



# Proceeds of Crime Act 2002

## 2002 CHAPTER 29

### PART 9

#### INSOLVENCY ETC.

##### *Sequestration in Scotland*

#### 420 [F<sup>1</sup>Modifications of the 2016 Act]

(1) This section applies if an award of sequestration is made in Scotland.

[F<sup>2</sup>(2) The following property is excluded from the debtor's estate for the purposes of the [F<sup>3</sup>2016] Act—

- (a) property for the time being subject to a restraint order which was made under section 41, 120 or 190 before the award of sequestration;
- (b) property for the time being detained under or by virtue of section 44A, 47J, 47K, 47M, 47P, 122A, 127J, 127K, 127M, 127P, 193A, 195J, 195K, 195M or 195P;
- (c) property in respect of which an order under section 50, 128(3) or 198 is in force;
- (d) property in respect of which an order under section 67A, 131A or 215A is in force.]

(3) Subsection (2)(a) applies to heritable property in Scotland only if the restraint order is recorded in the General Register of Sasines or registered in the Land Register of Scotland before the award of sequestration.

(4) It shall not be competent to submit a claim in relation to a confiscation order to the [F<sup>4</sup>trustee in the sequestration] in accordance with section [F<sup>5</sup>122 of the 2016] Act; and the reference here to a confiscation order is to any confiscation order that has been or may be made against the debtor under Part 2, 3 or 4 of this Act.

(5) If at any time in the period before the award of sequestration is made an interim trustee stands appointed under section [F<sup>6</sup>54(1) of the 2016] Act and any property in

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the debtor's estate is at that time subject to a restraint order made under section 41, 120 or 190, the powers conferred on the trustee by virtue of that Act do not apply to property then subject to the restraint order.

#### Textual Amendments

- F1** S. 420 title substituted (30.11.2016) by [The Bankruptcy \(Scotland\) Act 2016 \(Consequential Provisions and Modifications\) Order 2016 \(S.I. 2016/1034\)](#), art. 1, **Sch. 1 para. 25(8)**
- F2** S. 420(2) substituted (1.6.2015 for specified purposes, 1.3.2016 in so far as not already in force) by [Policing and Crime Act 2009 \(c. 26\)](#), s. 116(1), **Sch. 7 para. 82**; [S.I. 2015/983](#), arts. 2(2)(e), 3(s); [S.I. 2016/147](#), art. 3(i)
- F3** Word in s. 420(2) substituted (30.11.2016) by [The Bankruptcy \(Scotland\) Act 2016 \(Consequential Provisions and Modifications\) Order 2016 \(S.I. 2016/1034\)](#), art. 1, **Sch. 1 para. 25(7)(a)**
- F4** Words in s. 420(4) substituted (30.11.2016) by [The Bankruptcy \(Scotland\) Act 2016 \(Consequential Provisions and Modifications\) Order 2016 \(S.I. 2016/1034\)](#), art. 1, **Sch. 1 para. 25(7)(b)(i)**
- F5** Words in s. 420(4) substituted (30.11.2016) by [The Bankruptcy \(Scotland\) Act 2016 \(Consequential Provisions and Modifications\) Order 2016 \(S.I. 2016/1034\)](#), art. 1, **Sch. 1 para. 25(7)(b)(ii)**
- F6** Words in s. 420(5) substituted (30.11.2016) by [The Bankruptcy \(Scotland\) Act 2016 \(Consequential Provisions and Modifications\) Order 2016 \(S.I. 2016/1034\)](#), art. 1, **Sch. 1 para. 25(7)(c)**

#### Commencement Information

- I1** S. 420 in force at 24.3.2003 by [S.I. 2003/333](#), art. 2, **Sch.**

## 421 Restriction of powers

- (1) If an award of sequestration is made in Scotland the powers referred to in subsection (2) must not be exercised in relation to the property referred to in subsection (3).
- (2) These are the powers—
- the powers conferred on a court by sections 41 to <sup>F7</sup>67B, the powers conferred on an appropriate officer by section 47C] and the powers of a receiver appointed under section 48 <sup>F8</sup>[or 50] ;
  - the powers conferred on a court by sections 120 to 136 and Schedule 3 <sup>F9</sup>[, the powers conferred on an appropriate officer by section 127C] and the powers of an administrator appointed under section 125 or 128(3);
  - the powers conferred on a court by sections 190 to <sup>F10</sup>215B, the powers conferred on an appropriate officer by section 195C] and the powers of a receiver appointed under section 196 <sup>F11</sup>[or 198] .
- (3) This is the property—
- property which is for the time being comprised in the whole estate of the debtor within the meaning of section <sup>F12</sup>79 of the 2016] Act;
  - any income of the debtor which has been ordered under section <sup>F13</sup>90 or 95] of that Act to be paid to the <sup>F14</sup>[trustee in the sequestration] ;
  - any estate which under section <sup>F15</sup>79(4) or 86(4) and (5)] of that Act vests in the <sup>F16</sup>[trustee in the sequestration] ;
  - in a case where a confiscation order has been made under section 6 or 156 of this Act, any sums remaining in the hands of a receiver appointed under section 50 <sup>F17</sup>[or 198] of this Act after the amount required to be paid under the confiscation order has been fully paid;

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- (e) in a case where a confiscation order has been made under section 92 of this Act, any sums remaining in the hands of an administrator appointed under section 128 of this Act after the amount required to be paid under the confiscation order has been fully paid.
  - <sup>F18</sup>(f) in a case where a confiscation order has been made under section 6, 92 or 156 of this Act, any sums remaining in the hands of an appropriate officer after the amount required to be paid under the confiscation order has been fully paid under section 67D(2)(c), 131D(2)(c) or 215D(2)(c).]
- (4) But nothing in the <sup>F19</sup>2016] Act must be taken to restrict (or enable the restriction of) the powers referred to in subsection (2).

<sup>F20</sup>(5) .....

<sup>F20</sup>(6) .....

#### Textual Amendments

- F7** Words in s. 421(2)(a) substituted (1.6.2015) by Policing and Crime Act 2009 (c. 26), s. 116(1), **Sch. 7 para. 83(2)(a)**; S.I. 2015/983, arts. 2(2)(e), 3(t)
- F8** Words in s. 421(2)(a) substituted (1.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), **Sch. 8 para. 73(2)(a)**; S.I. 2008/755, art. 2(1)(a) (with arts. 3-14)
- F9** Words in s. 421(2)(b) inserted (1.6.2015) by Policing and Crime Act 2009 (c. 26), s. 116(1), **Sch. 7 para. 83(2)(b)**; S.I. 2015/983, arts. 2(2)(e), 3(t)
- F10** Words in s. 421(2)(c) substituted (1.3.2016) by Policing and Crime Act 2009 (c. 26), s. 116(1), **Sch. 7 para. 83(2)(c)**; S.I. 2016/147, art. 3(i)
- F11** Words in s. 421(2)(c) substituted (1.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), **Sch. 8 para. 73(2)(b)**; S.I. 2008/755, art. 2(1)(a) (with arts. 3-14)
- F12** Words in s. 421(3)(a) substituted (30.11.2016) by The Bankruptcy (Scotland) Act 2016 (Consequential Provisions and Modifications) Order 2016 (S.I. 2016/1034), art. 1, **Sch. 1 para. 25(9)(a)**
- F13** Words in s. 421(3)(b) substituted (30.11.2016) by The Bankruptcy (Scotland) Act 2016 (Consequential Provisions and Modifications) Order 2016 (S.I. 2016/1034), art. 1, **Sch. 1 para. 25(9)(b)(i)**
- F14** Words in s. 421(3)(b) substituted (30.11.2016) by The Bankruptcy (Scotland) Act 2016 (Consequential Provisions and Modifications) Order 2016 (S.I. 2016/1034), art. 1, **Sch. 1 para. 25(9)(b)(ii)**
- F15** Words in s. 421(3)(c) substituted (30.11.2016) by The Bankruptcy (Scotland) Act 2016 (Consequential Provisions and Modifications) Order 2016 (S.I. 2016/1034), art. 1, **Sch. 1 para. 25(9)(c)(i)**
- F16** Words in s. 421(3)(c) substituted (30.11.2016) by The Bankruptcy (Scotland) Act 2016 (Consequential Provisions and Modifications) Order 2016 (S.I. 2016/1034), art. 1, **Sch. 1 para. 25(9)(c)(ii)**
- F17** Words in s. 421(3)(d) substituted (1.4.2008) by Serious Crime Act 2007 (c. 27), s. 94(1), **Sch. 8 para. 73(3)**; S.I. 2008/755, art. 2(1)(a) (with arts. 3-14)
- F18** S. 421(3)(f) inserted (1.6.2015 for specified purposes, 1.3.2016 in so far as not already in force) by Policing and Crime Act 2009 (c. 26), s. 116(1), **Sch. 7 para. 83(3)**; S.I. 2015/983, arts. 2(2)(e), 3(t); S.I. 2016/147, art. 3(i)
- F19** Word in s. 421(4) substituted (30.11.2016) by The Bankruptcy (Scotland) Act 2016 (Consequential Provisions and Modifications) Order 2016 (S.I. 2016/1034), art. 1, **Sch. 1 para. 25(9)(d)**
- F20** S. 421(5)(6) omitted (30.11.2016) by virtue of The Bankruptcy (Scotland) Act 2016 (Consequential Provisions and Modifications) Order 2016 (S.I. 2016/1034), art. 1, **Sch. 1 para. 25(9)(e)**

#### Commencement Information

- I2** S. 421 in force at 24.3.2003 by S.I. 2003/333, art. 2, **Sch.**

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## 422 Tainted gifts

- (1) This section applies if a person whose estate is sequestrated in Scotland has made a tainted gift (whether directly or indirectly).
- (2) No decree may be granted under the Bankruptcy Act 1621 (c. 18) or section [F21]98 or 99 of the 2016] Act (gratuitous alienations and unfair preferences), or otherwise, in respect of the making of the gift at any time when—
  - (a) any property of the recipient of the tainted gift is subject to a restraint order under section 41, 120 or 190, F22...
  - [F23](aa) such property is detained under or by virtue of section 44A, 47J, 47K, 47M, 47P, 122A, 127J, 127K, 127M, 127P, 193A, 195J, 195K, 195M or 195P,]
  - (b) there is in force in respect of such property an order under section 50, F24... 128(3) [F25 or 198]. [F26, or
  - (c) there is in force in respect of such property an order under section 67A, 131A or 215A.]
- (3) Any decree made under the Bankruptcy Act 1621 (c. 18) or section [F27]98 or 99 of the 2016] Act, or otherwise, after an order mentioned in [F28]subsection (2)(a), (b) or (c)] is discharged must take into account any realisation under Part 2, 3 or 4 of this Act of property held by the recipient of the tainted gift.
- (4) A person makes a tainted gift for the purposes of this section if he makes a tainted gift within the meaning of Part 2, 3 or 4.

### Textual Amendments

- F21** Words in s. 422(2) substituted (30.11.2016) by [The Bankruptcy \(Scotland\) Act 2016 \(Consequential Provisions and Modifications\) Order 2016 \(S.I. 2016/1034\)](#), art. 1, [Sch. 1 para. 25\(10\)](#)
- F22** Word in s. 422(2)(a) repealed (1.6.2015) by [Policing and Crime Act 2009 \(c. 26\)](#), s. 116(1), [Sch. 8 Pt. 4](#); S.I. 2015/983, art. 2(2)(f)
- F23** S. 422(2)(aa) inserted (1.6.2015 for specified purposes, 1.3.2016 in so far as not already in force) by [Policing and Crime Act 2009 \(c. 26\)](#), s. 116(1), [Sch. 7 para. 84\(2\)\(a\)](#); S.I. 2015/983, arts. 2(2)(e), 3(u); S.I. 2016/147, art. 3(i)
- F24** Word in s. 422(2)(b) repealed (1.4.2008) by [Serious Crime Act 2007 \(c. 27\)](#), s. 94(1), [Sch. 8 para. 74\(a\)](#), [Sch. 14](#); S.I. 2008/755, art. 2(1)(a)(d) (with arts. 3-14)
- F25** Words in s. 422(2)(b) substituted (1.4.2008) by [Serious Crime Act 2007 \(c. 27\)](#), s. 94(1), [Sch. 8 para. 74\(b\)](#); S.I. 2008/755, art. 2(1)(a) (with arts. 3-14)
- F26** S. 422(2)(c) and word inserted (1.6.2015 for specified purposes, 1.3.2016 in so far as not already in force) by [Policing and Crime Act 2009 \(c. 26\)](#), s. 116(1), [Sch. 7 para. 84\(2\)\(b\)](#); S.I. 2015/983, arts. 2(2)(e), 3(u); S.I. 2016/147, art. 3(i)
- F27** Words in s. 422(3) substituted (30.11.2016) by [The Bankruptcy \(Scotland\) Act 2016 \(Consequential Provisions and Modifications\) Order 2016 \(S.I. 2016/1034\)](#), art. 1, [Sch. 1 para. 25\(10\)](#)
- F28** Words in s. 422(3) substituted (1.6.2015) by [Policing and Crime Act 2009 \(c. 26\)](#), s. 116(1), [Sch. 7 para. 84\(3\)](#); S.I. 2015/983, arts. 2(2)(e), 3(u)

### Commencement Information

- I3** S. 422 in force at 24.3.2003 by [S.I. 2003/333](#), art. 2, [Sch.](#)

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