



# Criminal Justice (Scotland) Act 1987

## 1987 CHAPTER 41

### PART I

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

##### *Sequestration etc. of estate comprising realisable property*

### **33 Sequestration of person holding realisable property**

- (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 date of sequestration (within the meaning of section 12(4) of the 1985 Act); and
  - (b) any proceeds of property realised by virtue of section 13(1) of this Act for the time being in the hands of an administrator appointed under that section,is excluded from the debtor's estate for the purposes of that Act.
- (2) Where an award of sequestration has been made, the powers conferred on the Court of Session by sections 8, 11 to 13, 16, 24, 27 and 28 of this Act or on an administrator appointed under subsection (1) of the said section 13 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); or
  - (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 the 1985 Act shall be taken as restricting, or enabling the restriction of, the exercise of the powers so conferred.
- (4) Where, during the period before sequestration is awarded, an interim trustee stands appointed under the proviso to section 13(1) of the 1985 Act and any property in the

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*Status: This is the original version (as it was originally enacted).*

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debtor's estate is subject to a restraint order, the powers conferred on the interim trustee by virtue of that Act do not apply to property for the time being subject to the restraint order.

- (5) Where the estate of a person is sequestrated and he has directly or indirectly made an implicative gift—
- (a) no decree shall, at any time when proceedings as regards an offence to which section 1 of this Act relates 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, be granted under section 34 or 36 of the 1985 Act (gratuitous alienations and unfair preferences) in respect of the making of the gift; and
  - (b) any decree granted under either of the said sections 34 and 36 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.
- (6) 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) 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 in it to the 1985 Act, there were substituted a reference to the said Act of 1913.