



Drug Trafficking Offences Act 1986

1986 CHAPTER 32

Miscellaneous and Supplemental

35 Power to appoint additional assistant commissioner.

In section 2 of the ^{M1}Metropolitan Police Act 1856 (power to appoint two assistant commissioners of police for the metropolis, increased to five by the ^{M2}Metropolitan Police Act 1933) for the word “two” there is substituted “six”; and the Metropolitan Police Act 1933 is repealed.

Marginal Citations

M1 1856 c. 2.

M2 1933 c. 33.

36 Drug trafficking offences to be serious arrestable offences.

In section 116(2) of the ^{M3}Police and Criminal Evidence Act 1984 (arrestable offences that are always serious) after paragraph (a) there is inserted—

“(aa) any of the offences mentioned in paragraphs (a) to (d) of the definition of “drug trafficking offence” in section 38(1) of the Drug Trafficking Offences Act 1986”.

Marginal Citations

M3 1984 c. 60.

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Changes to legislation: There are currently no known outstanding effects for the Drug Trafficking Offences Act 1986, Cross Heading: Miscellaneous and Supplemental. (See end of Document for details)

VALID FROM 01/12/1993

[^{F1}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 ^{M4}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 ^{M5}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.]

Textual Amendments

F1 S. 36A inserted (1.12.1993) by 1993 c. 36, s. 20(1) (with s. 78(6)(9)); S.I. 1993/2734, art. 2, Sch.

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Marginal Citations

M4 1979 c. 2.

M5 1990 c. 5.

VALID FROM 01/04/1994

[^{F2}36B Extension of certain offences to Crown servants and exemptions for regulators etc.

- (1) The Secretary of State may by regulations provide that, in such circumstances as may be prescribed, sections 23A, 24, 26B, 26C and 31 of this Act shall apply to such persons in the public service of the Crown, or such categories of person in that service, as may be prescribed.
- (2) Section 26B of this Act shall not apply to—
 - (a) any person designated by regulations made by the Secretary of State for the purpose of this paragraph; or
 - (b) in such circumstances as may be prescribed, any person who falls within such category of person as may be prescribed for the purpose of this paragraph.
- (3) The Secretary of State may designate, for the purpose of paragraph (a) of subsection (2) above, any person appearing to him to be performing regulatory, supervisory, investigative or registration functions.
- (4) The categories of person prescribed by the Secretary of State, for the purpose of paragraph (b) of subsection (2) above, shall be such categories of person connected with the performance by any designated person of regulatory, supervisory, investigative or registration functions as he considers it appropriate to prescribe.
- (5) In this section—

“the Crown” includes the Crown in right of Her Majesty’s Government in Northern Ireland; and

“prescribed” means prescribed by regulations made by the Secretary of State.
- (6) The power to make regulations under this section shall be exercisable by statutory instrument.
- (7) Any such instrument shall be subject to annulment in pursuance of a resolution of either House of Parliament.]

Textual Amendments

F2 S. 36B inserted (1.4.1994) by 1993 c. 36, s. 77, Sch. 4 para. 1; S.I. 1994/700, art. 2, Sch.

37 Expenses.

There shall be paid out of money provided by Parliament any increase attributable to this Act in the sums payable out of money so provided under any other Act.

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38 General interpretation.

(1) In this Act—

“authorised government department” means a government department which is an authorised department for the purposes of the ^{M6}Crown Proceedings Act 1947;

“constable” includes a person commissioned by the Commissioners of Customs and Excise;

“corresponding law” has the same meaning as in the ^{M7}Misuse of Drugs Act 1971;

“drug trafficking” means doing or being concerned in any of the following, whether in England and Wales or elsewhere—

- (a) producing or supplying a controlled drug where the production or supply contravenes section 4(1) of the Misuse of Drugs Act 1971 or a corresponding law;
- (b) transporting or storing a controlled drug where possession of the drug contravenes section 5(1) of that Act or a corresponding law;
- (c) importing or exporting a controlled drug where the importation or exportation is prohibited by section 3(1) of that Act or a corresponding law;
- [^{F3}(d) manufacturing or supplying a scheduled substance within the meaning of section 12 of the Criminal Justice (International Co-operation) Act 1990 where the manufacture or supply is an offence under that section;]

and includes a person doing the following, whether in England and Wales or elsewhere, that is entering into or being otherwise concerned in an arrangement whereby—

- (i) the retention or control by or on behalf of another person of the other person’s proceeds of drug trafficking is facilitated, or
- (ii) the proceeds of drug trafficking by another person are used to secure that funds are placed at the other person’s disposal or are used for the other person’s benefit to acquire property by way of investment;

“drug trafficking offence” means any of the following—

- (a) an offence under section 4(2) or (3) or 5(3) of the Misuse of Drugs Act 1971 (production, supply and possession for supply of controlled drugs);
- (b) an offence under section 20 of that Act (assisting in or inducing commission outside United Kingdom of offence punishable under a corresponding law);
- (c) an offence under—
 - (i) section 50(2) or (3) of the ^{M8}Customs and Excise Management Act 1979 (improper importation),
 - (ii) section 68(2) of that Act (exportation), or
 - (iii) section 170 of that Act (fraudulent evasion),

in connection with a prohibition or restriction on importation or exportation having effect by virtue of section 3 of the Misuse of Drugs Act 1971;

(d) an offence under section 24 of this Act;

[^{F4}(dd) an offence under sections 12, 14 or 19 of the Criminal Justice (International Co-operation) Act 1990;]

(e) an offence under section 1 of the ^{M9}Criminal Law Act 1977 of conspiracy to commit any of the offences in paragraphs (a) to [^{F5}(d)][^{F5}(dd)] above;

(f) an offence under section 1 of the ^{M10}Criminal Attempts Act 1981 of attempting to commit any of those offences;

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- (g) an offence of inciting another to commit any of those offences, whether under section 19 of the ^{M11}Misuse of Drugs Act 1971 or at common law; and
 - (h) aiding, abetting, counselling or procuring the commission of any of those offences;
 - “interest”, in relation to property, includes right;
 - “property” includes money and all other property, real or personal, heritable or moveable, including things in action and other intangible or incorporeal property.
- (2) The expressions listed in the left hand column below are respectively defined or (as the case may be) fall to be construed in accordance with the provisions of this Act listed in the right hand column in relation to those expressions.

| <i>Expression</i> | <i>Relevant provision</i> |
|---------------------------------------|---------------------------|
| Benefited from drug trafficking | Section 1(3) |
| Charging order | Section 9(2) |
| Confiscation order | Section 1(8) |
| Dealing with property | Section 8(7) |
| Defendant | Section 1(8) |
| Gift caught by this Act | Section 5(9) |
| Making a gift | Section 5(10) |
| Proceeds of drug trafficking | Section 2(1)(a) |
| Realisable property | Section 5(1) |
| Restraint order | Section 8(1) |
| Value of gift, payment or reward | Section 5 |
| Value of proceeds of drug trafficking | Section 2(1)(b) |
| Value of property | Section 5(4) |

- (3) This Act applies to property whether it is situated in England and Wales or elsewhere.
- (4) References in this Act to offences include a reference to offences committed before the commencement of section 1 of this Act; but nothing in this Act imposes any duty or confers any power on any court in or in connection with proceedings against a person for a drug trafficking offence instituted before the commencement of that section.
- (5) References in this Act to anything received in connection with drug trafficking include a reference to anything received both in that connection and in some other connection.
- (6) The following provisions shall have effect for the interpretation of this Act.
- (7) Property is held by any person if he holds any interest in it.
- (8) References to property held by a person include a reference to property vested in his trustee in bankruptcy, permanent or interim trustee within the meaning of the ^{M12}Bankruptcy (Scotland) Act 1985 or liquidator.

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- (9) References to an interest held by a person beneficially in property include a reference to an interest which would be held by him beneficially if the property were not so vested.
- (10) Property is transferred by one person to another if the first person transfers or grants to the other any interest in the property.
- (11) Proceedings for an offence are instituted . . . ^{F6}—
- (a) when a justice of the peace issues a summons or warrant under section 1 of the ^{M13}Magistrates' Courts Act 1980 in respect of the offence,
 - (b) when a person is charged with the offence after being taken into custody without a warrant,
 - (c) when a bill of indictment is preferred under section 2 of the ^{M14}Administration of Justice (Miscellaneous Provisions) Act 1933 in a case falling within paragraph (b) of subsection (2) of that section;
- and where the application of this subsection would result in there being more than one time for the institution of proceedings, they shall be taken to have been instituted at the earliest of those times.
- [^{F7}(12) Proceedings for an offence are concluded—
- (a) when (disregarding any power of a court to grant leave to appeal out of time) there is no further possibility of a confiscation order being made in the proceedings;
 - (b) on the satisfaction of a confiscation order made in the proceedings (whether by payment of the amount due under the order or by the defendant serving imprisonment in default).
- (13) An order is subject to appeal until (disregarding any power of a court to grant leave to appeal out of time) there is no further possibility of an appeal on which the order could be varied or set aside.]

Textual Amendments

- F3** S. 38(1)(d) inserted (*prosp.*) by Criminal Justice (International Co-operation) Act 1990 (c. 5, SIF 39:1), ss. 31(1), 32(2), **Sch. 4 para. 4(3)**
- F4** S. 38(1)(dd) inserted (*prosp.*) by Criminal Justice (International Co-operation) Act 1990 (c. 5, SIF 39:1), ss. 31(1), 32(2), **Sch. 4 para. 4(4)**
- F5** “dd” substituted (*prosp.* for “d” by Criminal Justice (International Co-operation) Act 1990 (c. 5, SIF 39:1), ss. 31(1), 32(2), **Sch. 4 para. 4(4)**)
- F6** Words repealed by Criminal Justice Act 1988 (c. 33, SIF 39:1), s. 170, Sch. 8 para. 16, **Sch. 16**
- F7** S. 38(12)(13) substituted by Criminal Justice Act 1988 (c. 33, SIF 39:1), s. 103, Sch. 5 para. 16, **Sch. 8 para. 16**

Modifications etc. (not altering text)

- C1** Definition extended with modifications by Criminal Justice Act 1988 (c. 33, SIF 39:1), s. 152(4), **Sch. 8 para. 16**

Marginal Citations

- M6** 1947 c. 44.
M7 1971 c. 38.
M8 1979 c. 2.
M9 1977 c. 45.

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M10 1981 c. 47.
M11 1971 c. 38.
M12 1985 c. 66
M13 1980 c. 43.
M14 1933 c. 36.

39 Minor amendments.

- (1) Section 28 of the ^{M15}Bankruptcy Act 1914 (effect of order of discharge) shall have effect as if amounts payable under confiscation orders were debts excepted under subsection (1)(a) of that section.
- (2) In section 49(1)(g) of the ^{M16}Land Registration Act 1925 (protection of certain interests by notice) after “Charging Orders Act 1979” there is inserted “or the Drug Trafficking Offences Act 1986”.
- (3) In section 1(2)(a) of the ^{M17}rehabilitation of Offenders Act 1974 (failure to pay fines etc. not to prevent person becoming rehabilitated) the reference to a fine or other sum adjudged to be paid by or imposed on a conviction does not include a reference to an amount payable under a confiscation order.
- (4) After subsection (4) of section 18 of the ^{M18}Civil Jurisdiction and Judgements Act 1982 there is inserted the following subsection—

“(4A) This section does not apply as respects the enforcement in Scotland of orders made by the High Court in England and Wales under or for the purposes of the Drug Trafficking Offences Act 1986.”
- (5) Section 281(4) of the Insolvency Act 1986 (discharge of bankrupt not to release him from liabilities in respect of fines, etc.) shall have effect as if the reference to a fine included a reference to a confiscation order.
- (6) Section 55(2) of the ^{M19}bankruptcy (Scotland) Act 1985 (discharge of debtor not to release him from liabilities in respect of fines etc.) shall have effect as if the reference to a fine included a reference to a confiscation order.

Marginal Citations

M15 1914 c. 59.
M16 1925 c. 21.
M17 1974 c. 53.
M18 1982 c. 27.
M19 1985 c. 66.

40 Short title, commencement and extent.

- (1) This Act may be cited as the Drug Trafficking Offences Act 1986.
- (2) This Act, except section 35 (which comes into force on the day on which this Act is passed), shall come into force on such day as the Secretary of State may by order made by statutory instrument appoint and different days may be appointed for different provisions and for different purposes.
- (3) Subject to subsections (4) and (5) below, this Act extends to England and Wales only.

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(4) This Act has effect in Scotland as follows—

(a) F8

(b) [F9 section 3(6)]

..... F10

..... F10

..... F10

sections 15 to [F11 17]; [F11 17A]

section 18(1);

..... F12

..... F12

section 30(10), (11) and (12);

section 34;

section 38, so far as relating to other provisions of this Act extending to Scotland;

section 39(3), (4) and (6); and

this section, so far as relating to other provisions of this Act extending to Scotland,

extend also to Scotland;

(c) F13

(5) Section 34 extends also to Northern Ireland.

Textual Amendments

F8 S. 40(4)(a) repealed by [Criminal Justice \(Scotland\) Act 1987 \(c. 41, SIF 39:1\)](#), ss. 47(4)(a), 70(2), **Sch. 2**

F9 Words inserted by [Criminal Justice \(Scotland\) Act 1987 \(c. 41, SIF 39:1\)](#), **ss. 45(7)(f)(ii)**, 47(4)(a)

F10 Words repealed by [Criminal Justice \(Scotland\) Act 1987 \(c. 41, SIF 39:1\)](#), ss. 47(4)(a), 70(2), **Sch. 2**

F11 “17A” substituted (E.W.) for “17” by [Criminal Justice Act 1988 \(c. 33, SIF 39:1\)](#), s. 103, Sch. 5 para. 17, **Sch. 8 para. 16**

F12 Words repealed by [Criminal Justice \(Scotland\) Act 1987 \(c. 41, SIF 39:1\)](#), ss. 47(4)(a), 70(2), **Sch. 2**

F13 S. 40(4)(c) repealed by [Criminal Justice \(Scotland\) Act 1987 \(c. 41, SIF 39:1\)](#), ss. 47(4)(a), 70(2), **Sch. 2**

Modifications etc. (not altering text)

C2 Power of appointment conferred by s. 40(2) fully exercised: [S.I. 1986/1488](#), 1546, 2145, 2266

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