



# Criminal Justice Act 1993

## 1993 CHAPTER 36

### PART II

#### DRUG TRAFFICKING OFFENCES

##### *Confiscation orders*

#### 7 **Confiscation orders**

- (1) In section 1 of the Drug Trafficking Offences Act 1986 (confiscation orders), in subsection (1), for “the court” there shall be substituted “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”.
- (2) After subsection (7) of that section there shall be inserted—
- “(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.”.
- (3) In subsection (3) of section 4 of the Act of 1986 (amount to be recovered under confiscation order), for the words from “the amount appearing” to the end there shall be substituted “—
- (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”.

## 8 Postponed determinations

The following section shall be inserted in the Drug Trafficking Offences Act 1986, after section 1—

### “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”.

- (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.
- (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.”.

## **9 Assumptions about proceeds of drug trafficking**

- (1) Section 2 of the Drug Trafficking Offences Act 1986 (assessing proceeds of drug trafficking) shall be amended as follows.
- (2) In subsection (2)—
- (a) for “may” there shall be substituted “shall”; and
  - (b) for the words from “following” to the end there shall be substituted “required assumptions”.
- (3) After subsection (2), there shall be inserted—
- “(2A) The court shall not make any required assumption 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 his case if the assumption were to be made.
- (2B) Where the court does not apply one or more of the required assumptions it shall state its reasons.”.
- (4) In subsection (3)—
- (a) for “Those” there shall be substituted “The required”; and
  - (b) in paragraph (a)(i), for “him” there shall be substituted “the defendant”.

## **10 Provision of information**

- (1) Section 3 of the Drug Trafficking Offences Act 1986 (statements relating to drug trafficking) shall be amended in accordance with subsections (2) to (4).
- (2) For subsections (1) and (2), there shall be substituted—

---

*Status: This is the original version (as it was originally enacted).*

---

- “(1) Where the prosecutor asks the court to proceed under section 1 of this Act or applies to the court under section 4A, 5A, 5B or 5C of this Act he shall give the court, within such period as it may direct, a statement of matters which he considers relevant in connection with—
- (a) determining whether the defendant has benefited from drug trafficking, or
  - (b) assessing the value of his proceeds of drug trafficking.
- (1A) In this section such a statement is referred to as a “prosecutor’s statement
- (1B) Where the court proceeds under section 1 of this Act without the prosecutor having asked it to do so, it may require him to give it a prosecutor’s statement, within such period as it may direct.
- (1C) Where the prosecutor has given a prosecutor’s statement—
- (a) he may at any time give the court a further such statement, and
  - (b) the court may at any time require him to give it a further such statement, within such period as it may direct.
- (1D) Where any prosecutor’s statement has been given and the court is satisfied that a copy of the statement has been served on the defendant, it may require the defendant—
- (a) to indicate to it, within such period as it may direct, the extent to which he accepts each allegation in the statement, and
  - (b) so far as he does not accept any such allegation, to give particulars of any matters on which he proposes to rely.
- (1E) Where the court has given a direction under this section it may at any time vary it by giving a further direction.
- (2) Where the defendant accepts to any extent any allegation in any prosecutor’s statement, the court may, for the purposes of—
- (a) determining whether the defendant has benefited from drug trafficking, or
  - (b) assessing the value of his proceeds of drug trafficking,
- treat his acceptance as conclusive of the matters to which it relates.”.
- (3) In subsection (3), for “statement” there shall be substituted “prosecutor’s statement in question”.
- (4) For subsection (5) there shall be substituted—
- “(5) An allegation may be accepted, or particulars of any matter may be given, for the purposes of this section in such manner as may be prescribed by rules of court or as the court may direct.”.
- (5) The following section shall be inserted in the Act of 1986, after section 3—

**“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

---

*Status: This is the original version (as it was originally enacted).*

---

- (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.
  - (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.”.
- (6) In section 5(3) of the Act of 1986 the words “sections 3 and 4 of” shall be omitted.

## **11 Variation of confiscation orders**

- (1) Section 14 of the Drug Trafficking Offences Act 1986 (variation of confiscation orders) shall be amended as follows.
- (2) In subsection (1) (variation on application of defendant), after “defendant” there shall be inserted “or a receiver appointed under section 8 or 11 of this Act, or in pursuance of a charging order, made”.
- (3) In subsection (3), for “defendant” there shall be substituted “person who applied for it”.
- (4) The following shall be inserted at the end—
  - “(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.”.

## **12 Revised assessment of proceeds of drug trafficking**

The following sections shall be inserted in the Drug Trafficking Offences Act 1986, after section 5—

---

*Status: This is the original version (as it was originally enacted).*

---

**“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.

### **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
  - (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.

---

*Status: This is the original version (as it was originally enacted).*

---

### **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”;
  - (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”.



---

*Status: This is the original version (as it was originally enacted).*

---

- (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 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.”.

### **13 Availability of powers and satisfaction of orders**

- (1) In section 6 of the Drug Trafficking Offences Act 1986 (default in complying with confiscation order: application of procedure for enforcing fines), the following subsection shall be added at the end—

“(7) 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.”.
- (2) Section 7 of the Act of 1986 (cases in which restraint orders and charging orders may be made) shall be amended as set out in subsections (3) to (5).
- (3) The following subsection shall be substituted for subsection (1)—

---

*Status: This is the original version (as it was originally enacted).*

---

- “(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 or an application has been made by the prosecutor in respect of the defendant under section 16 of the Criminal Justice (International Co-operation) Act 1990 (increase in realisable property) or section 4A, 5A, 5B or 5C of this Act,
  - (b) the proceedings have not, or the application has not, been concluded, and
  - (c) the court is satisfied that there is reasonable cause to believe—
    - (i) in the case of an application under section 5C of this Act or section 16 of the Act of 1990, that the court will be satisfied as mentioned in section 5C(4) of this Act or, as the case may be, section 16(2) of the Act of 1990, or
    - (ii) in any other case, that the defendant has benefited from drug trafficking.”.
- (4) The following subsection shall be substituted for subsection (2)—
- “(2) Those powers are also exercisable where—
- (a) the court is satisfied that, whether by the laying of an information or otherwise, a person is to be charged with a drug trafficking offence or that an application of a kind mentioned in subsection (1)(a) above is to be made in respect of the defendant, and
  - (b) the court is also satisfied as mentioned in subsection (1)(c) above.”.
- (5) The following subsections shall be added at the end—
- “(5) Where the court has made an order under section 8(1) or 9(1) of this Act in relation to a proposed application by virtue of subsection (2) above, the court shall discharge the order if the application is not made within such time as the court considers reasonable.
- (6) The court shall not exercise powers under section 8(1) or 9(1) of this Act, by virtue of subsection (1) above, if it is satisfied that—
- (a) there has been undue delay in continuing the proceedings or application in question; or
  - (b) the prosecutor does not intend to proceed.”.
- (6) In section 8 of the Act of 1986 (restraint orders), the following subsection shall be substituted for subsection (5)—
- “(5) A restraint order—
- (a) may be discharged or varied in relation to any property, and
  - (b) shall be discharged on the conclusion of the proceedings or of the application in question.”.
- (7) In section 9 of the Act of 1986 (charging orders), the following subsection shall be substituted for subsection (7)—
- “(7) In relation to a charging order, the court—
- (a) may make an order discharging or varying it, and
  - (b) shall make an order discharging it—

---

*Status: This is the original version (as it was originally enacted).*

---

- (i) on the conclusion of the proceedings or of the application in question, or
  - (ii) on payment into court of the amount payment of which is secured by the charge.”.
- (8) In section 11 of the Act of 1986 (realisation of property), the following subsection shall be substituted for subsection (1)—
  - “(1) Where a confiscation order—
    - (a) has been made under this Act,
    - (b) is not satisfied, and
    - (c) is not subject to appeal,the High Court or a county court may, on an application by the prosecutor, exercise the powers conferred by subsections (2) to (6) below.”.
- (9) In section 15 of the Act of 1986 (bankruptcy of defendant), the following shall be substituted for paragraphs (a) and (b) of subsection (6)—
  - “(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—
    - (i) proceedings for a drug trafficking offence have been instituted against him and have not been concluded;
    - (ii) an application has been made in respect of the defendant under section 4A, 5A, 5B or 5C of this Act or section 16 of the Criminal Justice (International Co-operation) Act 1990 and has not been concluded; or
    - (iii) 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 section 339 or 423 after the conclusion of the proceedings or of the application shall take into account any realisation under this Act of property held by the person to whom the gift was made.”.
- (10) In section 16 of the Act of 1986 (sequestration in Scotland), the following shall be substituted for paragraphs (a) and (b) of subsection (6)—
  - “(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—
    - (i) proceedings for a drug trafficking offence have been instituted against him and have not been concluded;
    - (ii) an application has been made in respect of the defendant under section 4A, 5A, 5B or 5C of this Act or section 16 of the Criminal Justice (International Co-operation) Act 1990 and has not been concluded; or
    - (iii) 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 section 34 or 36 after the conclusion of the proceedings or of the application shall take into account any realisation under this Act of property held by a person to whom the gift was made.”.

---

*Status: This is the original version (as it was originally enacted).*

---

(11) In section 38 of the Act of 1986 (interpretation), the following subsections shall be substituted for subsection (12)—

“(12) Proceedings for a drug trafficking offence are concluded—

- (a) when the defendant is acquitted on all counts;
- (b) if he is convicted on one or more counts, but the court decides not to make a confiscation order against him, when it makes that decision; or
- (c) if a confiscation order is made against him in those proceedings, when the order is satisfied.

(12A) An application under section 4A, 5A or 5B of this Act is concluded—

- (a) if the court decides not to make a confiscation order against the defendant, when it makes that decision; or
- (b) if a confiscation order is made against him as a result of that application, when the order is satisfied.

(12B) An application under section 16 of the Criminal Justice (International Co-operation) Act 1990 (increase in realisable property) or section 5C of this Act is concluded—

- (a) if the court decides not to vary the confiscation order in question, when it makes that decision; or
- (b) if the court varies the confiscation order as a result of the application, when the order is satisfied.

(12C) For the purposes of this Act, a confiscation order is satisfied when no amount is due under it.

(12D) For the purposes of sections 15 and 16 of this Act, a confiscation order is also satisfied when the defendant in respect of whom it was made has served a term of imprisonment or detention in default of payment of the amount due under the order.”.

*Death or absence of defendant*

**14 Defendant who has died or absconded**

(1) The following sections shall be inserted in the Drug Trafficking Offences Act 1986, after section 4—

**“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.

---

*Status: This is the original version (as it was originally enacted).*

---

- (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
  - (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.

#### **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 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 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.”.
- (2) In section 6 of the Act of 1986 (application of procedure for enforcing fines), in subsection (6), after the words “made by”, where they first occur, there shall be inserted “the High Court, by virtue of section 4A of this Act, or by”.
- (3) The following subsection shall be added at the end of section 6 of the Act of 1986—
  - “(8) Where the High Court makes a confiscation order by virtue of section 4A of this Act in relation to a defendant who has died, subsection (1) above shall be read as referring only to sections 31(1) and 32(1) of the Act of 1973.”.

## **15 Compensation**

The following sections shall be inserted in the Drug Trafficking Offences Act 1986, after section 19—

---

*Status: This is the original version (as it was originally enacted).*

---

**“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.

**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
  - (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.

---

*Status: This is the original version (as it was originally enacted).*

---

- (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.

#### **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
  - (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 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—

---

*Status: This is the original version (as it was originally enacted).*

---

- (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.”.

### *Offences*

## **16 Acquisition, possession or use of proceeds of drug trafficking**

- (1) The following section shall be inserted in the Drug Trafficking Offences Act 1986 at the appropriate place—

*“Acquiring etc. property derived from drug trafficking*

### **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.



---

*Status: This is the original version (as it was originally enacted).*

---

- (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 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.”.
- (2) In section 2(4) of the Act of 1986 (circumstances where assumptions are not to be made), after first “section” there shall be inserted “23A or”.

## 17 Acquisition, possession or use of proceeds of drug trafficking: Scotland

- (1) The following section shall be inserted in the Criminal Justice (Scotland) Act 1987, after section 42—

---

*Status: This is the original version (as it was originally enacted).*

---

**“42A 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 or to a person commissioned by the Commissioners of Customs and Excise 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 or a person so commissioned 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 person so commissioned, 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 or a person so commissioned 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 for the making of such disclosures

---

*Status: This is the original version (as it was originally enacted).*

---

as they have effect in relation to disclosures, and intended disclosures, to a constable or a person so commissioned.

- (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 to 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 to a fine or to both.
- (10) No constable, person so commissioned 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.”.

- (2) In section 3(3) of the Act of 1987 (circumstances where assumptions are not to be made), after the word “section” where it first occurs there shall be inserted the words “42A or”.

## **18 Offences in connection with laundering money from drug trafficking**

- (1) The following sections shall be inserted in the Drug Trafficking Offences Act 1986, after section 26A—

### *“Offences in connection with money laundering*

#### **26B 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,

the disclosure shall not be treated as a breach of any restriction imposed by statute or otherwise.

---

*Status: This is the original version (as it was originally enacted).*

---

- (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 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.

### **26C 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—

---

*Status: This is the original version (as it was originally enacted).*

---

- (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 intended enforcement, of any provision of this Act or of any other enactment relating to drug trafficking or the proceeds of such trafficking.”.
- (2) In section 24 of the Drug Trafficking Offences Act 1986 (assisting another to retain the benefit of drug trafficking), in subsection (3)(a) for the word “contract” there shall be substituted “statute or otherwise”.
- (3) In section 24 of the Act of 1986, the following subsection shall be inserted after subsection (4)—
  - “(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,

---

*Status: This is the original version (as it was originally enacted).*

---

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.”.

## **19 Offences in connection with laundering money from drug trafficking: Scotland**

- (1) The following sections shall be inserted after section 43 of the Criminal Justice (Scotland) Act 1987—

### **“43A 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 or to a person commissioned by the Commissioners of Customs and Excise 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 or a person so commissioned—
- (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,
- 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 42A or 43 of this Act; or
  - (b) section 14 of the Criminal Justice (International Co-operation) Act 1990 (concealing or transferring proceeds of drug trafficking),

---

*Status: This is the original version (as it was originally enacted).*

---

or, in the case of an act done otherwise than in Scotland, would constitute such an offence if done in Scotland.

- (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.

### **43B Tipping-off**

- (1) A person is guilty of an offence if—
- (a) he knows or suspects that a constable or a person commissioned by the Commissioners of Customs and Excise 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 within the meaning of subsections (7) and (8) of section 43A of this Act; 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 has been made to a constable, or a person so commissioned, under section 42A, 43 or 43A 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 42A(8), 43(4A) or 43A(5) of this Act has been made; and

---

*Status: This is the original version (as it was originally enacted).*

---

- (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) 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.
- (8) No constable, person so commissioned 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.”.
- (2) In section 43 of the Act of 1987 (assisting another to retain the proceeds of drug trafficking)—
  - (a) in subsection (3), after the words “trafficking or” there shall be inserted the words “discloses to a constable or a person so commissioned”; and
  - (b) in paragraph (a) of subsection (3), for the word “contract” there shall be substituted “statute or otherwise”.
- (3) After subsection (4) of that section, there shall be inserted the following subsection—
 

“(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 or a person commissioned as aforesaid.”.

## **20 Prosecution by order of the Commissioners of Customs and Excise**

- (1) The following section shall be inserted in the Drug Trafficking Offences Act 1986, after section 36—



---

*Status: This is the original version (as it was originally enacted).*

---

**“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 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—

    - (a) an offence under section 23A, 24, 26B, 26C or 31 of this Act or section 14 of the 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.”.
- (2) The following section shall be inserted in the Criminal Justice (Scotland) Act 1987, after section 40—

---

*Status: This is the original version (as it was originally enacted).*

---

**“40A Prosecution by order of the Commissioners of Customs and Excise**

- (1) Summary proceedings for a specified offence may be instituted by order of the Commissioners and shall, if so instituted, be commenced in the name of an officer.
- (2) 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.
- (3) 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 Customs and Excise Management Act 1979.
- (4) 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.
- (5) In this section—

“the Commissioners” means the Commissioners of Customs and Excise;

“officer” means a person commissioned by the Commissioners;

and

“specified offence” means—

  - (a) an offence under section 42, 42A, 43, 43A or 43B of this Act or section 14 of the 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.
- (6) Regulations under subsection (5) above shall be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.”.

## *Enforcement*

### **21 Enforcement of certain orders**

- (1) In section 9 of the Criminal Justice (International Co-operation) Act 1990 (enforcement of overseas forfeiture orders), in subsection (1)(b), the words “or intended for use” shall be inserted after “used”.
- (2) In section 24A of the Drug Trafficking Offences Act 1986 (recognition and enforcement of certain orders), the following shall be substituted for subsection (6)—
  - “(6) An Order in Council under this section shall be subject to annulment in pursuance of a resolution of either House of Parliament.”.
- (3) The same subsection as is inserted in section 24A of the Act of 1986 by subsection (2) shall be inserted in—
  - (a) section 25 of that Act (but in substitution for subsection (4));
  - (b) section 26 of that Act (but in substitution for subsection (5));
  - (c) section 29 of the Criminal Justice (Scotland) Act 1987 (but in substitution for subsection (4));
  - (d) section 30 of the Act of 1987 (but in substitution for subsection (5));
  - (e) section 94 of the Criminal Justice Act 1988 (but in substitution for subsection (4));
  - (f) section 95 of the Act of 1988 (but in substitution for subsection (3));
  - (g) section 96 of the Act of 1988 (but in substitution for subsection (5));
  - (h) section 9 of the Criminal Justice (International Co-operation) Act 1990 (but in substitution for subsection (5)).

### **22 Enforcement of Northern Ireland orders: drug trafficking**

- (1) In section 25 of the Drug Trafficking Offences Act 1986 (enforcement of Northern Ireland orders), in subsection (1), for “19” there shall be substituted “18” and the following subsection shall be inserted after subsection (3)—
  - “(3A) An Order in Council under this section may, in particular, provide for section 18 of the 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.”.
- (2) In section 29 of the Criminal Justice (Scotland) Act 1987 (enforcement of Northern Ireland orders), the following subsection shall be inserted after subsection (3)—
  - “(3A) An Order in Council under this section may, in particular, provide for section 18 of the 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.”.

### **23 Transfer of certain enforcement powers to the Commissioners of Customs and Excise**

- (1) The functions of the Secretary of State under section 20 of the Criminal Justice (International Co-operation) Act 1990 (enforcement powers in relation to ships) are transferred to the Commissioners of Customs and Excise.

---

*Status: This is the original version (as it was originally enacted).*

---

- (2) The following consequential amendments shall be made in the Act of 1990—
- (a) in section 20, for “Secretary of State”, “he” and “his”, wherever they occur, there shall be substituted, respectively, “Commissioners of Customs and Excise”, “they” and “their”;
  - (b) in section 21(3), for “Secretary of State”, where first occurring, there shall be substituted “Commissioners of Customs and Excise”; and
  - (c) in paragraph 2(2) of Schedule 3, for “Secretary of State” there shall be substituted “Commissioners of Customs and Excise”.
- (3) The transfer of functions effected by this section shall not affect the validity of any action taken or begun under section 20 of the Act of 1990 before the coming into force of this section.

### *Miscellaneous*

## 24 Miscellaneous amendments

- (1) In section 8(6) of the Drug Trafficking Offences Act 1986 (restraint orders), for “the court may” there shall be substituted “the High Court or a county court may”.
- (2) In sections 12(1) and (2), 13(1), 15(2), 16(2), 17(2) and 19(2)(b)(i) of that Act after “High Court” there shall be inserted, in each case, “or a county court”.
- (3) In section 17A(2) of that Act (expenses of insolvency practitioner dealing with property subject to restraint order), for “(3)(za)” there shall be substituted “(4)”.
- (4) In section 18(2) of that Act (remuneration and expenses of receiver), for “(3B)” there shall be substituted “(5)”.
- (5) In section 27 of that Act (application for an order to make material available), in subsection (8) for “this section” there shall be substituted “subsection (1) above” and the following subsection shall be added at the end—
 

“(10) An application under subsection (1) or (5) above may be made ex parte to a judge in chambers.”.
- (6) In section 27(5) of that Act the words “or, as the case may be, the sheriff” (which are spent) shall be omitted.
- (7) Section 38(1) of that Act (interpretation) shall be amended in accordance with subsections (8) and (9).
- (8) In the definition of “drug trafficking”, in paragraph (d), the words “or would be such an offence if it took place in England and Wales” shall be inserted at the end and the following paragraphs shall be inserted after paragraph (d)—
  - “(e) acquiring, having possession of or using property in circumstances which amount to the commission of an offence under section 23A of this Act or which would be such an offence if it took place in England and Wales;
  - (f) conduct which is an offence under section 14 (concealing or transferring proceeds of drug trafficking) of the Criminal Justice (International Co-operation) Act 1990 or which would be such an offence if it took place in England and Wales;

---

*Status: This is the original version (as it was originally enacted).*

---

- (g) using any ship for illicit traffic in controlled drugs in circumstances which amount to the commission of an offence under section 19 of the Act of 1990;”.
- (9) In the definition of “drug trafficking offence”, the following paragraph shall be inserted after paragraph (c)—
  - “(cc) an offence under section 23A of this Act;”.
- (10) In section 18(4A) of the Civil Jurisdiction and Judgments Act 1982 (enforcement of United Kingdom judgments in other parts of the United Kingdom), after “High Court” there shall be inserted “or a county court”.
- (11) In section 116(2)(aa) of the Police and Criminal Evidence Act 1984 (drug trafficking offences to be arrestable offences that are always serious), for “(d)” there shall be substituted “(dd)”.
- (12) Section 1 of the Criminal Justice (Scotland) Act 1987 (confiscation orders in relation to drug trafficking offences) shall be amended in accordance with subsections (13) to (15).
- (13) In subsection (2) (offences in relation to which confiscation orders may be made), the following paragraph shall be inserted after paragraph (b)—
  - “(bb) an offence under section 42A of this Act;”.
- (14) In subsection (6) (definition of “drug trafficking”), after paragraph (e) there shall be inserted the following paragraphs—
  - “(f) acquiring, having possession of or using property in contravention of section 42A of this Act;
  - (g) concealing or transferring the proceeds of drug trafficking in contravention of section 14 of the Act of 1990;
  - (h) using any ship for illicit traffic in controlled drugs in contravention of section 19 of the Act of 1990;”.
- (15) After subsection (6) there shall be inserted the following subsection—
  - “(7) In paragraphs (e) to (g) of subsection (6) above, references to conduct in contravention of the enactments mentioned in those paragraphs include conduct which would contravene the enactments if it took place in Scotland.”.

## **25 Appeal against order forfeiting drug trafficking cash**

- (1) The following sections shall be inserted in the Criminal Justice (International Co-operation) Act 1990, after section 26—

### **“26A Appeal against section 26 order**

- (1) This section applies where an order for the forfeiture of cash (“the forfeiture order”) is made under section 26 above by a magistrates' court.
- (2) Any party to the proceedings in which the forfeiture order is made (other than the applicant for the order) may, before the end of the period of 30 days beginning with the date on which it is made, appeal to the Crown Court or, in Northern Ireland, to a county court.
- (3) An appeal under this section shall be by way of a rehearing.

---

*Status: This is the original version (as it was originally enacted).*

---

- (4) On an application made by the appellant to a magistrates' court at any time, that court may order the release of so much of the cash to which the forfeiture order relates as it considers appropriate to enable him to meet his legal expenses in connection with the appeal.
- (5) The court hearing an appeal under this section may make such order as it considers appropriate.
- (6) If it upholds the appeal, the court may order the release of the cash, or (as the case may be) the remaining cash, together with any accrued interest.
- (7) Section 26(3) applies in relation to a rehearing on an appeal under this section as it applies to proceedings under section 26.

### **26B Appeal against section 26 order: Scotland**

Any party to proceedings in which an order for the forfeiture of cash is made by the sheriff under section 26 above may appeal against the order to the Court of Session.”.

- (2) The Act of 1990 shall be further amended as follows.
- (3) In section 26 (forfeiture of drug trafficking cash), after subsection (3) there shall be inserted the following subsection—
  - “(4) Proceedings on an application under this section to the sheriff shall be civil proceedings.”.
- (4) In section 28 (procedure), the words “or appeals” shall be inserted after the word “applications” in each place where it occurs in subsection (2).
- (5) In section 30 (forfeited cash to be paid into the Consolidated Fund), the following subsection shall be added at the end—
  - “(3) Subsection (2) above does not apply—
    - (a) where an appeal is made under section 26A or 26B above, before the appeal is determined or otherwise disposed of; and
    - (b) in any other case—
      - (i) where the forfeiture was ordered by a magistrates' court, before the end of the period of 30 days mentioned in section 26A(2); or
      - (ii) where the forfeiture was ordered by the sheriff, before the end of any period within which, in accordance with rules of court, an appeal under section 26B must be made.”.
- (6) The amendments made by this section apply only in relation to orders under section 26 of the Act of 1990 made on or after the date on which this section comes into force.

### **26 Disclosure of information etc. received in privileged circumstances**

- (1) In section 31 of the Drug Trafficking Offences Act 1986 (offence of prejudicing investigation), the following subsections shall be inserted after subsection (2)—
  - “(2A) Nothing in subsection (1) above makes it an offence for a professional legal adviser to disclose any information or other matter—

---

*Status: This is the original version (as it was originally enacted).*

---

- (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.”.
- (2) The same subsections as are inserted in section 31 of the Act of 1986 by subsection (1) shall be inserted in section 42 of the Criminal Justice (Scotland) Act 1987 (corresponding Scottish provision).