



# Drug Trafficking Act 1994

## 1994 CHAPTER 37

### PART I

#### CONFISCATION ORDERS

##### *Further proceedings in connection with confiscation orders*

### **13 Reconsideration of case where court has not proceeded under section 2.**

- (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 2 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 2 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 2 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 that section, the court shall have regard to all the circumstances of the case.
- (5) Where, having decided to proceed under that section, 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.

*Status: Point in time view as at 25/08/2000.*

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- (6) In considering the circumstances of any case the court shall have regard, in particular, to the amount of any fine or fines imposed on the defendant in respect of the offence or offences in question.
- (7) Where the court is proceeding under section 2 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 person on or before that date.
- (9) In considering under this section any evidence 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 4 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) Sections 11 and 12 of this Act shall apply where the prosecutor makes an application under this section as they apply where the prosecutor asks the court to proceed under section 2 of this Act.
- (12) 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.

#### **14 Re-assessment of whether defendant has benefited from drug trafficking.**

- (1) This section applies where the court has made a determination under section 2(2) of this Act (“the section 2(2) determination”) 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 2(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 make—
    - (i) a fresh determination under subsection (2) of section 2 of this Act; and
    - (ii) 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.

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- (4) Where the court is proceeding under section 2 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 2(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 person on or before that date.
- (6) In considering under this section any evidence 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 4 of this Act.
- (7) 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; and in this subsection “the date of conviction” has the same meaning as in section 13 of this Act.
- (8) Sections 11 and 12 of this Act shall apply where the prosecutor makes an application under this section as they apply where the prosecutor asks the court to proceed under section 2 of this Act.

## **15 Revised assessment of proceeds of drug trafficking.**

- (1) This section applies where the court has made a determination under subsection (4) of section 2 of this Act of the amount to be recovered in a particular case by virtue of that section (“the current section 2(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) Sections 11 and 12 of this Act shall apply where the prosecutor makes such an application as they apply where the prosecutor asks the court to proceed under section 2 of this Act, but subject (in the case of section 11) to subsection (9)(a) below.
- (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 at the time of the current section 2(4) determination was higher 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 2 of this Act of the amount to be recovered by virtue of that section.
- (5) In subsections (2) and (4) above—
  - “assessed value” means the value of the defendant’s proceeds of drug trafficking as assessed by the court in accordance with section 5(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 2(4) determination was made; or
    - (b) in any earlier period.

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- (6) Where the court is proceeding under section 2 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.
- (7) Any determination under section 2(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.
- (8) In the case of any determination under section 2(4) 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 respect of the current section 2(4) determination.
- (9) In relation to any such determination by virtue of this section—
- (a) sections 5(2), 6(4) and 11(9)(a) of this Act shall have effect as if for “confiscation order” there were substituted “determination”;
  - (b) section 5(3) shall have effect as if for “confiscation order is made” there were substituted “determination is made”; and
  - (c) section 6(1) of this Act shall have effect as if for “a confiscation order is made against the defendant” there were substituted “of the determination”.
- (10) The court may take into account any payment or other reward received by the defendant on or after the date of the current section 2(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 person on or before that date.
- (11) In considering under this section any evidence which relates to any payment or reward to which subsection (10) above applies, the court shall not make the assumptions which would otherwise be required by section 4 of this Act.
- (12) 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 2(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 2(4) determination such greater amount as it thinks just in all the circumstances of the case.
- (13) Where the court varies a confiscation order under subsection (12) above it shall substitute for the term of imprisonment or of detention fixed under [<sup>F1</sup>section 139(2) of the Powers of Criminal Courts (Sentencing) Act 2000] 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 9 of this Act) in respect of the greater amount substituted under subsection (12) above.
- (14) Subsection (13) above shall apply only if the effect of the substitution is to increase the maximum period applicable in relation to the order under [<sup>F2</sup>section 139(4) of the 2000 Act].
- (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 the date of conviction; and in this subsection “the date of conviction” has the same meaning as in section 13 of this Act.

#### Textual Amendments

**F1** Words in s. 15(13) substituted (25.8.2000) by 2000 c. 6, ss. 165(1), 168(1), **Sch. 9 para. 168(2)**

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**F2** Words in s. 15(14) substituted (25.8.2000) by 2000 c. 6, ss. 165(1), 168(1), Sch. 9 para. 168(3)

## 16 Increase in realisable property.

- (1) This section applies where, by virtue of section 5(3) of this Act, the amount which a person is ordered to pay by a confiscation order is less than the amount assessed to be the value of his proceeds of drug trafficking.
- (2) If, on an application made in accordance with subsection (3) below, the High Court is satisfied that the amount that might be realised in the case of the person in question is greater than the amount taken into account in making the confiscation order (whether it was greater than was thought when the order was made or has subsequently increased) the court shall issue a certificate to that effect, giving the court's reasons.
- (3) An application under subsection (2) above may be made either by the prosecutor or by a receiver appointed in relation to the realisable property of the person in question under section 26 or 29 of this Act or in pursuance of a charging order.
- (4) Where a certificate has been issued under subsection (2) above the prosecutor may apply to the Crown Court for an increase in the amount to be recovered under the confiscation order; and on that application the court may—
  - (a) substitute for that amount such amount (not exceeding the amount assessed as the value referred to in subsection (1) above) as appears to the court to be appropriate having regard to the amount now shown to be realisable; and
  - (b) increase the term of imprisonment or detention fixed in respect of the confiscation order under subsection (2) of [F3]section 139 of the Powers of Criminal Courts (Sentencing) Act 2000] (as it has effect by virtue of section 9 of this Act) if the effect of the substitution is to increase the maximum period applicable in relation to the order under [F4]subsection (4)] of that section.

### Textual Amendments

- F3** Words in s. 16(4)(b) substituted (25.8.2000) by 2000 c. 6, ss. 165(1), 168(1), Sch. 9 para. 169(a)  
**F4** Words in s. 16(4)(b) substituted (25.8.2000) by 2000 c. 6, ss. 165(1), 168(1), Sch. 9 para. 169(b)

## 17 Inadequacy of realisable property.

- (1) If, on an application made in respect of a confiscation order by—
  - (a) the defendant, or
  - (b) a receiver appointed under section 26 or 29 of this Act or in pursuance of a charging order,the High Court is satisfied that the realisable property is inadequate for the payment of any amount remaining to be recovered under the confiscation 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

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- (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.
- (3) Where a certificate has been issued under subsection (1) above, the person who applied for it may apply to the Crown Court for the amount to be recovered under the confiscation 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 [F5section 139 of the Powers of Criminal Courts (Sentencing) Act 2000] 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 9 of this Act) in respect of the lesser amount.
- (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.

#### Textual Amendments

**F5** Words in s. 17(4)(b) substituted (25.8.2000) by 2000 c. 6, ss. 165(1), 168(1), **Sch. 9 para. 170**

## 18 Compensation.

- (1) If proceedings are instituted against a person for any drug trafficking offence or offences and either—
  - (a) the proceedings do not result in his conviction for any drug trafficking offence, or
  - (b) he is convicted of one or more drug trafficking offences but—
    - (i) the conviction or convictions concerned are quashed, 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 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 (5) below; and
  - (b) that the applicant has suffered loss in consequence of anything done in relation to the property by or in pursuance of—

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- (i) an order of the High Court or a county court under sections 26 to 29 of this Act; or
  - [<sup>F6</sup>(ii) an order of the Court of Session under section 32, 33, 34 or 35 of the Proceeds of Crime (Scotland) Act 1995 (recognition and enforcement of orders under this Act and inhibition and arrestment of property affected by restraint orders);]
- (3) The High 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 even if the serious default had not occurred.
- (4) 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.
- (5) 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 was 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 Customs <sup>M1</sup> and Excise Management Act 1979, by the Commissioners of Customs and Excise.

**Textual Amendments**

**F6** S. 18(2)(ii) substituted (1.4.1996) by 1995 c. 40, ss. 5, 7(2), **Sch. 4 para. 94(4)**

**Marginal Citations**

**M1** 1979 c. 2.

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