



# Criminal Justice (Scotland) Act 1987

## 1987 CHAPTER 41

### PART I

#### CONFISCATION OF PROCEEDS OF DRUG TRAFFICKING ETC.

##### *Reciprocal arrangements for enforcement of confiscation orders*

- 27 Recognition and enforcement of orders under Drug Trafficking Offences Act 1986.**
- (1) An order to which this section applies shall, subject to this section and section 28 of this Act, 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 purposes of section 8, 11 or 12 of the Drug Trafficking Offences Act 1986 shall, subject to this section and section 28 of this Act, 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 11(3)(a) of the said Act of 1986 to have effect in the law of Scotland.
  - (5) The orders to which this section applies are orders of the High Court (within the meaning that expression has in relation to England and Wales)—
    - (a) made under sections 8, 11, 12 or 30 of the said Act of 1986,
    - (b) relating to the exercise by that Court of its powers under those sections, or

---

*Status: Point in time view as at 18/09/1993. This version of this cross heading contains provisions that are not valid for this point in time.*

**Changes to legislation:** *There are currently no known outstanding effects for the Criminal Justice (Scotland) Act 1987, Cross Heading: Reciprocal arrangements for enforcement of confiscation orders. (See end of Document for details)*

---

- (c) relating to receivers in the performance of their functions under section 8, 11 or 12 of that Act,  
but not including an order in proceedings for enforcement of any such order.
- (6) References in this section to an order under section 8 of the said Act of 1986 include references to a discharge under section 7(4) of that Act of such an order.
- (7) In this section and in section 28 of this Act, “order” means any order, direction or judgment (by whatever name called).
- (8) Nothing in any order of the High Court (within the meaning mentioned in subsection (5) above) under section 11(6) of the said Act of 1986 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.

## **28 Provisions supplementary to section 27.**

- (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 27 of this Act applies, direct that the order shall, in accordance with such rules, be registered in that Court.
- (2) Subsections (1) and (3) of section 27 of this Act 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 section 27 of this Act 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 (within the meaning mentioned in section 27(5) of this Act).
- (4) The Court of Session shall have the like power to make an order under section 1 of the <sup>M1</sup>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 the <sup>M2</sup>Drug Trafficking Offences Act 1986 in the High Court (within the meaning mentioned in section 27(5) of this Act) 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 27 of this Act applies, or
  - (b) assisting receivers performing functions there under or for the purposes of section 8, 11 or 12 of the said Act of 1986,
 make such orders and do otherwise as seems to it appropriate.
- (6) A document purporting to be a copy of an order under or for the purposes of the <sup>M3</sup>Drug Trafficking Offences Act 1986 by the High Court (within the meaning mentioned in section 27(5) of this Act) and to be certified as such by a proper officer of that Court shall, in Scotland, be sufficient evidence of the order.

*Status: Point in time view as at 18/09/1993. This version of this cross heading contains provisions that are not valid for this point in time.*

**Changes to legislation:** There are currently no known outstanding effects for the Criminal Justice (Scotland) Act 1987, Cross Heading: Reciprocal arrangements for enforcement of confiscation orders. (See end of Document for details)

#### Marginal Citations

**M1** 1972 c. 59.

**M2** 1986 c. 32.

**M3** 1986 c. 32.

VALID FROM 31/03/1996

#### [<sup>F1</sup>28A Inhibition of Scottish property affected by order registered under section 27.

- (1) On the application of the Lord Advocate, the Court of Session may in respect of heritable realisable property in Scotland affected by a restraint order registered under section 27 of this Act (whether such property generally or particular such property) grant warrant for inhibition against any person with an interest in that property; and the warrant—
  - (a) shall have effect as if granted on the dependence of an action for debt at the instance of the Lord Advocate against the person and may be executed, recalled, loosed or restricted accordingly;
  - (b) shall have the effect of letters of inhibition and shall forthwith be registered by the Lord Advocate 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) above as that section applies to an inhibition by separate letters or contained in a summons.
- (3) In the application of section 158 of that Act of 1868 (recall of inhibition) to such an 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) The fact that an inhibition 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 26, 29 or 30 of the Drug Trafficking Act 1994 in respect of that property.
- (5) No inhibition 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 the inhibition has been granted has ceased to have effect in respect of that property; and the Lord Advocate shall—
  - (a) apply for the recall, or as the case may be restriction, of the inhibition; and
  - (b) ensure that the recall, or restriction, of an inhibition on such application is reflected in the Register of Inhibitions and Adjudications.
- (6) Any power of the Court of Session to recall, loose or restrict inhibitions shall, in relation to an order containing an inhibition under subsection (1) above 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 31 of the Drug Trafficking Act 1994.]

*Status: Point in time view as at 18/09/1993. This version of this cross heading contains provisions that are not valid for this point in time.*

**Changes to legislation:** *There are currently no known outstanding effects for the Criminal Justice (Scotland) Act 1987, Cross Heading: Reciprocal arrangements for enforcement of confiscation orders. (See end of Document for details)*

#### Textual Amendments

**F1** Ss. 28A and 28B inserted (31.3.1996) by 1995 c. 20, s. 113(3), **Sch. 5 para. 26**; S.I. 1996/517, **arts. 3(2), 5**

VALID FROM 31/03/1996

#### **[<sup>F2</sup>28B Arrestment of Scottish property affected by order registered under section 27.**

- (1) On the application of the Lord Advocate, the Court of Session may, in respect of moveable property affected by a restraint order registered under section 27 of this Act (whether such property generally or particular such property), grant warrant for arrestment if the property would be arrestable if the person entitled to it were a debtor.
- (2) A warrant under subsection (1) above shall have effect as if granted on the dependence of an action for debt at the instance of the Lord Advocate against the person and may be executed, recalled, loosed or restricted accordingly.
- (3) The fact that an arrestment has been executed under subsection (2) above in respect of property shall not prejudice the exercise of a receiver's powers under or for the purposes of section 26, 29 or 30 of the Drug Trafficking Act 1994 in respect of that property.
- (4) No arrestment executed under subsection (2) above shall have effect once, or in so far as, the restraint order affecting the property in respect of which the warrant for such arrestment has been granted has ceased to have effect in respect of that property; and the Lord Advocate shall apply to the Court of Session for an order recalling, or as the case may be, restricting the arrestment accordingly.
- (5) Any power of the Court of Session to recall, loose or restrict arrestments shall, in relation to an arrestment proceeding upon a warrant under subsection (1) above 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 31 of the Drug Trafficking Act 1994.]

#### Textual Amendments

**F2** Ss. 28A and 28B inserted (31.3.1996) by 1995 c. 20, s. 113(3), **Sch. 5 para. 26**; S.I. 1996/517, **arts. 3(2), 5**

## **29 Enforcement of Northern Ireland orders.**

- (1) Her Majesty may by Order in Council provide that, for the purposes of sections 8 to 25 and 33 to 35 of this Act, this Act shall have effect as if—
  - (a) references to confiscation orders included a reference to orders made by courts in Northern Ireland which appear to Her Majesty to correspond to confiscation orders;
  - (b) references to offences to which section 1 of this Act relates included a reference to any offence under the law of Northern Ireland (not being an

---

*Status: Point in time view as at 18/09/1993. This version of this cross heading contains provisions that are not valid for this point in time.*

**Changes to legislation:** There are currently no known outstanding effects for the Criminal Justice (Scotland) Act 1987, Cross Heading: Reciprocal arrangements for enforcement of confiscation orders. (See end of Document for details)

---

- offence to which that section relates) which appears to Her Majesty to correspond to such an offence; and
- (c) such other modifications were made as may be specified in the Order in Council, being modifications which appear to Her Majesty to be requisite or desirable having regard to procedural differences which may for the time being exist between Scotland and Northern Ireland; and without prejudice to the generality of this paragraph modifications may include provision as to the circumstances in which proceedings in Northern Ireland are to be treated for the purposes of those sections as instituted or as concluded.
- (2) An Order in Council under this section may provide for the sections mentioned in subsection (1) above to have effect in relation to anything done or to be done in Northern Ireland subject to such further modifications as may be specified in the order.
- (3) An Order in Council under this section may contain such incidental, consequential and transitional provisions as Her Majesty considers expedient.
- (4) An Order in Council under this section shall not be made unless a draft of the order has been laid before Parliament and approved by resolution of each House of Parliament.

### **[F<sup>3</sup>30 Enforcement of other external orders.**

- (1) Her Majesty may by Order in Council—
- (a) direct in relation to a country or territory outside the United Kingdom designated by the order (“a designated country”) that, subject to such modifications as may be specified, this Part of this Act shall apply to external confiscation orders and to proceedings which have been or are to be instituted in the designated country and may result in an external confiscation order being made there;
- (b) make—
- (i) such provision in connection with the taking of action in the designated country with a view to satisfying a confiscation order; and
- (ii) such provision as to evidence or proof of any matter for the purposes of this section and section 30A of this Act; and
- (iii) such incidental, consequential and transitional provision, as appears to Her Majesty to be expedient; and
- (c) without prejudice to the generality of this subsection, direct that in such circumstances as may be specified proceeds which arise out of action taken in the designated country with a view to satisfying a confiscation order shall be treated as reducing the amount payable under the order to such extent as may be specified.
- (2) In this Part of this Act—“external confiscation order” means an order made by a court in a designated country for the purpose of recovering payments or other rewards received in connection with drug trafficking or their value; and “modifications” includes additions, alterations and omissions.
- (3) An Order in Council under this section may make different provision for different cases or classes of case.
- (4) The power to make an Order in Council under this section includes power to modify this Part of this Act in such a way as to confer power on a person to exercise a discretion.

*Status: Point in time view as at 18/09/1993. This version of this cross heading contains provisions that are not valid for this point in time.*

*Changes to legislation: There are currently no known outstanding effects for the Criminal Justice (Scotland) Act 1987, Cross Heading: Reciprocal arrangements for enforcement of confiscation orders. (See end of Document for details)*

- (5) An Order in Council under this section shall not be made unless a draft of the Order has been laid before Parliament and approved by a resolution of each House of Parliament.]

**Subordinate Legislation Made**

**P1** [S. 30](#): s. 30 power exercised by [S.I. 1991/1467](#)

**Textual Amendments**

**F3** [Ss. 30, 30A](#) substituted for s. 30 by [Law Reform \(Miscellaneous Provisions\) \(Scotland\) Act 1990](#) (c. 40, SIF 39:1), [s. 63](#)

**[<sup>F4</sup>30A Registration of external confiscation orders.**

- (1) On an application made by or on behalf of the Government of a designated country, the Court of Session 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 Scotland 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 Court of Session 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.]

**Textual Amendments**

**F4** [Ss. 30, 30A](#) substituted for s. 30 by [Law Reform \(Miscellaneous Provisions\) \(Scotland\) Act 1990](#) (c. 40, SIF 39:1), [s. 63](#)

**31 Enforcement in England and Wales.**

The following section shall be inserted before section 25 of the Drug Trafficking Offences Act 1986—

**“24A Recognition and enforcement of orders and functions under Part I of the Criminal Justice (Scotland) Act 1987.**

- (1) Her Majesty may by Order in Council make such provision as Her Majesty considers expedient for the purpose—
- (a) of enabling property in England and Wales which is realisable property for the purposes of Part I of the Criminal Justice (Scotland) Act 1987

---

*Status: Point in time view as at 18/09/1993. This version of this cross heading contains provisions that are not valid for this point in time.*

**Changes to legislation:** There are currently no known outstanding effects for the Criminal Justice (Scotland) Act 1987, Cross Heading: Reciprocal arrangements for enforcement of confiscation orders. (See end of Document for details)

---

- to be used or realised for the payment of any amount payable under a confiscation order made under that Part of that Act; and
- (b) of securing that, where no confiscation order has been made under that Part of that Act, property in England and Wales which is reliable property for the purposes of that Part of that Act is available, in the event that such an order is so made, to be used or realised for the payment of any amount payable under it.
- (2) Without prejudice to the generality of the power conferred by subsection (1) above, an Order in Council under this section may—
- (a) provide that, subject to any specified conditions—
- (i) the functions of a person appointed under section 13 of the Criminal Justice (Scotland) Act 1987; and
- (ii) such description of orders made under or for the purposes of Part I of the Criminal Justice (Scotland) Act 1987 as may be specified;
- shall have effect in the law of England and Wales;
- (b) make provision—
- (i) for the registration in the High Court of such descriptions of orders made under or for the purposes of that Part of that Act as may be specified; and
- (ii) for the High Court to have in relation to the enforcement of orders made under or for the purposes of that Part of that Act which are so registered such powers as may be specified; and
- (c) make provision as to the proof in England and Wales of orders made under or for the purposes of that Part of that Act.
- (3) In subsection (2) above “specified” means specified in an Order in Council under this section.
- (4) An Order in Council under this section may amend or apply, with or without modifications, any enactment.
- (5) An Order in Council under this section may contain such incidental, consequential and transitional provisions as Her Majesty considers expedient.
- (6) An Order in Council under this section shall not be made unless a draft of the Order has been laid before Parliament and approved by resolution of each House of Parliament.”.

### **32 Order in Council as regards taking of action in designated country.**

- (1) Her Majesty may by Order in Council make such provision in connection with the taking of action in a designated country in consequence of the making of a restraint order or of a confiscation order as appears to Her Majesty to be expedient; and without prejudice to the generality of this subsection such provision may include a direction that in such circumstances as may be specified proceeds arising out of action taken in that country with a view to satisfying a confiscation order which are retained there shall nevertheless be treated as reducing the amount payable under the confiscation order to such extent as may be specified.

**Status:** Point in time view as at 18/09/1993. This version of this cross heading contains provisions that are not valid for this point in time.

**Changes to legislation:** There are currently no known outstanding effects for the Criminal Justice (Scotland) Act 1987,  
**Cross Heading:** Reciprocal arrangements for enforcement of confiscation orders. (See end of Document for details)

---

- (2) Subsections (9)(a), (10), (11) and (12) of section 30 of this Act shall apply in respect of Orders in Council under this section as they apply in respect of Orders in council under that section.



**Status:**

Point in time view as at 18/09/1993. This version of this cross heading contains provisions that are not valid for this point in time.

**Changes to legislation:**

There are currently no known outstanding effects for the Criminal Justice (Scotland) Act 1987,  
Cross Heading: Reciprocal arrangements for enforcement of confiscation orders.