



Drug Trafficking Offences Act 1986

1986 CHAPTER 32

Confiscation of proceeds of drug trafficking

1 Confiscation orders

- (1) Subject to subsection (7) below, where a person appears before the Crown Court to be sentenced in respect of one or more drug trafficking offences (and has not previously been sentenced or otherwise dealt with in respect of his conviction for the offence or, as the case may be, any of the offences concerned), the court shall act as follows.
- (2) The court shall first determine whether he has benefited from drug trafficking.
- (3) For the purposes of this Act, a person who has at any time (whether before or after the commencement of this section) received any payment or other reward in connection with drug trafficking carried on by him or another has benefited from drug trafficking.
- (4) If the court determines that he has so benefited, the court shall, before sentencing or otherwise dealing with him in respect of the offence or, as the case may be, any of the offences concerned, determine in accordance with section 4 of this Act the amount to be recovered in his case by virtue of this section.
- (5) The court shall then, in respect of the offence or offences concerned—
 - (a) order him to pay that amount,
 - (b) 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), section 39 of the Powers of Criminal Courts Act 1973 (criminal bankruptcy orders) or section 43 of that Act (deprivation orders), and
 - (c) subject to paragraph (b) above, leave the order out of account in determining the appropriate sentence or other manner of dealing with the defendant.
- (6) No enactment restricting the power of a court dealing with an offender in a particular way from dealing with him also in any other way shall by reason only of the making

of an order under this section restrict the Crown Court from dealing with an offender in any way the court considers appropriate in respect of a drug trafficking offence.

- (7) Subsection (1) above does not apply in relation to any offence for which a person appears before the Crown Court to be sentenced if—
- (a) he has been committed to the Crown Court for sentence in respect of that offence under section 37(1) of the Magistrates' Courts Act 1980 (committal to Crown Court with a view to sentence of youth custody), or
 - (b) the powers of the court (apart from this section) to deal with him in respect of that offence are limited to dealing with him in any way in which a magistrates' court might have dealt with him in respect of the offence.
- (8) In this Act
- (a) an order under this section is referred to as a "confiscation order", and
 - (b) a person against whom proceedings have been instituted for a drug trafficking offence is referred to (whether or not he has been convicted) as "the defendant".

2 Assessing the proceeds of drug trafficking

- (1) For the purposes of this Act—
- (a) any payments or other rewards received by a person at any time (whether before or after the commencement of section 1 of this Act) in connection with drug trafficking carried on by him or another are his proceeds of drug trafficking, and
 - (b) the value of his proceeds of drug trafficking is the aggregate of the values of the payments or other rewards.
- (2) The Court may, for the purpose of determining whether the defendant has benefited from drug trafficking and, if he has, of assessing the value of his proceeds of drug trafficking, make the following assumptions, except to the extent that any of the assumptions are shown to be incorrect in the defendant's case.
- (3) Those assumptions are—
- (a) that any property appearing to the court—
 - (i) to have been held by him at any time since his conviction, or
 - (ii) to have been transferred to him at any time since the beginning of the period of six years ending when the proceedings were instituted against him,
 was received by him, at the earliest time at which he appears to the court to have held it, as a payment or reward in connection with drug trafficking carried on by him,
 - (b) that any expenditure of his since the beginning of that period was met out of payments received by him in connection with drug trafficking carried on by him, and
 - (c) that, for the purpose of valuing any property received or assumed to have been received by him at any time as such a reward, he received the property free of any other interests in it.
- (4) Subsection (2) above does not apply if the only drug trafficking offence in respect of which the defendant appears before the court to be sentenced is an offence under section 24 of this Act.

- (5) For the purpose of assessing the value of the defendant's proceeds of drug trafficking in a case where a confiscation order has previously been made against him, the court shall leave out of account any of his proceeds of drug trafficking that are shown to the court to have been taken into account in determining the amount to be recovered under that order.

3 Statements relating to drug trafficking

(1) Where

- (a) there is tendered to the Crown Court by the prosecutor a statement as to any matters relevant to the determination whether the defendant has benefited from drug trafficking or to the assessment of the value of his proceeds of drug trafficking, and

(b) the defendant accepts to any extent any allegation in the statement, the court may, for the purposes of that determination and assessment, treat his acceptance as conclusive of the matters to which it relates.

(2) Where

- (a) a statement is tendered under subsection (1)(a) above, and
(b) the court is satisfied that a copy of that statement has been served on the defendant,

the court may require the defendant to indicate to what extent he accepts each allegation in the statement and, so far as he does not accept any such allegation, to indicate any matters he proposes to rely on.

- (3) If the defendant fails in any respect to comply with a requirement under subsection (2) above he may be treated for the purposes of this section as accepting every allegation in the statement apart from—

- (a) any allegation in respect of which he has complied with the requirement, and
(b) any allegation that he has benefited from drug trafficking or that any payment or other reward was received by him in connection with drug trafficking carried on by him or another.

(4) Where

- (a) there is tendered to the Crown Court by the defendant a statement as to any matters relevant to determining the amount that might be realised at the time the confiscation order is made, and

(b) the prosecutor accepts to any extent any allegation in the statement, the court may, for the purposes of that determination, treat the acceptance by the prosecutor as conclusive of the matters to which it relates.

- (5) An allegation may be accepted or a matter indicated for the purposes of this section either—

- (a) orally before the court, or
(b) in writing in accordance with Crown Court Rules.

- (6) No acceptance by the defendant under this section that any payment or other reward was received by him in connection with drug trafficking carried on by him or another shall be admissible in evidence in any proceedings for an offence.

4 Amount to be recovered under confiscation order

- (1) Subject to subsection (3) below, the amount to be recovered in the defendant's case under the confiscation order shall be the amount the Crown Court assesses to be the value of the defendant's proceeds of drug trafficking.
- (2) If the court is satisfied as to any matter relevant for determining the amount that might be realised at the time the confiscation order is made (whether by an acceptance under section 3 of this Act or otherwise), the court may issue a certificate giving the court's opinion as to the matters concerned and shall do so if satisfied as mentioned in subsection (3) below.
- (3) If the court is satisfied that the amount that might be realised at the time the confiscation order is made is less than the amount the court assesses to be the value of his proceeds of drug trafficking, the amount to be recovered in the defendant's case under the confiscation order shall be the amount appearing to the court to be the amount that might be so realised.

5 Definition of principal terms used

- (1) In this Act, "realisable property" means, subject to subsection (2) below—
 - (a) any property held by the defendant, and
 - (b) any property held by a person to whom the defendant has directly or indirectly made a gift caught by this Act.
- (2) Property is not realisable property if—
 - (a) an order under section 43 of the Powers of Criminal Courts Act 1973 (deprivation orders),
 - (b) an order under section 27 of the Misuse of Drugs Act 1971 (forfeiture orders), or
 - (c) an order under section 223 or 436 of the Criminal Procedure (Scotland) Act 1975 (forfeiture of property),is in force in respect of the property.
- (3) For the purposes of sections 3 and 4 of this Act the amount that might be realised at the time a confiscation order is made against the defendant is—
 - (a) the total of the values at that time of all the realisable property held by the defendant, less
 - (b) where there are obligations having priority at that time, the total amounts payable in pursuance of such obligations,together with the total of the values at that time of all gifts caught by this Act.
- (4) Subject to the following provisions of this section, for the purposes of this Act the value of property (other than cash) in relation to any person holding the property—
 - (a) where any other person holds an interest in the property is—
 - (i) the market value of the first mentioned person's beneficial interest in the property, less
 - (ii) the amount required to discharge any incumbrance (other than a charging order) on that interest, and
 - (b) in any other case, is its market value.

- (5) Subject to subsection (10) below, references in this Act to the value at any time (referred to in subsection (6) below as " the material time ") of a gift caught by this Act or of any payment or reward are references to—
- (a) the value of the gift, payment or reward to the recipient when he received it adjusted to take account of subsequent changes in the value of money, or
 - (b) where subsection (6) below applies, the value there mentioned,
- whichever is the greater.
- (6) Subject to subsection (10) below, if at the material time the recipient holds—
- (a) the property which he received (not being cash), or
 - (b) property which, in whole or in part, directly or indirectly represents in his hands the property which he received,
- the value referred to in subsection (5)(b) above is the value to him at the material time of the property mentioned in paragraph (a) above or, as the case may be, of the property mentioned in paragraph (b) above so far as it so represents the property which he received, but disregarding in either case any charging order.
- (7) For the purposes of subsection (3) above, an obligation has priority at any time if it is an obligation of the defendant to—
- (a) pay an amount due in respect of a fine, or other order of a court, imposed or made on conviction of an offence, where the fine was imposed or order made before the confiscation order, or
 - (b) pay any sum which would be included among the preferential debts (within the meaning given by section 386 of the Insolvency Act 1986) in the defendant's bankruptcy commencing on the date of the confiscation order or winding up under an order of the court made on that date.
- (8) In the case of a confiscation order made before the coming into force of the Insolvency Act 1986, subsection (7) above shall have effect as if for paragraph (b) there were substituted—
- “(b) pay any sum which, if the defendant had been adjudged bankrupt or was being wound up, would be among the preferential debts.”;
- and in that paragraph " the preferential debts "—
- (a) in relation to bankruptcy, means the debts to be paid in priority under section 33 of the Bankruptcy Act 1914 (assuming the date of the confiscation order to be the date of the receiving order) and
 - (b) in relation to winding up, means the preferential debts listed in Schedule 19 to the Companies Act 1985 (assuming the date of the confiscation order to be the relevant date for the purpose of that Schedule).
- (9) A gift (including a gift made before the commencement of section 1 of this Act) is caught by this Act if—
- (a) it was made by the defendant at any time since the beginning of the period of six years ending when the proceedings were instituted against him, or
 - (b) it was made by the defendant at any time and was a gift of property—
 - (i) received by the defendant in connection with drug trafficking carried on by him or another, or
 - (ii) which in whole or in part directly or indirectly represented in the defendant's hands property received by him in that connection.
- (10) For the purposes of this Act—

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

- (a) the circumstances in which the defendant is to be treated as making a gift include those where he transfers property to another person directly or indirectly for a consideration the value of which is significantly less than the value of the consideration provided by the defendant, and
- (b) in those circumstances, the preceding provisions of this section shall apply as if the defendant had made a gift of such share in the property as bears to the whole property the same proportion as the difference between the values referred to in paragraph (a) above bears to the value of the consideration provided by the defendant.