



# Drug Trafficking Act 1994

## 1994 CHAPTER 37

### PART I

#### CONFISCATION ORDERS

##### *Confiscation orders where defendant has absconded or died*

#### **19 Powers of High Court where defendant has absconded or died**

- (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) section 4(2) of this Act shall not apply;
  - (b) section 11 of this Act shall apply as it applies where the prosecutor asks the court to proceed under section 2 of this Act, but with the omission of subsections (5), (7) and (8);
  - (c) 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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*Status: This is the original version (as it was originally enacted).*

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- (d) 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.
- (7) Subject to subsection (8) below, section 9 of this Act applies in relation to confiscation orders made by the High Court by virtue of this section as it applies in relation to confiscation orders made by the Crown Court and, for that purpose, references to the Crown Court in the provisions of the 1973 Act referred to in subsection (1) of that section (except in section 32(1)(b) of that Act) shall be construed as references to the High Court.
- (8) Where the High Court makes a confiscation order by virtue of this section in relation to a defendant who has died, section 9(1) of this Act shall be read as referring only to sections 31(1) and 32(1) of the 1973 Act.
- (9) Where the High Court—
  - (a) has been asked to proceed under this section in relation to a defendant who has absconded, but
  - (b) has decided not to make a confiscation order against him,
 section 14 of this Act shall not apply at any time while he remains an absconder.
- (10) Where a confiscation order has been made in relation to any defendant by virtue of this section, section 15 of this Act shall not apply at any time while he is an absconder.

## **20 Effect of conviction where High Court has acted under section 19**

- (1) Where, in the case of any defendant, the High Court has made a confiscation order by virtue of section 19 of this Act, the Crown Court shall, in respect of the offence or, as the case may be, any of the offences concerned—
  - (a) take account of the order before—
    - (i) imposing any fine on the defendant;
    - (ii) making any order involving any payment by him; or
    - (iii) making any order under section 27 of the Misuse of Drugs Act 1971 (forfeiture orders) or section 43 of the 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 him.
- (2) Where the High Court has made a confiscation order by virtue of section 19 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 2(1) of this Act shall not apply so far as his appearance is in respect of that offence or those offences.

## **21 Variation of confiscation orders made by virtue of section 19**

- (1) This section applies where—
  - (a) the High Court has made a confiscation order by virtue of section 19(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 2 of this Act; and
  - (b) may, if it considers it just in all the circumstances, vary the amount to be recovered under the confiscation order.
- (4) In the case of any determination under section 2 of this Act by virtue of this section, section 4(6) 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 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 19 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 in accordance with section 24 of this Act 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) 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.

## **22 Compensation etc where absconder is acquitted**

- (1) This section applies where—
  - (a) the High Court has made a confiscation order by virtue of section 19(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 in accordance with section 24 of this Act if it is satisfied that the applicant has suffered loss as a result of the making of the confiscation order.

**23 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 19(4) of this Act in relation to an absconder;
  - (b) the defendant has ceased to be an absconder; and
  - (c) section 22 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 19(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 in accordance with section 24 of this Act if it is satisfied that the applicant has suffered loss as a result of the making of the confiscation order.

**24 Provisions supplementary to sections 21, 22 and 23**

- (1) Where the High Court orders compensation to be paid under section 21, 22 or 23 of this Act, the amount of that compensation shall be such as the court considers just in all the circumstances of the case.
- (2) Rules of court may make provision—
  - (a) for the giving of notice of any application under section 21, 22 or 23 of this Act; and
  - (b) for any person appearing to the court to be likely to be affected by any exercise of its powers under any of those sections to be given an opportunity to make representations to the court.
- (3) Any payment of compensation under any of those sections shall be made by the Lord Chancellor.
- (4) Where the court cancels a confiscation order under section 22 or 23 of this Act it may make such consequential or incidental order as it considers appropriate in connection with the cancellation.