



Criminal Justice (International Co-operation) Act 1990

1990 CHAPTER 5

PART II

THE VIENNA CONVENTION

Substances useful for manufacture of controlled drugs

12 Manufacture and supply of scheduled substances

- (1) It is an offence for a person—
 - (a) to manufacture a scheduled substance; or
 - (b) to supply such a substance to another person,knowing or suspecting that the substance is to be used in or for the unlawful production of a controlled drug.
- (2) A person guilty of an offence under subsection (1) above is liable—
 - (a) on summary conviction, to imprisonment for a term not exceeding six months or a fine not exceeding the statutory maximum or both;
 - (b) on conviction on indictment, to imprisonment for a term not exceeding fourteen years or a fine or both.
- (3) In this section “a controlled drug” has the same meaning as in the Misuse of Drugs Act 1971 and “unlawful production of a controlled drug” means the production of such a drug which is unlawful by virtue of section 4(1)(a) of that Act.
- (4) In this section and elsewhere in this Part of this Act “a scheduled substance” means a substance for the time being specified in Schedule 2 to this Act.
- (5) Her Majesty may by Order in Council amend that Schedule (whether by addition, deletion or transfer from one Table to the other) but—
 - (a) no such Order shall add any substance to the Schedule unless—

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- (i) it appears to Her Majesty to be frequently used in or for the unlawful production of a controlled drug; or
 - (ii) it has been added to the Annex to the Vienna Convention under Article 12 of that Convention; and
- (b) no such Order shall be made unless a draft of it has been laid before and approved by a resolution of each House of Parliament.

13 Regulations about scheduled substances

- (1) The Secretary of State may by regulations make provision—
- (a) imposing requirements as to the documentation of transactions involving scheduled substances;
 - (b) requiring the keeping of records and the furnishing of information with respect to such substances;
 - (c) for the inspection of records kept pursuant to the regulations;
 - (d) for the labelling of consignments of scheduled substances.
- (2) Regulations made by virtue of subsection (1)(b) may, in particular, require—
- (a) the notification of the proposed exportation of substances specified in Table I in Schedule 2 to this Act to such countries as may be specified in the regulations; and
 - (b) the production, in such circumstances as may be so specified, of evidence that the required notification has been given;
- and for the purposes of section 68 of the Customs and Excise Management Act 1979 (offences relating to exportation of prohibited or restricted goods) any such substance shall be deemed to be exported contrary to a restriction for the time being in force with respect to it under this Act if it is exported without the requisite notification having been given.
- (3) Regulations under this section may make different provision in relation to the substances specified in Table I and Table II in Schedule 2 to this Act respectively and in relation to different cases or circumstances.
- (4) The power to make regulations under this section shall be exercisable by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.
- (5) Any person who fails to comply with any requirement imposed by the regulations or, in purported compliance with any such requirement, furnishes information which he knows to be false in a material particular or recklessly furnishes information which is false in a material particular is guilty of an offence and liable—
- (a) on summary conviction, to imprisonment for a term not exceeding six months or a fine not exceeding the statutory maximum or both;
 - (b) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine or both.
- (6) No information obtained pursuant to the regulations shall be disclosed except for the purposes of criminal proceedings or of proceedings under the provisions of the Drug Trafficking Offences Act 1986 or the Criminal Justice (Scotland) Act 1987 relating to the confiscation of the proceeds of drug trafficking or corresponding provisions in force in Northern Ireland.

Proceeds of drug trafficking

14 Concealing or transferring proceeds of drug trafficking

- (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 drug trafficking; or
 - (b) converts or transfers that property or removes it from the jurisdiction, for the purpose of avoiding prosecution for a drug trafficking offence 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 drug trafficking, 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 a drug trafficking offence or the making or enforcement of a confiscation order.
- (3) 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 drug trafficking, he acquires that property for no, or for inadequate, consideration.
- (4) In subsections (1)(a) and (2)(a) 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.
- (5) For the purposes of subsection (3) above consideration given for any property is inadequate if its value is significantly less than the value of that property, and there shall not be treated as consideration the provision for any person of services or goods which are of assistance to him in drug trafficking.
- (6) 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 both;
 - (b) on conviction on indictment, to imprisonment for a term not exceeding fourteen years or a fine or both.

15 Interest on sums unpaid under confiscation orders

- (1) If any sum required to be paid by a person under a confiscation order is not paid when it is required to be paid (whether forthwith on the making of the order or at a time specified under section 31(1) of the Powers of Criminal Courts Act 1973 or under section 396(1) of the Criminal Procedure (Scotland) Act 1975) that person shall be liable to pay interest on that sum for the period for which it remains unpaid and the amount of the interest shall for the purposes of enforcement be treated as part of the amount to be recovered from him under the confiscation order.
- (2) The Crown Court or, in Scotland, the sheriff may, on the application of the prosecutor, increase the term of imprisonment or detention fixed in respect of the confiscation order under subsection (2) of section 31 of the said Act of 1973 (imprisonment in default of payment) or under subsection (2) of section 396 of the said Act of 1975

(which makes similar provision for Scotland) if the effect of subsection (1) above is to increase the maximum period applicable in relation to the order under subsection (3A) of the said section 31 or under section 407(1A) of the said Act of 1975.

- (3) The rate of interest under subsection (1) above shall be that for the time being applying to a civil judgment debt under section 17 of the Judgments Act 1838 and in Scotland shall be the rate applicable to an award of damages in the Court of Session.

16 Increase in realisable property

- (1) This section has effect where by virtue of section 4(3) of the Drug Trafficking Offences Act 1986 (insufficient realisable property) the amount which a person is ordered to pay by a confiscation order is less than the amount assessed to be the value of his proceeds of drug trafficking.
- (2) If, on an application made in accordance with subsection (3) below, the High Court is satisfied that the amount that might be realised in the case of the person in question is greater than the amount taken into account in making the confiscation order (whether it was greater than was thought when the order was made or has subsequently increased) the court shall issue a certificate to that effect, giving the court's reasons.
- (3) An application under subsection (2) above may be made either by the prosecutor or by a receiver appointed under the said Act of 1986 in relation to the realisable property of the person in question.
- (4) Where a certificate has been issued under subsection (2) above the prosecutor may apply to the Crown Court for an increase in the amount to be recovered under the confiscation order; and on that application the court may—
 - (a) substitute for that amount such amount (not exceeding the amount assessed as the value referred to in subsection (1) above) as appears to the court to be appropriate having regard to the amount now shown to be realisable; and
 - (b) increase the term of imprisonment or detention fixed in respect of the confiscation order under subsection (2) of section 31 of the Powers of Criminal Courts Act 1973 (imprisonment in default of payment) if the effect of the substitution is to increase the maximum period applicable in relation to the order under subsection (3A) of that section.

17 Increase in realisable property: Scotland

- (1) This section has effect where by virtue of section 1(1)(b) of the Criminal Justice (Scotland) Act 1987 (insufficient realisable property) the amount which a person is ordered to pay by a confiscation order is less than the amount assessed to be the value of his proceeds of drug trafficking.
- (2) If, on an application made in accordance with subsection (3) below, the Court of Session is satisfied that the amount that might be realised in the case of the person in question is greater than the amount taken into account in making the confiscation order (whether it was greater than was thought when the order was made or has subsequently increased) the court shall issue a certificate to that effect, giving the court's reasons.
- (3) An application under subsection (2) above may be made either by the prosecutor or by an administrator appointed under section 13(1) of the said Act of 1987 in relation to the realisable property of the person in question.

- (4) Where a certificate has been issued under subsection (2) above the prosecutor may apply to the High Court of Justiciary for an increase in the amount to be recovered under the confiscation order; and on that application the court may—
- (a) substitute for that amount such amount (not exceeding the amount assessed as the value referred to in subsection (1) above) as appears to the court to be appropriate having regard to the amount now shown to be realisable; and
 - (b) increase the term of imprisonment or detention fixed in respect of the confiscation order under subsection (2) of section 396 of the Criminal Procedure (Scotland) Act 1975 (imprisonment in default of payment) if the effect of the substitution is to increase the maximum period applicable in relation to the order under subsection (1A) of section 407 of that Act.

Offences at sea

18 Offences on British ships

Anything which would constitute a drug trafficking offence if done on land in any part of the United Kingdom shall constitute that offence if done on a British ship.

19 Ships used for illicit traffic

- (1) This section applies to a British ship, a ship registered in a state other than the United Kingdom which is a party to the Vienna Convention (a “Convention state”) and a ship not registered in any country or territory.
- (2) A person is guilty of an offence if on a ship to which this section applies, wherever it may be, he—
- (a) has a controlled drug in his possession; or
 - (b) is in any way knowingly concerned in the carrying or concealing of a controlled drug on the ship,
- knowing or having reasonable grounds to suspect that the drug is intended to be imported or has been exported contrary to section 3(1) of the Misuse of Drugs Act 1971 or the law of any state other than the United Kingdom.
- (3) A certificate purporting to be issued by or on behalf of the government of any state to the effect that the importation or export of a controlled drug is prohibited by the law of that state shall be evidence, and in Scotland sufficient evidence, of the matters stated.
- (4) A person guilty of an offence under this section is liable—
- (a) in a case where the controlled drug is a Class A drug—
 - (i) on summary conviction, to imprisonment for a term not exceeding six months or a fine not exceeding the statutory maximum or both;
 - (ii) on conviction on indictment, to imprisonment for life or a fine or both;
 - (b) in a case where the controlled drug is a Class B drug—
 - (i) on summary conviction, to imprisonment for a term not exceeding six months or a fine not exceeding the statutory maximum or both;
 - (ii) on conviction on indictment, to imprisonment for a term not exceeding fourteen years or a fine or both;
 - (c) in a case where the controlled drug is a Class C drug—

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- (i) on summary conviction, to imprisonment for a term not exceeding three months or a fine not exceeding the statutory maximum or both;
- (ii) on conviction on indictment, to imprisonment for a term not exceeding five years or a fine or both.

(5) In this section “a controlled drug” and the references to controlled drugs of a specified Class have the same meaning as in the said Act of 1971; and an offence under this section shall be included in the offences to which section 28 of that Act (defences) applies.

20 Enforcement powers

- (1) The powers conferred on an enforcement officer by Schedule 3 to this Act shall be exercisable in relation to any ship to which section 18 or 19 above applies for the purpose of detecting and the taking of appropriate action in respect of the offences mentioned in those sections.
- (2) Those powers shall not be exercised outside the landward limits of the territorial sea of the United Kingdom in relation to a ship registered in a Convention state except with the authority of the Secretary of State; and he shall not give his authority unless that state has in relation to that ship—
 - (a) requested the assistance of the United Kingdom for the purpose mentioned in subsection (1) above; or
 - (b) authorised the United Kingdom to act for that purpose.
- (3) In giving his authority pursuant to a request or authorisation from a Convention state the Secretary of State shall impose such conditions or limitations on the exercise of the powers as may be necessary to give effect to any conditions or limitations imposed by that state.
- (4) The Secretary of State may, either of his own motion or in response to a request from a Convention state, authorise a Convention state to exercise, in relation to a British ship, powers corresponding to those conferred on enforcement officers by Schedule 3 to this Act but subject to such conditions or limitations, if any, as he may impose.
- (5) Subsection (4) above is without prejudice to any agreement made, or which may be made, on behalf of the United Kingdom whereby the United Kingdom undertakes not to object to the exercise by any other state in relation to a British ship of powers corresponding to those conferred by that Schedule.
- (6) The powers conferred by that Schedule shall not be exercised in the territorial sea of any state other than the United Kingdom without the authority of the Secretary of State and he shall not give his authority unless that state has consented to the exercise of those powers.

21 Jurisdiction and prosecutions

- (1) Proceedings under this Part of this Act or Schedule 3 in respect of an offence on a ship may be taken, and the offence may for all incidental purposes be treated as having been committed, in any place in the United Kingdom.
- (2) No such proceedings shall be instituted—
 - (a) in England or Wales except by or with the consent of the Director of Public Prosecutions or the Commissioners of Customs and Excise;

- (b) in Northern Ireland except by or with the consent of the Director of Public Prosecutions for Northern Ireland or those Commissioners.
- (3) Without prejudice to subsection (2) above no proceedings for an offence under section 19 above alleged to have been committed outside the landward limits of the territorial sea of the United Kingdom on a ship registered in a Convention state shall be instituted except in pursuance of the exercise with the authority of the Secretary of State of the powers conferred by Schedule 3 to this Act; and section 3 of the Territorial Waters Jurisdiction Act 1878 (consent of Secretary of State for certain prosecutions) shall not apply to those proceedings.

Supplementary

22 Extradition

- (1) The offences to which an Order in Council under section 2 of the Extradition Act 1870 can apply shall include drug trafficking offences.
- (2) In paragraph 15 of Schedule 1 to the Extradition Act 1989 (extradition offences treated as within jurisdiction of foreign states) after paragraph (i) there shall be inserted—
 - “(j) a drug trafficking offence within the meaning of the Drug Trafficking Offences Act 1986; or
 - (k) an offence to which section 1 of the Criminal Justice (Scotland) Act 1987 relates;”.
- (3) At the end of subsection (2) of section 22 of the said Act of 1989 (extradition offences under Conventions) there shall be inserted—
 - “(h) the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances which was signed in Vienna on 20th December 1988 (“the Vienna Convention”).”

and at the end of subsection (4) of that section there shall be inserted “and

- (h) in relation to the Vienna Convention—
 - (i) any drug trafficking offence within the meaning of the Drug Trafficking Offences Act 1986; and
 - (ii) an offence to which section 1 of the Criminal Justice (Scotland) Act 1987 relates;”.

23 Application of ancillary provisions of Misuse of Drugs Act 1971

- (1) The Misuse of Drugs Act 1971 shall be amended as follows.
- (2) In section 12(1) (prohibition direction on practitioner etc. in consequence of conviction) after paragraph (b) there shall be inserted—
 - “(c) of an offence under section 12 or 13 of the Criminal Justice (International Co-operation) Act 1990;”.
- (3) In section 21 (offences by bodies corporate) after the words “an offence under this Act” there shall be inserted the words “or Part II of the Criminal Justice (International Co-operation) Act 1990”.
- (4) In section 23 (power to search and obtain evidence) after subsection (3) there shall be inserted—

“(3A) The powers conferred by subsection (1) above shall be exercisable also for the purposes of the execution of Part II of the Criminal Justice (International Co-operation) Act 1990 and subsection (3) above (excluding paragraph (a)) shall apply also to offences under section 12 or 13 of that Act, taking references in those provisions to controlled drugs as references to scheduled substances within the meaning of that Part.”

24 Interpretation of Part II

(1) In this Part of this Act—

“British ship” means a ship registered in the United Kingdom or a colony;

“Convention state” has the meaning given in section 19(1) above;

“scheduled substance” has the meaning given in section 12(4) above;

“ship” includes any vessel used in navigation;

“the territorial sea of the United Kingdom” includes the territorial sea adjacent to any of the Channel Islands, the Isle of Man or any colony;

“the Vienna Convention” means the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances which was signed in Vienna on 20th December 1988.

(2) Any expression used in this Part of this Act which is also used in the Drug Trafficking Offences Act 1986 has the same meaning as in that Act.

(3) In relation to Scotland, any expression used in this Part of this Act which is also used in the Criminal Justice (Scotland) Act 1987 has the same meaning as in that Act and “drug trafficking offence” means an offence to which section 1 of that Act relates.

(4) If in any proceedings under this Part of this Act any question arises whether any country or territory is a state or is a party to the Vienna Convention, a certificate issued by or under the authority of the Secretary of State shall be conclusive evidence on that question.