



# Criminal Justice Act 1988

## 1988 CHAPTER 33

### PART VI

#### CONFISCATION OF THE PROCEEDS OF AN OFFENCE

##### *Enforcement, etc. of confiscation orders*

#### **86 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, 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 77(8) or 80(5) or (6) above for the time being in the hands of a receiver appointed under section 77 or 80 above.
- (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 77 to 80 above or on a receiver so appointed or on the Court of Session by sections 90 to 92 below 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 <sup>M1</sup>Insolvency Act 1986 shall be taken as restricting, or enabling the restriction of, the exercise of those powers.

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*Status: Point in time view as at 31/03/1997. This version of this provision has been superseded.*

*Changes to legislation: Criminal Justice Act 1988, Section 86 is up to date with all changes known to be in force on or before 10 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

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- (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) For the purposes of the application of Parts IV and V of the <sup>M2</sup>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.
- (6) 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.
- (7) In any case in which a winding up of a company commenced or is treated as having commenced before 29th December 1986, this section shall have effect with the substitution for references to the Insolvency Act 1986 of references to the <sup>M3</sup>Companies Act 1985.

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**Marginal Citations**

**M1** 1986 c. 45.

**M2** 1986 c. 45.

**M3** 1985 c. 6.

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