



Criminal Justice Act 1993

1993 CHAPTER 36

PART II

DRUG TRAFFICKING OFFENCES

Confiscation orders

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—

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- (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.”.
- (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

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- (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—
- (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—

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- (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.”