



Drug Trafficking Offences Act 1986

1986 CHAPTER 32

Investigations into drug trafficking

27 Order to make material available

- (1) A constable or, in Scotland, the procurator fiscal may, for the purpose of an investigation into drug trafficking, apply to a Circuit judge or, in Scotland, the sheriff for an order under subsection (2) below in relation to particular material or material of a particular description.
- (2) If on such an application the judge or, as the case may be, the sheriff is satisfied that the conditions in subsection (4) below are fulfilled, he may make an order that the person who appears to him to be in possession of the material to which the application relates shall—
 - (a) produce it to a constable for him to take away, or
 - (b) give a constable access to it,within such period as the order may specify.

This subsection is subject to section 30(11) of this Act.

- (3) The period to be specified in an order under subsection (2) above shall be seven days unless it appears to the judge or, as the case may be, the sheriff that a longer or shorter period would be appropriate in the particular circumstances of the application.
- (4) The conditions referred to in subsection (2) above are—
 - (a) that there are reasonable grounds for suspecting that a specified person has carried on or has benefited from drug trafficking,
 - (b) that there are reasonable grounds for suspecting that the material to which the application relates—
 - (i) is likely to be of substantial value (whether by itself or together with other material) to the investigation for the purpose of which the application is made, and
 - (ii) does not consist of or include items subject to legal privilege or excluded material, and

Status: This is the original version (as it was originally enacted).

- (c) that there are reasonable grounds for believing that it is in the public interest, having regard—
 - (i) to the benefit likely to accrue to the investigation if the material is obtained, and
 - (ii) to the circumstances under which the person in possession of the material holds it,
 that the material should be produced or that access to it should be given.
- (5) Where the judge or, as the case may be, the sheriff makes an order under subsection (2) (b) above in relation to material on any premises he may, on the application of a constable or, in Scotland, the procurator fiscal order any person who appears to him to be entitled to grant entry to the premises to allow a constable to enter the premises to obtain access to the material.
- (6) Provision may be made by Crown Court Rules or, as respects Scotland, rules of court as to—
 - (a) the discharge and variation of orders under this section, and
 - (b) proceedings relating to such orders.
- (7) An order of a Circuit Judge under this section shall have effect as if it were an order of the Crown Court.
- (8) Where the material to which an application under this section relates consists of information contained in a computer—
 - (a) an order under subsection (2)(a) above shall have effect as an order to produce the material in a form in which it can be taken away and in which it is visible and legible, and
 - (b) an order under subsection (2)(b) above shall have effect as an order to give access to the material in a form in which it is visible and legible.
- (9) An order under subsection (2) above—
 - (a) shall not confer any right to production of, or access to, items subject to legal privilege or excluded material,
 - (b) shall have effect notwithstanding any obligation as to secrecy or other restriction upon the disclosure of information imposed by statute or otherwise, and
 - (c) may be made in relation to material in the possession of an authorised government department.

28 Authority for search

- (1) A constable or, in Scotland, the procurator fiscal may, for the purpose of an investigation into drug trafficking, apply to a Circuit judge or, in Scotland, the sheriff for a warrant under this section in relation to specified premises.
- (2) On such application the judge or, as the case may be, the sheriff may issue a warrant authorising a constable to enter and search the premises if he is satisfied—
 - (a) that an order made under section 27 of this Act in relation to material on the premises has not been complied with, or
 - (b) that the conditions in subsection (3) below are fulfilled, or
 - (c) that the conditions in subsection (4) below are fulfilled.
- (3) The conditions referred to in subsection (2)(b) above are—

- (a) that there are reasonable grounds for suspecting that a specified person has carried on or has benefited from drug trafficking, and
 - (b) that the conditions in section 27(4)(b) and (c) of this Act are fulfilled in relation to any material on the premises, and
 - (c) that it would not be appropriate to make an order under that section in relation to the material because—
 - (i) it is not practicable to communicate with any person entitled to produce the material, or
 - (ii) it is not practicable to communicate with any person entitled to grant access to the material or entitled to grant entry to the premises on which the material is situated, or
 - (iii) the investigation for the purposes of which the application is made might be seriously prejudiced unless a constable could secure immediate access to the material.
- (4) The conditions referred to in subsection (2)(c) above are—
- (a) that there are reasonable grounds for suspecting that a specified person has carried on or has benefited from drug trafficking, and
 - (b) that there are reasonable grounds for suspecting that there is on the premises material relating to the specified person or to drug trafficking which is likely to be of substantial value (whether by itself or together with other material) to the investigation for the purpose of which the application is made, but that the material cannot at the time of the application be particularised, and
 - (c) that—
 - (i) it is not practicable to communicate with any person entitled to grant entry to the premises, or
 - (ii) entry to the premises will not be granted unless a warrant is produced, or
 - (iii) the investigation for the purpose of which the application is made might be seriously prejudiced unless a constable arriving at the premises could secure immediate entry to them.
- (5) Where a constable has entered premises in the execution of a warrant issued under this section, he may seize and retain any material, other than items subject to legal privilege and excluded material, which is likely to be of substantial value (whether by itself or together with other material) to the investigation for the purpose of which the warrant was issued.

29 Sections 27 and 28: supplementary provisions

- (1) For the purposes of sections 21 and 22 of the Police and Criminal Evidence Act 1984 (access to, and copying and retention of, seized material)—
- (a) an investigation into drug trafficking shall be treated as if it were an investigation of or in connection with an offence, and
 - (b) material produced in pursuance of an order under section 27(2)(a) of this Act shall be treated as if it were material seized by a constable.
- (2) Subject to subsection (3) below, in sections 27 and 28 of this Act " items subject to legal privilege ", " excluded material " and " premises " have the same meanings as in the said Act of 1984.

(3) As respects Scotland, in sections 27 and 28 of this Act the references to excluded material shall be omitted, and—

" items subject to legal privilege " means—

- (a) communications between a professional legal adviser and his client,
- (b) communications made in connection with or in contemplation of legal proceedings and for the purposes of these proceedings, being communications which would in legal proceedings be protected from disclosure by virtue of any rule of law relating to the confidentiality of communications, and

" premises " includes any place and, in particular, includes—

- (a) any vehicle, vessel, aircraft or hovercraft,
- (b) any offshore installation within the meaning of section 1 of the Mineral Workings (Offshore Installations) Act 1971, and
- (c) any tent or movable structure.

30 Disclosure of information held by government departments

(1) Subject to subsection (4) below, the High Court may on an application by the prosecutor order any material mentioned in subsection (3) below which is in the possession of an authorised government department to be produced to the court within such period as the court may specify.

(2) The power to make an order under subsection (1) above is exercisable if—

- (a) the powers conferred on the court by sections 8(1) and 9(1) of this Act are exercisable by virtue of subsection (1) of section 7 of this Act, or
- (b) those powers are exercisable by virtue of subsection (2) of that section and the court has made a restraint or charging order which has not been discharged ;

but where the power to make an order under subsection (1) above is exercisable by virtue only of paragraph (b) above, subsection (3) of section 7 of this Act shall apply for the purposes of this section as it applies for the purposes of sections 8 and 9 of this Act.

(3) The material referred to in subsection (1) above is any material which—

- (a) has been submitted to an officer of an authorised government department by the defendant or by a person who has at any time held property which was realisable property,
- (b) has been made by an officer of an authorised government department in relation to the defendant or such a person, or
- (c) is correspondence which passed between an officer of an authorised government department and the defendant or such a person,

and an order under that subsection may require the production of all such material or of a particular description of such material, being material in the possession of the department concerned.

(4) An order under subsection (1) above shall not require the production of any material unless it appears to the High Court that the material is likely to contain information that would facilitate the exercise of the powers conferred on the court by sections 8 to 11 of this Act or on a receiver appointed under section 8 or 11 of this Act or in pursuance of a charging order.

- (5) The court may by order authorise the disclosure to such a receiver of any material produced under subsection (1) above or any part of such material; but the court shall not make an order under this subsection unless a reasonable opportunity has been given for an officer of the department to make representations to the court.
- (6) Material disclosed in pursuance of an order under subsection (5) above may, subject to any conditions contained in the order, be further disclosed for the purposes of the functions under this Act of the receiver or the Crown Court.
- (7) The court may by order authorise the disclosure to a person mentioned in subsection (8) below of any material produced under subsection (1) above or any part of such material; but the court shall not make an order under this subsection unless—
 - (a) a reasonable opportunity has been given for an officer of the department to make representations to the court, and
 - (b) it appears to the court that the material is likely to be of substantial value in exercising functions relating to drug trafficking.
- (8) The persons referred to in subsection (7) above are—
 - (a) any member of a police force,
 - (b) any member of the Crown Prosecution Service, and
 - (c) any officer within the meaning of the Customs and Excise Management Act 1979.
- (9) Material disclosed in pursuance of an order under subsection (7) above may, subject to any conditions contained in the order, be further disclosed for the purposes of functions relating to drug trafficking.
- (10) Material may be produced or disclosed in pursuance of this section notwithstanding any obligation as to secrecy or other restriction upon the disclosure of information imposed by statute or otherwise.
- (11) An order under subsection (1) above and, in the case of material in the possession of an authorised government department, an order under section 27(2) of this Act may require any officer of the department (whether named in the order or not) who may for the time being be in possession of the material concerned to comply with it, and such an order shall be served as if the proceedings were civil proceedings against the department.
- (12) The person on whom such an order is served—
 - (a) shall take all reasonable steps to bring it to the attention of the officer concerned, and
 - (b) if the order is not brought to that officer's attention within the period referred to in subsection (1) above, shall report the reasons for the failure to the court; and it shall also be the duty of any other officer of the department in receipt of the order to take such steps as are mentioned in paragraph (a) above.

31 Offence of prejudicing investigation

- (1) Where, in relation to an investigation into drug trafficking, an order under section 27 of this Act has been made or has been applied for and has not been refused or a warrant under section 28 of this Act has been issued, a person who, knowing or suspecting that the investigation is taking place, makes any disclosure which is likely to prejudice the investigation is guilty of an offence.

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

- (2) 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 disclosure was likely to prejudice the investigation, or
 - (b) that he had lawful authority or reasonable excuse for making the disclosure.
- (3) A person guilty of an offence under this section shall be liable—
- (a) on conviction on indictment, to imprisonment for a term not exceeding five years or to a fine or to both, and
 - (b) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum or to both.

32 Authorisation of delay in notifying arrest

- (1) In section 56 of the Police and Criminal Evidence Act 1984 (right to have someone informed when arrested), at the beginning of subsection (5) there is inserted " Subject to subsection (5A) below " and after that subsection there is inserted—
- “(5A) An officer may also authorise delay where the serious arrestable offence is a drug trafficking offence and the officer has reasonable grounds for believing—
- (a) that the detained person has benefited from drug trafficking, and
 - (b) that the recovery of the value of that person's proceeds of drug trafficking will be hindered by telling the named person of the arrest.”
- (2) In section 58 of that Act (access to legal advice) at the beginning of subsection (8) there is inserted " Subject to subsection (8A) below " and after that subsection there is inserted—
- “(8A) An officer may also authorise delay where the serious arrestable offence is a drug trafficking offence and the officer has reasonable grounds for believing—
- (a) that the detained person has benefited from drug trafficking, and
 - (b) that the recovery of the value of that person's proceeds of drug trafficking will be hindered by the exercise of the right conferred by subsection (1) above.”
- (3) In section 65 of that Act (interpretation)—
- (a) after the definition of " appropriate consent" there is inserted—
“"drug trafficking" and "drug trafficking offence " have the same meaning as in the Drug Trafficking Offences Act 1986”, and
 - (b) at the end of that section there is inserted " and references in this Part to any person's proceeds of drug trafficking are to be construed in accordance with the Drug Trafficking Offences Act 1986 ".
- (4) Without prejudice to section 20(2) of the Interpretation Act 1978, the Police and Criminal Evidence Act 1984 (Application to Customs and Excise) Order 1985 applies to sections 56 and 58 of the Police and Criminal Evidence Act 1984 as those sections have effect by virtue of this section.