



Drug Trafficking Act 1994

1994 CHAPTER 37

PART I

CONFISCATION ORDERS

Confiscation orders

2 Confiscation orders

- (1) Subject to subsection (7) below, where a defendant 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), then—
 - (a) if the prosecutor asks the court 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 the defendant has benefited from drug trafficking.
- (3) For the purposes of this Act, a person has benefited from drug trafficking if he has at any time (whether before or after the commencement of this Act) received any payment or other reward in connection with drug trafficking carried on by him or another person.
- (4) If the court determines that the defendant 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 5 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 the defendant to pay that amount;
 - (b) take account of the order before—

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- (i) imposing any fine on him;
 - (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
 - (c) subject to paragraph (b) above, leave the order out of account in determining the appropriate sentence or other manner of dealing with him.
- (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 defendant 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 Magistrates' Courts Act 1980 (committal to Crown Court with a view to sentence of detention in a young offender institution); 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.
- (8) 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.
- (9) In this Act “confiscation order” means an order under this section and includes, in particular, such an order made by virtue of section 13, 14 or 19 of this Act.

3 Postponed determinations

- (1) Where the Crown Court is acting under section 2 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 that section,
- 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—

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- (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 2 of this Act shall have effect as if—
- (a) in subsection (4), 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; 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”.
- (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 2(5)(b)(ii) or (iii) of this Act.
- (10) Where the court has sentenced the defendant under subsection (7) above during the 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 2(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.
- (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; and
 - “the relevant offence” means the drug trafficking offence in respect of which the defendant appears (as mentioned in section 2(1) of this Act) before the court;
- and references to an appeal include references to an application under section 111 of the Magistrates' Courts Act 1980 (statement of case by magistrates' court).

4 Assessing the proceeds of drug trafficking

- (1) For the purposes of this Act—

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- (a) any payments or other rewards received by a person at any time (whether before or after the commencement of this Act) in connection with drug trafficking carried on by him or another person 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) Subject to subsections (4) and (5) below, the Crown Court shall, for the purpose—
 - (a) of determining whether the defendant has benefited from drug trafficking, and
 - (b) if he has, of assessing the value of his proceeds of drug trafficking,make the required assumptions.
- (3) The required assumptions are—
 - (a) that any property appearing to the court—
 - (i) to have been held by the defendant at any time since his conviction, or
 - (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) The court shall not make any required assumption in relation to any particular property or expenditure if—
 - (a) that assumption is shown to be incorrect in the defendant's case; or
 - (b) the court is satisfied that there would be a serious risk of injustice in the defendant's case if the assumption were to be made;and where, by virtue of this subsection, the court does not make one or more of the required assumptions, it shall state its reasons.
- (5) 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 49, 50 or 51 of this Act.
- (6) 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.
- (7) References in subsection (6) above to a confiscation order include a reference to a confiscation order within the meaning of—
 - (a) the Drug Trafficking Offences Act 1986; or
 - (b) Part I of the Criminal Justice (Scotland) Act 1987.

- (8) For the purposes of the application of Part II of this Act in Scotland and Northern Ireland, the expression “proceeds of drug trafficking” shall be construed in accordance with section 48(2) of this Act.

5 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 reason of the acceptance of an allegation made in a statement given under section 11 of this Act or made in the giving of information under section 12 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—
- (a) the amount appearing to the court to be the amount that might be so realised; or
 - (b) a nominal amount, where it appears to the court (on the information available to it at the time) that the amount that might be so realised is nil.

6 Meaning of “amount that might be realised” and “realisable property”

- (1) For the purposes 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 that time of all the realisable property held by the defendant, less
 - (b) where there are obligations having priority at that time, the total amount payable in pursuance of such obligations,
- together with the total of the values at that time of all gifts caught by this Act.
- (2) In this Act “realisable property” means, subject to subsection (3) 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.
- (3) Property is not realisable property if there is in force in respect of it an order under any of the following enactments, namely—
- (a) section 27 of the Misuse of Drugs Act 1971 (forfeiture orders);
 - (b) section 43 of the Powers of Criminal Courts Act 1973 (deprivation orders);
 - (c) section 223 or 436 of the Criminal Procedure (Scotland) Act 1975 (forfeiture of property);
 - (d) section 13(2), (3) or (4) of the Prevention of Terrorism (Temporary Provisions) Act 1989 (forfeiture orders).
- (4) For the purposes of subsection (1) above, an obligation has priority at any time if it is an obligation of the defendant—

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- (a) to 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 the order was made before the confiscation order; or
- (b) to 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 bankruptcy commencing on the date of the confiscation order or winding up under an order of the court made on that date.

7 Value of property etc

- (1) Subject to the following provisions of this section and to section 8 of this Act, for the purposes of this Act the value of property (other than cash) in relation to any person holding the property is the market value of the property, except that, where any other person holds an interest in the property, the value is—
 - (a) the market value of the first-mentioned person's beneficial interest in the property, less
 - (b) the amount required to discharge any incumbrance (other than a charging order) on that interest.
- (2) Subject to section 8(2) of this Act, references in this Act to the value at any time (referred to in subsection (3) 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 (3) below applies, the value there mentioned, whichever is the greater.
- (3) Subject to section 8(2) of this Act, 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 (2)(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.
- (4) References in this section to a charging order include a reference to a charging order within the meaning of the Drug Trafficking Offences Act 1986.

8 Gifts caught by this Act

- (1) A gift (including a gift made before the commencement 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 person; or
 - (ii) which in whole or in part directly or indirectly represented in the defendant's hands property received by him in that connection.

- (2) 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 provisions of subsection (1) above and of section 7 of this Act 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.

9 Application of procedure for enforcing fines

- (1) Where the Crown Court orders the defendant to pay any amount under section 2 of this Act, sections 31(1) to (3C) and 32(1) and (2) of the 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 that amount were a fine imposed on him by the Crown Court.
- (2) Where—
- (a) a warrant of commitment is issued for a default in payment of an amount ordered to be paid under section 2 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 Criminal Justice Act 1982 (detention of persons aged 18 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, detention in a young offender institution, or detention under section 4 of the 1982 Act 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 1973 Act (power to suspend sentence of imprisonment) 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 Criminal Law Act 1977 (sentences of imprisonment partly served and partly suspended) 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 1973 Act (term to be served in default of payment of fine etc) for which a warrant of commitment has not been issued at that time.

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- (4) In the application of Part III of the 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), of that Act; and
 - (b) in section 87 of that Act (enforcement by High Court or county court), subsection (3) shall be omitted.
- (5) Where the defendant serves a term of imprisonment or detention in default of paying any amount due under a confiscation order, his serving that term does not prevent the confiscation order from continuing to have effect, so far as any other method of enforcement is concerned.
- (6) This section applies in relation to confiscation orders made by—
- (a) the criminal division of the Court of Appeal, or
 - (b) the House of Lords on appeal from that division,
- as it applies in relation to confiscation orders made by the Crown Court, and the last reference in subsection (1) above to the Crown Court shall be construed accordingly.

10 Interest on sums unpaid under confiscation orders

- (1) If any sum required to be paid by a person under a confiscation order is not paid when it is required to be paid (whether forthwith on the making of the order or at a time specified under section 31(1) of the Powers of Criminal Courts Act 1973) that person shall be liable to pay interest on that sum for the period for which it remains unpaid; and the amount of the interest shall for the purposes of enforcement be treated as part of the amount to be recovered from him under the confiscation order.
- (2) The Crown Court may, on the application of the prosecutor, increase the term of imprisonment or detention fixed in respect of the confiscation order under subsection (2) of section 31 of the 1973 Act (as it has effect by virtue of section 9 of this Act) if the effect of subsection (1) above is to increase the maximum period applicable in relation to the order under subsection (3A) of that section.
- (3) The rate of interest under subsection (1) above shall be that for the time being applying to a civil judgment debt under section 17 of the Judgments Act 1838.