



# Criminal Justice Act 1993

## 1993 CHAPTER 36

### PART II

#### DRUG TRAFFICKING OFFENCES

##### *Death or absence of defendant*

#### 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

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- (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,
  - (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.

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- (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.
- (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.”.