



# Proceeds of Crime (Scotland) Act 1995

## 1995 CHAPTER 43

### PART I

#### CONFISCATION OF THE PROCEEDS OF CRIME

##### *Confiscation orders*

#### **4 Realisable property.**

- (1) In this Act “realisable property” means, subject to subsection (2) below—
- (a) the whole estate wherever situated of a person—
    - (i) against whom proceedings have been instituted for an offence to which this Part of this Act applies; or
    - (ii) in respect of whom a restraint order has been made by virtue of section 29(3) of this Act;
  - (b) the whole estate wherever situated of a person to whom any person whose whole estate is realisable by virtue of paragraph (a) above has (directly or indirectly and whether in one transaction or in a series of transactions) made a gift caught by this Part of this Act or, as the case may be, an implicative gift;
  - (c) any other property in the possession or under the control of a person mentioned in paragraph (a) or (b) above; and
  - (d) any income or estate vesting in a person mentioned in paragraph (a) or (b) above.
- (2) Property is not realisable if—
- (a) held on trust by a person mentioned in subsection (1)(a) or (b) above for a person not so mentioned;
  - (b) a suspended forfeiture order is in force in respect of the property; or
  - (c) it is, for the time being, subject to a restraint order made in respect of other proceedings.
- (3) For the purposes of this Part of this Act, the amount that might be realised at the time a confiscation order is made in respect of a person is—

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*Status: Point in time view as at 01/04/1996. This version of this provision has been superseded.*

*Changes to legislation: There are currently no known outstanding effects for the Proceeds of Crime (Scotland) Act 1995, Section 4. (See end of Document for details)*

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- (a) in relation to an offence which is not a drug trafficking offence, subject to section 7(5) of this Act, the total value at that time of all his realisable property, and of all gifts caught by this Part which have been made by him, less any amount due by him at that time in respect of any compensation order under section 249 of the 1995 Act made before the confiscation order; and
  - (b) in relation to a drug trafficking offence, the total value at that time of all his realisable property and all implicative gifts which have been made by him.
- (4) In assessing the value of realisable property (other than money) of a person in respect of whom it proposes to make a confiscation order, the court shall have regard to the likely market value of the property at the date on which the order would be made; but it may also have regard to any security or real burden which would require to be discharged in realising the property or to any other factors which might reduce the amount recoverable by such realisation.
- (5) In assessing the value of realisable property of a person whose estate has been sequestrated, or who has been adjudged bankrupt in England and Wales or Northern Ireland, the court shall take into account the extent to which the property is subject to, as the case may be, sequestration or bankruptcy procedure by virtue of paragraph 1 or 2 of Schedule 2 to this Act.
- (6) Without prejudice to section 2(7) of this Act, the court may, for the purposes of section 1(5)(b) of this Act, disregard the amount (or part of the amount) of an implicative gift if it considers it improbable that such amount (or part) could be realised.

**Status:**

Point in time view as at 01/04/1996. This version of this provision has been superseded.

**Changes to legislation:**

There are currently no known outstanding effects for the Proceeds of Crime (Scotland) Act 1995, Section 4.