



# Criminal Justice Act 1993

## 1993 CHAPTER 36

### PART III

#### PROCEEDS OF CRIMINAL CONDUCT

##### *Confiscation orders*

#### **27 Confiscation orders**

- (1) Section 71 of the Criminal Justice Act 1988 (confiscation orders) shall be amended as follows.
- (2) The following subsection shall be inserted after subsection (7)—

“(7A) The standard of proof required to determine any question arising under this Part of this Act as to—

  - (a) whether a person has benefited as mentioned in subsection (2)(b)(i) above;
  - (b) whether his benefit is at least the minimum amount; or
  - (c) the amount to be recovered in his case by virtue of section 72 below, shall be that applicable in civil proceedings.”.
- (3) The following subsection shall be inserted at the end—

“(10) Subsection (9) above is subject to section 93E below.”.

#### **28 Postponed determinations**

The following section shall be inserted in the Criminal Justice Act 1988, after section 72—

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### **“72A Postponed determinations**

- (1) Where a court is acting under section 71 above but considers that it requires further information before—
  - (a) determining whether the defendant has benefited as mentioned in section 71(2)(b)(i) above;
  - (b) determining whether his benefit is at least the minimum amount; or
  - (c) determining the amount to be recovered in his case by virtue of section 72 above,it may, for the purpose of enabling that information to be obtained, postpone making that 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 any 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 offence or any of the offences concerned.
- (8) Where the court has so proceeded, section 72 above shall have effect as if—
  - (a) in subsection (4), the words from “before sentencing” to “offences concerned” were omitted; and
  - (b) in subsection (5), after “determining” there were inserted “in relation to any offence in respect of which he has not been sentenced or otherwise dealt with”.

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- (9) In sentencing, or otherwise dealing with, the defendant in respect of the offence, or any of the offences, concerned 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 72(5)(b) or (c) above.
- (10) In this section, 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 of the offence concerned, or
  - (b) where he was convicted in the same proceedings, but on different dates, of two or more offences which may be taken together for the purposes of subsection (2) or, as the case may be, (3) of section 71 above, the date of the latest of those convictions.”.

*Money laundering and other offences*

**29 Assisting another to retain the benefit of criminal conduct**

- (1) The following section shall be inserted in the Criminal Justice Act 1988, after section 93—

*“Money laundering and other offences*

**93A Assisting another to retain the benefit of criminal conduct**

- (1) Subject to subsection (3) below, if a person enters into or is otherwise concerned in an arrangement whereby—
- (a) the retention or control by or on behalf of another (“A”) of A’s proceeds of criminal conduct is facilitated (whether by concealment, removal from the jurisdiction, transfer to nominees or otherwise); or
  - (b) A’s proceeds of criminal conduct—
    - (i) are used to secure that funds are placed at A’s disposal; or
    - (ii) are used for A’s benefit to acquire property by way of investment,knowing or suspecting that A is a person who is or has been engaged in criminal conduct or has benefited from criminal conduct, he is guilty of an offence.
- (2) In this section, references to any person’s proceeds of criminal conduct include a reference to any property which in whole or in part directly or indirectly represented in his hands his proceeds of criminal conduct.
- (3) Where a person discloses to a constable a suspicion or belief that any funds or investments are derived from or used in connection with criminal conduct or discloses to a constable any matter on which such a suspicion or belief is based—

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- (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 contravention of subsection (1) above and the disclosure relates to the arrangement concerned, 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 is made on his initiative and as soon as it is reasonable for him to make it.
- (4) In proceedings against a person for an offence under this section, it is a defence to prove—
- (a) that he did not know or suspect that the arrangement related to any person's proceeds of criminal conduct; or
  - (b) that he did not know or suspect that by the arrangement the retention or control by or on behalf of A of any property was facilitated or, as the case may be, that by the arrangement any property was used, as mentioned in subsection (1) above; or
  - (c) that—
    - (i) he intended to disclose to a constable such a suspicion, belief or matter as is mentioned in subsection (3) above in relation to the arrangement; but
    - (ii) there is reasonable excuse for his failure to make disclosure in accordance with subsection (3)(b) above.
- (5) 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.
- (6) 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 fourteen years or a fine or to both.
- (7) In this Part of this Act “criminal conduct” means conduct which constitutes an offence to which this Part of this Act applies or would constitute such an offence if it had occurred in England and Wales or (as the case may be) Scotland.”.
- (2) In section 102(1) of the Act of 1988 (interpretation of Part VI), the following definition shall be inserted after the definition of “interest”—
- ““proceeds of criminal conduct”, in relation to any person who has benefited from criminal conduct, means that benefit;”.
- (3) In section 102(2) of the Act of 1988, the following entry shall be inserted in the table after the entry relating to section 71(9)(a)—

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“Criminal conduct

Section 93A(7)”.

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### **30 Acquisition, possession or use of proceeds of criminal conduct**

The following section shall be inserted in the Criminal Justice Act 1988, after section 93A—

#### **“93B Acquisition, possession or use of proceeds of criminal conduct**

- (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 criminal conduct, 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 criminal conduct shall not be treated as consideration for the purposes of subsection (2) above.
- (5) Where a person discloses to a constable a suspicion or belief that any property is, or in whole or in part directly or indirectly represents, another person’s proceeds of criminal conduct 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 that 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

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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 criminal conduct or the proceeds of such conduct.”.

### **31 Concealing or transferring proceeds of criminal conduct**

The following section shall be inserted in the Criminal Justice Act 1988, after section 93B—

#### **“93C Concealing or transferring proceeds of criminal conduct**

- (1) A person is guilty of an offence if he—
- (a) conceals or disguises any property which is, or in whole or in part directly or indirectly represents, his proceeds of criminal conduct; or
  - (b) converts or transfers that property or removes it from the jurisdiction, for the purpose of avoiding prosecution for an offence to which this Part of this Act applies or the making or enforcement in his case of a confiscation order.
- (2) A person is guilty of an offence if, knowing or having reasonable grounds to suspect that any property is, or in whole or in part directly or indirectly represents, another person’s proceeds of criminal conduct, he—
- (a) conceals or disguises that property; or
  - (b) converts or transfers that property or removes it from the jurisdiction, for the purpose of assisting any person to avoid prosecution for an offence to which this Part of this Act applies or the making or enforcement in his case of a confiscation order.
- (3) In subsections (1) and (2) above, the references to concealing or disguising any property include references to concealing or disguising its nature, source, location, disposition, movement or ownership or any rights with respect to it.
- (4) 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.”.

### **32 Tipping-off**

The following section shall be inserted in the Criminal Justice Act 1988, after section 93C—

### **“93D 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 money laundering; and
  - (b) he discloses to any other person information or any other matter which is likely to prejudice that investigation, or proposed investigation.
- (2) A person is guilty of an offence if—
  - (a) he knows or suspects that a disclosure (“the disclosure”) has been made to a constable under section 93A or 93B above; 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 93A(5) or 93B(8) above (“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 “money laundering” means doing any act which constitutes an offence under section 93A, 93B or 93C above or, in the case of an act done otherwise than in England and Wales or Scotland, would constitute such an offence if done in England and Wales or (as the case may be) 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) 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.

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- (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 an offence to which this Part of this Act applies.”.

### **33 Application to Scotland of sections 93A to 93D of 1988 Act**

The following section shall be inserted in the Criminal Justice Act 1988, after section 93D—

#### **“93E Application of sections 93A to 93D to Scotland**

In the application of sections 93A to 93D above to Scotland—

“offence to which this Part of this Act applies” means an offence triable on indictment (whether or not such offence is also triable summarily) other than—

- (a) an offence to which section 1 of the Criminal Justice (Scotland) Act 1987 (confiscation of proceeds of drug trafficking) relates; or
- (b) an offence under Part III of the Prevention of Terrorism (Temporary Provisions) Act 1989; and

“proceeds of criminal conduct” does not include—

- (a) proceeds of drug trafficking (“drug trafficking” having the meaning assigned by section 1(6) of the said Act of 1987); or
- (b) terrorist funds within the meaning of section 11 of the said Act of 1989.”.

### **34 Enforcement of Northern Ireland orders: proceeds of criminal conduct**

- (1) In section 94 of the Criminal Justice Act 1988 (enforcement of Northern Ireland orders), in subsection (1), for “89” there shall be substituted “88” 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 95 of the Act of 1988 (enforcement of Northern Ireland orders in Scotland), the following subsection shall be inserted after subsection (2)—

“(2A) 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.”.

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

The following section shall be inserted in the Criminal Justice Act 1988, after section 93E—



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**“93F 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;

“proceedings”, as respects Scotland, means summary proceedings;

and

“specified offence” means—

  - (a) any offence under sections 93A to 93D above;
  - (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.”.