



Criminal Justice Act 1988

1988 CHAPTER 33

PART VI

CONFISCATION OF THE PROCEEDS OF AN OFFENCE

Miscellaneous and supplemental

F198

Textual Amendments

F1 S. 98 repealed (15.2.1994) by 1993 c. 36, s. 79(13)(14), Sch. 5 Pt. I para. 14(1), Sch. 6 Pt. I; S.I. 1994/71, art. 2, Sch. Appendix

99 Authorisation of delay in notifying arrest etc.

- (1) The ^{M1}Police and Criminal Evidence Act 1984 shall be amended as follows.
- (2) In section 56(5A) (which authorises delay in notifying arrest for a drug trafficking offence)—
 - (a) after the word “offence”, in the second place where it occurs, there shall be inserted the words “or an offence to which Part VI of the Criminal Justice Act 1988 applies (offences in respect of which confiscation orders under that Part may be made)”; and
 - (b) the following paragraphs shall be substituted for paragraphs (a) and (b)—
 - “(a) where the offence is a drug trafficking offence, that the detained person has benefited from drug trafficking and that the recovery of the value of that person’s proceeds of drug trafficking will be hindered by telling the named person of the arrest; and

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- (b) where the offence is one to which Part VI of the Criminal Justice Act 1988 applies, that the detained person has benefited from the offence and that the recovery of the value of the property obtained by that person from or in connection with the offence or of the pecuniary advantage derived by him from or in connection with it will be hindered by telling the named person of the arrest.”
- (3) In section 58(8A) (which authorises delay in access to legal advice on arrest for a drug trafficking offence)—
- (a) after the word “offence”, in the second place where it occurs, there shall be inserted the words “or an offence to which Part VI of the Criminal Justice Act 1988 applies”; and
- (b) the following paragraphs shall be substituted for paragraphs (a) and (b)—
- “(a) where the offence is a drug trafficking offence, that the detained person has benefited from drug trafficking and that the recovery of the value of that person’s proceeds of drug trafficking will be hindered by the exercise of the right conferred by subsection (1) above; and
- (b) where the offence is one to which Part VI of the Criminal Justice Act 1988 applies, that the detained person has benefited from the offence and that the recovery of the value of the property obtained by that person from or in connection with the offence or of the pecuniary advantage derived by him from or in connection with it will be hindered by the exercise of the right conferred by subsection (1) above.”
- (4) Without prejudice to section 20(2) of the ^{M2}Interpretation Act 1978, the ^{M3}Police and Criminal Evidence Act 1984 (Application to Customs and Excise) Order 1985 shall apply to sections 56 and 58 of the ^{M4}Police and Criminal Evidence Act 1984 as those sections have effect by virtue of this section.

Marginal Citations

- M1** 1984 c. 60.
M2 1978 c. 30.
M3 S.I. 1985/1800.
M4 1984 c. 60.

100 Power to inspect Land Register, etc.

- (1) The Chief Land Registrar (in this section referred to as “the registrar”) shall, on an application under subsection (2) or (4) below made in relation to a person specified in the application or to property so specified, provide the applicant with any information kept by the registrar under the ^{M5}Land Registration Act 1925 which relates to the person or property so specified.
- (2) An application may be made by—
- (a) any police officer not below the rank of superintendent;
- (b) any Crown Prosecutor; or

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- (c) any member of the Serious Fraud Office designated for the purposes of section 1 of the ^{M6}Criminal Justice Act 1987; or
 - (d) any person commissioned by the Commissioners of Customs and Excise not below the rank of senior executive officer; or
 - (e) any person authorised in that behalf by the Commissioners of Inland Revenue not below the rank of senior executive officer;
- and on an application under this subsection an appropriate certificate shall be given to the registrar.
- (3) In subsection (2) above “appropriate certificate” means a certificate—
- (a) that a person specified in the certificate has committed or that there are reasonable grounds for suspecting that a person so specified has committed an offence to which this Part of this Act applies; and
 - (b) that there are reasonable grounds for suspecting that there is information kept by the registrar which is likely to be of substantial value (whether by itself or together with other information) to an investigation into whether the person so specified has benefited from the commission of the offence or in facilitating the recovery of the value of the property obtained by that person from or in connection with the offence.
- (4) An application may be made by a receiver appointed under this Part of this Act and on an application under this subsection there shall be given to the registrar—
- (a) a document certified by the proper officer of the court to be a true copy of the order appointing the receiver; and
 - (b) a certificate that there are reasonable grounds for suspecting that there is information kept by the registrar which is likely to facilitate the exercise of the powers conferred on the receiver in respect of the person or property specified in the application.
- (5) The reference in subsection (1) above to the provision of information is a reference to its provision in documentary form.
- (6) The references to senior executive officers in subsection (2) above include references to equivalent departmental grades.
- (7) This section shall cease to have effect on the day appointed under section 3(2) of the ^{M7}Land Registration Act 1988 for the coming into force of that Act.

Marginal Citations

- M5** 1925 c. 21.
- M6** 1987 c. 38.
- M7** 1988 c. 3.

101 Abolition of power to make criminal bankruptcy order.

- (1) The power to make a criminal bankruptcy order which section 39 of the ^{M8}Powers of Criminal Courts Act 1973 confers on the Crown Court is abolished.
- (2) Nothing in subsection (1) above—
- (a) shall affect any criminal bankruptcy order made before this section comes into force; or

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(b) shall prevent the taking of any step following such an order.

Marginal Citations

M8 1973 c. 62.

102 Part VI— Interpretation. E+W

(1) In this Part of this Act—

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

“interest”, in relation to property, includes right;

[^{F2}“proceeds of criminal conduct”, in relation to any person who has benefited from criminal conduct, means that benefit;]

“property” includes money and all other property, real or personal, heritable or moveable, including things in action and other intangible or incorporeal property.

(2) The expressions listed in the left-hand column below are respectively defined or (as the case may be) fall to be construed in accordance with the provisions of this Act listed in the right-hand column in relation to those expressions.

Expression	Relevant provision
Benefited from an offence	Section 71(4)
Charging order	Section 78(2)
Confiscation order	Section 71(9)(a)
[^{F3} Criminal conduct	Section 93A(7)]
Dealing with property	Section 77(9)
Defendant	Section 71(9)(d)
Gift caught by this Part of this Act	Section 74(10)
Making a gift	Section 74(12)
[^{F4} Offence of a relevant description	Section 71(1E)]
Offence to which this Part of this Act applies	Section 71(9)(c)
Realisable property	Section 74(1)
[^{F4} Relevant criminal conduct	Section 71(1D)]
Restraint order	Section 77(1)
Value of gift	Section 74(7) and (8)
Value of property	Section 74(4) to (6)

(3) This Part of this Act applies to property wherever situated.

(4) References in this Part of this Act to offences include a reference to offences committed before the commencement of this Part of this Act; but nothing in this Part

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of this Act confers any power on any court in connection with proceedings against a person for an offence instituted before the commencement of this Part of this Act.

- (5) References in this Part of this Act to property obtained, or to a pecuniary advantage derived, in connection with the commission of an offence include a reference to property obtained or to a pecuniary advantage derived, both in that connection and in some other connection.
- (6) The following provisions shall have effect for the interpretation of this Part of this Act.
- (7) Property is held by any person if he holds any interest in it.
- (8) References to property held by a person include a reference to property vested in his trustee in bankruptcy, permanent or interim trustee within the meaning of the ^{M9}Bankruptcy (Scotland) Act 1985 or liquidator.
- (9) References to an interest held by a person beneficially in property include a reference to an interest which would be held by him beneficially if the property were not so vested.
- (10) Property is transferred by one person to another if the first person transfers or grants to the other any interest in the property.
- (11) Proceedings for an offence are instituted—
 - (a) when a justice of the peace issues a summons or warrant under section 1 of the ^{M10}Magistrates' Courts Act 1980 in respect of that offence;
 - (b) when a person is charged with the offence after being taken into custody without a warrant;
 - (c) when a bill of indictment is preferred under section 2 of the ^{M11}Administration of Justice (Miscellaneous Provisions) Act 1933 in a case falling within paragraph (b) of subsection (2) of that section;

and where the application of this subsection would result in there being more than one time for the institution of proceedings, they shall be taken to have been instituted at the earliest of those times.

- ^{F5}(12) Proceedings for an offence are concluded—
- (a) when the defendant is acquitted on all counts or, as the case may be, every charge against him is dismissed;
 - (b) if he is convicted on one or more counts or charges but the court decides not to make a confiscation order against him, when the court makes that decision;
 - (c) if he is sentenced without the court having considered whether or not to proceed under section 71 above in his case, when he is sentenced; and
 - (d) if a confiscation order is made against him in those proceedings, when the order is satisfied.
- (12A) An application under section 74A, 74B or 74C above is concluded—
- (a) if the court decides not to make or, as the case may be, not to vary any order against the defendant on that application, when it makes that decision;
 - (b) if an order against the defendant is made or varied on that application, when the order is satisfied; and
 - (c) if the application is withdrawn, when the prosecutor notifies the withdrawal of the application to the court to which it was made.

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- (12B) For the purposes of this Part of this Act, a confiscation order is satisfied when no amount is due under it.
- (12C) For the purposes only of section 84 above, a confiscation order shall be treated as 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.]
- (13) An order is subject to appeal until (disregarding any power of a court to grant leave to appeal out of time) there is no further possibility of an appeal on which the order could be varied or set aside.

Extent Information

- E1** This version of this provision extends to England and Wales only; a separate version has been created for Scotland only.

Textual Amendments

- F2** Definition in s. 102(1) inserted (15.2.1994) by 1993 c. 36, s. 29(2); S.I. 1994/71, art. 2
- F3** Entry in s. 102(2) Table inserted (15.2.1994) by 1993 c. 36, s. 29(3); S.I. 1994/71, art. 2
- F4** Entries in s. 102(2) inserted (E.W.) (1.11.1995) by 1995 c. 11, s. 15(1), Sch. 1 para.3; S.I. 1995/2650, art.2
- F5** S. 102(12)(12A)-(12C) substituted (E.W.) (1.11.1995) for s. 102(12) by 1995 c. 11, s. 8(8); S.I. 1995/2650, art.2

Marginal Citations

- M9** 1985 c. 66.
- M10** 1980 c. 43.
- M11** 1933 c. 36.

102 Part VI— Interpretation. **S**

- (1) In this Part of this Act—
- “constable” includes a person commissioned by the Commissioners of Customs and Excise;
- “interest”, in relation to property, includes right;
- [^{F7}“proceeds of criminal conduct”, in relation to any person who has benefited from criminal conduct, means that benefit;]
- “property” includes money and all other property, real or personal, heritable or moveable, including things in action and other intangible or incorporeal property.
- (2) The expressions listed in the left-hand column below are respectively defined or (as the case may be) fall to be construed in accordance with the provisions of this Act listed in the right-hand column in relation to those expressions.

Expression	Relevant provision
Benefited from an offence	Section 71(4)
Charging order	Section 78(2)
Confiscation order	Section 71(9)(a)

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[^{F8} Criminal conduct	Section 93A(7)]
Dealing with property	Section 77(9)
Defendant	Section 71(9)(d)
Gift caught by this Part of this Act	Section 74(10)
Making a gift	Section 74(12)
Offence to which this Part of this Act applies	Section 71(9)(c)
Realisable property	Section 74(1)
Restraint order	Section 77(1)
Value of gift	Section 74(7) and (8)
Value of property	Section 74(4) to (6)

- (3) This Part of this Act applies to property wherever situated.
- (4) References in this Part of this Act to offences include a reference to offences committed before the commencement of this Part of this Act; but nothing in this Part of this Act confers any power on any court in connection with proceedings against a person for an offence instituted before the commencement of this Part of this Act.
- (5) References in this Part of this Act to property obtained, or to a pecuniary advantage derived, in connection with the commission of an offence include a reference to property obtained or to a pecuniary advantage derived, both in that connection and in some other connection.
- (6) The following provisions shall have effect for the interpretation of this Part of this Act.
- (7) Property is held by any person if he holds any interest in it.
- (8) References to property held by a person include a reference to property vested in his trustee in bankruptcy, permanent or interim trustee within the meaning of the ^{M13}Bankruptcy (Scotland) Act 1985 or liquidator.
- (9) References to an interest held by a person beneficially in property include a reference to an interest which would be held by him beneficially if the property were not so vested.
- (10) Property is transferred by one person to another if the first person transfers or grants to the other any interest in the property.
- (11) Proceedings for an offence are instituted—
- when a justice of the peace issues a summons or warrant under section 1 of the ^{M14}Magistrates' Courts Act 1980 in respect of that offence;
 - when a person is charged with the offence after being taken into custody without a warrant;
 - when a bill of indictment is preferred under section 2 of the ^{M15}Administration of Justice (Miscellaneous Provisions) Act 1933 in a case falling within paragraph (b) of subsection (2) of that section;
- and where the application of this subsection would result in there being more than one time for the institution of proceedings, they shall be taken to have been instituted at the earliest of those times.

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(12) Proceedings are concluded—

- (a) when (disregarding any power of a court to grant leave to appeal out of time) there is no further possibility of a confiscation order being made in the proceedings;
- (b) on the satisfaction of a confiscation order made in the proceedings (whether by payment of the amount due under the order or by the defendant serving imprisonment in default).

(13) An order is subject to appeal until (disregarding any power of a court to grant leave to appeal out of time) there is no further possibility of an appeal on which the order could be varied or set aside.

Extent Information

E3 This version of this provision extends to Scotland only; a separate version has been created for England and Wales only.

Textual Amendments

F7 Definition in s. 102(1) inserted (15.2.1994) by 1993 c. 36, s. 29(2); S.I. 1994/71, art. 2
F8 Entry in s. 102(2) Table inserted (15.2.1994) by 1993 c. 36, s. 29(3); S.I. 1994/71, art. 2

Marginal Citations

M13 1985 c. 66.
M14 1980 c. 43.
M15 1933 c. 36.

103 Amendments of Drug Trafficking Offences Act 1986 and Criminal Justice (Scotland) Act 1987.

^{F6}(1)

(2) The amendments of the ^{M12}Criminal Justice (Scotland) Act 1987 specified in Part II of that Schedule shall also have effect.

Extent Information

E2 For extent of s. 103 see s. 172

Textual Amendments

F6 S. 103(1) repealed (3.2.1995) by 1994 c. 37, ss. 67, 69(2), Sch. 3

Marginal Citations

M12 1987 c. 41.

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