



Criminal Justice Act 1993

1993 CHAPTER 36

PART I

JURISDICTION

1 Offences to which this Part applies

- (1) This Part applies to two groups of offences—
 - (a) any offence mentioned in subsection (2) (a “Group A offence”); and
 - (b) any offence mentioned in subsection (3) (a “Group B offence”).
- (2) The Group A offences are—
 - (a) an offence under any of the following provisions of the Theft Act 1968—
 - section 1 (theft);
 - section 15 (obtaining property by deception);
 - section 16 (obtaining pecuniary advantage by deception);
 - section 17 (false accounting);
 - section 19 (false statements by company directors, etc.);
 - section 20(2) (procuring execution of valuable security by deception);
 - section 21 (blackmail);
 - section 22 (handling stolen goods);
 - (b) an offence under either of the following provisions of the Theft Act 1978—
 - section 1 (obtaining services by deception);
 - section 2 (avoiding liability by deception);
 - (c) an offence under any of the following provisions of the Forgery and Counterfeiting Act 1981—
 - section 1 (forgery);
 - section 2 (copying a false instrument);
 - section 3 (using a false instrument);
 - section 4 (using a copy of a false instrument);

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section 5 (offences which relate to money orders, share certificates, passports, etc.);

- (d) the common law offence of cheating in relation to the public revenue.
- (3) The Group B offences are—
- (a) conspiracy to commit a Group A offence;
 - (b) conspiracy to defraud;
 - (c) attempting to commit a Group A offence;
 - (d) incitement to commit a Group A offence.
- (4) The Secretary of State may by order amend subsection (2) or (3) by adding or removing any offence.
- (5) The power to make such an order shall be exercisable by statutory instrument.
- (6) No order shall be made under subsection (4) unless a draft of it has been laid before and approved by a resolution of each House of Parliament.

2 Jurisdiction in respect of Group A offences

- (1) For the purposes of this Part, “relevant event”, in relation to any Group A offence, means any act or omission or other event (including any result of one or more acts or omissions) proof of which is required for conviction of the offence.
- (2) For the purpose of determining whether or not a particular event is a relevant event in relation to a Group A offence, any question as to where it occurred is to be disregarded.
- (3) A person may be guilty of a Group A offence if any of the events which are relevant events in relation to the offence occurred in England and Wales.

3 Questions immaterial to jurisdiction in the case of certain offences

- (1) A person may be guilty of a Group A or Group B offence whether or not—
 - (a) he was a British citizen at any material time;
 - (b) he was in England and Wales at any such time.
- (2) On a charge of conspiracy to commit a Group A offence, or on a charge of conspiracy to defraud in England and Wales, the defendant may be guilty of the offence whether or not—
 - (a) he became a party to the conspiracy in England and Wales;
 - (b) any act or omission or other event in relation to the conspiracy occurred in England and Wales.
- (3) On a charge of attempting to commit a Group A offence, the defendant may be guilty of the offence whether or not—
 - (a) the attempt was made in England and Wales;
 - (b) it had an effect in England and Wales.
- (4) Subsection (1)(a) does not apply where jurisdiction is given to try the offence in question by an enactment which makes provision by reference to the nationality of the person charged.
- (5) Subsection (2) does not apply in relation to any charge under the Criminal Law Act 1977 brought by virtue of section 1A of that Act.

- (6) Subsection (3) does not apply in relation to any charge under the Criminal Attempts Act 1981 brought by virtue of section 1A of that Act.

4 Rules for determining certain jurisdictional questions relating to the location of events

In relation to a Group A or Group B offence—

- (a) there is an obtaining of property in England and Wales if the property is either despatched from or received at a place in England and Wales; and
- (b) there is a communication in England and Wales of any information, instruction, request, demand or other matter if it is sent by any means—
 - (i) from a place in England and Wales to a place elsewhere; or
 - (ii) from a place elsewhere to a place in England and Wales.

5 Conspiracy, attempt and incitement

- (1) The following section shall be inserted in the Criminal Law Act 1977, after section 1—

“1A Extended jurisdiction over certain conspiracies

- (1) This Part of this Act has effect in relation to an agreement which falls within this section as it has effect in relation to one which falls within section 1(1) above.
- (2) An agreement falls within this section if—
 - (a) a party to it, or a party’s agent, did anything in England and Wales in relation to it before its formation, or
 - (b) a party to it became a party in England and Wales (by joining it either in person or through an agent), or
 - (c) a party to it, or a party’s agent, did or omitted anything in England and Wales in pursuance of it,and the agreement would fall within section 1(1) above as an agreement relating to the commission of a Group A offence but for that offence, if committed in accordance with the parties’ intentions, not being an offence triable in England and Wales.
- (3) In subsection (2) above “Group A offence” has the same meaning as in Part I of the Criminal Justice Act 1993.
- (4) Subsection (1) above is subject to the provisions of section 6 of the Act of 1993 (relevance of external law).
- (5) An offence which is an offence of conspiracy, by virtue of this section, shall be treated for all purposes as an offence of conspiracy to commit the relevant Group A offence.”.

- (2) The following section shall be inserted in the Criminal Attempts Act 1981, after section 1—

“1A Extended jurisdiction in relation to certain attempts

- (1) If this section applies to an act, what the person doing the act had in view shall be treated as an offence to which section 1(1) above applies.
 - (2) This section applies to an act if—
 - (a) it is done in England and Wales, and
 - (b) it would fall within section 1(1) above as more than merely preparatory to the commission of a Group A offence but for the fact that that offence, if completed, would not be an offence triable in England and Wales.
 - (3) In this section “Group A offence” has the same meaning as in Part 1 of the Criminal Justice Act 1993.
 - (4) Subsection (1) above is subject to the provisions of section 6 of the Act of 1993 (relevance of external law).
 - (5) Where a person does any act to which this section applies, the offence which he commits shall for all purposes be treated as the offence of attempting to commit the relevant Group A offence.”.
- (3) A person may be guilty of conspiracy to defraud if—
- (a) a party to the agreement constituting the conspiracy, or a party’s agent, did anything in England and Wales in relation to the agreement before its formation, or
 - (b) a party to it became a party in England and Wales (by joining it either in person or through an agent), or
 - (c) a party to it, or a party’s agent, did or omitted anything in England and Wales in pursuance of it,
- and the conspiracy would be triable in England and Wales but for the fraud which the parties to it had in view not being intended to take place in England and Wales.
- (4) A person may be guilty of incitement to commit a Group A offence if the incitement—
- (a) takes place in England and Wales; and
 - (b) would be triable in England and Wales but for what the person charged had in view not being an offence triable in England and Wales.
- (5) Subsections (3) and (4) are subject to section 6.

6 Relevance of external law

- (1) A person is guilty of an offence triable by virtue of section 1A of the Criminal Law Act 1977, or by virtue of section 5(3), only if the pursuit of the agreed course of conduct would at some stage involve—
 - (a) an act or omission by one or more of the parties, or
 - (b) the happening of some other event,
 constituting an offence under the law in force where the act, omission or other event was intended to take place.
- (2) A person is guilty of an offence triable by virtue of section 1A of the Criminal Attempts Act 1981, or by virtue of section 5(4), only if what he had in view would involve the

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commission of an offence under the law in force where the whole or any part of it was intended to take place.

- (3) Conduct punishable under the law in force in any place is an offence under that law for the purposes of this section, however it is described in that law.
- (4) Subject to subsection (6), a condition specified in subsection (1) or (2) shall be taken to be satisfied unless, not later than rules of court may provide, the defence serve on the prosecution a notice—
 - (a) stating that, on the facts as alleged with respect to the relevant conduct, the condition is not in their opinion satisfied;
 - (b) showing their grounds for that opinion; and
 - (c) requiring the prosecution to show that it is satisfied.
- (5) In subsection (4) “the relevant conduct” means—
 - (a) where the condition in subsection (1) is in question, the agreed course of conduct; and
 - (b) where the condition in subsection (2) is in question, what the defendant had in view.
- (6) The court, if it thinks fit, may permit the defence to require the prosecution to show that the condition is satisfied without the prior service of a notice under subsection (4).
- (7) In the Crown Court, the question whether the condition is satisfied shall be decided by the judge alone.
- (8) The following paragraph shall be inserted in section 9(3) of the Criminal Justice Act 1987 (preparatory hearing in a case of serious fraud), before paragraph (b)—
 - “(aa) a question arising under section 6 of the Criminal Justice Act 1993 (relevance of external law to certain charges of conspiracy, attempt and incitement);”.

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—

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- (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.

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- (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.

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(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—

“(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
- (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—

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- “(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—

“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.

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- (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—

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- (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.

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

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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”.
- (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)—

“(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.”.

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

(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—
 - (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—

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

- (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.”.
- (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—

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

“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.
- (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.”.

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

- (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—

“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,

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- (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.
- (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.

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

- (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—
 - (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.

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

- (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 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

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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—

“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—

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- (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 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.

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- (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.
- (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

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- (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—
 - (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.

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

- (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, 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—
- he knows, or suspects, that another person is engaged in drug money laundering,
 - 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
 - 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—
- his suspicion or belief that another person is engaged in drug money laundering, or
 - 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 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),
- 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.

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- (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
 - (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—

“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);

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- (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—

“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

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- (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.”.

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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.
- (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

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- 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;
 - (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.

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- (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.
- (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—

(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).

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”.

- (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)—

“Criminal conduct

Section 93A(7)”.

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.

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

- (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—

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

“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.”.

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

PART IV

FINANCING ETC. OF TERRORISM

Amendments of the 1991 Act

36 Confiscation orders

- (1) In section 47(7) of the Northern Ireland (Emergency Provisions) Act 1991 (confiscation orders), for “the amount that might then be so realised” there shall be substituted “—
 - (a) the amount that might then 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 then be so realised is nil”.
- (2) In section 47 of the Act of 1991, the following subsection shall be added at the end—

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

 - (a) whether a person has benefited from terrorist-related activities engaged in by him or another;
 - (b) the value of his proceeds of those activities;
 - (c) any matter of which the court must be satisfied under subsection (5) above; or
 - (d) the amount to be required to be paid under a confiscation order made in his case,

shall be that applicable in civil proceedings.”.
- (3) Section 48 of that Act (postponed confiscation orders etc.) shall be amended as follows.
- (4) In subsection (2), for “a period not exceeding six months after the date of conviction” there shall be substituted “such period as it may specify”.
- (5) After subsection (2) there shall be inserted—

“(2A) More than one postponement may be made under subsection (2) above in relation to the same case.

(2B) Unless it is satisfied that there are exceptional circumstances, the court shall not specify a period under subsection (2) above which—

 - (a) by itself, or
 - (b) where there have been one or more previous postponements under subsection (2) above or (3) below, when taken together with the earlier specified period or periods,

exceeds six months beginning with the date on which the defendant was convicted.”.
- (6) In subsection (3) the words “during the period of postponement” shall cease to have effect and for the words from “on the application of the prosecution” to the end there shall be substituted—

“on that account—

- (a) postpone making the confiscation order 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;

but, without prejudice to Article 11 of the Treatment of Offenders (Northern Ireland) Order 1989, the court may notwithstanding any postponement under this section proceed to sentence or otherwise deal with the defendant in respect of the conviction.”.

(7) After subsection (3) there shall be inserted—

“(3A) A postponement or extension under subsection (2) or (3) above may be made—

- (a) on application by the defendant or the prosecution, or
- (b) by the court of its own motion.

(3B) Unless the court is satisfied that there are exceptional circumstances, any postponement or extension under subsection (3) above shall not exceed the period ending three months after the date of determination of the appeal.”.

37 Revised assessments

The following sections shall be inserted in the Northern Ireland (Emergency Provisions) Act 1991, after section 48—

“48A Re-assessment of whether defendant has benefited

(1) This section applies where—

- (a) a court proceeding under section 47(1) above decided not to make a confiscation order (“the decision”); and
- (b) the statement made by the court under section 48(8) above was to the effect that the reason, or one of the reasons, for the decision was that the court was not satisfied that the defendant had benefited.

(2) If the prosecution has evidence—

- (a) which was not considered by the court, but
- (b) which the prosecution believes would have led the court to decide that the defendant had benefited,

the prosecution may apply to the Crown Court for it to consider that evidence.

(3) If, having considered the evidence, the court considers that it would have been satisfied that the defendant had benefited if that evidence had been available to it, section 47 shall apply as if the court were convicting the defendant.

(4) The court may take into account any money or other property obtained by the defendant on or after the date of the decision, but only if the prosecution shows that it was obtained by him as a direct or indirect result of terrorist-related activities carried on by the defendant or another on or before that date.

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

- (5) In considering any evidence under this section which relates to any money or other property to which subsection (4) above applies, the court shall not make the assumptions which would otherwise be required by section 51 below.
- (6) 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 defendant was convicted.
- (7) Subsections (1) to (7) of section 48 above shall not apply where the court is proceeding under section 47 above by virtue of this section.
- (8) Where the court—
 - (a) has, in dealing with the defendant in respect of the conviction or any of the convictions concerned, made an order for the payment of compensation under Article 3 of the Order of 1980, and
 - (b) makes a confiscation order by virtue of this section,
 it shall, if it is of the opinion that the defendant will not have sufficient means to satisfy both orders in full, direct that so much of the compensation as will not in its opinion be recoverable because of the insufficiency of his means is to be paid out of any sums recovered under the confiscation order.
- (9) Where the prosecution makes an application to the court under this section it shall, on making the application, give the court a statement under section 52 below.
- (10) Where the High Court—
 - (a) has been asked to proceed under section 52B below 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.
- (11) In this section “benefited” means benefited from terrorist-related activities as mentioned in section 47(1) above.

48B Revised assessments

- (1) This section applies where the court has made a confiscation order by reference to an amount assessed under section 47(1) above (“the current assessment”).
- (2) Where the prosecution is of the opinion that the real value of the defendant’s proceeds of terrorist-related activities was greater than their assessed value, the prosecution may apply to the Crown Court for the evidence on which it has formed that opinion to be considered by the court.
- (3) In subsection (2) above—
 - “assessed value” means the value of the defendant’s proceeds of terrorist-related activities as assessed by the court under section 47(1) above; and
 - “real value” means the value of the defendant’s proceeds of terrorist-related activities which took place—
 - (a) in the period by reference to which the current assessment was made; or
 - (b) in any earlier period.

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

- (4) If, having considered the evidence, the court is satisfied that the real value of the defendant's proceeds of terrorist-related activities is greater than their assessed value (whether because the real value was higher at the time of the current assessment than was thought or because the value of the proceeds in question has subsequently increased), the court shall make a fresh determination of the amount to be required to be paid under section 47 above.
- (5) In relation to any determination by virtue of this section, section 47(7) above shall have effect as it has effect in relation to the making of a confiscation order.
- (6) For any determination by virtue of this section, section 47(8) above shall not apply in relation to any of the defendant's proceeds of terrorist-related activities taken into account in respect of the current assessment.
- (7) Sections 50(4) and 52(4)(a) and (7) below shall have effect in relation to any such determination as if for "confiscation order" there were substituted "determination" and section 50(3) below shall so have effect as if for "a confiscation order is made" there were substituted "of the determination".
- (8) The court may take into account any money or other property obtained by the defendant on or after the date of the current assessment, but only if the prosecution shows that it was obtained by him as a direct or indirect result of terrorist-related activities carried on by the defendant or another on or before that date.
- (9) In considering any evidence under this section which relates to any money or other property to which subsection (8) above applies, the court shall not make the assumptions which would otherwise be required by section 51 below.
- (10) If, as a result of making the determination required by subsection (4) above, the amount to be required to be paid exceeds the amount set in accordance with the current assessment, the court may substitute for the amount required to be paid under the confiscation order such greater amount as it thinks just in all the circumstances of the case.
- (11) Where the court varies a confiscation order under subsection (10) above it shall substitute for the term of imprisonment or of detention fixed under section 35(1) (c) of the Criminal Justice Act (Northern Ireland) 1945 in respect of the amount required to be paid under the order a longer term determined in accordance with that section (as it has effect by virtue of paragraph 2 of Schedule 4 to this Act) in respect of the greater amount substituted under subsection (10) above.
- (12) Subsection (11) above shall apply only if the effect of the substitution is to increase the maximum period applicable in relation to the order under paragraph 2(1)(b) of Schedule 4 to this Act.
- (13) Where the prosecution makes an application to the court under this section—
 - (a) it shall, on making the application, give the court a statement under section 52 below; and
 - (b) section 52A shall apply.
- (14) Where a confiscation order has been made in relation to any defendant by virtue of section 52B below, this section shall not apply at any time while he is an absconder.

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

(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 the date on which the defendant was convicted.”.

38 Statements, etc. relevant to making confiscation orders

(1) Section 52 of the Northern Ireland (Emergency Provisions) Act 1991 shall be amended as follows.

(2) The following subsections shall be substituted for subsection (1)—

“(1) In this section, except in subsection (4) below, “a statement” means a statement in the case of a defendant as to any matters relevant—

- (a) to determining whether he has benefited from terrorist-related activities,
- (b) to assessing the value of his proceeds of those activities, or
- (c) to determining whether the requirements of section 47(5) above are satisfied.

(1A) Where section 47(1) above applies—

- (a) the court may require the prosecution to give it a statement within such period as it may direct; and
- (b) the prosecution may at any time give a statement to the court.

(1B) Where the prosecution has given the court a statement—

- (a) it may at any time give the court a further statement; and
- (b) the court may at any time require it to give the court a further statement, within such period as the court may direct.

(1C) Where—

- (a) a statement has been given to the court under this section, and
 - (b) the defendant accepts to any extent any allegation in the statement,
- the court may treat his acceptance as conclusive of the matters to which it relates.”.

(3) In subsection (2)—

- (a) for “is tendered under subsection (1)(a) above” there shall be substituted “is given under this section”; and
- (b) after first “indicate” there shall be inserted “within such period as the court may direct”.

(4) The following subsection shall be inserted after subsection (2)—

“(2A) Where the court has given a direction under this section it may at any time vary it by giving a further direction.”.

(5) In subsection (4), for “tendered” there shall be substituted “given”.

(6) In subsection (5), for the words from “either” to the end there shall be substituted “in such manner as may be prescribed by rules of court or as the court may direct”.

39 Provision of information

The following section shall be inserted in the Northern Ireland (Emergency Provisions) Act 1991, after section 52—

“52A Provision of information by defendant

- (1) This section applies where the Crown Court is proceeding under section 47(1) above.
- (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) Rules of court 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 prosecution 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.”

40 Variation of confiscation orders

- (1) Paragraph 15 (variation of confiscation orders) of Schedule 4 to the Northern Ireland (Emergency Provisions) Act 1991 shall be amended as follows.
- (2) In sub-paragraph (1), after “defendant” there shall be inserted “or a receiver appointed under this Schedule, or in pursuance of a charging order, made”.
- (3) In sub-paragraph (3), for “defendant” there shall be substituted “person who applied for it”.
- (4) The following shall be added at the end—
 - “(5) Rules of court may make provision—
 - (a) for the giving of notice of any application under this paragraph; and
 - (b) for any person appearing to the court to be likely to be affected by any exercise of its powers under this paragraph to be given an opportunity to make representations to the court.”

41 Availability of powers and satisfaction of orders

- (1) Schedule 4 to the Northern Ireland (Emergency Provisions) Act 1991 (supplementary provisions about confiscation orders) shall be amended as follows.

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

(2) In paragraph 2 (application of procedure for enforcing fines), the following shall be added at the end—

“(6) 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.”.

(3) In paragraph 4 (cases in which restraint orders and charging orders may be made), the following sub-paragraphs shall be substituted for sub-paragraphs (1) and (2)—

“(1) The powers conferred on the High Court by paragraphs 5(1) and 6(1) below are exercisable where—

- (a) proceedings have been instituted in Northern Ireland against the defendant for a relevant offence or an application has been made by the prosecution in respect of the defendant under section 48A, 48B or 52B of this Act or paragraph 11 below,
- (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 48B of this Act or paragraph 11 below, that the court will be satisfied as mentioned in section 48B(4) of this Act or, as the case may be, paragraph 11(1)(b) below, or
 - (ii) in any other case, that the defendant has benefited from terrorist-related activities.

(2) Those powers are also exercisable where—

- (a) the High Court is satisfied that, whether by the making of a complaint or otherwise, a person is to be charged with a relevant offence or that an application of a kind mentioned in sub-paragraph (1)(a) above is to be made in respect of the defendant, and
- (b) it appears to the court that there is reasonable cause to believe—
 - (i) in the case of a proposed application under section 48B of this Act or paragraph 11 below, that the court will be satisfied as mentioned in section 48B(4) of this Act or, as the case may be, paragraph 11(1)(b) below, or
 - (ii) in any other case, that the defendant has benefited from terrorist-related activities.”.

(4) The following sub-paragraphs shall be added at the end of paragraph 4—

“(5) Where the court has made an order under paragraph 5(1) or 6(1) below in relation to a proposed application, by virtue of sub-paragraph (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 paragraph 5(1) or 6(1) below, by virtue of sub-paragraph (1) above, if it is satisfied that—

- (a) there has been undue delay in continuing the proceedings or application in question; or
- (b) the prosecution does not intend to proceed.”.

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

(5) In paragraph 5 (restraint orders), the following sub-paragraph shall be substituted for sub-paragraph (6)—

“(6) 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.”.

(6) In paragraph 6 (charging orders), the following sub-paragraph shall be substituted for sub-paragraph (6)—

“(6) 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—
 - (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.”.

(7) In paragraph 10 (realisation of property), the following sub-paragraph shall be substituted for sub-paragraph (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 may, on an application by the prosecution, exercise the powers conferred by sub-paragraphs (2) to (6) below.”.

(8) In paragraph 16 (bankruptcy of defendant), the following shall be substituted for paragraphs (a) and (b) of sub-paragraph (6)—

“(a) no order shall be made under Article 312 or 367 of the said Order of 1989 (avoidance of certain transactions) in respect of the making of the gift at any time when—

- (i) proceedings for a relevant offence have been instituted against him and have not been concluded;
- (ii) an application has been made in respect of the defendant under section 48A, 48B or 52B of this Act or paragraph 11 below 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 either of those Articles after the conclusion of the proceedings or of the application shall take into account any realisation under this Schedule of property held by the person to whom the gift was made.”.

(9) In paragraph 1 (interpretation), the following sub-paragraphs shall be substituted for sub-paragraph (3)—

“(3) Proceedings for a relevant offence are concluded—

- (a) when the defendant is acquitted;

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

- (b) if he is convicted, 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.
- (3A) An application under section 48A or 52B 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.
- (3B) An application under section 48B of this Act or paragraph 11 below 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.
- (3C) For the purposes of this Schedule, a confiscation order is satisfied when no amount is due under it.
- (3D) For the purposes of paragraph 16 below, 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.”.

42 Defendant who has died or absconded

The following section shall be inserted in the Northern Ireland (Emergency Provisions) Act 1991, after section 52A—

“52B Powers of High Court where defendant has died or absconded

- (1) Subsection (2) below applies where a person has been convicted of a relevant offence.
- (2) If the prosecution 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 have been instituted against the defendant for one or more relevant offences but have not been concluded.
- (4) If the prosecution asks it to proceed under this section, the High Court, if satisfied that the defendant has absconded, may exercise the powers of the Crown Court under this Act to make a confiscation order against the defendant as if the defendant had been convicted of the relevant offence or each of the relevant offences for which the proceedings had been instituted.
- (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.

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

- (6) Where the prosecution makes an application to the court under this section it shall, on making the application, give the court a statement under section 52 above.
- (7) In any proceedings on an application under this section—
- (a) sections 51, 52(1C), (2) and (3) and 52A above shall not apply,
 - (b) the court shall not make a confiscation order against a person who has absconded unless it is satisfied that the prosecution 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.
- (8) Where the High Court has made a confiscation order by virtue of this section, in a case where the defendant has been or is subsequently convicted of one or more of the offences concerned, sections 47 and 48(1) to (5) and (7) above shall not apply in respect of his conviction of that offence or those offences; but any court dealing with him in respect of that conviction or any of those convictions—
- (a) shall take account of the order before—
 - (i) imposing any fine on him; or
 - (ii) making any order involving any payment by him, other than an order under Article 3 of the Criminal Justice (Northern Ireland) Order 1980 (compensation orders); or
 - (iii) making any order under Article 7 of that Order (deprivation orders),but subject to that shall leave the order out of account in determining the appropriate sentence or other manner of dealing with him; and
 - (b) if it makes an order for the payment of compensation under Article 3 of the Order of 1980, and is of the opinion that the defendant will not have sufficient means to satisfy both that order and the confiscation order in full, shall direct that so much of the compensation as will not in its opinion be recoverable because of the insufficiency of his means is to be paid out of any sums recovered under the confiscation order.”.

43 Compensation

In Schedule 4 to the Northern Ireland (Emergency Provisions) Act 1991, the following paragraphs shall be inserted after paragraph 20—

“Compensation etc. where absconder is acquitted

- 20A (1) This paragraph applies where—
- (a) the High Court has made a confiscation order by virtue of section 52B(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.

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

- (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 paragraph 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 paragraph; and
 - (b) for any person appearing to the court to be likely to be affected by any exercise of its powers under this paragraph to be given an opportunity to make representations to the court.
- (6) Any payment of compensation under this paragraph shall be made by the Lord Chancellor out of money provided by Parliament.
- (7) Where the court cancels a confiscation order under this paragraph it may make such consequential or incidental order as it considers appropriate in connection with the cancellation.

*Power to discharge confiscation order and
order compensation where absconder returns*

- 20B
- (1) This paragraph applies where—
 - (a) the High Court has made a confiscation order by virtue of section 52B(4) of this Act in relation to an absconder,
 - (b) the defendant has ceased to be an absconder, and
 - (c) paragraph 20A above 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 52B(4) above was exercised; or
 - (b) the prosecution does not intend to proceed.
 - (3) Where the High Court cancels a confiscation order under this paragraph 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.
 - (4) The amount of compensation to be paid under this paragraph 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 paragraph; and
 - (b) for any person appearing to the court to be likely to be affected by any exercise of its powers under this paragraph to be given an opportunity to make representations to the court.
 - (6) Any payment of compensation under this paragraph shall be made by the Lord Chancellor out of money provided by Parliament.

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- (7) Where the court cancels a confiscation order under this paragraph it may make such consequential or incidental order as it considers appropriate in connection with the cancellation.

Variation of confiscation orders made by virtue of section 52B

- 20C (1) This paragraph applies where—
- (a) the High Court has made a confiscation order by virtue of section 52B(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 terrorist-related activities in the period by reference to which the assessment 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 required 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 proceed under section 47(1) of this Act to make a fresh assessment of the value of his proceeds of terrorist-related activities, and
 - (b) may, if it considers it just in all the circumstances, vary the amount required to be paid under the confiscation order.
- (4) For any assessment under section 47 of this Act by virtue of this paragraph, section 47(8) shall not apply in relation to any of the defendant’s proceeds of terrorist-related activities taken into account in assessing the original value.
- (5) Where the court varies a confiscation order under this paragraph—
- (a) it shall substitute for the term of imprisonment or detention fixed in respect of the order under subsection (1)(c) of section 35 of the Criminal Justice Act (Northern Ireland) 1945 (imprisonment in default of payment) a shorter term if the effect of the substitution under sub-paragraph (3) above is to reduce the maximum period applicable in relation to the order under subsection (2) of that section as it has effect by virtue of paragraph 2(1)(b) above; 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—
 - (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 paragraph shall be such as the court considers just in all the circumstances of the case.

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- (7) Rules of court may make provision—
 - (a) for the giving of notice of any application under this paragraph; and
 - (b) for any person appearing to the court to be likely to be affected by any exercise of its powers under this paragraph to be given an opportunity to make representations to the court.
- (8) Any payment of compensation under this paragraph shall be made by the Lord Chancellor out of money provided by Parliament.
- (9) No application shall be entertained by the court under this paragraph if it is made after the end of the period of six years beginning with the date on which the confiscation order was made.”.

44 Realisable property

In section 50 of the Northern Ireland (Emergency Provisions) Act 1991 (realisable property, value and gifts), in subsection (2), the following paragraphs shall be inserted after paragraph (c)—

- “(d) section 43 of the Powers of Criminal Courts Act 1973; or
- (e) section 223 or 436 of the Criminal Procedure (Scotland) Act 1975.”.

45 Enforcement

- (1) Section 67 of the Northern Ireland (Emergency Provisions) Act 1991 (orders and regulations) shall be amended as follows.
- (2) In subsection (5), after the words “paragraph 7(3)” there shall be inserted “or 19(1)(a)”.
- (3) Subsection (6) shall cease to have effect.

46 Enforcement of orders outside Northern Ireland

In paragraph 19 of Schedule 4 to the Northern Ireland (Emergency Provisions) Act 1991 (enforcement of orders outside Northern Ireland), the following sub-paragraphs shall be added at the end—

- “(3) An Order under this paragraph may contain such incidental, consequential and transitional provisions as Her Majesty considers expedient.
- (4) An Order under sub-paragraph (1)(a) above 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.”.

47 Offences relating to proceeds of terrorist-related activities

- (1) In section 53 of the Northern Ireland (Emergency Provisions) Act 1991 (assisting another to retain proceeds of terrorist-related activities) the following subsection shall be inserted after subsection (3)—
 - “(3A) Where a person discloses to a constable a suspicion or belief that any funds or investments are derived from or used in connection with terrorist-related

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activities or any matter on which such a suspicion or belief is based, the disclosure shall not be treated as a breach of any restriction upon the disclosure of information imposed by statute or otherwise.”.

(2) In section 53 of that Act 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), (3A) and (4)(c) 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.”.

(3) In subsection (3) of section 54 of that Act (concealing or transferring proceeds of terrorist-related activities), for the words from “that property” to the end of that subsection, there shall be substituted “or uses that property or has possession of it”.

(4) In section 54 of that Act, the following subsection shall be inserted after subsection (3)

—
“(3A) 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.”.

(5) For section 54(5) of that Act there shall be substituted—

“(5) For the purposes of subsection (3A) above—

- (a) a person acquires property for inadequate consideration if the value of the consideration is significantly less than the value of the property;
- (b) a person uses or has possession of any property for inadequate consideration if the value of the consideration is significantly less than the value of his possession or use of the property; and
- (c) the provision for any person of services or goods which are of assistance to him in terrorist-related activities shall not be treated as consideration.

(5A) 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 terrorist-related activities or 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 contravention of subsection (3) above, he does not commit an offence under that subsection if—
 - (i) the disclosure is made before he does the act concerned and that 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.

(5B) For the purposes of this section, having possession of any property shall be taken to be doing an act in relation to it.

(5C) In proceedings against a person for an offence under subsection (3) above, it is a defence to prove that—

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- (a) he intended to disclose to a constable such a suspicion, belief or matter as is mentioned in subsection (5A) above; but
- (b) there is reasonable excuse for his failure to make a disclosure in accordance with paragraph (b) of that subsection.

(5D) In the case of a person who was in employment at the relevant time, subsections (5A) and (5C) 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.

(5E) No constable or other person shall be guilty of an offence under subsection (3) above 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 terrorism or the proceeds or resources of such terrorism.”.

48 Failure to disclose knowledge or suspicion relating to proceeds of terrorist-related activities

The following section shall be inserted in the Northern Ireland (Emergency Provisions) Act 1991, after section 54—

“54A Failure to disclose knowledge or suspicion of offences under sections 53 and 54

- (1) A person is guilty of an offence if—
 - (a) he knows, or suspects, that another person is acting in the proscribed manner,
 - (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 acting in the proscribed manner, 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.

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- (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 “acting in the proscribed manner” means doing any act which constitutes an offence under section 53 or 54 above or, in the case of an act done otherwise than in the United Kingdom, which would constitute such an offence if done in the United Kingdom.
- (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.”.

Amendments of the 1989 Act

49 Financial assistance for terrorism

- (1) In section 9 of the Prevention of Terrorism (Temporary Provisions) Act 1989 (contributions towards acts of terrorism), the following shall be inserted at the end of subsection (1)(b)—

“or

- (c) uses or has possession of, whether for consideration or not, any money or other property.”.

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- (2) In section 10 of that Act (contributions to the resources of proscribed organisations), in subsection (1)(b), after the words “or accepts” there shall be inserted “or uses or has possession of”.
- (3) In section 12 of that Act (disclosure of information about terrorist funds) for the word “contract”, in subsection (1), there shall be substituted “statute or otherwise”.
- (4) In section 12 of that Act, the following subsection shall be inserted after subsection (2)
- “(2A) For the purposes of subsection (2) above a person who uses or has possession of money or other property shall be taken to be concerned in a transaction or arrangement.”.
- (5) In section 12(3) of that Act, after “section 9(1)(b)” there shall be inserted “or (c)”.
- (6) The following subsections shall be added at the end of section 12 of that Act—
- “(4) In the case of a person who was in employment at the relevant time, subsections (1) to (3) 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.
- (5) No constable or other person shall be guilty of an offence under section 9(1)(b) or (c) or (2) or 10(1)(b) or (c) above 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 terrorism or the proceeds or resources of terrorism.
- (6) For the purposes of subsection (5) above, having possession of any property shall be taken to be doing an act in relation to it.”.

50 Investigation of terrorist activities

- (1) Section 17 (investigation of terrorist activities) of the Prevention of Terrorism (Temporary Provisions) Act 1989 shall be amended as follows.
- (2) In subsection (1)(a)(ii)—
- (a) for “or 11 above” there shall be substituted “11, 18 or 18A of this Act”; and
- (b) for “or 28” there shall be substituted “28, 53, 54 or 54A”.
- (3) For subsection (2) there shall be substituted—
- “(2) A person is guilty of an offence if, knowing or having reasonable cause to suspect that a constable is acting, or is proposing to act, in connection with a terrorist investigation which is being, or is about to be, conducted, he—
- (a) discloses to any other person information or any other matter which is likely to prejudice the investigation or proposed investigation, or
- (b) falsifies, conceals or destroys or otherwise disposes of, or causes or permits the falsification, concealment, destruction or disposal of, material which is or is likely to be relevant to the investigation, or proposed investigation.

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- (2A) A person is guilty of an offence if, knowing or having reasonable cause to suspect that a disclosure (“the disclosure”) has been made to a constable under section 12, 18 or 18A of this Act or section 53, 54 or 54A of the Northern Ireland (Emergency Provisions) Act 1991, he—
- (a) discloses to any other person information or any other matter which is likely to prejudice any investigation which might be conducted following the disclosure; or
 - (b) falsifies, conceals or destroys or otherwise disposes of, or causes or permits the falsification, concealment, destruction or disposal of, material which is or is likely to be relevant to any such investigation.
- (2B) A person is guilty of an offence if, knowing or having reasonable cause to suspect that a disclosure (“the disclosure”) of a kind mentioned in section 12(4) or 18A(5) of this Act or section 53(4A), 54(5D) or 54A(5) of the Act of 1991 has been made, he—
- (a) discloses to any person information or any other matter which is likely to prejudice any investigation which might be conducted following the disclosure; or
 - (b) falsifies, conceals or destroys or otherwise disposes of, or causes or permits the falsification, concealment, destruction or disposal of, material which is or is likely to be relevant to any such investigation.
- (2C) Nothing in subsections (2) to (2B) 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.
- (2D) Subsection (2C) above does not apply in relation to any information or other matter which is disclosed with a view to furthering any criminal purpose.
- (2E) 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 terrorism or the proceeds or resources of terrorism.”.
- (4) In subsection (3) (defence in respect of disclosure), after “investigation” there shall be inserted “or proposed investigation”.
- (5) The following shall be inserted after subsection (3)—
- “(3A) In proceedings against a person for an offence under subsection (2A)(a) or (2B)(a) above it is a defence to prove—
- (a) that he did not know and had no reasonable cause to suspect that his disclosure was likely to prejudice the investigation in question; or
 - (b) that he had lawful authority or reasonable excuse for making his disclosure.”.

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- (6) In subsection (4) (defence in respect of falsifying material etc.), for the words from “the persons” to the end there shall be substituted “any person conducting, or likely to be conducting, the investigation or proposed investigation”.
- (7) The following shall be inserted after subsection (4)—
- “(4A) In proceedings against a person for an offence under subsection (2A)(b) or (2B)(b) above, it is a defence to prove that he had no intention of concealing any information contained in the material in question from any person who might carry out the investigation in question.”.
- (8) In subsection (5) (penalties) after “(2)” there shall be inserted “(2A) or (2B)”.
- (9) The following subsection shall be added at the end—
- “(6) For the purposes of subsection (1) above, as it applies in relation to any offence under section 18 or 18A below or section 54A of the Act of 1991, “act” includes omission.”.

51 Failure to disclose knowledge or suspicion of financial assistance for terrorism

The following section shall be inserted in the Prevention of Terrorism (Temporary Provisions) Act 1989, after section 18—

“18A Failure to disclose knowledge or suspicion of offences under sections 9 to 11

- (1) A person is guilty of an offence if—
- (a) he knows, or suspects, that another person is providing financial assistance for terrorism;
 - (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 providing financial assistance for terrorism; 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

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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 “providing financial assistance for terrorism” means doing any act which constitutes an offence under section 9, 10 or 11 above or, in the case of an act done otherwise than in the United Kingdom, which would constitute such an offence if done in the United Kingdom.
- (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.”.

PART V

INSIDER DEALING

The offence of insider dealing

52 The offence

- (1) An individual who has information as an insider is guilty of insider dealing if, in the circumstances mentioned in subsection (3), he deals in securities that are price-affected securities in relation to the information.
- (2) An individual who has information as an insider is also guilty of insider dealing if—
 - (a) he encourages another person to deal in securities that are (whether or not that other knows it) price-affected securities in relation to the information,

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knowing or having reasonable cause to believe that the dealing would take place in the circumstances mentioned in subsection (3); or

- (b) he discloses the information, otherwise than in the proper performance of the functions of his employment, office or profession, to another person.
- (3) The circumstances referred to above are that the acquisition or disposal in question occurs on a regulated market, or that the person dealing relies on a professional intermediary or is himself acting as a professional intermediary.
- (4) This section has effect subject to section 53.

53 Defences

- (1) An individual is not guilty of insider dealing by virtue of dealing in securities if he shows—
- (a) that he did not at the time expect the dealing to result in a profit attributable to the fact that the information in question was price-sensitive information in relation to the securities, or
 - (b) that at the time he believed on reasonable grounds that the information had been disclosed widely enough to ensure that none of those taking part in the dealing would be prejudiced by not having the information, or
 - (c) that he would have done what he did even if he had not had the information.
- (2) An individual is not guilty of insider dealing by virtue of encouraging another person to deal in securities if he shows—
- (a) that he did not at the time expect the dealing to result in a profit attributable to the fact that the information in question was price-sensitive information in relation to the securities, or
 - (b) that at the time he believed on reasonable grounds that the information had been or would be disclosed widely enough to ensure that none of those taking part in the dealing would be prejudiced by not having the information, or
 - (c) that he would have done what he did even if he had not had the information.
- (3) An individual is not guilty of insider dealing by virtue of a disclosure of information if he shows—
- (a) that he did not at the time expect any person, because of the disclosure, to deal in securities in the circumstances mentioned in subsection (3) of section 52; or
 - (b) that, although he had such an expectation at the time, he did not expect the dealing to result in a profit attributable to the fact that the information was price-sensitive information in relation to the securities.
- (4) Schedule 1 (special defences) shall have effect.
- (5) The Treasury may by order amend Schedule 1.
- (6) In this section references to a profit include references to the avoidance of a loss.

Interpretation

54 Securities to which Part V applies

- (1) This Part applies to any security which—
- (a) falls within any paragraph of Schedule 2; and

(b) satisfies any conditions applying to it under an order made by the Treasury for the purposes of this subsection;
and in the provisions of this Part (other than that Schedule) any reference to a security is a reference to a security to which this Part applies.

(2) The Treasury may by order amend Schedule 2.

55 “Dealing” in securities

- (1) For the purposes of this Part, a person deals in securities if—
- (a) he acquires or disposes of the securities (whether as principal or agent); or
 - (b) he procures, directly or indirectly, an acquisition or disposal of the securities by any other person.
- (2) For the purposes of this Part, “acquire”, in relation to a security, includes—
- (a) agreeing to acquire the security; and
 - (b) entering into a contract which creates the security.
- (3) For the purposes of this Part, “dispose”, in relation to a security, includes—
- (a) agreeing to dispose of the security; and
 - (b) bringing to an end a contract which created the security.
- (4) For the purposes of subsection (1), a person procures an acquisition or disposal of a security if the security is acquired or disposed of by a person who is—
- (a) his agent,
 - (b) his nominee, or
 - (c) a person who is acting at his direction,
- in relation to the acquisition or disposal.
- (5) Subsection (4) is not exhaustive as to the circumstances in which one person may be regarded as procuring an acquisition or disposal of securities by another.

56 “Inside information”, etc

- (1) For the purposes of this section and section 57, “inside information” means information which—
- (a) relates to particular securities or to a particular issuer of securities or to particular issuers of securities and not to securities generally or to issuers of securities generally;
 - (b) is specific or precise;
 - (c) has not been made public; and
 - (d) if it were made public would be likely to have a significant effect on the price of any securities.
- (2) For the purposes of this Part, securities are “price-affected securities” in relation to inside information, and inside information is “price-sensitive information” in relation to securities, if and only if the information would, if made public, be likely to have a significant effect on the price of the securities.
- (3) For the purposes of this section “price” includes value.

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57 “Insiders”

- (1) For the purposes of this Part, a person has information as an insider if and only if—
 - (a) it is, and he knows that it is, inside information, and
 - (b) he has it, and knows that he has it, from an inside source.
- (2) For the purposes of subsection (1), a person has information from an inside source if and only if—
 - (a) he has it through—
 - (i) being a director, employee or shareholder of an issuer of securities; or
 - (ii) having access to the information by virtue of his employment, office or profession; or
 - (b) the direct or indirect source of his information is a person within paragraph (a).

58 Information “made public”

- (1) For the purposes of section 56, “made public”, in relation to information, shall be construed in accordance with the following provisions of this section; but those provisions are not exhaustive as to the meaning of that expression.
- (2) Information is made public if—
 - (a) it is published in accordance with the rules of a regulated market for the purpose of informing investors and their professional advisers;
 - (b) it is contained in records which by virtue of any enactment are open to inspection by the public;
 - (c) it can be readily acquired by those likely to deal in any securities—
 - (i) to which the information relates, or
 - (ii) of an issuer to which the information relates; or
 - (d) it is derived from information which has been made public.
- (3) Information may be treated as made public even though—
 - (a) it can be acquired only by persons exercising diligence or expertise;
 - (b) it is communicated to a section of the public and not to the public at large;
 - (c) it can be acquired only by observation;
 - (d) it is communicated only on payment of a fee; or
 - (e) it is published only outside the United Kingdom.

59 “Professional intermediary”

- (1) For the purposes of this Part, a “professional intermediary” is a person—
 - (a) who carries on a business consisting of an activity mentioned in subsection (2) and who holds himself out to the public or any section of the public (including a section of the public constituted by persons such as himself) as willing to engage in any such business; or
 - (b) who is employed by a person falling within paragraph (a) to carry out any such activity.
- (2) The activities referred to in subsection (1) are—
 - (a) acquiring or disposing of securities (whether as principal or agent); or
 - (b) acting as an intermediary between persons taking part in any dealing in securities.

- (3) A person is not to be treated as carrying on a business consisting of an activity mentioned in subsection (2)—
 - (a) if the activity in question is merely incidental to some other activity not falling within subsection (2); or
 - (b) merely because he occasionally conducts one of those activities.
- (4) For the purposes of section 52, a person dealing in securities relies on a professional intermediary if and only if a person who is acting as a professional intermediary carries out an activity mentioned in subsection (2) in relation to that dealing.

60 Other interpretation provisions

- (1) For the purposes of this Part, “regulated market” means any market, however operated, which, by an order made by the Treasury, is identified (whether by name or by reference to criteria prescribed by the order) as a regulated market for the purposes of this Part.
- (2) For the purposes of this Part an “issuer”, in relation to any securities, means any company, public sector body or individual by which or by whom the securities have been or are to be issued.
- (3) For the purposes of this Part—
 - (a) “company” means any body (whether or not incorporated and wherever incorporated or constituted) which is not a public sector body; and
 - (b) “public sector body” means—
 - (i) the government of the United Kingdom, of Northern Ireland or of any country or territory outside the United Kingdom;
 - (ii) a local authority in the United Kingdom or elsewhere;
 - (iii) any international organisation the members of which include the United Kingdom or another member state;
 - (iv) the Bank of England; or
 - (v) the central bank of any sovereign State.
- (4) For the purposes of this Part, information shall be treated as relating to an issuer of securities which is a company not only where it is about the company but also where it may affect the company’s business prospects.

Miscellaneous

61 Penalties and prosecution

- (1) An individual guilty of insider dealing shall be liable—
 - (a) on summary conviction, to a fine not exceeding the statutory maximum or imprisonment for a term not exceeding six months or to both; or
 - (b) on conviction on indictment, to a fine or imprisonment for a term not exceeding seven years or to both.
- (2) Proceedings for offences under this Part shall not be instituted in England and Wales except by or with the consent of—
 - (a) the Secretary of State; or
 - (b) the Director of Public Prosecutions.

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

- (3) In relation to proceedings in Northern Ireland for offences under this Part, subsection (2) shall have effect as if the reference to the Director of Public Prosecutions were a reference to the Director of Public Prosecutions for Northern Ireland.

62 Territorial scope of offence of insider dealing

- (1) An individual is not guilty of an offence falling within subsection (1) of section 52 unless—
- (a) he was within the United Kingdom at the time when he is alleged to have done any act constituting or forming part of the alleged dealing;
 - (b) the regulated market on which the dealing is alleged to have occurred is one which, by an order made by the Treasury, is identified (whether by name or by reference to criteria prescribed by the order) as being, for the purposes of this Part, regulated in the United Kingdom; or
 - (c) the professional intermediary was within the United Kingdom at the time when he is alleged to have done anything by means of which the offence is alleged to have been committed.
- (2) An individual is not guilty of an offence falling within subsection (2) of section 52 unless—
- (a) he was within the United Kingdom at the time when he is alleged to have disclosed the information or encouraged the dealing; or
 - (b) the alleged recipient of the information or encouragement was within the United Kingdom at the time when he is alleged to have received the information or encouragement.

63 Limits on section 52

- (1) Section 52 does not apply to anything done by an individual acting on behalf of a public sector body in pursuit of monetary policies or policies with respect to exchange rates or the management of public debt or foreign exchange reserves.
- (2) No contract shall be void or unenforceable by reason only of section 52.

64 Orders

- (1) Any power under this Part to make an order shall be exercisable by statutory instrument.
- (2) No order shall be made under this Part unless a draft of it has been laid before and approved by a resolution of each House of Parliament.
- (3) An order under this Part—
- (a) may make different provision for different cases; and
 - (b) may contain such incidental, supplemental and transitional provisions as the Treasury consider expedient.

PART VI

MISCELLANEOUS

65 Fixing of fines

- (1) The following section shall be substituted for section 18 of the Criminal Justice Act 1991 (fixing of certain fines by reference to units)—

“18 Fixing of fines

- (1) Before fixing the amount of any fine, a court shall inquire into the financial circumstances of the offender.
- (2) The amount of any fine fixed by a court shall be such as, in the opinion of the court, reflects the seriousness of the offence.
- (3) In fixing the amount of any fine, a court shall take into account the circumstances of the case including, among other things, the financial circumstances of the offender so far as they are known, or appear, to the court.

- (4) Where—

- (a) an offender has been convicted in his absence in pursuance of section 11 or 12 of the Magistrates' Courts Act 1980 (non-appearance of accused),
- (b) an offender—
- (i) has failed to comply with an order under section 20(1) below; or
 - (ii) has otherwise failed to co-operate with the court in its inquiry into his financial circumstances, or
- (c) the parent or guardian of an offender who is a child or young person—
- (i) has failed to comply with an order under section 20(1B) below; or
 - (ii) has otherwise failed to co-operate with the court in its inquiry into his financial circumstances,

and the court considers that it has insufficient information to make a proper determination of the financial circumstances of the offender, it may make such determination as it thinks fit.

- (5) Subsection (3) above applies whether taking into account the financial circumstances of the offender has the effect of increasing or reducing the amount of the fine.”.
- (2) Section 19 of the Act of 1991 (fixing of fines in cases to which the unit fines system did not apply) shall cease to have effect.
- (3) The further amendments made by Schedule 3 shall have effect.
- (4) The amendments made by this section and that Schedule shall apply in relation to offenders convicted (but not sentenced) before the date on which this section comes into force as they apply in relation to offenders convicted after that date.

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

66 Powers of courts to deal with offenders

- (1) In section 1 of the Criminal Justice Act 1991 (restrictions on imposing custodial sentences), the following shall be substituted for subsection (2)(a)—
 - “(a) that the offence, or the combination of the offence and one or more offences associated with it, was so serious that only such a sentence can be justified for the offence; or”.
- (2) In section 2 of the Act of 1991 (length of custodial sentences), in subsections (2)(a) and (3), for the word “other” there shall be substituted “one or more”.
- (3) In section 3 of the Act of 1991 (procedural requirements for custodial sentences), in subsection (3)(a), the words “or (as the case may be) of the offence and the offence or offences associated with it,” shall be inserted after the word “offence”.
- (4) In section 6 of the Act of 1991 (restrictions on imposing community sentences)—
 - (a) in subsection (1), for the words “other offence” there shall be substituted “or more offences”; and
 - (b) in subsection (2)(b), for the word “other” there shall be substituted “one or more”.
- (5) In section 7 of the Act of 1991 (procedural requirements for community sentences), in subsection (1), the words “or (as the case may be) of the offence and the offence or offences associated with it,” shall be inserted after the word “offence”.
- (6) For section 29 of the Act of 1991 (effect of previous convictions) there shall be substituted—

“29 Effect of previous convictions and of offending while on bail

- (1) In considering the seriousness of any offence, the court may take into account any previous convictions of the offender or any failure of his to respond to previous sentences.
- (2) In considering the seriousness of any offence committed while the offender was on bail, the court shall treat the fact that it was committed in those circumstances as an aggravating factor.
- (3) A probation order or conditional discharge order made before 1st October 1992 (which, by virtue of section 2 or 7 of the Powers of Criminal Courts Act 1973, would otherwise not be a sentence for the purposes of this section) is to be treated as a sentence for those purposes.
- (4) A conviction in respect of which a probation order or conditional discharge order was made before that date (which, by virtue of section 13 of that Act, would otherwise not be a conviction for those purposes) is to be treated as a conviction for those purposes.”.
- (7) In subsection (1) of section 12D of the Children and Young Persons Act 1969 (duty of court to state in certain cases that requirement is in place of custodial sentence), in paragraph (ii)(a) for the words “other offence” there shall be substituted “or more offences”.
- (8) In section 38 of the Magistrates' Courts Act 1980 (committal for sentence on summary trial of offence triable either way), in subsection (2)(a), for the word “other” there shall be substituted “one or more”.

- (9) The amendments made by this section shall apply in relation to offenders convicted (but not sentenced) before the date on which this section comes into force as they apply in relation to offenders convicted after that date.

67 Penalty for causing death by dangerous driving or by careless driving

- (1) In Part I of Schedule 2 to the Road Traffic Offenders Act 1988 (prosecution and punishment of offences), in the entries relating to section 1 of the Road Traffic Act 1988 (causing death by dangerous driving) and section 3A of that Act (causing death by careless driving while under influence of drink or drugs), in column 4, for “5 years” there shall be substituted “10 years”.
- (2) In section 53(2) of the Children and Young Persons Act 1933 (punishment of certain serious crimes), the following shall be inserted after the word “law” in paragraph (a)—
- “(aa) a young person is convicted of—
 - (i) an offence under section 1 of the Road Traffic Act 1988 (causing death by dangerous driving); or
 - (ii) an offence under section 3A of that Act (causing death by careless driving while under influence of drink or drugs);”.

68 Appeals in Scotland against lenient disposals, etc

- (1) In section 228(1) of the Criminal Procedure (Scotland) Act 1975 (right of appeal of person convicted on indictment)—
- (a) after paragraph (b) (and before the word “or”) insert—
 - “(bb) against his absolute discharge or admonition;
 - (bc) against any probation order or any community service order under the Community Service by Offenders (Scotland) Act 1978;
 - (bd) against any order deferring sentence;”;
 - (b) in paragraph (c), after “sentence” add “or disposal or order”.
- (2) In section 228A of that Act (appeal by Lord Advocate against sentence in solemn proceedings etc.)—
- (a) after “conviction” insert “or against any probation order or any community service order under the Community Service by Offenders (Scotland) Act 1978 or against the person’s absolute discharge or admonition or against any order deferring sentence;”;
 - (b) for paragraph (a) substitute—
 - “(a) if it appears to the Lord Advocate that, as the case may be—
 - (i) the sentence is unduly lenient;
 - (ii) the making of the probation order or community service order is unduly lenient or its terms are unduly lenient;
 - (iii) to dismiss with an admonition or to discharge absolutely is unduly lenient; or
 - (iv) the deferment of sentence is inappropriate or on unduly lenient conditions;”.
- (3) In section 442(1) of that Act (rights of appeal in summary proceedings)—

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- (a) in paragraph (a)—
 - (i) after “person convicted” insert “, or found to have committed an offence.”;
 - (ii) in sub-paragraph (i), after “conviction” insert “or finding”;
 - (iii) after sub-paragraph (ii) (and before the word “or”) insert—
 - “(ia) against his absolute discharge or admonition or any probation order or any community service order under the Community Service by Offenders (Scotland) Act 1978 or any order deferring sentence.”; and
 - (iv) in sub-paragraph (iii), after “sentence” add “or disposal or order”; and
- (b) in paragraph (c)—
 - (i) after “conviction” insert “or, whether the person has been convicted or not, against any probation order or any community service order under the Community Service by Offenders (Scotland) Act 1978 or against the person’s absolute discharge or admonition or against any order deferring sentence.”;
 - (ii) for “the sentence is unduly lenient” substitute—
 - “, as the case may be—
 - (i) the sentence is unduly lenient;
 - (ii) the making of the probation order or community service order is unduly lenient or its terms are unduly lenient;
 - (iii) to dismiss with an admonition or to discharge absolutely is unduly lenient; or
 - (iv) the deferment of sentence is inappropriate or on unduly lenient conditions.”.

69 Supervised release of certain young offenders in Scotland

In section 212A of the Criminal Procedure (Scotland) Act 1975 (which makes provision for the supervised release of short-term prisoners in Scotland) at the end add—

“(7) The foregoing provisions of this section apply to a person sentenced under section 207 or 415 of this Act as the provisions apply to a person sentenced to a period of imprisonment.”.

70 Penalties under implementation regulations

- (1) Paragraphs 8(3), 9(2) and 10(3) of Schedule 8 to the Banking Coordination (Second Council Directive) Regulations 1992 shall cease to have effect.
- (2) Regulations under section 2(2) of the European Communities Act 1972 for the purpose of implementing—
 - (a) Article 15 of the Second Banking Co-ordination Directive (which requires the United Kingdom to make provision for the exercise in the United Kingdom by supervisory authorities of other member States of information and inspection powers in relation to institutions authorised by them), or

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- (b) Articles 3, 6 and 7 of the Supervision of Credit Institutions Directive (which make similar provision in relation to the consolidated supervision of credit institutions),

may, notwithstanding paragraph 1(1)(d) of Schedule 2 to that Act, create offences punishable in the same way as offences under sections 39, 40 and 41 of the Banking Act 1987.

- (3) In this section—

“the Second Banking Co-ordination Directive” means the Community Council Directive No. [89/646/EEC](#) on the co-ordination of laws, regulations and administrative provisions relating to the taking up and pursuit of the business of credit institutions and amending Directive [77/780/EEC](#); and

“the Supervision of Credit Institutions Directive” means the Community Council Directive No. [92/30/EEC](#) on the supervision of credit institutions on a consolidated basis.

- (4) Subsection (1) shall not affect the punishment for an offence committed before that subsection comes into force.

71 Offences in connection with taxation etc. in the EC

- (1) A person who, in the United Kingdom, assists in or induces any conduct outside the United Kingdom which involves the commission of a serious offence against the law of another member State is guilty of an offence under this section if—

- (a) the offence involved is one consisting in or including the contravention of provisions of the law of that member State which relate to any of the matters specified in subsection (2);
- (b) the offence involved is one consisting in or including the contravention of other provisions of that law so far as they have effect in relation to any of those matters; or
- (c) the conduct is such as to be calculated to have an effect in that member State in relation to any of those matters.

- (2) The matters mentioned in subsection (1) are—

- (a) the determination, discharge or enforcement of any liability for a Community duty or tax;
- (b) the operation of arrangements under which reliefs or exemptions from any such duty or tax are provided or sums in respect of any such duty or tax are repaid or refunded;
- (c) the making of payments in pursuance of Community arrangements made in connection with the regulation of the market for agricultural products and the enforcement of the conditions of any such payments;
- (d) the movement into or out of any member State of anything in relation to the movement of which any Community instrument imposes, or requires the imposition of, any prohibition or restriction; and
- (e) such other matters in relation to which provision is made by any Community instrument as the Secretary of State may by order specify.

- (3) For the purposes of this section—

- (a) an offence against the law of a member State is a serious offence if provision is in force in that member State authorising the sentencing, in some or all cases,

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- of a person convicted of that offence to imprisonment for a maximum term of twelve months or more; and
- (b) the question whether any conduct involves the commission of such an offence shall be determined according to the law in force in the member State in question at the time of the assistance or inducement.
- (4) In any proceedings against any person for an offence under this section it shall be a defence for that person to show—
- (a) that the conduct in question would not have involved the commission of an offence against the law of the member State in question but for circumstances of which he had no knowledge; and
- (b) that he did not suspect or anticipate the existence of those circumstances and did not have reasonable grounds for doing so.
- (5) For the purposes of any proceedings for an offence under this section, a certificate purporting to be issued by or on behalf of the government of another member State which contains a statement, in relation to such times as may be specified in the certificate—
- (a) that a specified offence existed against the law of that member State,
- (b) that an offence against the law of that member State was a serious offence within the meaning of this section,
- (c) that such an offence consists in or includes the contravention of particular provisions of the law of that member State,
- (d) that specified provisions of the law of that member State relate to, or are capable of having an effect in relation to, particular matters,
- (e) that specified conduct involved the commission of a particular offence against the law of that member State, or
- (f) that a particular effect in that member State in relation to any matter would result from specified conduct,
- shall, in the case of a statement falling within paragraphs (a) to (d), be conclusive of the matters stated and, in the other cases, be evidence, and in Scotland sufficient evidence, of the matters stated.
- (6) A person guilty of an offence under this section shall be liable—
- (a) on summary conviction, to a penalty of the statutory maximum or to imprisonment for a term not exceeding six months or to both; or
- (b) on conviction on indictment, to a penalty of any amount or to imprisonment for a term not exceeding seven years or to both.
- (7) Sections 145 to 152 and 154 of the Customs and Excise Management Act 1979 (general provisions as to legal proceedings) shall apply as if this section were contained in that Act; and an offence under this section shall be treated for all purposes as an offence for which a person is liable to be arrested under the customs and excise Acts.
- (8) The power of the Secretary of State to make an order under subsection (2)(e) shall be exercisable by statutory instrument; and no such order shall be made unless a draft of the order has been laid before, and approved by a resolution of, each House of Parliament.
- (9) In this section—
- “another member State” means a member State other than the United Kingdom;

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“Community duty or tax” means any of the following, that is to say—

- (a) any Community customs duty;
- (b) an agricultural levy of the Economic Community;
- (c) value added tax under the law of another member State;
- (d) any duty or tax on tobacco products, alcoholic liquors or hydrocarbon oils which, in another member State, corresponds to any excise duty;
- (e) any duty, tax or other charge not falling within paragraphs (a) to (d) of this definition which is imposed by or in pursuance of any Community instrument on the movement of goods into or out of any member State;

“conduct” includes acts, omissions and statements;

“contravention” includes a failure to comply; and

“the customs and excise Acts” has the same meaning as in the Customs and Excise Management Act 1979.

- (10) References in this section, in relation to a Community instrument, to the movement of anything into or out of a member State include references to the movement of anything between member States and to the doing of anything which falls to be treated for the purposes of that instrument as involving the entry into, or departure from, the territory of the Community of any goods (within the meaning of that Act of 1979).

72 Backing of warrants: safeguards

- (1) The Backing of Warrants (Republic of Ireland) Act 1965 shall be amended as follows.
- (2) In section 2 (proceedings before magistrates' courts), the following subsection shall be added at the end—

“(5) The Secretary of State may by order provide that an order may not be made under subsection (1) of this section if it is shown to the satisfaction of the court that no provision is made in the law of the Republic, in respect of a person delivered up to the Republic by the United Kingdom, corresponding to the provision made by or under sections 6A and 6B of this Act in respect of a person delivered up to the United Kingdom by the Republic.”

- (3) The following sections shall be inserted after section 6—

“6A Persons delivered up by the Republic: the rule of speciality

- (1) The Secretary of State may by order provide that, except in such cases as may be specified in the order, no person delivered up to the United Kingdom under corresponding arrangements in force in the Republic (“the defendant”) may be dealt with for, or in respect of, any offence committed before his surrender, other than the offence for which he was delivered up.
- (2) In subsection (1) of this section, “corresponding” means corresponding to provisions contained in this Act.
- (3) Any order under this section may, in particular, specify the following cases for the purposes of subsection (1) of this section—
 - (a) where consent is given by a Minister of the Republic;
 - (b) where the defendant, having had an opportunity to leave the United Kingdom, has not done so within 45 days of his final discharge in respect of the offence for which he was delivered up;

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- (c) where the defendant has, after being returned to the United Kingdom, left the United Kingdom and subsequently returned to it;
- (d) where the description of the offence charged in the United Kingdom is altered in the course of proceedings but the offence under its new description is shown by its constituent elements to be an offence for which the defendant could have been delivered up under the corresponding legislation.

6B Extradition to third country

- (1) The Secretary of State may by order provide that, except in such cases as may be specified in the order, no person delivered up to the United Kingdom under corresponding arrangements in force in the Republic (“the defendant”) may be delivered up to a territory other than the Republic to be dealt with for, or in respect of, any offence committed before his surrender to the United Kingdom.
- (2) In subsection (1) of this section “corresponding” means corresponding to provisions contained in this Act.
- (3) Any order under this section may, in particular, specify the following cases for the purposes of subsection (1) of this section—
 - (a) where consent is given by a Minister of the Republic;
 - (b) where the defendant, having had an opportunity to leave the United Kingdom, has not done so within 45 days of his final discharge in respect of the offence for which he was delivered up;
 - (c) where the defendant has, after being returned to the United Kingdom, left the United Kingdom and subsequently returned to it.

6C Provisions supplementing sections 2(5), 6A and 6B

- (1) The power to make an order under section 2(5), 6A or 6B of this Act shall be exercisable by statutory instrument.
- (2) Any such order shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (3) Any such order may—
 - (a) make different provision for different cases; and
 - (b) make such incidental or supplemental provision as the Secretary of State considers appropriate.
- (4) Any incidental or supplemental provision may, in particular, include—
 - (a) in the case of an order under section 2(5) of this Act, provision as to the circumstances in which, and the presumptions which may be applied in considering whether, provision made by the law of the Republic is to be treated as corresponding to provision made by or under section 6A or 6B of this Act;
 - (b) in the case of an order under section 6A or 6B of this Act—
 - (i) provision as to the notification of any consent;
 - (ii) provision as to the drawing up of any document to support a request for consent.

- (5) Where any consent is notified in accordance with the provisions of an order under section 6A or 6B of this Act—
- (a) judicial notice shall be taken of that consent; and
 - (b) a certificate of the Secretary of State to the effect that that consent was given in accordance with those provisions shall be evidence without further proof (or in Scotland sufficient evidence).”.

73 Power of Secretary of State to make grants in relation to combating drug misuse

- (1) The Secretary of State may, with the consent of the Treasury, pay such grants, to such persons, as he considers appropriate in connection with measures intended—
- (a) to combat or deal with drug trafficking or the misuse of drugs; or
 - (b) to deal with consequences of the misuse of drugs.
- (2) Any such grant may be made subject to such conditions as the Secretary of State may, with the agreement of the Treasury, see fit to impose.
- (3) Payments under this section shall be made out of money provided by Parliament.

74 Persons not eligible for early release

- (1) Part II of Schedule 1 to the Criminal Justice Act 1982 (persons convicted of offences under certain enactments not eligible for early release) shall be amended as follows.
- (2) In the entry relating to the Drug Trafficking Offences Act 1986, the following paragraph shall be inserted before paragraph 26—
- “25A Section 23A (acquisition, possession or use of proceeds of drug trafficking).”.
- (3) In the entry relating to the Criminal Justice Act 1988, the following paragraphs shall be inserted before paragraph 30—
- “29A Section 93A (assisting another to retain the benefit of criminal conduct).
- 29B Section 93B (acquisition, possession or use of proceeds of criminal conduct).
- 29C Section 93C (concealing or transferring proceeds of criminal conduct).”.

75 Compassionate release of certain children and other persons in Scotland

- (1) In section 7(5) of the Prisoners and Criminal Proceedings (Scotland) Act 1993 (which applies provisions of that Act to certain children), for “Sections”, where it first occurs, substitute “Without prejudice to section 6(1)(b)(ii) of this Act, sections 3,”.
- (2) In paragraph 2(2) of Schedule 6 to that Act (which makes transitional provision as respects release on licence on compassionate grounds) after “Act” insert “, and sections 12 and 17 of this Act in so far as relating to a licence granted, or person released, by virtue of this sub-paragraph,”.

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

76 Life prisoners transferred to Scotland

- (1) The Prisoners and Criminal Proceedings (Scotland) Act 1993 shall be amended as follows.
- (2) In section 10 (life prisoners transferred to Scotland)—
 - (a) in subsection (1), the words “(whether before or after the commencement of this section)” shall cease to have effect;
 - (b) in subsection (2), after “life prisoner” insert “, except such case as is mentioned in paragraph 7 of Schedule 6 to this Act,”; and
 - (c) in subsection (4)—
 - (i) in paragraph (a), after “has” insert “(whether before or after the commencement of this section)”;
 - (ii) in paragraph (b), after “Scotland” insert “(whether before or after that commencement)”.
- (3) In Schedule 6 (transitional provisions and savings)—
 - (a) in paragraph 1, in the definition of “existing life prisoner”, after “person” insert “(other than a transferred life prisoner)”;
 - (b) in paragraph 2(1), for “paragraph 7 below” substitute “to section 10(4) of this Act”; and
 - (c) for paragraph 7 substitute—

“7 In the case of a transferred life prisoner who is a discretionary life prisoner for the purposes of Part II of the Criminal Justice Act 1991 by virtue of section 48 of or paragraph 9 of Schedule 12 to that Act, subsection (3) of section 10 of this Act applies and the certificate mentioned in paragraph (b) of that subsection is the certificate under the said section 48 or paragraph 9.”.

77 Power to extend certain offences to Crown servants and to exempt regulators etc

Schedule 4, which confers power on the Secretary of State to make regulations extending certain provisions to Crown servants and to make regulations exempting persons from certain offences, shall have effect.

PART VII

SUPPLEMENTARY

78 Commencement etc

- (1) Sections 70 and 71 shall come into force at the end of the period of two months beginning with the day on which this Act is passed.
- (2) Sections 68, 69, 75, 76 and 79(1) to (12), paragraph 2 of Schedule 5 and, in so far as relating to the Criminal Procedure (Scotland) Act 1975 and the Prisoners and Criminal Proceedings (Scotland) Act 1993, Schedule 6, shall come into force on the passing of this Act.
- (3) The other provisions of this Act shall come into force on such day as may be appointed by the Secretary of State by an order made by statutory instrument.

- (4) Different days may be appointed under subsection (3) for different provisions and different purposes.
- (5) Nothing in any provision in Part I applies to any act, omission or other event occurring before the coming into force of that provision.
- (6) Where a person is charged with a relevant offence which was committed before the coming into force of a provision of Part II, Part III, or (as the case may be) Part IV, that provision shall not affect the question whether or not that person is guilty of the offence or the powers of the court in the event of his being convicted of that offence.
- (7) Section 4A(3) and (4) of the Drug Trafficking Offences Act 1986 (inserted by section 14) shall not apply to any proceedings—
 - (a) for an offence committed before the commencement of section 14; or
 - (b) for one or more offences, any one of which was so committed.
- (8) Section 52B(3) and (4) of the Northern Ireland (Emergency Provisions) Act 1991 (inserted by section 42) shall not apply to any proceedings—
 - (a) for an offence committed before the commencement of section 42; or
 - (b) for one or more offences, any one of which was so committed.
- (9) In subsection (6) “relevant offence” means an offence in relation to which provision is made by Part II, Part III or Part IV, other than an offence created by that Part.
- (10) An order under subsection (3) may contain such transitional provisions and savings as the Secretary of State considers appropriate.
- (11) For the purposes of section 27 of the Prevention of Terrorism (Temporary Provisions) Act 1989 (temporary provisions), any amendment made in that Act by a provision of Part IV of, or paragraph 15 of Schedule 5 to, this Act shall be treated, as from the time when that provision comes into force, as having been continued in force by the order under subsection (6) of that section which has effect at that time.
- (12) For the purposes of section 69 of the Northern Ireland (Emergency Provisions) Act 1991 (temporary provisions), any amendment made in that Act by a provision of Part IV of, or paragraph 17(1), (2), (5), (6) and (7) of Schedule 5 to, this Act (other than sections 43 and 45) shall be treated, as from the time when that provision comes into force, as having been continued in force by the order under section 69(3) of the Act of 1991 which has effect at that time.

79 Short title, extent etc

- (1) This Act may be cited as the Criminal Justice Act 1993.
- (2) The following provisions of this Act extend to the United Kingdom—

Part V;
sections 21(1) and (3)(h), 23, 24, 45 to 51, 70 to 72, 77, 78 and this section;
Schedules 1 and 2; and
paragraphs 4, 5 and 6 of Schedule 4.
- (3) The following provisions of this Act extend only to Great Britain—

sections 13(9) to (11), 21(3)(e), 24(2), (3) and (7) to (10), 29 to 32, 34(1), 35, 67(1) and 73; and
paragraph 3 of Schedule 4.

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- (4) The following provisions of this Act extend only to Scotland—
sections 17, 19, 20(2), 21(3)(c) and (d), 22(2), 24(12) to (15), 26(2), 33, 68, 69,
75 and 76; and
paragraph 2 of Schedule 4.
- (5) Sections 21(3)(f) and 34(2) extend to Scotland and Northern Ireland only.
- (6) Sections 36 to 44 extend only to Northern Ireland.
- (7) Section 72 also extends to the Channel Islands and the Isle of Man.
- (8) The provisions of Schedules 5 and 6 have the same extent as the provisions on which they operate.
- (9) Otherwise, this Act extends to England and Wales only.
- (10) Her Majesty may by Order in Council direct that such provisions of this Act as may be specified in the Order shall extend, with such exceptions and modifications as appear to Her Majesty to be appropriate, to any colony.
- (11) Subject to any Order made after the passing of this Act by virtue of subsection (1)(a) of section 3 of the Northern Ireland Constitution Act 1973, the regulation of insider dealing shall not be a transferred matter for the purposes of that Act but shall for the purposes of subsection (2) of that section be treated as specified in Schedule 3 to that Act.
- (12) An Order in Council under paragraph 1(1)(b) of Schedule 1 to the Northern Ireland Act 1974 (legislation for Northern Ireland in the interim period) which contains a statement that it is made only for purposes corresponding to purposes of any of sections 16, 18 and 29 to 32—
 - (a) shall not be subject to paragraph 1(4) and (5) of that Schedule (affirmative resolution of both Houses of Parliament); but
 - (b) shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (13) Schedule 5 (consequential amendments) shall have effect.
- (14) The repeals and revocations set out in Schedule 6 (which include the repeal of two enactments which are spent) shall have effect.