



Criminal Justice (Scotland) Act 1987

1987 CHAPTER 41

PART I

CONFISCATION OF PROCEEDS OF DRUG TRAFFICKING ETC.

Offences

42 Offence of prejudicing investigation.

- (1) A person who, knowing or suspecting that an investigation into drug trafficking is taking place, does anything which is likely to prejudice the investigation is guilty of an offence.
- (2) In proceedings against a person for an offence under subsection (1) above, it is a defence to prove—
 - (a) that he did not know or suspect, or have reasonable grounds to suspect, that by acting as he did he was likely to prejudice the investigation, or
 - (b) that he had lawful authority or reasonable excuse for acting as he did.
- (3) A person guilty of an offence under subsection (1) above shall be liable—
 - (a) on conviction on indictment, to imprisonment for a term not exceeding five years or to a fine or to both, and
 - (b) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum or to both.

43 Offence of assisting another to retain the proceeds of drug trafficking.

- (1) Subject to subsection (3)(b) below, a person shall be guilty of an offence if, knowing or suspecting that another person (in this section referred to as “A”) is a person who carries on, or has carried on, or has derived financial or other rewards from, drug trafficking, he enters into, or is otherwise concerned in, an arrangement whereby—

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- (a) the retention or control, by or on behalf of A, of A's proceeds of drug trafficking is facilitated (whether by concealment, removal from the jurisdiction, transfer to nominees or otherwise); or
 - (b) A's proceeds of drug trafficking—
 - (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.
- (2) In this section, references to proceeds of drug trafficking shall be construed as including any property which, whether in whole or in part, directly or indirectly constitutes such proceeds.
- (3) 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 funds or investments are derived from or used in connection with drug trafficking 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 imposed by contract on the disclosure of information; and
 - (b) if the disclosure relates to an arrangement entry into which, or concern in which, by the person would (but for this paragraph) contravene subsection (1) above, he does not commit an offence under that subsection if—
 - (i) the disclosure is made before, with the consent of the constable or as the case may be of the person so commissioned, he enters into, or becomes concerned in, that arrangement, or
 - (ii) though made after he enters into, or becomes concerned in, that arrangement, it is made on his own initiative and as soon as it is reasonable for him to do so.
- (4) In proceedings against a person for an offence under subsection (1) above, it shall be a defence to prove—
- (a) that he did not know or suspect that the arrangement related to any person's proceeds of drug trafficking; or
 - (b) that he did not know or suspect that 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 or to a person commissioned as aforesaid 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 paragraph (b) of that subsection.
- (5) A person guilty of an offence under subsection (1) above shall be liable—
- (a) on conviction on indictment, to imprisonment for a term not exceeding fourteen years or to a fine or to both; and
 - (b) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum or to both.

44 Offences relating to controlled drugs: fines.

- (1) Without prejudice to section 395(1) of the ^{M1}1975 Act (fines) as applied by section 194 of that Act but subject to the proviso to subsection (1) of section 2 of this Act, where

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a person is convicted on indictment of an offence to which this section relates and sentenced in respect of that offence to a period of imprisonment or detention, the Court where—

- (a) paragraph (b) below does not apply shall, unless it is satisfied that for any reason it would be inappropriate to do so, also impose a fine;
 - (b) it makes an order under section 1(1) of this Act as regards the person, may also impose a fine.
- (2) In determining the amount of a fine imposed under paragraph (a) of subsection (1) above, the Court shall have regard to any profits likely to have been made by the person from the crime in respect of which he has been convicted.
 - (3) This section relates to the same offences as does section 1 of this Act.
 - (4) Where in any proceedings a fine has been imposed by virtue of subsection (1) above as regards a person and a period of imprisonment or detention is imposed on him in default of payment of its amount (or as the case may be of an instalment thereof), that period shall run from the expiry of any other period of imprisonment or detention (not being one of life imprisonment or detention for life) imposed on him in the proceedings.
 - (5) The reference in subsection (4) above to “any other period of imprisonment or detention imposed” includes (without prejudice to the generality of the expression) a reference to such a period imposed on default of payment of a fine (or instalment thereof) or of a confiscation order (or instalment thereof); but only where that default has occurred before the warrant for imprisonment is issued for the default in relation to the fine imposed by virtue of subsection (1) of this section.

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