



# Criminal Justice (Scotland) Act 1987

## 1987 CHAPTER 41

### PART I

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

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

#### **35 Winding up 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, 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 13(1) of this Act for the time being in the hands of an administrator appointed under that section.
- (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 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 any realisable property held by the company in relation to which the functions of the liquidator are exercisable—
  - (a) so as to inhibit the liquidator 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 the powers so conferred.

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*Status: This is the original version (as it was originally enacted).*

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- (4) For the purposes of the application of Parts IV and V of the Insolvency Act 1986 (winding up of registered companies and winding up of unregistered companies) to a company which the Court of Session has jurisdiction to wind up, a person is not a creditor in so far as any sum due to him by the company is due in respect of a confiscation order (whether under this Act or under and within the meaning of section 1 of the Drug Trafficking Offences Act 1986 or any corresponding provision in Northern Ireland).
- (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 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.
- (6) In any case in which a winding up of a company commenced, or is treated as having commenced, before the date on which the Insolvency Act 1986 came into force, subsections (2) to (5) above have effect with the substitution for references to that Act of references to the Companies Act 1985.