



# Drug Trafficking Offences Act 1986

## 1986 CHAPTER 32

An Act to make provision for the recovery of the proceeds of drug trafficking and other provision in connection with drug trafficking, to make provision about the supply of articles which may be used or adapted for use in the administration of controlled drugs or used to prepare a controlled drug for administration and to increase the number of assistant commissioners of police for the metropolis. [8th July 1986]

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

**Modifications etc. (not altering text)**

- C1 Act applied with modifications by S.I. 1989/485, arts. 3, 4 Schs. 1, 2  
C2 Act modified by S.I. 1990/1199, arts. 3, 4, 5, Sch. 2

*Confiscation of proceeds of drug trafficking*

**1 Confiscation orders.**

- (1) Subject to subsection (7) below, where a person appears before the Crown Court to be sentenced in respect of one or more drug trafficking offences (and has not previously been sentenced or otherwise dealt with in respect of his conviction for the offence or, as the case may be, any of the offences concerned), [F<sup>1</sup>then—
- (a) if the prosecutor asks it to proceed under this section, or
  - (b) if the court considers that, even though the prosecutor has not asked it to do so, it is appropriate for it to proceed under this section,
- it] shall act as follows.
- (2) The court shall first determine whether he has benefited from drug trafficking.

*Status: Point in time view as at 08/08/1994.*

*Changes to legislation: There are currently no known outstanding effects for the Drug Trafficking Offences Act 1986. (See end of Document for details)*

- (3) For the purposes of this Act, a person who has at any time (whether before or after the commencement of this section) received any payment or other reward in connection with drug trafficking carried on by him or another has benefited from drug trafficking.
- (4) If the court determines that he has so benefited, the court shall, before sentencing or otherwise dealing with him in respect of the offence or, as the case may be, any of the offences concerned, determine in accordance with section 4 of this Act the amount to be recovered in his case by virtue of this section.
- (5) The court shall then, in respect of the offence or offences concerned—
- (a) order him to pay that amount,
  - (b) take account of the order before—
    - (i) Imposing any fine on him, or
    - (ii) make any order involving any payment by him, or
    - (iii) making any order under section 27 of the <sup>M1</sup>Misuse of Drugs Act 1971 (forfeiture orders), <sup>F2</sup> . . . or section 43 of that Act (deprivation orders), and
  - (c) subject to paragraph (b) above, leave the order out of account in determining the appropriate sentence or other manner of dealing with the defendant.
- (6) No enactment restricting the power of a court dealing with an offender in a particular way from dealing with him also in any other way shall by reason only of the making of an order under this section restrict the Crown Court from dealing with an offender in any way the court considers appropriate in respect of a drug trafficking offence.
- (7) Subsection (1) above does not apply in relation to any offence for which a person appears before the Crown Court to be sentenced if—
- (a) he has been committed to the Crown Court for sentence in respect of that offence under section 37(1) of the <sup>M2</sup>Magistrates' Courts Act 1980 (committal to Crown Court with a view to sentence of youth custody), or
  - (b) the powers of the court (apart from this section) to deal with him in respect of that offence are limited to dealing with him in any way in which a magistrates' court might have dealt with him in respect of the offence.
- [<sup>F3</sup>(7A) The standard of proof required to determine any question arising under this Act as to—
- (a) whether a person has benefited from drug trafficking, or
  - (b) the amount to be recovered in his case by virtue of this section,
- shall be that applicable in civil proceedings.]
- [<sup>F4</sup>(8) In this Act—
- (a) an order under this section is referred to as a “confiscation order”, and
  - (b) a person against whom proceedings have been instituted for a drug trafficking offence is referred to (whether or not he has been convicted) as “the defendant”.]

#### Textual Amendments

- F1** Words in s. 1(1) substituted (*prosp.*) by 1993 c. 36, ss. 7(1), 78(3) (with s. 78(6)(9))
- F2** Words in s. 1(5)(b)(iii) repealed (15.2.1994) by 1993 c. 36, s. 79(14), **Sch. 6 Pt. I**; S.I. 1994/71, art. 2, **Sch.**
- F3** S. 1(7A) inserted (*prosp.*) by 1993 c. 36, ss. 7(2), 78(3) (with s. 78(6)(9))
- F4** S. 1(8) repealed (*prosp.*) by 1993 c. 36, ss. 78(3), 79(14), **Sch. 6 Pt. I**

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#### **Marginal Citations**

**M1** 1971 c. 38.

**M2** 1980 c. 43.

#### **[<sup>F5</sup>1A Postponed determinations.**

- (1) Where the Crown Court is acting under section 1 of this Act but considers that it requires further information before—
  - (a) determining whether the defendant has benefited from drug trafficking, or
  - (b) determining the amount to be recovered in his case by virtue of section 1 of this Act,it may, for the purpose of enabling that information to be obtained, postpone making the determination for such period as it may specify.
- (2) More than one postponement may be made under subsection (1) above in relation to the same case.
- (3) Unless it is satisfied that there are exceptional circumstances, the court shall not specify a period under subsection (1) above which—
  - (a) by itself, or
  - (b) where there have been one or more previous postponements under subsection (1) above or (4) below, when taken together with the earlier specified period or periods,exceeds six months beginning with the date of conviction.
- (4) Where the defendant appeals against his conviction, the court may, on that account—
  - (a) postpone making either or both of the determinations mentioned in subsection (1) above for such period as it may specify, or
  - (b) where it has already exercised its powers under this section to postpone, extend the specified period.
- (5) A postponement or extension under subsection (1) or (4) above may be made—
  - (a) on application by the defendant or the prosecutor, or
  - (b) by the court of its own motion.
- (6) Unless the court is satisfied that there are exceptional circumstances, any postponement or extension under subsection (4) above shall not exceed the period ending three months after the date on which the appeal is determined or otherwise disposed of.
- (7) Where the court exercises its power under subsection (1) or (4) above, it may nevertheless proceed to sentence, or otherwise deal with, the defendant in respect of the relevant offence or any of the relevant offences.
- (8) Where the court has so proceeded, section 1 of this Act shall have effect as if—
  - (a) in subsection (4), the words from “before sentencing” to “offences concerned” were omitted, and
  - (b) in subsection (5)(c), after “determining” there were inserted “in relation to any offence in respect of which he has not been sentenced or otherwise dealt with”.

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- (9) In sentencing, or otherwise dealing with, the defendant in respect of the relevant offence or any of the relevant offences at any time during the specified period, the court shall not—
- (a) impose any fine on him, or
  - (b) make any such order as is mentioned in section 1(5)(b)(ii) or (iii) of this Act.
- [ Where the court has sentenced the defendant under subsection (7) above during the <sup>F6</sup>(9A) specified period it may, after the end of that period, vary the sentence by imposing a fine or making any such order as is mentioned in section 1(5)(b)(ii) or (iii) of this Act so long as it does so within a period corresponding to that allowed by section 47(2) or (3) of the Supreme Court Act 1981 (time allowed for varying a sentence) but beginning with the end of the specified period.]
- (10) In this section—
- (a) “the relevant offence” means the drug trafficking offence in respect of which the defendant appears (as mentioned in section 1(1) of this Act) before the court;
  - (b) references to an appeal include references to an application under section 111 of the Magistrates’ Courts Act 1980 (statement of case by magistrates’ court).
- (11) In this section “the date of conviction” means—
- (a) the date on which the defendant was convicted, or
  - (b) where he appeared to be sentenced in respect of more than one conviction, and those convictions were not all on the same date, the date of the latest of those convictions.]

#### Textual Amendments

**F5** S. 1A inserted (*prosp.*) by 1993 c. 36, ss.8, 78(3) (with s. 78(6)(9))

**F6** S. 1A(9A) inserted (*prosp.*) by 1994 c. 33, ss. 168(1), 172, **Sch. 9 para. 28**

## 2 Assessing the proceeds of drug trafficking.

- (1) For the purposes of this Act—
- (a) any payments or other rewards received by a person at any time (whether before or after the commencement of section 1 of this Act) in connection with drug trafficking carried on by him or another are his proceeds of drug trafficking, and
  - (b) the value of his proceeds of drug trafficking is the aggregate of the values of the payments or other rewards.
- (2) The Court may, for the purpose of determining whether the defendant has benefited from drug trafficking and, if he has, of assessing the value of his proceeds of drug trafficking, make the following assumptions, except to the extent that any of the assumptions are shown to be incorrect in the defendant's case.
- (3) Those assumptions are—
- (a) that any property appearing to the court—
    - (i) to have been held by him at any time since his conviction, or

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- (ii) to have been transferred to him at any time since the beginning of the period of six years ending when the proceedings were instituted against him,  
was received by him, at the earliest time at which he appears to the court to have held it, as a payment or reward in connection with drug trafficking carried on by him,
- (b) that any expenditure of his since the beginning of that period was met out of payments received by him in connection with drug trafficking carried on by him, and
- (c) that, for the purpose of valuing any property received or assumed to have been received by him at any time as such a reward, he received the property free of any other interests in it.
- (4) Subsection (2) above does not apply if the only drug trafficking offence in respect of which the defendant appears before the court to be sentenced is an offence under section [F723A or] 24 of this Act [F8 or section 14 of the Criminal Justice (International Co-operation) Act 1990].
- (5) For the purpose of assessing the value of the defendant's proceeds of drug trafficking in a case where a confiscation order has previously been made against him, the court shall leave out of account any of his proceeds of drug trafficking that are shown to the court to have been taken into account in determining the amount to be recovered under that order.

[F9]References in this subsection to a confiscation order include a reference to a confiscation order within the meaning of Part I of the Criminal Justice (Scotland) Act 1987].

#### Textual Amendments

- F7** Words in s. 2(4) inserted (15.2.1994) by 1993 c. 36, s. 16(2), (with s. 78(6)(9)); S.I. 1994/71, art. 2, Sch.
- F8** Words inserted (01.07.1991) by Criminal Justice (International Co-operation) Act 1990 (c. 5, SIF 39:1), s. 31(1), Sch. 4 para. 4(2); S.I. 1991/1072, art. 2(b), Sch. Pt.II.
- F9** Words added by Criminal Justice (Scotland) Act 1987 (c. 41, SIF 39:1), ss. 45(7)(a), 47(4)(a),

### 3 Statements relating to drug trafficking.

- (1) Where —
- (a) there is tendered to the Crown Court by the prosecutor a statement as to any matters relevant to the determination whether the defendant has benefited from drug trafficking or to the assessment of the value of his proceeds of drug trafficking, and
- (b) the defendant accepts to any extent any allegation in the statement,
- the court may, for the purposes of that determination and assessment, treat his acceptance as conclusive of the matters to which it relates.
- (2) Where—
- (a) a statement is tendered under subsection (1)(a) above, and
- (b) the court is satisfied that a copy of that statement has been served on the defendant,

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the court may require the defendant to indicate to what extent he accepts each allegation in the statement and, so far as he does not accept any such allegation, to indicate any matters he proposes to rely on.

- (3) If the defendant fails in any respect to comply with a requirement under subsection (2) above he may be treated for the purposes of this section as accepting every allegation in the statement apart from—
- (a) any allegation in respect of which he has complied with the requirement, and
  - (b) any allegation that he has benefited from drug trafficking or that any payment or other reward was received by him in connection with drug trafficking carried on by him or another.
- (4) Where—
- (a) there is tendered to the Crown Court by the defendant a statement as to any matters relevant to determining the amount that might be realised at the time the confiscation order is made, and
  - (b) the prosecutor accepts to any extent any allegation in the statement.
- the court may, for the purposes of that determination, treat the acceptance by the prosecutor as conclusive of the matters to which it relates.
- (5) An allegation may be accepted or a matter indicated for the purposes of this section either—
- (a) orally before the court, or
  - (b) in writing in accordance with Crown Court Rules.
- (6) No acceptance by the defendant under this section that any payment or other reward was received by him in connection with drug trafficking carried on by him or another shall be admissible in evidence in any proceedings for an offence.

### **[<sup>F10</sup>3A Provision of information by defendant.**

- (1) This section applies where—
- (a) the prosecutor has asked the court to proceed under section 1 of this Act or has applied to the court under section 5A, 5B or 5C of this Act, or
  - (b) no such request has been made but the court is nevertheless proceeding, or considering whether to proceed, under section 1.
- (2) For the purpose of obtaining information to assist it in carrying out its functions, the court may at any time order the defendant to give it such information as may be specified in the order.
- (3) An order under subsection (2) above may require all, or any specified part, of the required information to be given to the court in such manner, and before such date, as may be specified in the order.
- (4) Crown Court Rules may make provision as to the maximum or minimum period that may be allowed under subsection (3) above.
- (5) If the defendant fails, without reasonable excuse, to comply with any order under this section, the court may draw such inference from that failure as it considers appropriate.
- (6) Where the prosecutor accepts to any extent any allegation made by the defendant in giving to the court information required by an order under this section, the court may treat that acceptance as conclusive of the matters to which it relates.

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- (7) For the purposes of this section, an allegation may be accepted in such manner as may be prescribed by rules of court or as the court may direct.]

#### Textual Amendments

**F10** S. 3A inserted (*prosp.*) by 1993 c. 36, ss. 10(5), 78(3) (with s. 78(6)(9)) (which s. 10 itself was repealed (3.2.1995) by 1994 c. 37, ss. 67, 69(2), Sch. 3 and so the insertion fell)

#### 4 Amount to be recovered under confiscation order.

- (1) Subject to subsection (3) below, the amount to be recovered in the defendant's case under the confiscation order shall be the amount the Crown Court assesses to be the value of the defendant's proceeds of drug trafficking.
- (2) If the court is satisfied as to any matter relevant for determining the amount that might be realised at the time the confiscation order is made (whether by an acceptance under section 3 of this Act or otherwise), the court may issue a certificate giving the court's opinion as to the matters concerned and shall do so if satisfied as mentioned in subsection (3) below.
- (3) If the court is satisfied that the amount that might be realised at the time the confiscation order is made is less than the amount the court assesses to be the value of his proceeds of drug trafficking, the amount to be recovered in the defendant's case under the confiscation order shall be the amount appearing to the court to be the amount that might be so realised.

#### [<sup>F11</sup>4A Powers of High Court where defendant has died or absconded.

- (1) Subsection (2) below applies where a person has been convicted of one or more drug trafficking offences.
- (2) If the prosecutor asks it to proceed under this section, the High Court may exercise the powers of the Crown Court under this Act to make a confiscation order against the defendant if satisfied that the defendant has died or absconded.
- (3) Subsection (4) below applies where proceedings for one or more drug trafficking offences have been instituted against a person but have not been concluded.
- (4) If the prosecutor asks it to proceed under this section, the High Court may exercise the powers of the Crown Court under this Act to make a confiscation order against the defendant if satisfied that the defendant has absconded.
- (5) The power conferred by subsection (4) above may not be exercised at any time before the end of the period of two years beginning with the date which is, in the opinion of the court, the date on which the defendant absconded.
- (6) In any proceedings on an application under this section—
  - (a) sections 2(2) and 3(1D), (2) and (3) shall not apply,
  - (b) the court shall not make a confiscation order against a person who has absconded unless it is satisfied that the prosecutor has taken reasonable steps to contact him, and

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- (c) any person appearing to the court to be likely to be affected by the making of a confiscation order by the court shall be entitled to appear before the court and make representations.]

#### Textual Amendments

**F11** Ss. 4A, 4B inserted (*prosp.*) by 1993 c. 36, ss. 14(1), 78(3)(7) (with s. 78(6)(9)) (which s. 14 itself was repealed (3.2.1995) by 1994 c. 37, ss. 67, 69(2), Sch. 3 and so the insertion fell)

#### Modifications etc. (not altering text)

**C3** S. 4A(3)(4) excluded (*prosp.*) by 1993 c. 36, s. 78(3)(7) (which s. 78(7) itself was repealed (3.2.1995) by 1994 c. 37, ss. 67, 69(2), Sch. 3 and so the amendment fell)

### [<sup>F12</sup>4B Effect of conviction where High Court has acted under section 4A.

- (1) Where the High Court has made a confiscation order by virtue of section 4A of this Act, the Crown Court shall, in respect of the offence or any of the offences concerned—
- (a) take account of the order before—
    - (i) imposing any fine on him, or
    - (ii) making any order involving any payment by him, or
    - (iii) making any order under section 27 of the <sup>M3</sup>Misuse of Drugs Act 1971 (forfeiture orders) or section 43 of the <sup>M4</sup>Powers of Criminal Courts Act 1973 (deprivation orders), and
  - (b) subject to paragraph (a) above, leave the order out of account in determining the appropriate sentence or other manner of dealing with the defendant.
- (2) Where the High Court has made a confiscation order by virtue of section 4A of this Act and the defendant subsequently appears before the Crown Court to be sentenced in respect of one or more of the offences concerned, section 1(1) of this Act shall not apply so far as his appearance is in respect of that offence or those offences.]

#### Textual Amendments

**F12** Ss. 4A, 4B inserted (*prosp.*) by 1993 c. 36, ss. 14(1), 78(3) (with s. 78(6)(9)) (which s. 14 itself was repealed (3.2.1995) by 1994 c. 37, ss. 67, 69(2), Sch. 3 and so the insertion fell)

#### Marginal Citations

**M3** 1971 c. 38.

**M4** 1973 c. 62.

## 5 Definition of principal terms used.

- (1) In this Act, “realisable property” means, subject to subsection (2) below—
- (a) any property held by the defendant, and
  - (b) any property held by a person to whom the defendant has directly or indirectly made a gift caught by this Act.
- (2) Property is not realisable property if—



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- (a) an order under section 43 of the <sup>M5</sup>Powers of Criminal Courts Act 1973 (deprivation orders),
- (b) an order under section 27 of the <sup>M6</sup>Misuse of Drugs Act 1971 (forfeiture orders), . . . <sup>F13</sup>
- (c) an order under section 223 or 436 of the <sup>M7</sup>Criminal Procedure (Scotland) Act 1975 (forfeiture of property) [<sup>F14</sup>, or
- (d) an order under section 13(2), (3) or (4) of the Prevention of Terrorism (Temporary Provisions) Act 1989 (forfeiture orders),]

is in force in respect of the property.

- (3) For the purposes of sections 3 and 4 of this Act the amount that might be realised at the time a confiscation order is made against the defendant is—

- (a) the total of the values at this time of all the realisable property held by the defendant, less
- (b) where there are obligations having priority at that time, the total amounts payable in pursuance of such obligations,

together with the total of the values at that time of all gifts caught by this Act.

- (4) Subject to the following provisions of this section, for the purposes of this Act the value of property (other than cash) in relation to any person holding the property—

- (a) where any other person holds an interest in the property, is—
  - (i) the market value of the first mentioned person's beneficial interest in the property, less
  - (ii) the amount required to discharge any incumbrance (other than a charging order) on that interest, and
- (b) in any other case, is its market value.

- (5) Subject to subsection (10) below, references in this Act to the value at any time (referred to in subsection (6) below as “the material time”) of a gift caught by this Act or of any payment or reward are references to—

- (a) the value of the gift, payment or reward to the recipient when he received it adjusted to take account of subsequent changes in the value of money, or
- (b) where subsection (6) below applies, the value there mentioned,

whichever is the greater.

- (6) Subject to subsection (10) below, if at the material time the recipient holds—

- (a) the property which he received (not being cash), or
- (b) property which, in whole or in part, directly or indirectly represents in his hands the property which he received,

the value referred to in subsection (5)(b) above is the value to him at the material time of the property mentioned in paragraph (a) above or, as the case may be, of the property mentioned in paragraph (b) above so far as it so represents the property which he received, but disregarding in either case any charging order.

- (7) For the purposes of subsection (3) above, an obligation has priority at any time if it is an obligation of the defendant to—

- (a) pay an amount due in respect of a fine, or other order of a court, imposed or made on conviction of an offence, where the fine was imposed or order made before the confiscation order, or
- (b) pay any sum which would be included among the preferential debts (within the meaning given by section 386 of the Insolvency Act 1986) in the defendant's

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bankruptcy commencing on the date of the confiscation order or winding up under an order of the court made on that date.

- (8) In the case of a confiscation order made before the coming into force of the Insolvency Act 1986, subsection (7) above shall have effect as if for paragraph (b) there were substituted—

“(b) pay any sum which, if the defendant had been adjudged bankrupt or was being wound up, would be among the preferential debts.”;

and in that paragraph “the preferential debts”—

- (a) in relation to bankruptcy, means the debts to be paid in priority under section 33 of the <sup>M8</sup>Bankruptcy Act 1914 (assuming the date of the confiscation order to be the date of the receiving order) and
- (b) in relation to winding up, means the preferential debts listed in Schedule 19 to the <sup>M9</sup>Companies Act 1985 (assuming the date of the confiscation order to be the relevant date for the purpose of that Schedule).
- (9) A gift (including a gift made before the commencement of section 1 of this Act) is caught by this Act if—
- (a) it was made by the defendant at any time since the beginning of the period of six years ending when the proceedings were instituted against him, or
- (b) it was made by the defendant at any time and was a gift of property—
- (i) received by the defendant in connection with drug trafficking carried on by him or another, or
- (ii) which in whole or in part directly or indirectly represented in the defendant’s hands property received by him in that connection.
- (10) For the purposes of this Act—
- (a) the circumstances in which the defendant is to be treated as making a gift include those where he transfers property to another person directly or indirectly for a consideration the value of which is significantly less than the value of the consideration provided by the defendant, and
- (b) in those circumstances, the preceding provisions of this section shall apply as if the defendant had made a gift of such share in the property as bears to the whole property the same proportion as the difference between the values referred to in paragraph (a) above bears to the value of the consideration provided by the defendant.

#### Textual Amendments

**F13** Word repealed by [Prevention of Terrorism \(Temporary Provisions\) Act 1989 \(c. 4, SIF 39:2\)](#), s. 25(1), [Sch. 8 para. 7](#)

**F14** S. 5(2)(d) inserted by [Prevention of Terrorism \(Temporary Provisions\) Act 1989 \(c. 4, SIF 39:2\)](#), s. 25(1), [Sch. 8 para. 7](#)

#### Marginal Citations

**M5** 1973 c. 62.

**M6** 1971 c. 38

**M7** 1975 c. 21.

**M8** 1914 c. 59.

**M9** 1985 c. 6.

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**[<sup>F15</sup>5A Reconsideration of case where court has not proceeded under section 1.**

- (1) This section applies where the defendant has appeared before the Crown Court to be sentenced in respect of one or more drug trafficking offences but the court has not proceeded under section 1 of this Act.
- (2) If the prosecutor has evidence—
  - (a) which was not available to him when the defendant appeared to be sentenced (and accordingly was not considered by the court), but
  - (b) which the prosecutor believes would have led the court to determine that the defendant had benefited from drug trafficking if—
    - (i) the prosecutor had asked the court to proceed under section 1 of this Act, and
    - (ii) the evidence had been considered by the court,he may apply to the Crown Court for it to consider the evidence.
- (3) The court shall proceed under section 1 of this Act if, having considered the evidence, it is satisfied that it is appropriate to do so.
- (4) In considering whether it is appropriate to proceed under section 1, the court shall have regard to all the circumstances of the case.
- (5) Where, having decided to proceed under section 1, the court proposes to make a confiscation order against the defendant, it shall order the payment of such amount as it thinks just in all the circumstances of the case.
- (6) In considering the circumstances of any case the court shall have regard, in particular, to the amount of any fine imposed on the defendant in respect of the offence or offences in question.
- (7) Where the court is proceeding under section 1 of this Act, by virtue of this section, subsection (4) of that section shall have effect as if the words “before sentencing or otherwise dealing with him in respect of the offence or, as the case may be, any of the offences concerned” were omitted.
- (8) The court may take into account any payment or other reward received by the defendant on or after the date of conviction, but only if the prosecutor shows that it was received by the defendant in connection with drug trafficking carried on by the defendant or another on or before that date.
- (9) In considering any evidence under this section which relates to any payment or reward to which subsection (8) above applies, the court shall not make the assumptions which would otherwise be required by section 2 of this Act.
- (10) No application shall be entertained by the court under this section if it is made after the end of the period of six years beginning with the date of conviction.
- (11) In this section “the date of conviction” means—
  - (a) the date on which the defendant was convicted, or
  - (b) where he appeared to be sentenced in respect of more than one conviction, and those convictions were not all on the same date, the date of the latest of those convictions.]

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### Textual Amendments

**F15** Ss. 5A-5C inserted (*prosp.*) by 1993 c. 36, ss.12, 78(3) (with s. 78(6)(9))

### [<sup>F16</sup>5B Re-assessment of whether defendant has benefited from drug trafficking.

- (1) This section applies where the court has made a determination (“the section 1(2) determination”) under section 1(2) of this Act that the defendant has not benefited from drug trafficking.
- (2) If the prosecutor has evidence—
  - (a) which was not considered by the court in making the section 1(2) determination, but
  - (b) which the prosecutor believes would have led the court to determine that the defendant had benefited from drug trafficking if it had been considered by the court,
 he may apply to the Crown Court for it to consider that evidence.
- (3) If, having considered the evidence, the court is satisfied that it would have determined that the defendant had benefited from drug trafficking if that evidence had been available to it, the court—
  - (a) shall—
    - (i) make a fresh determination under subsection (2) of section 1 of this Act; and
    - (ii) make a determination under subsection (4) of that section of the amount to be recovered by virtue of that section; and
  - (b) may make an order under that section.
- (4) Where the court is proceeding under section 1 of this Act, by virtue of this section, subsection (4) of that section shall have effect as if the words “before sentencing or otherwise dealing with him in respect of the offence or, as the case may be, any of the offences concerned” were omitted.
- (5) The court may take into account any payment or other reward received by the defendant on or after the date of the section 1(2) determination, but only if the prosecutor shows that it was received by the defendant in connection with drug trafficking carried on by the defendant or another on or before that date.
- (6) In considering any evidence under this section which relates to any payment or reward to which subsection (5) above applies, the court shall not make the assumptions which would otherwise be required by section 2 of this Act.
- (7) Where the High Court—
  - (a) has been asked to proceed under section 4A of this Act in relation to a defendant who has absconded, but
  - (b) has decided not to make a confiscation order against him,
 this section shall not apply at any time while he remains an absconder.
- (8) No application shall be entertained by the court under this section if it is made after the end of the period of six years beginning with—
  - (a) the date on which the defendant was convicted; or

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*Changes to legislation: There are currently no known outstanding effects for the Drug Trafficking Offences Act 1986. (See end of Document for details)*

- (b) where he appeared to be sentenced in respect of more than one conviction, and those convictions were not all on the same date, the date of the latest of those convictions.]

#### Textual Amendments

**F16** Ss. 5A-5C inserted (*prosp.*) by 1993 c. 36, ss.12, 78(3) (with s. 78(6)(9)) (which s. 12 itself was repealed (3.2.1995) by 1994 c. 37, ss. 67, 69(2), Sch. 3 and so the insertion fell)

#### [<sup>F17</sup>5C Revised assessment of proceeds of drug trafficking.

- (1) This section applies where the court has made a determination under section 1(4) of this Act of the amount to be recovered in a particular case by virtue of that section (“the current section 1(4) determination”).
- (2) Where the prosecutor is of the opinion that the real value of the defendant’s proceeds of drug trafficking was greater than their assessed value, the prosecutor may apply to the Crown Court for the evidence on which the prosecutor has formed his opinion to be considered by the court.
- (3) In subsection (2) above—
  - “assessed value” means the value of the defendant’s proceeds of drug trafficking as assessed by the court under section 4(1) of this Act; and
  - “real value” means the value of the defendant’s proceeds of drug trafficking which took place—
    - (a) in the period by reference to which the current section 1(4) determination was made; or
    - (b) in any earlier period.
- (4) If, having considered the evidence, the court is satisfied that the real value of the defendant’s proceeds of drug trafficking is greater than their assessed value (whether because the real value was higher at the time of the current section 1(4) determination than was thought or because the value of the proceeds in question has subsequently increased), the court shall make a fresh determination under subsection (4) of section 1 of this Act of the amount to be recovered by virtue of that section.
- (5) Where the court is proceeding under section 1 of this Act, by virtue of this section, subsection (4) of that section shall have effect as if the words “before sentencing or otherwise dealing with him in respect of the offence or, as the case may be, any of the offences concerned” were omitted.
- (6) Any determination under section 1(4) of this Act by virtue of this section shall be by reference to the amount that might be realised at the time when the determination is made.
- (7) For any determination under section 1(4) of this Act by virtue of this section, section 2(5) of this Act shall not apply in relation to any of the defendant’s proceeds of drug trafficking taken into account in respect of the current section 1(4) determination.
- (8) In relation to any such determination—
  - (a) sections 3(4)(a), 4(2) and 5(7) of this Act shall have effect as if for “confiscation order” there were substituted “determination”;

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- (b) section 4(3) of this Act shall have effect as if for “confiscation order is made” there were substituted “determination is made”; and
  - (c) section 5(3) of this Act shall have effect as if for “a confiscation order is made against the defendant” there were substituted “of the determination”.
- (9) The court may take into account any payment or other reward received by the defendant on or after the date of the current section 1(4) determination, but only if the prosecutor shows that it was received by the defendant in connection with drug trafficking carried on by the defendant or another on or before that date.
- (10) In considering any evidence under this section which relates to any payment or reward to which subsection (9) above applies, the court shall not make the assumptions which would otherwise be required by section 2 of this Act.
- (11) If, as a result of making the fresh determination required by subsection (4) above, the amount to be recovered exceeds the amount set by the current section 1(4) determination, the court may substitute for the amount to be recovered under the confiscation order which was made by reference to the current section 1(4) determination such greater amount as it thinks just in all the circumstances of the case.
- (12) Where the court varies a confiscation order under subsection (11) above, it shall substitute for the term of imprisonment or of detention fixed under section 31(2) of the <sup>M10</sup>Powers of Criminal Courts Act 1973 in respect of the amount to be recovered under the order a longer term determined in accordance with that section (as it has effect by virtue of section 6 of this Act) in respect of the greater amount substituted under subsection (11) above.
- (13) Subsection (12) above shall apply only if the effect of the substitution is to increase the maximum period applicable in relation to the order under section 31(3A) of the Act of 1973.
- (14) Where a confiscation order has been made in relation to any defendant by virtue of section 4A of this Act, this section shall not apply at any time while he is an absconder.
- (15) No application shall be entertained by the court under this section if it is made after the end of the period of six years beginning with—
- (a) the date on which the defendant was convicted; or
  - (b) where he appeared to be sentenced in respect of more than one conviction, and those convictions were not all on the same date, the date of the latest of those convictions.]

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**Textual Amendments**

**F17** Ss. 5A-5C inserted (*prosp.*) by 1993 c. 36, ss.12, 78(3) (with s. 78(6)(9)) (which s. 12 itself was repealed (3.2.1995) by 1994 c. 37, ss. 67, 69(2), SCh. 3 and so the insertion fell)

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**Marginal Citations**

**M10** 1973 c. 62.

*Status: Point in time view as at 08/08/1994.*

*Changes to legislation: There are currently no known outstanding effects for the Drug Trafficking Offences Act 1986. (See end of Document for details)*

*Enforcement etc. of confiscation orders*

**6 Application of procedure for enforcing fines.**

(1) Where the Crown Court orders the defendant to pay any amount under section 1 of this Act, sections 31(1) to (3C) and 32(1) and (2) of the <sup>M11</sup>Powers of Criminal Courts Act 1973 (powers of Crown Court in relation to fines and enforcement of Crown Court fines) shall have effect as if—

- (a) that amount were a fine imposed on him by the Crown Court, . . . <sup>F18</sup>
- (b) . . . . . <sup>F18</sup>

(2) Where—

- (a) a warrant of commitment is issued for a default in payment of an amount ordered to be paid under section 1 of this Act in respect of an offence or offences, and
- (b) at the time the warrant is issued, the defendant is liable to serve a term of custody in respect of the offence or offences,

the term of imprisonment or of detention under section 9 of the <sup>M12</sup>Criminal Justice Act 1982 (detention of persons aged 17 to 20 for default) to be served in default of payment of the amount shall not begin to run until after the term mentioned in paragraph (b) above.

(3) The reference in subsection (2) above to the term of custody which the defendant is liable to serve in respect of the offence or offences is a reference to the term of imprisonment, youth custody or detention under section 4 . . . <sup>F19</sup> of the said Act of 1982 which he is liable to serve in respect of the offence or offences; and for the purposes of this subsection—

- (a) consecutive terms and terms which are wholly or partly concurrent shall be treated as a single term, and
- (b) there shall be disregarded—
  - (i) Any sentence suspended under section 22(1) of the said Act of 1973 which has not taken effect at the time the warrant is issued,
  - (ii) in the case of a sentence of imprisonment passed with an order under section 47(1) of the <sup>M13</sup>Criminal Law Act 1977, any part of the sentence which the defendant has not at that time been required to serve in prison, and
  - (iii) any term of imprisonment or detention fixed under section 31(2) of the said Act of 1973 for which a warrant of commitment has not been issued at that time.

(4) In the application of Part III of the <sup>M14</sup>Magistrates' Courts Act 1980 to amounts payable under confiscation orders—

- (a) such an amount is not a sum adjudged to be paid by a conviction for the purposes of section 81 (enforcement of fines imposed on young offenders) or a fine for the purposes of section 85 (remission of fines), and
- (b) in section 87 (enforcement by High Court or county court), subsection (3) shall be omitted.

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

(6) This section applies in relation to confiscation orders made by the criminal division of the Court of Appeal, or by the House of Lords on appeal from that division, as it

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applies in relation to confiscation orders made by the Crown Court, and the reference in subsection (1)(a) above to the Crown Court shall be construed accordingly.

#### Textual Amendments

- F18** S. 6(1)(b) and word “and” repealed by [Criminal Justice Act 1988 \(c. 33, SIF 39:1\)](#), s. 170, Sch. 8 para. 16, **Sch. 16**
- F19** Words repealed by [Criminal Justice Act 1988 \(c. 33, SIF 39:1\)](#), s. 170, Sch. 8 para. 16, **Sch. 16**
- F20** S. 6(5) repealed by [Criminal Justice Act 1988 \(c. 33, SIF 39:1\)](#), s. 170, Sch. 8 para. 16, **Sch. 16**

#### Marginal Citations

- M11** 1973 c. 62.
- M12** 1982 c. 48.
- M13** 1977 c. 45.
- M14** 1980 c. 43.

## 7 Cases in which restraint orders and charging orders may be made.

- (1) The powers conferred on the High Court by sections 8(1) and 9(1) of this Act are exercisable where—
- (a) proceedings have been instituted in England and Wales against the defendant for a drug trafficking offence,
  - (b) the proceedings have not been concluded, and
  - (c) the court is satisfied that there is reasonable cause to believe that the defendant has benefited from drug trafficking.
- (2) Those powers are also exercisable where the court is satisfied—
- (a) that [<sup>F21</sup>whether by the laying of an information or otherwise, a person is to be charged with] a drug trafficking offence, and
  - (b) that there is reasonable cause to believe that he has benefited from drug trafficking.
- (3) For the purposes of sections 8, 9 and 22 of this Act, at any time when those powers are exercisable before proceedings have been instituted—
- (a) references in this Act to the defendant shall be construed as references to the person referred to in subsection (2)(a) above,
  - (b) references in this Act to the prosecutor shall be construed as references to the person who the High Court is satisfied is to have the conduct of the proposed proceedings, and
  - (c) references in this Act to realisable property shall be construed as if, immediately before that time, proceedings had been instituted against the person referred to in subsection (2)(a) above for a drug trafficking offence.
- (4) Where the court has made an order under section 8(1) or 9(1) of this Act by virtue of subsection (2) above, the court shall discharge the order if [<sup>F22</sup>the proposed proceedings are not instituted][<sup>F22</sup>proceedings in respect of the offence are not instituted (whether by the laying of an information or otherwise)] within such time as the court considers reasonable.



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### Textual Amendments

- F21** Words substituted by [Criminal Justice Act 1988 \(c. 33, SIF 39:1\)](#), s. 103, Sch. 5 para. 2(a), **Sch. 8 para. 16**
- F22** Words commencing “proceedings in respect of the offence” substituted (E.W.) for words commencing “the proposed proceedings are not instituted” by [Criminal Justice Act 1988 \(c. 33, SIF 39:1\)](#), s. 103, Sch. 5 para. 2(b), **Sch. 8 para. 16**

## 8 Restraint orders.

- (1) The High Court may by order (in this Act referred to as a “restraint order”) prohibit any person from dealing with any realisable property, subject to such conditions and exceptions as may be specified in the order.
- (2) A restraint order may apply—
  - (a) to all realisable property held by a specified person, whether the property is described in the order or not, and
  - (b) to realisable property held by a specified person, being property transferred to him after the making of the order.
- (3) This section shall not have effect in relation to any property for the time being subject to a charge under section 9 of this Act.
- (4) A restraint order—
  - (a) may be made only on an application by the prosecutor,
  - (b) may be made on an ex parte application to a judge in chambers, and
  - (c) shall provide for notice to be given to persons affected by the order.
- (5) A restraint order—
  - (a) may be discharged or varied in relation to any property, and
  - (b) shall be discharged when proceedings for the offences are concluded.
- [<sup>F23</sup>(5A) An application for the discharge or variation of a restraint order may be made by any person affected by it.]
- (6) Where the High court has made a restraint order, the court may at any time appoint a receiver—
  - (a) to take possession of any realisable property, and
  - (b) in accordance with the court’s directions, to manage or otherwise deal with any property in respect of which he is appointed,subject to such exceptions and conditions as may be specified by the court; and may require any person having possession of property in respect of which a receiver is appointed under this section to give possession of it to the receiver.
- (7) For the purposes of this section, dealing with property held by any person includes (without prejudice to the generality of the expression)—
  - (a) where a debt is owed to that person, making a payment to any person in reduction of the amount of the debt, and
  - (b) removing the property from Great Britain.

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- (8) Where [<sup>F24</sup>the High Court has made a restraint order], [<sup>F24</sup>a restraint order has been made], a constable may for the purpose of preventing any realisable property being removed from Great Britain, seize the property.
- [<sup>F25</sup>In this subsection, the reference to a restraint order includes a reference to a restraint order within the meaning of Part I of the Criminal Justice (Scotland) Act 1987, and, in relation to such an order, “realisable property” has the same meaning as in that Part]
- (9) Property seized under subsection (8) above shall be dealt with in accordance with the [<sup>F26</sup>court’s directions][<sup>F26</sup>directions of the court which made the order].
- [<sup>F27</sup>(10) The <sup>M15</sup>Land Charges Act 1972 and the <sup>M16</sup> Land Registration Act 1925 shall apply—
- (a) in relation to restraint orders, as they apply in relation to orders affecting land made by the court for the purpose of enforcing judgments or recognisances; and
  - (b) in relation to applications for restraint orders, as they apply in relation to other pending land actions.
- (11) The prosecutor shall be treated for the purposes of section 57 of the Land Registration Act 1925 (inhibitions) as a person interested in relation to any registered land to which a restraint order or an application for such an order relates.]

#### Textual Amendments

- F23** S. 8(5A) inserted (E.W.) by [Criminal Justice Act 1988 \(c. 33, SIF 39:1\)](#), s. 103, Sch. 5 para. 3(1), [Sch. 8 para. 16](#)
- F24** Words “a restraint order has been made” substituted (E.W.) for words commencing “the High Court” by [Criminal Justice \(Scotland\) Act 1987 \(c. 41, SIF 39:1\)](#), [ss. 45\(7\)\(b\)\(i\)](#), 47(4)(a)
- F25** Words added by [Criminal Justice \(Scotland\) Act 1987 \(c. 41, SIF 39:1\)](#), [ss. 45\(7\)\(b\)\(i\)](#), 47(4)(a)
- F26** Words commencing “directions of the court” substituted (E.W.) for words “court’s directions” by [Criminal Justice \(Scotland\) Act 1987 \(c. 41, SIF 39:1\)](#), [ss. 45\(7\)\(b\)\(ii\)](#), 47(4)(a)
- F27** S. 8(10)(11) added (E.W.) by [Criminal Justice Act 1988 \(c. 33, SIF 39:1\)](#), s. 103, Sch. 5 para. 3(2), [Sch. 8 para. 16](#)

#### Modifications etc. (not altering text)

- C4** S. 8 extended (S.) with modifications by [Criminal Justice \(Scotland\) Act 1987 \(c. 41, SIF 39:1\)](#), [ss. 27\(2\)\(4\)](#), 47(4)(a)

#### Marginal Citations

- M15** 1972 c.61(98:2).  
**M16** 1925 c.21(98:2).

## 9 Charging orders in respect of land, securities etc.

- (1) The High Court may make a charging order on realisable property for securing the payment to the Crown—
- (a) where a confiscation order has not been made, of an amount equal to the value from time to time of the property charged, and
  - (b) in any other case, of an amount not exceeding the amount payable under the confiscation order.

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- (2) For the purposes of this Act, a charging order is an order made under this section imposing on any such realisable property as may be specified in the order a charge for securing the payment of money to the Crown.
- (3) A charging order—
- [<sup>F28</sup>(a) may be made only on an application by the prosecutor;
  - (b) may be made on an ex parte application to a judge in chambers;
  - (c) shall provide for notice to be given to persons affected by the order; and
  - (d) may be made subject to such conditions as the court thinks fit and, without prejudice to the generality of this paragraph, such conditions as it thinks fit as to the time when the charge is to become effective].
- (4) Subject to subsection (6) below, a charge may be imposed by a charging order only on—
- (a) any interest in realisable property, being an interest held beneficially by the defendant or by a person to whom the defendant has directly or indirectly made a gift caught by this Act—
    - (i) in any asset of a kind mentioned in subsection (5) below, or
    - (ii) under any trust, or
  - (b) any interest in realisable property held by a person as trustee of a trust if the interest is in such an asset or is an interest under another trust and a charge may by virtue of paragraph (a) above be imposed by a charging order on the whole beneficial interest under the first-mentioned trust.
- (5) The assets referred to in subsection (4) above are—
- (a) land in England and Wales, or
  - (b) securities of any of the following kinds—
    - (i) government stock,
    - (ii) stock of any body (other than a building society) incorporated within England and Wales,
    - (iii) stock of any body incorporated outside England and Wales or of any country or territory outside the United Kingdom, being stock registered in a register kept at any place within England and Wales,
    - (iv) units of any unit trust in respect of which a register of the unit holders is kept at any place within England and Wales.
- (6) In any case where a charge is imposed by a charging order on any interest in an asset of a kind mentioned in subsection (5)(b) above, the court may provide for the charge to extend to any interest or dividend payable in respect of the asset.
- (7) The court may make an order discharging or varying the charging order and shall make an order discharging the charging order if the proceedings for the offence are concluded or the amount payment of which is secured by the charge is paid into court.
- [<sup>F29</sup>(8) An application for the discharge or variation of a charging order may be made by any person affected by it.]

#### Textual Amendments

**F28** S. 9(3)(a)–(d) substituted by [Criminal Justice Act 1988 \(c. 33, SIF 39:1\)](#), s. 103, Sch. 5 para. 4(1), [Sch. 8 para. 16](#)

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**F29** S. 9(8) added by [Criminal Justice Act 1988 \(c. 33, SIF 39:1\)](#), s. 103, Sch. 5 para. 4(2), [Sch. 8 para. 16](#)

## 10 Charging orders: supplementary provisions.

- (1) ..... <sup>F30</sup>
- (2) the <sup>M17</sup>Land Charges Act 1972 and the <sup>M18</sup>Land Registration Act 1925 shall apply in relation to charging orders as they apply in relation to orders or writs issued or made for the purpose of enforcing judgments.
- (3) Where a charging order has been registered under section 6 of the Land Charges Act 1972, subsection (4) of that section (effect of non-registration of writs and orders registrable under that section) shall not apply to an order appointing a receiver made in pursuance of the charging order.
- (4) Subject to any provision made under section 11 of this Act or by rules of court, a charge imposed by a charging order shall have the like effect and shall be enforceable in the same courts and in the same manner as an equitable charge created by the person holding the beneficial interest or, as the case may be, the trustees by writing under their hand.
- (5) Where a charging order has been protected by an entry registered under the Land Charges Act 1972 or the Land Registration Act 1925, an order under section 9(7) of this Act discharging the charging order may direct that the entry be cancelled.
- (6) The Secretary of State may by order made by statutory instrument amend section 9 of this Act by adding to or removing from the kinds of assets for the time being referred to there any asset of a kind which in his opinion ought to be so added or removed.
- An order under this subsection shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (7) In this section and section 9 of this Act, “building society”, “dividend”, “government stock”, “stock” and “unit trust” have the same meanings as in the <sup>M19</sup>Charging Orders Act 1979.

### Textual Amendments

**F30** S. 10(1) repealed by [Criminal Justice Act 1988 \(c. 33, SIF 39:1\)](#), ss. 103, 170, Sch. 5 para. 5, Sch. 8 para. 16, [Sch. 16](#)

### Marginal Citations

**M17** 1972 c. 61.  
**M18** 1925 c. 21.  
**M19** 1979 c. 53.

## 11 Realisation of property.

- (1) Where—
- (a) in proceedings instituted for a drug trafficking offence, a confiscation order is made,
  - (b) the order is not subject to appeal, and
  - (c) the proceedings have not been concluded,

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the High Court may, on an application by the prosecutor, exercise the powers conferred by subsections (2) to (6) below.

- (2) The court may appoint a receiver in respect of realisable property.
- (3) The court may empower a receiver appointed under subsection (2) above, under section 8 of this Act or in pursuance of a charging order—
  - (a) to enforce any charge imposed under section 9 of this Act on realisable property or on interest or dividends payable in respect of such property, and
  - (b) in relation to any realisable property other than property for the time being subject to a charge under section 9 of this Act, to take possession of the property subject to such conditions or exceptions as may be specified by the court.
- (4) The court may order any person having possession of realisable property to give possession of it to any such receiver.
- (5) The court may empower any such receiver to realise any realisable property in such manner as the court may direct.
- (6) The court may order any person holding an interest in realisable property to make such payment to the receiver in respect of any beneficial interest held by the defendant or, as the case may be, the recipient of a gift caught by this Act as the court may direct and the court may, on the payment being made, by order transfer, grant or extinguish any interest in the property.
- (7) Subsections (4) to (6) above do not apply to property for the time being subject to a charge under section 9 of this Act.
- (8) The court shall not in respect of any property exercise the powers conferred by subsection (3)(a), (5) or (6) above unless a reasonable opportunity has been given for persons holding any interest in the property to make representations to the court.

**Modifications etc. (not altering text)**

C5 Ss. 11, 12 extended with modifications (S.) by [Criminal Justice \(Scotland\) Act 1987 \(c. 41, SIF 39:1\)](#), ss. 27(2)(4), 47(4)(a)

## 12 Application of proceeds of realisation and other sums.

- (1) Subject to subsection (2) below, the following sums in the hands of a receiver appointed under section 8 or 11 of this Act or in pursuance of a charging order, that is—
  - (a) the proceeds of the enforcement of any charge imposed under section 9 of this Act,
  - (b) the proceeds of the realisation, other than by the enforcement of such a charge, of any property under section 8 or 11 of this Act, and
  - (c) any other sums, being property held by the defendant,shall <sup>F31</sup>first be applied in payment of such expenses incurred by a person acting as an insolvency practitioner as are payable under section 17A(2) of this Act and then shall, after such payments (if any) as the High Court may direct have been made out of those sums, be applied on the defendant's behalf towards the satisfaction of the confiscation order.

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*Changes to legislation: There are currently no known outstanding effects for the Drug Trafficking Offences Act 1986. (See end of Document for details)*

- (2) If, after the amount payable under the confiscation order has been fully paid, any such sums remain in the hands of such a receiver, the receiver shall distribute those sums—
- (a) among such of those who held property which has been realised under this Act, and
  - (b) in such proportions,

as the High Court may direct after giving a reasonable opportunity for such persons to make representations to the court.

- (3) The receipt of any sum by a justices' clerk on account of an amount payable under a confiscation order shall reduce the amount so payable, but the [F32]sum shall be applied as follows—

- (a) if paid by a receiver under subsection (1) above, it shall first be applied in payment of his remuneration and expenses,
- (b) subject to paragraph (a) above, it shall be applied in reimbursement of any sums paid by the prosecutor under section 18(2) of this Act,

and the balance [F32]justices' clerk shall apply the money received for the purposes specified in this section and in the order so specified.

- (4) The justices' clerk shall first pay any expenses incurred by a person acting as an insolvency practitioner and payable under section 17A(2) of this Act but not already paid under subsection (1) above.

- (5) If the money was paid to the justices' clerk by a receiver appointed under section 8 or 11 of this Act or in pursuance of a charging order the justices' clerk shall next pay the receiver's remuneration and expenses.

- (6) After making—

- (a) any payment required by subsection (4) above; and
- (b) in a case to which subsection (5) above applies, any payment required by that subsection,

the justices' clerk shall reimburse any amount paid under section 18(2) of this Act.

- (7) Any balance in the hands of the justices' clerk after he has made all payments required by the foregoing provisions of this section]

shall be treated for the purposes of section 61 of the M20 Justices of the Peace Act 1979(application of fines, etc.) as if it were a fine imposed by a magistrates' court.

In this subsection, "justices' clerk" has the same meaning as in the Justices of the Peace Act 1979.

#### Textual Amendments

**F31** Words inserted (E.W.) by [Criminal Justice Act 1988 \(c. 33, SIF 39:1\)](#), s. 103, Sch. 5 para. 6(2), **Sch. 8 para. 16**

**F32** S. 12(3)–(7) substituted (E.W.) by [Criminal Justice Act 1988 \(c. 33, SIF 39:1\)](#), s. 103, Sch. 5 para. 6(3), **Sch. 8 para. 16**

#### Modifications etc. (not altering text)

**C6** Ss. 11, 12 extended with modifications (S.) by [Criminal Justice \(Scotland\) Act 1987 \(c. 41, SIF 39:1\)](#), **ss. 27(2)(4), 47(4)(a)**

*Status: Point in time view as at 08/08/1994.*

*Changes to legislation: There are currently no known outstanding effects for the Drug Trafficking Offences Act 1986. (See end of Document for details)*

#### Marginal Citations

M20 1979 c. 55

### 13 Exercise of powers by High Court or receiver.

- (1) The following provisions apply to the powers conferred on the High Court by sections 8 to 12 of this Act, . . . <sup>F33</sup>, or on a receiver appointed under section 8 or 11 of this Act or in pursuance of a charging order.
- (2) Subject to the following provisions of this section, the powers shall be exercised with a view to making available for satisfying the confiscation order or, as the case may be, any confiscation order that may be made in the defendant's case the value for the time being of realisable property held by any person by the realisation of such property.
- (3) In the case of realisable property held by a person to whom the defendant has directly or indirectly made a gift caught by this Act, the powers shall be exercised with a view to realising no more than the value for the time being of the gift.
- (4) The powers shall be exercised with a view to allowing any person other than the defendant or the recipient of any such gift to retain or recover the value of any property held by him.
- (5) An order may be made or other action taken in respect of a debt owed by the Crown.
- (6) In exercising those powers, no account shall be taken of any obligations of the defendant or of the recipient of any such gift which conflict with the obligation to satisfy the confiscation order.

#### Textual Amendments

F33 Words repealed by [Criminal Justice \(Scotland\) Act 1987 \(c. 41, SIF 39:1\)](#), ss. 47(4)(a), 70(2), [Sch. 2](#)

#### Modifications etc. (not altering text)

C7 [S. 13\(2\)–\(6\)](#) applied (S.) by [Criminal Justice \(Scotland\) Act 1987 \(c. 41, SIF 39:1\)](#), ss. 23(7), 47(4)(a)

### 14 Variation of confiscation orders.

- (1) If, on an application by the defendant in respect of a confiscation order, the High Court is satisfied that the realisable property is inadequate for the payment of any amount remaining to be recovered under the order the court shall issue a certificate to that effect, giving the court's reasons.
- (2) For the purposes of subsection (1) above—
  - (a) in the case of realisable property held by a person who has been adjudged bankrupt or whose estate has been sequestrated the court shall take into account the extent to which any property held by him may be distributed among creditors, and
  - (b) the court may disregard any inadequacy in the realisable property which appears to the court to be attributable wholly or partly to anything done by the defendant for the purpose of preserving any property held by a person to whom the defendant had directly or indirectly made a gift caught by this Act from any risk of realisation under this Act.



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*Status: Point in time view as at 08/08/1994.*

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- (3) Where a certificate has been issued under subsection (1) above, the defendant may apply to the Crown Court for the amount to be recovered under the order to be reduced.
- (4) The Crown Court shall, on an application under subsection (3) above—
- (a) substitute for the amount to be recovered under the order such lesser amount as the court thinks just in all the circumstances of the case, and
  - (b) substitute for the term of imprisonment or of detention fixed under subsection (2) of section 31 of the <sup>M21</sup>Powers of Criminal Courts Act 1973 in respect of the amount to be recovered under the order a shorter term determined in accordance with that section (as it has effect by virtue of section 6 of this Act) in respect of the lesser amount.

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**Marginal Citations**

**M21** 1973 c. 62.

## 15 Bankruptcy of defendant etc.

- (1) Where a person who holds realisable property is adjudged bankrupt—
- (a) property for the time being subject to a restraint order made before the order adjudging him bankrupt, and
  - (b) any proceeds of property realised by virtue of section 8(6) or 11(5) or (6) of this Act for the time being in the hands of a receiver appointed under section 8 or 11 of this Act,
- is excluded from the bankrupt's estate for the purposes of Part IX of the Insolvency Act 1986.
- (2) Where a person has been adjudged bankrupt, the powers conferred on the High Court by sections 8 to 12 of this Act or on a receiver so appointed . . . <sup>F34</sup> shall not be exercised in relation to—
- (a) property for the time being comprised in the bankrupt's estate for the purposes of that Part,
  - (b) property in respect of which his trustee in bankruptcy may (without leave of court) serve a notice under section 307 [<sup>F35</sup>308 or 308A] of that Act (after-acquired property and tools, clothes etc. exceeding value of reasonable replacement [<sup>F36</sup>and certain tenancies]), and
  - (c) property which is to be applied for the benefit of creditors of the bankrupt by virtue of a condition imposed under section 280(2)(c) of that Act.
- (3) Nothing in that Act shall be taken as restricting, or enabling the restriction of, the exercise of those powers.
- (4) Subsection (2) above does not affect the enforcement of a charging order—
- (a) made before the order adjudging the person bankrupt, or
  - (b) on property which was subject to a restraint order when the order adjudging him bankrupt was made.
- (5) Where, in the case of a debtor, an interim receiver stands appointed under section 286 of that Act and any property of the debtor is subject to a restraint order—
- (a) the powers conferred on the receiver by virtue of that Act do not apply to property for the time being subject to the restraint order,



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- (b) ..... <sup>F37</sup>
- (6) Where a person is adjudged bankrupt and has directly or indirectly made a gift caught by this Act—
- (a) no order shall be made under section 339 or 423 of that Act (avoidance of certain transactions) in respect of the making of the gift at any time when proceedings for a drug trafficking offence have been instituted against him and have not been concluded or when property of the person to whom the gift was made is subject to a restraint order or charging order, and
  - (b) any order made under either of those sections after the conclusion of the proceedings 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 a petition in bankruptcy is presented, or a receiving order or adjudication in bankruptcy is made, before the date on which the Insolvency Act 1986 comes into force, this section has effect with the following modifications—
- (a) for references to the bankrupt's estate for the purposes of Part IX of that Act there are substituted references to the property of the bankrupt for the purposes of the Bankruptcy Act
  - (b) for references to the Act of 1986 and sections 280(2)(c), 286, 339 and 423 of that Act that are respectively substituted references to the Act of 1914 and to sections 26(2), 8, 27 and 42 of that Act,
  - (c) the references in subsection (5) to an interim receiver appointed as there mentioned include, where a receiving order has been made, a reference to the receiver constituted by virtue of section 7 of the Act of 1914, and
  - [<sup>F38</sup>(d) subsection (2)(b) omitted.]

#### Textual Amendments

- F34** Words repealed by [Criminal Justice \(Scotland\) Act 1987](#) (c. 41, SIF 39:1), ss. 47(4)(a), 70(2), **Sch. 2**
- F35** Words substituted by [Housing Act 1988](#) (c. 50, SIF 61), s. 140, **Sch. 17 para. 71**
- F36** Words inserted by [Housing Act 1988](#) (c. 50, SIF 61), s. 140, **Sch. 17 para. 71**
- F37** [S.15\(5\)\(b\)\(c\)](#) repealed by [Criminal Justice Act 1988](#) (c. 33, SIF 39:1), ss. 103, 170, Sch. 5 para. 7(a), Sch. 8 para. 16, **Sch. 16**
- F38** [S. 15\(7\)\(d\)](#) substituted by [Criminal Justice Act 1988](#) (c. 33, SIF 39:1), s. 103, Sch. 5 para. 7(b), **Sch. 8 para. 16**

## 16 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 8(6) or 11(5) or (6) of this Act for the time being in the hands of a receiver appointed under section 8 or 11 of this Act,
- is excluded from the debtor's estate for the purposes of the <sup>M22</sup>Bankruptcy (Scotland) Act 1985.
- (2) Where an award of sequestration has been made, the powers conferred on the High Court by section 8 to 12 of this Act or on a receiver so appointed . . . <sup>F39</sup> shall not be exercised in relation to—

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*Status: Point in time view as at 08/08/1994.*

*Changes to legislation: There are currently no known outstanding effects for the Drug Trafficking Offences Act 1986. (See end of Document for details)*

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- (a) property comprised in the whole estate of the debtor within the meaning of section 31(8) of that Act,
  - (b) any income of the debtor which has been ordered, under subsection (2) of section 32 of that Act, to be paid to the permanent trustee or any estate which, [<sup>F40</sup>under subsection (10) of section 31 of that Act or subsection (6) of the said section 32 of that Act], vests in the permanent trustee [<sup>F41</sup>, 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 that Act shall be taken as restricting, or enabling the restriction of, the exercise of those powers.
- (4) Subsection (2) above does not affect the enforcement of a charging order—
- (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.
- [<sup>F42</sup>(5) Where, during the period before sequestration is awarded, an interim trustee stands appointed under the proviso to section 13(1) of that Act and any property in the debtor's estate is subject to a restraint order—
- (a) 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,
  - (b) the trustee, if he seizes or disposes of any property for the time being subject to the restraint order and, when he does so, believes and has reasonable grounds for believing that he is entitled (whether in pursuance of an order of a court or otherwise) to do so—
    - (i) shall not (except insofar as the same has been caused by his negligence) be liable to any person in respect of any loss or damage resulting from his seizure or disposal of the property, and
    - (ii) shall have a lien on the property, or the proceeds of its sale, for such of the expenses of the sequestration as were incurred in connection with the seizure or disposal, and
  - (c) any such property in the hands of the trustee shall, subject to a lien for any expenses (including his remuneration) properly incurred in respect of the property, be dealt with in such manner as the High Court may direct.]
- [<sup>F42</sup>(5) Where, during the period before sequestration is awarded, an interim trustee stands appointed under the proviso to section 13(1) of that Act and 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 that Act (gratuitous alienations and unfair preferences) in respect of the making of the gift at any time when proceedings for a drug trafficking offence have been instituted against him and have not been concluded or when 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 either of those sections after the conclusion of the proceedings shall take into account any realisation under this Act of property held by the person to whom the gift was made.

*Status: Point in time view as at 08/08/1994.*

*Changes to legislation: There are currently no known outstanding effects for the Drug Trafficking Offences Act 1986. (See end of Document for details)*

(7) In any case in which, notwithstanding the coming into force of the <sup>M23</sup>Bankruptcy (Scotland) Act 1985 the <sup>M24</sup>Bankruptcy (Scotland) Act 1913 applies to a sequestration, subsection (2) above shall have effect as if for paragraphs (a) and (b) thereof there were substituted the following paragraphs—

- “(a) property comprised in the whole property of the debtor which vests in the trustee under section 97 of the Bankruptcy (Scotland) Act 1913,
- (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 therein to the Act of 1985 there were substituted a reference to the Act of 1913.

#### Textual Amendments

- F39** Words repealed by [Criminal Justice \(Scotland\) Act 1987 \(c. 41, SIF 39:1\)](#), ss. 47(4)(a), 70(2), **Sch. 2**
- F40** Words substituted by [Housing Act 1988 \(c. 50, SIF 61\)](#), s. 140, **Sch. 17**, para. 72
- F41** Words added (1.4.1988) by [Criminal Justice \(Scotland\) Act 1987 \(c. 41, SIF 39:1\)](#), ss. 45(7)(c)(i), 47(4)(a), and the like words, without the opening comma, added (E.W.) (23.1.1989) by [Criminal Justice Act 1988 \(c.33, SIF 39:1\)](#), s. 103, **Sch. 5 para. 8(1)**, **Sch. 8 para. 16**
- F42** [S. 16\(5\)\(a\)\(b\)\(c\)](#) substituted (E.W.) by [s.16\(5\)](#) by [Criminal Justice Act 1988 \(c. 33, SIF 39:1\)](#), s. 103, **Sch. 5 para. 8(3)**, **Sch. 8 para. 16**

#### Marginal Citations

- M22** 1985 c. 66.
- M23** 1985 c. 66.
- M24** 1913 c. 20.

## 17 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 8(6) or 11(5) or (6) of this Act for the time being in the hands of a receiver appointed under section 8 or 11 of this Act; . . . <sup>F43</sup>

(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 8 to 12 of this Act or on a receiver so appointed . . . <sup>F44</sup> 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.

*Status: Point in time view as at 08/08/1994.*

*Changes to legislation: There are currently no known outstanding effects for the Drug Trafficking Offences Act 1986. (See end of Document for details)*

- (3) Nothing in the Insolvency Act 1986 shall be taken as restricting, or enabling the restriction of, the exercise of those powers.
- (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) 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 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 has commenced, or is treated as having commenced, before the date on which the Insolvency Act 1986 comes into force, this section has effect with the substitution for references to that Act of references to the <sup>M25</sup>Companies Act 1985.

#### Textual Amendments

**F43** Words repealed by [Criminal Justice Act 1988 \(c. 33, SIF 39:1\)](#), ss. 103, 170, Sch. 5 para. 9, Sch. 8 para. 16, **Sch. 16**

**F44** Words repealed by [Criminal Justice \(Scotland\) Act 1987 \(c. 41, SIF 39:1\)](#), ss. 47(4)(a), 70(2), **Sch. 2**

#### Marginal Citations

**M25** 1985 c. 6.

### [<sup>F45</sup>17A Insolvency officers dealing with property subject to restraint order.

- (1) Without prejudice to the generality of any enactment contained in the <sup>M26</sup> Insolvency Act 1986 or in any other Act, where—
- (a) any person acting as an insolvency practitioner seizes or disposes of any property in relation to which his functions are not exercisable because it is for the time being subject to a restraint order; and
  - (b) at the time of the seizure or disposal he believes, and has reasonable grounds for believing, that he is entitled (whether in pursuance of an order of the court or otherwise) to seize or dispose of that property,

he shall not be liable to any person in respect of any loss or damage resulting from the seizure or disposal except in so far as the loss or damage is caused by his negligence in so acting; and a person so acting shall have a lien on the property, or the proceeds of its sale, for such of his expenses as were incurred in connection with the liquidation, bankruptcy or other proceedings in relation to which the seizure or disposal purported to take place and for so much of his remuneration as may reasonably be assigned for his acting in connection with those proceedings.

*Status: Point in time view as at 08/08/1994.*

*Changes to legislation: There are currently no known outstanding effects for the Drug Trafficking Offences Act 1986. (See end of Document for details)*

- (2) Any person who, acting as an insolvency practitioner, incurs expenses—
- (a) in respect of such property as is mentioned in paragraph (a) of subsection (1) above and in so doing does not know and has no reasonable grounds to believe that the property is for the time being subject to a restraint order; or
  - (b) other than in respect of such property as is so mentioned, being expenses which, but for the effect of a restraint order, might have been met by taking possession of and realising the property,
- shall be entitled (whether or not he has seized or disposed of that property so as to have a lien under that subsection) to payment of those expenses under section 12(1) or (3)(za) of this Act.
- (3) In this Act, the expression “acting as an insolvency practitioner” shall be construed in accordance with section 388 (interpretation) of the said Act of 1986 except that for the purposes of such construction the reference in subsection (2)(a) of that section to a permanent or interim trustee in sequestration shall be taken to include a reference to a trustee in sequestration and subsection (5) of that section (which provides that nothing in the section is to apply to anything done by the official receiver) shall be disregarded; and the expression shall also comprehend the official receiver acting as receiver or manager of the property.]

#### Textual Amendments

**F45** S. 17A inserted by [Criminal Justice Act 1988 \(c. 33, SIF 39:1\)](#), s. 103, Sch. 5 para. 10, **Sch. 8 para. 16**

#### Marginal Citations

**M26** 1986 c. 45

## 18 Receivers: supplementary provisions.

- (1) Where a receiver appointed under section 8 or 11 of this Act or in pursuance of a charging order takes any action—
- (a) in relation to property which is not realisable property, being action which he would be entitled to take if it were such property,
  - (b) believing, and having reasonable grounds for believing, that he is entitled to take that action in relation to that property,
- he shall not be liable to any person in respect of any loss or damage resulting from his action except in so far as the loss or damage is caused by his negligence.
- (2) Any amount due in respect of the remuneration and expenses of a receiver so appointed shall, if no sum is available to be applied in payment of it under section 12 <sup>[<sup>F46</sup>(3B)]</sup> of this Act, be paid by the prosecutor or, in a case where proceedings for a drug trafficking offence are not instituted, by the person on whose application the receiver was appointed.

#### Textual Amendments

**F46** Words substituted by [Criminal Justice Act 1988 \(c. 33, SIF 39:1\)](#), s. 103, Sch. 5 para. 11, **Sch. 8 para. 16**

*Status: Point in time view as at 08/08/1994.*

*Changes to legislation: There are currently no known outstanding effects for the Drug Trafficking Offences Act 1986. (See end of Document for details)*

## 19 Compensation.

(1) If proceedings are instituted against a person for a drug trafficking offence or offences and either—

- (a) the proceedings do not result in his conviction for any drug trafficking offence, or
- (b) where he is convicted of one or more drug trafficking offences—
  - (i) the conviction or convictions concerned are quashed . . . <sup>F47</sup>, or
  - (ii) he is pardoned by Her Majesty in respect of the conviction or convictions concerned,

the High Court may, on an application by a person who held property which was realisable property, order compensation to be paid to the applicant [<sup>F48</sup>if, having regard to all the circumstances, it considers it appropriate to make such an order].

(2) The High Court shall not order compensation to be paid in any case unless the court is satisfied—

- (a) that there has been some serious default on the part of a person concerned in the investigation or prosecution of the offence or offences concerned, being a person mentioned in subsection (4) below, . . . <sup>F49</sup> and
- (b) that the applicant has suffered . . . <sup>F50</sup> loss in consequence of anything done in relation to the property by or in pursuance of—
  - (i) an order of the High Court under sections 8 to 11 of this Act, or
  - (ii) an order of the Court of Session under section [<sup>F51</sup>11 (as applied by subsection (6) of that section), 27 or 28 of the Criminal Justice (Scotland) Act 1987 (inhibition and arrestment of property affected by restraint order and recognition and enforcement of orders under this Act)].

[<sup>F52</sup>(2A) The Court shall not order compensation to be paid in any case where it appears to the Court that the proceedings would have been instituted or continued if the serious default had not occurred.]

(3) The amount of compensation to be paid under this section shall be such as the High Court thinks just in all the circumstances of the case.

(4) Compensation payable under this section shall be paid—

- (a) where the person in default was or was acting as a member of a police force, out of the police fund out of which the expenses of that police force are met,
- (b) where the person in default was a member of the Crown Prosecution Service or acting on behalf of the service, by the Director of Public Prosecutions, and
- (c) where the person in default was an officer within the meaning of the <sup>M27</sup>Customs and Excise Management Act 1979, by the Commissioners of Customs and Excise.

### Textual Amendments

**F47** Words repealed by [Criminal Justice Act 1988 \(c. 33, SIF 39:1\)](#), ss. 103, 170, Sch. 5 para. 12(a), Sch. 8 para. 16, [Sch. 16](#)

**F48** Words added by [Criminal Justice Act 1988 \(c. 33, SIF 39:1\)](#), s. 103, Sch. 5 para. 12(b), [Sch. 8 para. 16](#)

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- F49** Words repealed by [Criminal Justice Act 1988 \(c. 33, SIF 39:1\)](#), ss. 103, 170, Sch. 5 para. 12(c)(i), Sch. 8 para. 16, **Sch. 16**
- F50** Word repealed by [Criminal Justice Act 1988 \(c. 33, SIF 39:1\)](#), ss. 103, 170, Sch. 5 para. 12(c)(ii), Sch. 8 para. 16, **Sch. 16**
- F51** Words substituted by [Criminal Justice \(Scotland\) Act 1987 \(c. 41, SIF 39:1\)](#), **ss. 45(7)(d)**, 47(4)(a)
- F52** Words inserted by [Criminal Justice Act 1988 \(c. 33, SIF 39:1\)](#), s. 103, Sch. 5 para. 12(d), **Sch. 8 para. 16**

#### Marginal Citations

**M27** 1979 c. 2.

### [<sup>F53</sup>19A Compensation etc. where absconder is acquitted.

- (1) This section applies where—
  - (a) the High Court has made a confiscation order by virtue of section 4A(4) of this Act, and
  - (b) the defendant is subsequently tried for the offence or offences concerned and acquitted on all counts.
- (2) The court by which the defendant is acquitted shall cancel the confiscation order.
- (3) The High Court may, on the application of a person who held property which was realisable property, order compensation to be paid to the applicant if it is satisfied that the applicant has suffered loss as a result of the making of the confiscation order.
- (4) The amount of compensation to be paid under this section shall be such as the court considers just in all the circumstances of the case.
- (5) Rules of court may make provision—
  - (a) for the giving of notice of any application under this section; and
  - (b) for any person appearing to the court to be likely to be affected by any exercise of its powers under this section to be given an opportunity to make representations to the court.
- (6) Any payment of compensation under this section shall be made by the Lord Chancellor out of money provided by Parliament.
- (7) Where the court cancels a confiscation order under this section it may make such consequential or incidental order as it considers appropriate in connection with the cancellation.]

#### Textual Amendments

**F53** Ss. 19A-19C inserted (*prosp.*) by 1993 c. 36, **ss.15**, 78(3) (with s. 78(6)(9))

### [<sup>F54</sup>19B Power to discharge confiscation order and order compensation where absconder returns.

- (1) This section applies where—
  - (a) the High Court has made a confiscation order by virtue of section 4A(4) of this Act in relation to an absconder,
  - (b) the defendant has ceased to be an absconder, and



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- (c) section 19A of this Act does not apply.
- (2) The High Court may, on the application of the defendant, cancel the confiscation order if it is satisfied that—
- (a) there has been undue delay in continuing the proceedings in respect of which the power under section 4A(4) of this Act was exercised; or
  - (b) the prosecutor does not intend to proceed with the prosecution.
- (3) Where the High Court cancels a confiscation order under this section it may, on the application of a person who held property which was realisable property, order compensation to be paid to the applicant if it is satisfied that the applicant has suffered loss as a result of the making of the confiscation order.
- (4) The amount of compensation to be paid under this section shall be such as the court considers just in all the circumstances of the case.
- (5) Rules of court may make provision—
- (a) for the giving of notice of any application under this section; and
  - (b) for any person appearing to the court to be likely to be affected by any exercise of its powers under this section to be given an opportunity to make representations to the court.
- (6) Any payment of compensation under this section shall be made by the Lord Chancellor out of money provided by Parliament.
- (7) Where the court cancels a confiscation order under this section it may make such consequential or incidental order as it considers appropriate in connection with the cancellation.]

#### Textual Amendments

**F54** Ss. 19A-19C inserted (*prosp.*) by 1993 c. 36, ss.15, 78(3) (with s. 78(6)(9))

#### [<sup>F55</sup>19C Variation of confiscation orders made by virtue of section 4A.

- (1) This section applies where—
- (a) the High Court has made a confiscation order by virtue of section 4A(4) of this Act, and
  - (b) the defendant has ceased to be an absconder.
- (2) If the defendant alleges that—
- (a) the value of his proceeds of drug trafficking in the period by reference to which the determination in question was made (the “original value”), or
  - (b) the amount that might have been realised at the time the confiscation order was made,
- was less than the amount ordered to be paid under the confiscation order, he may apply to the High Court for it to consider his evidence.
- (3) If, having considered that evidence, the court is satisfied that the defendant’s allegation is correct it—
- (a) shall make a fresh determination under subsection (4) of section 1 of this Act, and



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- (b) may, if it considers it just in all the circumstances, vary the amount to be recovered under the confiscation order.
- (4) For any determination under section 1 of this Act by virtue of this section, section 2(5) of this Act shall not apply in relation to any of the defendant's proceeds of drug trafficking taken into account in determining the original value.
- (5) Where the court varies a confiscation order under this section—
  - (a) it shall substitute for the term of imprisonment or of detention fixed under section 31(2) of the <sup>M28</sup>Powers of Criminal Courts Act 1973 in respect of the amount to be recovered under the order a shorter term determined in accordance with that section (as it has effect by virtue of section 6 of this Act) in respect of the lesser amount; and
  - (b) on the application of a person who held property which was realisable property, it may order compensation to be paid to the applicant if—
    - (i) it is satisfied that the applicant has suffered loss as a result of the making of the confiscation order; and
    - (ii) having regard to all the circumstances of the case, the court considers it to be appropriate.
- (6) The amount of compensation to be paid under this section shall be such as the court considers just in all the circumstances of the case.
- (7) Rules of court may make provision—
  - (a) for the giving of notice of any application under this section; and
  - (b) for any person appearing to the court to be likely to be affected by any exercise of its powers under this section to be given an opportunity to make representations to the court.
- (8) Any payment of compensation under this section shall be made by the Lord Chancellor out of money provided by Parliament.
- (9) No application shall be entertained by the court under this section if it is made after the end of the period of six years beginning with the date on which the confiscation order was made.]

**Textual Amendments**

F55 Ss. 19A-19C inserted (*prosp.*) by 1993 c. 36, ss.15, 78(3) (with s. 78(6)(9))

**Marginal Citations**

M28 1973 c. 62.

20–23 ..... F56

**Textual Amendments**

F56 Ss. 20–23 repealed by Criminal Justice (Scotland) Act 1987 (c. 41, SIF 39:1), ss. 47(4)(a), 70(2), Sch. 2

*Status: Point in time view as at 08/08/1994.*

*Changes to legislation: There are currently no known outstanding effects for the Drug Trafficking Offences Act 1986. (See end of Document for details)*

*[<sup>F57</sup> Acquiring etc. property derived from drug trafficking]*

**Textual Amendments**

**F57** Cross heading and S. 23A inserted (*prosp.*) by 1993 c. 36, ss. 16(1), 78(3) (with s. 78(6)(9))

**[<sup>F58</sup>23A Acquisition, possession or use of proceeds of drug trafficking.**

- (1) A person is guilty of an offence if, knowing that any property is, or in whole or in part directly or indirectly represents, another person's proceeds of drug trafficking, he acquires or uses that property or has possession of it.
- (2) It is a defence to a charge of committing an offence under this section that the person charged acquired or used the property or had possession of it for adequate consideration.
- (3) For the purposes of subsection (2) above—
  - (a) a person acquires property for inadequate consideration if the value of the consideration is significantly less than the value of the property; and
  - (b) a person uses or has possession of property for inadequate consideration if the value of the consideration is significantly less than the value of his use or possession of the property.
- (4) The provision for any person of services or goods which are of assistance to him in drug trafficking shall not be treated as consideration for the purposes of subsection (2) above.
- (5) Where a person discloses to a constable a suspicion or belief that any property is, or in whole or in part directly or indirectly represents, another person's proceeds of drug trafficking, or discloses to a constable any matter on which such a suspicion or belief is based—
  - (a) the disclosure shall not be treated as a breach of any restriction upon the disclosure of information imposed by statute or otherwise; and
  - (b) if he does any act in relation to the property in contravention of subsection (1) above, he does not commit an offence under this section if—
    - (i) the disclosure is made before he does the act concerned and the act is done with the consent of the constable, or
    - (ii) the disclosure is made after he does the act, but on his initiative and as soon as it is reasonable for him to make it.
- (6) For the purposes of this section, having possession of any property shall be taken to be doing an act in relation to it.
- (7) In proceedings against a person for an offence under this section, it is a defence to prove that—
  - (a) he intended to disclose to a constable such a suspicion, belief or matter as is mentioned in subsection (5) above, but
  - (b) there is reasonable excuse for his failure to make the disclosure in accordance with paragraph (b) of that subsection.
- (8) In the case of a person who was in employment at the relevant time, subsections (5) and (7) above shall have effect in relation to disclosures, and intended disclosures, to the appropriate person in accordance with the procedure established by his employer

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for the making of such disclosures as they have effect in relation to disclosures, and intended disclosures, to a constable.

- (9) A person guilty of an offence under this section is liable—
- (a) on summary conviction, to imprisonment for a term not exceeding six months or a fine not exceeding the statutory maximum or to both, or
  - (b) on conviction on indictment, to imprisonment for a term not exceeding fourteen years or a fine or to both.
- (10) No constable or other person shall be guilty of an offence under this section in respect of anything done by him in the course of acting in connection with the enforcement, or intended enforcement, of any provision of this Act or of any other enactment relating to drug trafficking or the proceeds of such trafficking.]

#### Textual Amendments

**F58** S. 23A and cross heading inserted (15.2.1994) by 1993 c. 36, s. 16(1); S.I. 1994/71, art. 2, Sch. (with s. 78(6)(9))

#### Modifications etc. (not altering text)

**C8** S. 23A applied (1.8.1994) by 1994/1757, art. 3

### *Offence of assisting drug traffickers*

## **24 Assisting another to retain the benefit of drug trafficking.**

- (1) Subject to subsection (3) below, if a person enters into or is otherwise concerned in an arrangement whereby—
- (a) the retention or control by or on behalf of another (call him “A”) of A’s proceeds of drug trafficking is facilitated (whether by concealment, removal from the jurisdiction, transfer to nominees or otherwise), or
  - (b) A’s proceeds of drug trafficking—
    - (i) are used to secure that funds are placed at A’s disposal, or
    - (ii) are used for A’s benefit to acquire property by way of investment, knowing or suspecting that A is a person who carries on or has carried on drug trafficking or has benefited from drug trafficking, he is guilty of an offence.
- (2) In this section, references to any person’s proceeds of drug trafficking include a reference to any property which in whole or in part directly or indirectly represented in his hands his proceeds of drug trafficking.
- (3) Where a person discloses to a constable a suspicion or belief that any funds or investments are derived from or used in connection with drug trafficking or any matter on which such a suspicion or belief is based—
- (a) the disclosure shall not be treated as a breach of any restriction upon the disclosure of information imposed by [<sup>F59</sup>statute or otherwise], and
  - (b) if he does any act in contravention of subsection (1) above and the disclosure relates to the arrangement concerned, he does not commit an offence under this section if the disclosure is made in accordance with this paragraph, that is—

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- (i) it is made before he does the act concerned, being an act done with the consent of the constable, or
- (ii) it is made after he does the act, but is made on his initiative and as soon as it is reasonable for him to make it.
- (4) In proceedings against a person for an offence under this section, it is a defence to prove—
- (a) that he did not know or suspect that the arrangement related to any person’s proceeds of drug trafficking, or
- (b) that he did not know or suspect that by the arrangement the retention or control by or on behalf of A of any property was facilitated or, as the case may be, that by the arrangement any property was used as mentioned in subsection (1) above, or
- (c) that—
- (i) he intended to disclose to a constable such a suspicion, belief or matter as is mentioned in subsection (3) above in relation to the arrangement, but
- (ii) there is reasonable excuse for his failure to make disclosure in accordance with subsection (3)(b) above.
- [<sup>F60</sup>(4A) In the case of a person who was in employment at the relevant time, subsections (3) and (4) above shall have effect in relation to disclosures, and intended disclosures, to the appropriate person in accordance with the procedure established by his employer for the making of such disclosures as they have effect in relation to disclosures, and intended disclosures, to a constable.]
- (5) A person guilty of an offence under this section shall be liable—
- (a) on conviction on indictment, to imprisonment for a term not exceeding fourteen years or to a fine or to both, and
- (b) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum or to both.
- (5A) . . . . .<sup>F61</sup>
- (6) In Part II of Schedule 1 to the <sup>M29</sup>Criminal Justice Act 1982 (persons convicted of offences under certain enactments not eligible for early release), after paragraph 25 there is inserted—

“ DRUG TRAFFICKING OFFENCES ACT 1986 (C. 32)

26 Section 24 (assisting another to retain the benefit of drug trafficking).”

#### Textual Amendments

**F59** Word in s. 24(3)(a) substituted (1.4.1994) by 1993 c. 36, s. 18(2), (with s. 78(6)(9)); S.I. 1994/700, art. 2, Sch.

**F60** S. 24(4A) inserted (1.4.1994) by 1993 c. 36, s. 18(3), (with s. 78(6)(9)); S.I. 1994/700, art. 2, Sch.

**F61** S. 24(5A) inserted by Criminal Justice Act 1988 (c. 33, SIF 39:1), s. 103, Sch. 5 para. 13 and repealed by Police Officers (Central Service) Act 1989 (c.11, SIF 95), s. 3, Sch.

#### Modifications etc. (not altering text)

**C9** S.24 applied (1.8.1994) by S.I. 1994/1757, reg. 3

*Status: Point in time view as at 08/08/1994.*

*Changes to legislation: There are currently no known outstanding effects for the Drug Trafficking Offences Act 1986. (See end of Document for details)*

#### Marginal Citations

M29 1982 c. 48.

### [<sup>F62</sup>24A Recognition and enforcement of orders and functions under Part I of the Criminal Justice (Scotland) Act

- (1) Her Majesty may by Order in Council make such provision as Her Majesty considers expedient for the purpose—
  - (a) of enabling property in England and Wales which is realisable property for the purposes of Part I of the Criminal Justice (Scotland) Act 1987 to be used or realised for the payment of any amount payable under a confiscation order made under that Part of that Act; and
  - (b) of securing that, where no confiscation order has been made under that Part of that Act, property in England and Wales which is realisable property for the purposes of that Part of that Act is available, in the event that such an order is so made, to be used or realised for the payment of any amount payable under it.
- (2) Without prejudice to the generality of the power conferred by subsection (1) above, an Order in Council under this section may—
  - (a) provide that, subject to any specified conditions—
    - (i) the functions of a person appointed under section 13 of the Criminal Justice (Scotland) Act 1987; and
    - (ii) such descriptions of orders made under or for the purposes of Part I of the Criminal Justice (Scotland) Act 1987 as may be specified;shall have effect in the law of England and Wales;
  - (b) make provision—
    - (i) for the registration in the High Court of such descriptions of orders made under or for the purposes of that Part of that Act as may be specified; and
    - (ii) for the High Court to have in relation to the enforcement of orders made under or for the purposes of that Part of that Act which are so registered such powers as may be specified; and
  - (c) make provision as to the proof in England and Wales of orders made under or for the purposes of that Part of that Act.
- (3) In subsection (2) above “specified” means specified in an Order in Council under this section.
- (4) An Order in Council under this section may amend or apply, with or without modifications, any enactment.
- (5) An Order in Council under this section may contain such incidental, consequential and transitional provisions as Her Majesty considers expedient.

[ An Order in Council under this section shall be subject to annulment in pursuance of <sup>F63</sup>(6) a resolution of either House of Parliament. ]]

#### Textual Amendments

**F62** S. 24A inserted (E.W.) by [Criminal Justice \(Scotland\) Act 1987 \(c. 41, SIF 39:1\)](#), **ss. 31**, 47(4)(a)

**F63** S. 24A(6) substituted (1.12.1993) by [1993 c. 36, s. 21\(2\)](#) (with [s. 78\(6\)\(9\)](#)); [S.I. 1993/2734](#), **art. 2**, Sch.

*Status: Point in time view as at 08/08/1994.*

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### *Enforcement of external orders*

## **25 Enforcement of Northern Ireland orders.**

- (1) Her Majesty may by Order in Council provide that, for the purposes of sections 7 to [F64]18] of this Act, this Act shall have effect as if—
- (a) references to confiscation orders included a reference to orders made by courts in Northern Ireland which appear to Her Majesty to correspond to confiscation orders,
  - (b) references to drug trafficking offences included a reference to any offence under the law of Northern Ireland (not being a drug trafficking offence) which appears to Her Majesty to correspond to such an offence,
  - (c) references to proceedings in England and Wales or to the institution or conclusion in England and Wales of proceedings included a reference to proceedings in Northern Ireland or to the institution or conclusion in Northern Ireland of proceedings, as the case may be, and
  - [F65](d) the references to the laying of an information in section 7(2) and (4) of this Act included references to making a complaint under Article 20 of the Magistrates' Courts (Northern Ireland) Order 1981.]
- (2) An Order in Council under this section may provide for those sections to have effect in relation to anything done or to be done in Northern Ireland subject to such further modifications as may be specified in the order.
- (3) An Order in Council . . . F66 under this section may contain such incidental, consequential and transitional provisions as Her Majesty considers expedient.
- [F67](3A) An Order in Council under this section may, in particular, provide for section 18 of the M30 Civil Jurisdiction and Judgments Act 1982 (enforcement of United Kingdom judgments in other parts of the United Kingdom) not to apply in relation to such orders as may be prescribed by the Order.]
- [F68](4) An Order in Council under this section shall be subject to annulment in pursuance of a resolution of either House of Parliament.]

#### **Textual Amendments**

- F64** Word in s. 25(1) substituted (1.12.1993) by 1993 c. 36, s. 22(1) (with s. 78(6)(9)); S.I. 1993/2734, art. 2, Sch.
- F65** S. 25(1)(d) substituted by Criminal Justice Act 1988 (c. 33, SIF 39:1), s. 103, Sch. 5 para. 14(1), Sch. 8 para. 16
- F66** Words repealed by Criminal Justice Act 1988 (c. 33, SIF 39:1), ss. 103, 170, Sch. 5 para. 14(2), Sch. 8 para. 16, Sch. 16
- F67** S. 25(3A) inserted (1.12.1993) by 1993 c. 36, s. 22(1) (with s. 78(6)(9)); S.I. 1993/2734, art. 2, Sch.
- F68** S. 25(4) substituted (1.12.1993) by 1993 c. 36, s. 21(2)(3)(a) (with s. 78(6)(9)); S.I. 1993/2734, art. 2, Sch.

#### **Marginal Citations**

- M30** 1982 c. 27.

*Status: Point in time view as at 08/08/1994.*

*Changes to legislation: There are currently no known outstanding effects for the Drug Trafficking Offences Act 1986. (See end of Document for details)*

[<sup>F69</sup>26 **Enforcement of other external orders.**

- (1) Her Majesty may by Order in Council—
- (a) direct in relation to a country or territory outside the United Kingdom designated by the Order (“a designated country”) that, subject to such modifications as may be specified, this Act shall apply to external confiscation orders and to proceedings which have been or are to be instituted in the designated country and may result in an external confiscation order being made there;
  - (b) make—
    - (i) such provision in connection with the taking of action in the designated country with a view to satisfying a confiscation order; and
    - (ii) such provision as to evidence or proof of any matter for the purposes of this section and section 26A below; and
    - (iii) such incidental, consequential and transitional provision, as appears to Her Majesty to be expedient; and
  - (c) without prejudice to the generality of this subsection, direct that in such circumstances as may be specified proceeds which arise out of action taken in the designated country with a view to satisfying a confiscation order shall be treated as reducing the amount payable under the order to such extent as may be specified.
- (2) In this Act—
- “external confiscation order” means an order made by a court in a designated country for the purpose of recovering payments or other rewards received in connection with drug trafficking or their value; and
  - “modifications” includes additions, alterations and omissions.
- (3) An Order in Council under this section may make different provision for different cases or classes of case.
- (4) The power to make an Order in Council under this section includes power to modify this Act in such a way as to confer power on a person to exercise a discretion.

[ An Order in Council under this section shall be subject to annulment in pursuance of <sup>F70</sup>(5) a resolution of either House of Parliament.]]

**Textual Amendments**

**F69** S. 26, 26A substituted by [Criminal Justice Act 1988 \(c. 33, SIF 39:1\)](#), s. 103, Sch. 5 para. 15, [Sch. 8 para. 16](#)

**F70** S. 26(5) substituted (1.12.1993) by [1993 c. 36, s. 21\(2\)\(3\)\(b\)](#) (with [s. 78\(6\)\(9\)](#)); [S.I. 1993/2734, art. 2](#), Sch.

[<sup>F71</sup>26A **Registration of external confiscation orders.**

- (1) On an application made by or on behalf of the Government of a designated country, the High Court may register an external confiscation order made there if—
- (a) it is satisfied that at the time of registration the order is in force and not subject to appeal;



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- (b) it is satisfied, where the person against whom the order is made did not appear in the proceedings, that he received notice of the proceedings in sufficient time to enable him to defend them; and
  - (c) it is of the opinion that enforcing the order in England and Wales would not be contrary to the interests of justice.
- (2) In subsection (1) above “appeal” includes—
- (a) any proceedings by way of discharging or setting aside a judgment; and
  - (b) an application for a new trial or a stay of execution.
- (3) The High Court shall cancel the registration of an external confiscation order if it appears to the court that the order has been satisfied by payment of the amount due under it or by the person against whom it was made serving imprisonment in default of payment or by any other means.]

#### Textual Amendments

**F71** Ss. 26, 26A substituted by [Criminal Justice Act 1988 \(c. 33, SIF 39:1\)](#), s. 103, Sch. 5 para. 15, [Sch. 8 para. 16](#)

#### *[<sup>F72</sup>Offences in connection with money laundering]*

#### Textual Amendments

**F72** Cross heading and ss. 26B, 26C inserted (1.4.1994) by [1993 c. 36, s. 18\(1\)](#), (with s. 78(6)(9)); [S.I. 1994/700, art. 2, Sch.](#)

### **26B** <sup>F73</sup>**Failure to disclose knowledge or suspicion of money laundering.**

- (1) A person is guilty of an offence if—
- (a) he knows, or suspects, that another person is engaged in drug money laundering,
  - (b) the information, or other matter, on which that knowledge or suspicion is based came to his attention in the course of his trade, profession, business or employment, and
  - (c) he does not disclose the information or other matter to a constable as soon as is reasonably practicable after it comes to his attention.
- (2) Subsection (1) above does not make it an offence for a professional legal adviser to fail to disclose any information or other matter which has come to him in privileged circumstances.
- (3) It is a defence to a charge of committing an offence under this section that the person charged had a reasonable excuse for not disclosing the information or other matter in question.
- (4) Where a person discloses to a constable—
- (a) his suspicion or belief that another person is engaged in drug money laundering, or
  - (b) any information or other matter on which that suspicion or belief is based,



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- the disclosure shall not be treated as a breach of any restriction imposed by statute or otherwise.
- (5) Without prejudice to subsection (3) or (4) above, in the case of a person who was in employment at the relevant time, it is a defence to a charge of committing an offence under this section that he disclosed the information or other matter in question to the appropriate person in accordance with the procedure established by his employer for the making of such disclosures.
- (6) A disclosure to which subsection (5) above applies shall not be treated as a breach of any restriction imposed by statute or otherwise.
- (7) In this section, “drug money laundering” means doing any act which constitutes an offence under—
- (a) section 23A or 24 of this Act; or
  - (b) section 14 of the <sup>M31</sup>Criminal Justice (International Co-operation) Act 1990 (concealing or transferring proceeds of drug trafficking);
- or, in the case of an act done otherwise than in England and Wales, would constitute such an offence if done in England and Wales.
- (8) For the purposes of subsection (7) above, having possession of any property shall be taken to be doing an act in relation to it.
- (9) For the purposes of this section, any information or other matter comes to a professional legal adviser in privileged circumstances if it is communicated, or given, to him—
- (a) by, or by a representative of, a client of his in connection with the giving by the adviser of legal advice to the client;
  - (b) by, or by a representative of, a person seeking legal advice from the adviser; or
  - (c) by any person—
    - (i) in contemplation of, or in connection with, legal proceedings; and
    - (ii) for the purpose of those proceedings.
- (10) No information or other matter shall be treated as coming to a professional legal adviser in privileged circumstances if it is communicated or given with a view to furthering any criminal purpose.
- (11) A person guilty of an offence under this section shall be liable—
- (a) on summary conviction, to imprisonment for a term not exceeding six months or a fine not exceeding the statutory maximum or to both, or
  - (b) on conviction on indictment, to imprisonment for a term not exceeding five years or a fine or to both.

#### **Textual Amendments**

**F73** Ss. 26B, 26C and cross heading inserted (1.4.1994) by 1993 c. 36, s. 18(1), (with s. 78(6)(9)); S.I. 1994/700, art. 2, Sch.

#### **Modifications etc. (not altering text)**

**C10** S. 26B applied (1.8.1994) by S.I. 1994/1757, reg. 3

**C11** S. 26B excluded (1.8.1994) by S.I. 1994/1757, art. 4(1)(3)

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### Marginal Citations

M31 1990 c. 5.

## 26C <sup>F74</sup>Tipping-off.

- (1) A person is guilty of an offence if—
  - (a) he knows or suspects that a constable is acting, or is proposing to act, in connection with an investigation which is being, or is about to be, conducted into drug money laundering, and
  - (b) he discloses to any other person information or any other matter which is likely to prejudice that investigation, or proposed investigation.
- (2) A person is guilty of an offence if—
  - (a) he knows or suspects that a disclosure (“the disclosure”) has been made to a constable under section 23A, 24 or 26B of this Act, and
  - (b) he discloses to any other person information or any other matter which is likely to prejudice any investigation which might be conducted following the disclosure.
- (3) A person is guilty of an offence if—
  - (a) he knows or suspects that a disclosure of a kind mentioned in section 23A(8), 24(4A) or 26B(5) of this Act (“the disclosure”) has been made, and
  - (b) he discloses to any person information or any other matter which is likely to prejudice any investigation which might be conducted following the disclosure.
- (4) Nothing in subsections (1) to (3) above makes it an offence for a professional legal adviser to disclose any information or other matter—
  - (a) to, or to a representative of, a client of his in connection with the giving by the adviser of legal advice to the client; or
  - (b) to any person—
    - (i) in contemplation of, or in connection with, legal proceedings; and
    - (ii) for the purpose of those proceedings.
- (5) Subsection (4) above does not apply in relation to any information or other matter which is disclosed with a view to furthering any criminal purpose.
- (6) In proceedings against a person for an offence under subsection (1), (2) or (3) above, it is a defence to prove that he did not know or suspect that the disclosure was likely to be prejudicial in the way mentioned in that subsection.
- (7) In this section “drug money laundering” has the same meaning as in section 26B of this Act.
- (8) A person guilty of an offence under this section shall be liable—
  - (a) on summary conviction, to imprisonment for a term not exceeding six months or a fine not exceeding the statutory maximum or to both, or
  - (b) on conviction on indictment, to imprisonment for a term not exceeding five years or a fine or to both.
- (9) No constable or other person shall be guilty of an offence under this section in respect of anything done by him in the course of acting in connection with the enforcement, or

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intended enforcement, of any provision of this Act or of any other enactment relating to drug trafficking or the proceeds of such trafficking.

#### Textual Amendments

**F74** Ss. 26B, 26C and cross heading inserted (1.4.1994) by 1993 c. 36, s. 18(1), (with s. 78(6)(9)); S.I. 1994/700, art. 2, Sch.

#### Modifications etc. (not altering text)

**C12** S. 26C applied (1.8.1994) by S.I. 1994/1757, reg. 3

### *Investigations into drug trafficking*

#### **27 Order to make material available.**

- (1) A constable . . . <sup>F75</sup> may, for the purpose of an investigation into drug trafficking, apply to a Circuit judge . . . <sup>F75</sup> for an order under subsection (2) below in relation to particular material or material of a particular description.
- (2) If on such an application the judge . . . <sup>F75</sup> is satisfied that the conditions in subsection (4) below are fulfilled, he may make an order that the person who appears to him to be in possession of the material to which the application relates shall—
  - (a) produce it to a constable for him to take away, or
  - (b) give a constable access to it,within such period as the order may specify.

This subsection is subject to section 30(11) of this Act.

- (3) The period to be specified in an order under subsection (2) above shall be seven days unless it appears to the judge . . . <sup>F75</sup> that a longer or shorter period would be appropriate in the particular circumstances of the application.
  - (4) The conditions referred to in subsection (2) above are—
    - (a) that there are reasonable grounds for suspecting that a specified person has carried on or has benefited from drug trafficking,
    - (b) that there are reasonable grounds for suspecting that the material to which the application relates—
      - (i) is likely to be of substantial value (whether by itself or together with other materials) to the investigation for the purpose of which the application is made, and
      - (ii) does not consist of or include items subject to legal privilege or excluded material, and
    - (c) that there are reasonable grounds for believing that it is in the public interest, having regard—
      - (i) to the benefit likely to accrue to the investigation if the material is obtained, and
      - (ii) to the circumstances under which the person in possession of the material holds it,that the material should be produced or that access to it should be given.

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- (5) Where the judge <sup>F76</sup> . . . makes an order under subsection (2)(b) above in relation to material on any premises he may, on the application of a constable . . . <sup>F75</sup> order any person who appears to him to be entitled to grant entry to the premises to allow a constable to enter the premises to obtain access to the material.
- (6) Provision may be made by Crown Court Rules . . . <sup>F75</sup> as to—
- (a) the discharge and variation of orders under this section, and
  - (b) proceedings relating to such orders.
- (7) An order of a Circuit Judge under this section shall have effect as if it were an order of the Crown Court.
- (8) Where the material to which an application under [<sup>F77</sup>subsection (1) above] relates consists of information contained in a computer—
- (a) an order under subsection (2)(a) above shall have effect as an order to produce the material in a form in which it can be taken away and in which it is visible and legible, and
  - (b) an order under subsection (2)(b) above shall have effect as an order to give access to the material in a form in which it is visible and legible.
- (9) An order under subsection (2) above—
- (a) shall not confer any right to production of, or access to, items subject to legal privilege or excluded material,
  - (b) shall have effect notwithstanding any obligation as to secrecy or other restriction upon the disclosure of information imposed by statute or otherwise, and
  - (c) may be made in relation to material in the possession of an authorised government department.
- [<sup>F78</sup>(10) An application under subsection (1) or (5) above may be made ex parte to a judge in chambers.]

#### Textual Amendments

- F75** Words repealed by [Criminal Justice \(Scotland\) Act 1987 \(c. 41, SIF 39:1\)](#), ss. 47(4)(a), 70(2), [Sch. 2](#)
- F76** Words in [s. 27\(5\)](#) repealed (15.2.1994) by [1993 c. 36](#), ss. 24(6), 79(14), [Sch. 6 Pt. I](#) (with [s. 78\(6\)\(9\)](#)); [S.I. 1999/71](#), art. 2, [Sch.](#)
- F77** Words in [s. 27\(8\)](#) substituted (*prosp.*) by [1993 c. 36](#), ss. 24(5), 78(3) (with [s. 78\(6\)\(9\)](#))
- F78** [S. 27\(10\)](#) added (*prosp.*) by [1993 c. 36](#), ss. 24(5), 78(3) (with [s. 78\(6\)\(9\)](#))

## 28 Authority for search.

- (1) A constable . . . <sup>F79</sup> may, for the purpose of an investigation into drug trafficking, apply to a Circuit judge . . . <sup>F79</sup> for a warrant under this section in relation to specified premises.
- (2) On such application the judge . . . <sup>F79</sup> may issue a warrant authorising a constable to enter and search the premises if he is satisfied—
- (a) that an order made under section 27 of this Act in relation to material on the premises has not been complied with, or
  - (b) that the conditions in subsection (3) below are fulfilled, or

*Status: Point in time view as at 08/08/1994.*

*Changes to legislation: There are currently no known outstanding effects for the Drug Trafficking Offences Act 1986. (See end of Document for details)*

- (c) that the conditions in subsection (4) below are fulfilled.
- (3) The conditions referred to in subsection (2)(b) above are—
- (a) that there are reasonable grounds for suspecting that a specified person has carried on or has benefited from drug trafficking, and
  - (b) that the conditions in section 27(4)(b) and (c) of this Act are fulfilled in relation to any material on the premises, and
  - (c) that it would not be appropriate to make an order under that section in relation to the material because—
    - (i) it is not practicable to communicate with any person entitled to produce the material, or
    - (ii) it is not practicable to communicate with any person entitled to grant access to the material or entitled to grant entry to the premises on which the material is situated, or
    - (iii) the investigation for the purposes of which the application is made might be seriously prejudiced unless a constable could secure immediate access to the material.
- (4) The conditions referred to in subsection (2)(c) above are—
- (a) that there are reasonable grounds for suspecting that a specified person has carried on or has benefited from drug trafficking, and
  - (b) that there are reasonable grounds for suspecting that there is on the premises material relating to the specified person or to drug trafficking which is likely to be of substantial value (whether by itself or together with other material) to the investigation for the purpose of which the application is made, but that the material cannot at the time of the application be particularised, and
  - (c) that—
    - (i) it is not practicable to communicate with any person entitled to grant entry to the premises, or
    - (ii) entry to the premises will not be granted unless a warrant is produced, or
    - (iii) the investigation for the purpose of which the application is made might be seriously prejudiced unless a constable arriving at the premises could secure immediate entry to them.
- (5) Where a constable has entered premises in the execution of a warrant issued under this section, he may seize and retain any material, other than items subject to legal privilege and excluded material, which is "likely to be of substantial value (whether by itself or together with other material) to the investigation for the purpose of which the warrant was issued.

#### Textual Amendments

**F79** Words repealed by [Criminal Justice \(Scotland\) Act 1987 \(c. 41, SIF 39:1\)](#), ss. 47(4)(a), 70(2), [Sch. 2](#)

29

- (1) For the purposes of section 21 and 22 of the <sup>M32</sup>Police and Criminal Evidence Act 1984 (access to, and copying and retention of, seized material)—
- (a) an investigation into drug trafficking shall be treated as if it were an investigation of or in connection with an offence, and

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*Changes to legislation: There are currently no known outstanding effects for the Drug Trafficking Offences Act 1986. (See end of Document for details)*

- (b) material produced in pursuance of an order under section 27(2)(a) of this Act shall be treated as if it were material seized by a constable.
- (2) Subject to subsection (3) below, in sections 27 and 28 of this Act “items subject to legal privilege”, “excluded material” and “premises” have the same meanings as in the said Act of 1984.
- (3) . . . . . F80

**Textual Amendments**

**F80** S. 29(3) repealed by [Criminal Justice \(Scotland\) Act 1987 \(c. 41, SIF 39:1\)](#), ss. 47(4)(a), 70(2), [Sch. 2](#)

**Marginal Citations**

**M32** 1984 c. 60.

**30 Disclosure of information held by government departments.**

- (1) Subject to subsection (4) below, the High Court may on an application by the prosecutor order any material mentioned in subsection (3) below which is in the possession of an authorised government department to be produced to the court within such period as the court may specify.
- (2) The power to make an order under subsection (1) above is exercisable if—
- the powers conferred on the court by sections 8(1) and 9(1) of this Act are exercisable by virtue of subsection (1) of section 7 of this Act, or
  - those powers are exercisable by virtue of subsection (2) of that section and the court has made a restraint or charging order which has not been discharged;
- but where the power to make an order under subsection (1) above is exercisable by virtue only of paragraph (b) above, subsection (3) of section 7 of this Act shall apply for the purposes of this section as it applies for the purposes of sections 8 and 9 of this Act
- (3) The material referred to in subsection (1) above is any material which—
- has been submitted to an officer of an authorised government department by the defendant or by a person who has at any time held property which was realisable property,
  - has been made by an officer of an authorised government department in relation to the defendant or such a person, or
  - is correspondence which passed between an officer of an authorised government department and the defendant or such a person,
- and an order under that subsection may require the production of all such material or of a particular description of such material, being material in the possession of the department concerned.
- (4) An order under subsection (1) above shall not require the production of any material unless it appears to the High Court that the material is likely to contain information that would facilitate the exercise of the powers conferred on the court by sections 8 to 11 of this Act or on a receiver appointed under section 8 or 11 of this Act or in pursuance of a charging order.

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- (5) The court may by order authorise the disclosure to such a receiver of any material produced under subsection (1) above or any part of such material; but the court shall not make an order under this subsection unless a reasonable opportunity has been given for an officer of the department to make representations to the court.
- (6) Material disclosed in pursuance of an order under subsection (5) above may, subject to any conditions contained in the order, be further disclosed for the purposes of the functions under this Act of the receiver or the Crown Court.
- (7) The court may by order authorise the disclosure to a person mentioned in subsection (8) below of any material produced under subsection (1) above or any part of such material; but the court shall not make an order under this subsection unless—
  - (a) a reasonable opportunity has been given for an officer of the department to make representations to the court, and
  - (b) it appears to the court that the material is likely to be of substantial value in exercising functions relating to drug trafficking.
- (8) The persons referred to in subsection (7) above are—
  - (a) any member of a police force,
  - (b) any member of the Crown Prosecution Service, and
  - (c) any officer within the meaning of the <sup>M33</sup>Customs and Excise Management Act 1979.
- (9) Material disclosed in pursuance of an order under subsection (7) above may, subject to any conditions contained in the order, be further disclosed for the purposes of functions relating to drug trafficking.
- (10) Material may be produced or disclosed in pursuance of this section notwithstanding any obligation as to secrecy or other restriction upon the disclosure of information imposed by statute or otherwise.
- (11) An order under subsection (1) above and, in the case of material in the possession of an authorised government department, an order under section 27(2) of this Act may require any officer of the department (whether named in the order or not) who may for the time being be in possession of the material concerned to comply with it, and such an order shall be served as if the proceedings were civil proceedings against the department.
- (12) The person on whom such an order is served—
  - (a) shall take all reasonable steps to bring it to the attention of the officer concerned, and
  - (b) if the order is not brought to that officer's attention within the period referred to in subsection (1) above, shall report the reasons for the failure to the court; and it shall also be the duty of any other officer of the department in receipt of the order to take such steps as are mentioned in paragraph (a) above.

**Marginal Citations**

M33 1979 c. 2.



*Status: Point in time view as at 08/08/1994.*

*Changes to legislation: There are currently no known outstanding effects for the Drug Trafficking Offences Act 1986. (See end of Document for details)*

### 31 Offence of prejudicing investigation.

(1) Where, in relation to an investigation into drug trafficking, an order under section 27 of this Act has been made or has been applied for and has not been refused or a warrant under section 28 of this Act has been issued, a person who, knowing or suspecting that the investigation is taking place, makes any disclosure which is likely to prejudice the investigation is guilty of an offence.

(2) In proceedings against a person for an offence under this section, it is a defence to prove—

- (a) that he did not know or suspect that the disclosure was likely to prejudice the investigation, or
- (b) that he had lawful authority or reasonable excuse for making the disclosure.

[<sup>F81</sup>(2A) Nothing in subsection (1) above makes it an offence for a professional legal adviser to disclose any information or other matter—

- (a) to, or to a representative of, a client of his in connection with the giving by the adviser of legal advice to the client; or
- (b) to any person—
  - (i) in contemplation of, or in connection with, legal proceedings; and
  - (ii) for the purpose of those proceedings.

(2B) Subsection (2A) above does not apply in relation to any information or other matter which is disclosed with a view to furthering any criminal purpose.]

(3) A person guilty of an offence under this section shall be liable—

- (a) on conviction on indictment, to imprisonment for a term not exceeding five years or to a fine or to both, and
- (b) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum or to both.

#### Textual Amendments

**F81** S. 31(2A)(2B) inserted (1.4.1994) by 1993 c. 36, s. 26(1) (with s. 78(6)(9)); S.I. 1994/700, art. 2, Sch.

#### Modifications etc. (not altering text)

**C13** S. 31 applied (1.8.1994) by S.I. 1994/1757, reg. 3

### 32 Authorisation of delay in notifying arrest.

(1) In section 56 of the <sup>M34</sup>Police and Criminal Evidence Act 1984 (right to have someone informed when arrested), at the beginning of subsection (5) there is inserted “Subject to subsection (5A) below” and after that subsection there is inserted—

“(5A) An officer may also authorise delay where the serious arrestable offence is a drug trafficking offence and the officer has reasonable grounds for believing—

- (a) that the detained person has benefited from drug trafficking, and
- (b) that the recovery of the value of that person’s proceeds of drug trafficking will be hindered by telling the named person of the arrest.”



*Status: Point in time view as at 08/08/1994.*

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(2) In section 58 of that Act (access to legal advice) at the beginning of subsection (8) there is inserted “Subject to subsection (8A) below” and after that subsection there is inserted—

“(8A) An officer may also authorise delay where the serious arrestable offence is a drug trafficking offence and the officer has reasonable grounds for believing—

- (a) that the detained person has benefited from drug trafficking, and
- (b) that the recovery of the value of that person’s proceeds of drug trafficking will be hindered by the exercise of the right conferred by subsection (1) above.”

(3) In section 65 of that Act (interpretation)—

- (a) after the definition of “appropriate consent” there is inserted—  
““drug trafficking” and “drug trafficking offence” have the same meaning as in the Drug Trafficking Offences Act 1986”; and
- (b) at the end of that section there is inserted “and references in this Part to any person’s proceeds of drug trafficking are to be construed in accordance with the Drug Trafficking Offences Act 1986”.

(4) Without prejudice to section 20(2) of the <sup>M35</sup>Interpretation Act 1978, the <sup>M36</sup>Police and Criminal Evidence Act 1984 (Application to Customs and Excise) Order 1985 applies to sections 56 and 58 of the <sup>M37</sup>Police and Criminal Evidence Act 1984 as those sections have effect by virtue of this section.

**Marginal Citations**

- M34** 1984 c. 60.
- M35** 1978 c. 30.
- M36** S.I. 1985/1800.
- M37** 1984 c. 60.

**33** ..... **F82**

**Textual Amendments**

- F82** S. 33 repealed by [Land Registration Act 1988 \(c. 3, SIF 98:2\)](#), **ss. 1(2)(f)**, 2, Sch.

*Drug administration kits etc.*

**34 Prohibition of supply etc. of articles for administering or preparing controlled drugs.**

(1) After section 9 of the <sup>M38</sup>Misuse of Drugs Act 1971 there is inserted the following section—

*Status: Point in time view as at 08/08/1994.*

*Changes to legislation: There are currently no known outstanding effects for the Drug Trafficking Offences Act 1986. (See end of Document for details)*

**“9A Prohibition of supply etc. of articles for administering or preparing controlled drugs.**

- (1) A person who supplies or offers to supply any article which may be used or adapted to be used (whether by itself or in combination with another article or other articles) in the administration by any person of a controlled drug to himself or another, believing that the article (or the article as adapted) is to be so used in circumstances where the administration is unlawful, is guilty of an offence.
- (2) It is not an offence under subsection (1) above to supply or offer to supply a hypodermic syringe, or any part of one.
- (3) A person who supplies or offers to supply any article which may be used to prepare a controlled drug for administration by any person to himself or another believing that the article is to be so used in circumstances where the administration is unlawful is guilty of an offence.
- (4) For the purposes of this section, any administration of a controlled drug is unlawful except—
  - (a) the administration by any person of a controlled drug to another in circumstances where the administration of the drug is not unlawful under section 4(1) of this Act, or
  - (b) the administration by any person of a controlled drug to himself in circumstances where having the controlled drug in his possession is not unlawful under section 5(1) of this Act.
- (5) In this section, references to administration by any person of a controlled drug to himself include a reference to his administering it to himself with the assistance of another”.

(2) In Schedule 4 to that Act, after the entry relating to section 9 there is inserted—

“Section 9A	Prohibition of supply etc. of articles for administering or preparing controlled drugs.	Summary	6 months or level 5 on the standard scale, or both.”
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**Marginal Citations**  
M38 1971 c. 38.

*Miscellaneous and Supplemental*

*Status: Point in time view as at 08/08/1994.*

*Changes to legislation: There are currently no known outstanding effects for the Drug Trafficking Offences Act 1986. (See end of Document for details)*

#### Textual Amendments

**F83** S. 35 repealed (8.8.1994) by 1994 c. 29, s. 93, Sch. 9 Pt. I; S.I. 1994/2025, art. 3

### 36 Drug trafficking offences to be serious arrestable offences.

In section 116(2) of the <sup>M39</sup>Police and Criminal Evidence Act 1984 (arrestable offences that are always serious) after paragraph (a) there is inserted—

“(aa) any of the offences mentioned in paragraphs (a) to (d) of the definition of “drug trafficking offence” in section 38(1) of the Drug Trafficking Offences Act 1986”.

#### Marginal Citations

**M39** 1984 c. 60.

### [<sup>F84</sup>36A Prosecution by order of the Commissioners of Customs and Excise.

- (1) Proceedings for an offence to which this section applies (“a specified offence”) may be instituted by order of the Commissioners.
- (2) Any proceedings for a specified offence which are so instituted shall be commenced in the name of an officer.
- (3) In the case of the death, removal, discharge or absence of the officer in whose name any proceedings for a specified offence were commenced, those proceedings may be continued by another officer.
- (4) Where the Commissioners investigate, or propose to investigate, any matter with a view to determining—
  - (a) whether there are grounds for believing that a specified offence has been committed, or
  - (b) whether a person should be prosecuted for a specified offence,that matter shall be treated as an assigned matter within the meaning of the <sup>M40</sup>Customs and Excise Management Act 1979.
- (5) Nothing in this section shall be taken—
  - (a) to prevent any person (including any officer) who has power to arrest, detain or prosecute any person for a specified offence from doing so; or
  - (b) to prevent a court from proceeding to deal with a person brought before it following his arrest by an officer for a specified offence, even though the proceedings have not been instituted by an order made under subsection (1) above.
- (6) In this section—

“the Commissioners” means the Commissioners of Customs and Excise;  
“officer” means a person commissioned by the Commissioners; and  
“specified offence” means—

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- (a) an offence under section 23A, 24, 26B, 26C or 31 of this Act or section 14 of the <sup>M41</sup>Criminal Justice (International Co-operation) Act 1990 (concealing or transferring proceeds of drug trafficking);
  - (b) attempting to commit, conspiracy to commit or incitement to commit, any such offence; or
  - (c) any other offence of a kind prescribed in regulations made by the Secretary of State for the purposes of this section.
- (7) The power to make regulations under subsection (6) above shall be exercisable by statutory instrument.
- (8) Any such instrument shall be subject to annulment in pursuance of a resolution of either House of Parliament.]

#### Textual Amendments

**F84** S. 36A inserted (1.12.1993) by 1993 c. 36, s. 20(1) (with s. 78(6)(9)); S.I. 1993/2734, art. 2, Sch.

#### Marginal Citations

**M40** 1979 c. 2.

**M41** 1990 c. 5.

### [<sup>F85</sup>36B Extension of certain offences to Crown servants and exemptions for regulators etc.

- (1) The Secretary of State may by regulations provide that, in such circumstances as may be prescribed, sections 23A, 24, 26B, 26C and 31 of this Act shall apply to such persons in the public service of the Crown, or such categories of person in that service, as may be prescribed.
- (2) Section 26B of this Act shall not apply to—
  - (a) any person designated by regulations made by the Secretary of State for the purpose of this paragraph; or
  - (b) in such circumstances as may be prescribed, any person who falls within such category of person as may be prescribed for the purpose of this paragraph.
- (3) The Secretary of State may designate, for the purpose of paragraph (a) of subsection (2) above, any person appearing to him to be performing regulatory, supervisory, investigative or registration functions.
- (4) The categories of person prescribed by the Secretary of State, for the purpose of paragraph (b) of subsection (2) above, shall be such categories of person connected with the performance by any designated person of regulatory, supervisory, investigative or registration functions as he considers it appropriate to prescribe.
- (5) In this section—
  - “the Crown” includes the Crown in right of Her Majesty’s Government in Northern Ireland; and
  - “prescribed” means prescribed by regulations made by the Secretary of State.
- (6) The power to make regulations under this section shall be exercisable by statutory instrument.

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- (7) Any such instrument shall be subject to annulment in pursuance of a resolution of either House of Parliament.]

#### Textual Amendments

**F85** S. 36B inserted (1.4.1994) by 1993 c. 36, s. 77, **Sch. 4 para. 1**; S.I. 1994/700, art. 2, **Sch.**

### 37 Expenses.

There shall be paid out of money provided by Parliament any increase attributable to this Act in the sums payable out of money so provided under any other Act.

### 38 General interpretation.

- (1) In this Act—

“authorised government department” means a government department which is an authorised department for the purposes of the <sup>M42</sup>Crown Proceedings Act 1947;

“constable” includes a person commissioned by the Commissioners of Customs and Excise;

“corresponding law” has the same meaning as in the <sup>M43</sup>Misuse of Drugs Act 1971;

“drug trafficking” means doing or being concerned in any of the following, whether in England and Wales or elsewhere—

- (a) producing or supplying a controlled drug where the production or supply contravenes section 4(1) of the Misuse of Drugs Act 1971 or a corresponding law;
- (b) transporting or storing a controlled drug where possession of the drug contravenes section 5(1) of that Act or a corresponding law;
- (c) importing or exporting a controlled drug where the importation or exportation is prohibited by section 3(1) of that Act or a corresponding law;
- [<sup>F86</sup>(d) manufacturing or supplying a scheduled substance within the meaning of section 12 of the Criminal Justice (International Co-operation) Act 1990 where the manufacture or supply is an offence under that section;]

and includes a person doing the following, whether in England and Wales or elsewhere, that is entering into or being otherwise concerned in an arrangement whereby—

- (i) the retention or control by or on behalf of another person of the other person’s proceeds of drug trafficking is facilitated, or
- (ii) the proceeds of drug trafficking by another person are used to secure that funds are placed at the other person’s disposal or are used for the other person’s benefit to acquire property by way of investment;

“drug trafficking offence” means any of the following—

- (a) an offence under section 4(2) or (3) or 5(3) of the Misuse of Drugs Act 1971 (production, supply and possession for supply of controlled drugs);
- (b) an offence under section 20 of that Act (assisting in or inducing commission outside United Kingdom of offence punishable under a corresponding law);
- (c) an offence under—

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- (i) section 50(2) or (3) of the <sup>M44</sup>Customs and Excise Management Act 1979 (improper importation),
- (ii) section 68(2) of that Act (exportation), or
- (iii) section 170 of that Act (fraudulent evasion),
- in connection with a prohibition or restriction on importation or exportation having effect by virtue of section 3 of the Misuse of Drugs Act 1971;
- (d) an offence under section 24 of this Act;
- [<sup>F87</sup>(dd) an offence under sections 12, 14 or 19 of the Criminal Justice (International Co-operation) Act 1990;]
- (e) an offence under section 1 of the <sup>M45</sup>Criminal Law Act 1977 of conspiracy to commit any of the offences in paragraphs (a) to [<sup>F88</sup>(dd)] above;
- (f) an offence under section 1 of the <sup>M46</sup>Criminal Attempts Act 1981 of attempting to commit any of those offences;
- (g) an offence of inciting another to commit any of those offences, whether under section 19 of the <sup>M47</sup>Misuse of Drugs Act 1971 or at common law; and
- (h) aiding, abetting, counselling or procuring the commission of any of those offences;
- “interest”, in relation to property, includes right;
- “property” includes money and all other property, real or personal, heritable or moveable, including things in action and other intangible or incorporeal property.
- (2) The expressions listed in the left hand column below are respectively defined or (as the case may be) fall to be construed in accordance with the provisions of this Act listed in the right hand column in relation to those expressions.

<i>Expression</i>	<i>Relevant provision</i>
Benefited from drug trafficking	Section 1(3)
Charging order	Section 9(2)
Confiscation order	Section 1(8)
Dealing with property	Section 8(7)
Defendant	Section 1(8)
Gift caught by this Act	Section 5(9)
Making a gift	Section 5(10)
Proceeds of drug trafficking	Section 2(1)(a)
Realisable property	Section 5(1)
Restraint order	Section 8(1)
Value of gift, payment or reward	Section 5
Value of proceeds of drug trafficking	Section 2(1)(b)
Value of property	Section 5(4)

- (3) This Act applies to property whether it is situated in England and Wales or elsewhere.
- (4) References in this Act to offences include a reference to offences committed before the commencement of section 1 of this Act; but nothing in this Act imposes any duty or

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confers any power on any court in or in connection with proceedings against a person for a drug trafficking offence instituted before the commencement of that section.

- (5) References in this Act to anything received in connection with drug trafficking include a reference to anything received both in that connection and in some other connection.
- (6) The following provisions shall have effect for the interpretation of this Act.
- (7) Property is held by any person if he holds any interest in it.
- (8) References to property held by a person include a reference to property vested in his trustee in bankruptcy, permanent or interim trustee within the meaning of the <sup>M48</sup>Bankruptcy (Scotland) Act 1985 or liquidator.
- (9) References to an interest held by a person beneficially in property include a reference to an interest which would be held by him beneficially if the property were not so vested.
- (10) Property is transferred by one person to another if the first person transfers or grants to the other any interest in the property.
- (11) Proceedings for an offence are instituted . . . <sup>F89</sup>—
  - (a) when a justice of the peace issues a summons or warrant under section 1 of the <sup>M49</sup>Magistrates' Courts Act 1980 in respect of the offence,
  - (b) when a person is charged with the offence after being taken into custody without a warrant,
  - (c) when a bill of indictment is preferred under section 2 of the <sup>M50</sup>Administration of Justice (Miscellaneous Provisions) Act 1933 in a case falling within paragraph (b) of subsection (2) of that section;and where the application of this subsection would result in there being more than one time for the institution of proceedings, they shall be taken to have been instituted at the earliest of those times.
- [<sup>F90</sup>(12) Proceedings for an offence are concluded—
  - (a) when (disregarding any power of a court to grant leave to appeal out of time) there is no further possibility of a confiscation order being made in the proceedings;
  - (b) on the satisfaction of a confiscation order made in the proceedings (whether by payment of the amount due under the order or by the defendant serving imprisonment in default).
- (13) An order is subject to appeal until (disregarding any power of a court to grant leave to appeal out of time) there is no further possibility of an appeal on which the order could be varied or set aside.]

#### Textual Amendments

- F86** S. 38(1)(d) inserted (01.07.1991) by [Criminal Justice \(International Co-operation\) Act 1990 \(c. 5, SIF 39:1\)](#), s. 31(1), [Sch. 4 para. 4\(3\)](#); S.I. 1991/1072, art. 2(b), [Sch. Pt.II](#).
- F87** S. 38(1)(dd) inserted (01.07.1991) by [Criminal Justice \(International Co-operation\) Act 1990 \(c. 5, SIF 39:1\)](#), s. 31(1), [Sch. 4 para. 4\(4\)](#); S.I. 1991/1072, art. 2(b), [Sch.Pt.II](#).
- F88** “dd” substituted (01.07.1991) for “d” by [Criminal Justice \(International Co-operation\) Act 1990 \(c. 5, SIF 39:1\)](#), s. 31(1), [Sch. 4 para. 4\(4\)](#); S.I. 1991/1072, art. 2(b), [Sch. Pt.II](#).
- F89** Words repealed by [Criminal Justice Act 1988 \(c. 33, SIF 39:1\)](#), s. 170, [Sch. 8 para. 16](#), [Sch. 16](#)



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**F90** S. 38(12)(13) substituted by Criminal Justice Act 1988 (c. 33, SIF 39:1), s. 103, Sch. 5 para. 16, **Sch. 8 para. 16**

**Modifications etc. (not altering text)**

**C14** Definition extended with modifications by Criminal Justice Act 1988 (c. 33, SIF 39:1), s. 152(4), **Sch. 8 para. 16**

**Marginal Citations**

**M42** 1947 c. 44.  
**M43** 1971 c. 38.  
**M44** 1979 c. 2.  
**M45** 1977 c. 45.  
**M46** 1981 c. 47.  
**M47** 1971 c. 38.  
**M48** 1985 c. 66.  
**M49** 1980 c. 43.  
**M50** 1933 c. 36.

**39 Minor amendments.**

- (1) Section 28 of the <sup>M51</sup>Bankruptcy Act 1914 (effect of order of discharge) shall have effect as if amounts payable under confiscation orders were debts excepted under subsection (1)(a) of that section.
- (2) In section 49(1)(g) of the <sup>M52</sup>Land Registration Act 1925 (protection of certain interests by notice) after “Charging Orders Act 1979” there is inserted “or the Drug Trafficking Offences Act 1986”.
- (3) In section 1(2)(a) of the <sup>M53</sup>rehabilitation of Offenders Act 1974 (failure to pay fines etc. not to prevent person becoming rehabilitated) the reference to a fine or other sum adjudged to be paid by or imposed on a conviction does not include a reference to an amount payable under a confiscation order.
- (4) After subsection (4) of section 18 of the <sup>M54</sup>Civil Jurisdiction and Judgements Act 1982 there is inserted the following subsection—
 

“(4A) This section does not apply as respects the enforcement in Scotland of orders made by the High Court in England and Wales under or for the purposes of the Drug Trafficking Offences Act 1986.”
- (5) Section 281(4) of the Insolvency Act 1986 (discharge of bankrupt not to release him from liabilities in respect of fines, etc.) shall have effect as if the reference to a fine included a reference to a confiscation order.
- (6) Section 55(2) of the <sup>M55</sup>bankruptcy (Scotland) Act 1985 (discharge of debtor not to release him from liabilities in respect of fines etc.) shall have effect as if the reference to a fine included a reference to a confiscation order.

**Marginal Citations**

**M51** 1914 c. 59.  
**M52** 1925 c. 21.  
**M53** 1974 c. 53.  
**M54** 1982 c. 27.

*Status: Point in time view as at 08/08/1994.*

*Changes to legislation: There are currently no known outstanding effects for the Drug Trafficking Offences Act 1986. (See end of Document for details)*

M55 1985 c. 66.

**40 Short title, commencement and extent.**

- (1) This Act may be cited as the Drug Trafficking Offences Act 1986.
- (2) This Act, except section 35 (which comes into force on the day on which this Act is passed), shall come into force on such day as the Secretary of State may by order made by statutory instrument appoint and different days may be appointed for different provisions and for different purposes.
- (3) Subject to subsections (4) and (5) below, this Act extends to England and Wales only.
- (4) This Act has effect in Scotland as follows—
  - (a) ..... F91
  - (b) [<sup>F92</sup>section 3(6)]  
..... F93  
..... F93  
..... F93  
sections 15 to [<sup>F94</sup>17]; [<sup>F94</sup>17A]  
section 18(1);  
..... F95  
..... F95  
section 30(10), (11) and (12);  
section 34;  
section 38, so far as relating to other provisions of this Act extending to Scotland;  
section 39(3), (4) and (6); and  
this section, so far as relating to other provisions of this Act extending to Scotland,  
extend also to Scotland;  
(c) ..... F96
- (5) Section 34 extends also to Northern Ireland.

**Textual Amendments**

- F91** S. 40(4)(a) repealed by Criminal Justice (Scotland) Act 1987 (c. 41, SIF 39:1), ss. 47(4)(a), 70(2), **Sch. 2**
- F92** Words inserted by Criminal Justice (Scotland) Act 1987 (c. 41, SIF 39:1), **ss. 45(7)(f)(ii)**, 47(4)(a)
- F93** Words repealed by Criminal Justice (Scotland) Act 1987 (c. 41, SIF 39:1), ss. 47(4)(a), 70(2), **Sch. 2**
- F94** “17A” substituted (E.W.) for “17” by Criminal Justice Act 1988 (c. 33, SIF 39:1), s. 103, Sch. 5 para. 17, **Sch. 8 para. 16**
- F95** Words repealed by Criminal Justice (Scotland) Act 1987 (c. 41, SIF 39:1), ss. 47(4)(a), 70(2), **Sch. 2**

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*Status: Point in time view as at 08/08/1994.*

*Changes to legislation: There are currently no known outstanding effects for the Drug Trafficking Offences Act 1986. (See end of Document for details)*

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**F96** S. 40(4)(c) repealed by [Criminal Justice \(Scotland\) Act 1987 \(c. 41, SIF 39:1\)](#), ss. 47(4)(a), 70(2), [Sch. 2](#)

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**Modifications etc. (not altering text)**

**C15** Power of appointment conferred by s. 40(2) fully exercised: [S.I. 1986/1488](#), 1546, 2145, 2266

**Status:**

Point in time view as at 08/08/1994.

**Changes to legislation:**

There are currently no known outstanding effects for the Drug Trafficking Offences Act 1986.