



Drug Trafficking Act 1994

1994 CHAPTER 37

PART I

CONFISCATION ORDERS

Insolvency of defendants etc

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—

Status: This is the original version (as it was originally enacted).

- (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.