



# Drug Trafficking Act 1994

## 1994 CHAPTER 37

### PART I

#### CONFISCATION ORDERS

##### **Modifications etc. (not altering text)**

- C1** Part I (ss. 1-41) except ss. 10, 16 applied (1.1.1997) with modifications by [S.I. 1996/2880, arts. 3-6](#), [Schs. 1-3](#) (as amended by [S.I. 1997/2980, arts. 2-5, Sch.](#))

#### *Introductory*

### **1 Meaning of “drug trafficking” and “drug trafficking offence”.**

- (1) In this Act “drug trafficking” means, subject to subsection (2) below, doing or being concerned in any of the following, whether in England and Wales or elsewhere—
- (a) producing or supplying a controlled drug where the production or supply contravenes section 4(1) of the Misuse <sup>M1</sup> of Drugs Act 1971 or a corresponding law;
  - (b) transporting or storing a controlled drug where possession of the drug contravenes section 5(1) of that Act or a corresponding law;
  - (c) importing or exporting a controlled drug where the importation or exportation is prohibited by section 3(1) of that Act or a corresponding law;
  - (d) manufacturing or supplying a scheduled substance within the meaning of section 12 of the Criminal <sup>M2</sup> Justice (International Co-operation) Act 1990 where the manufacture or supply is an offence under that section or would be such an offence if it took place in England and Wales;
  - (e) using any ship for illicit traffic in controlled drugs in circumstances which amount to the commission of an offence under section 19 of that Act;
  - (f) conduct which is an offence under section 49 of this Act or which would be such an offence if it took place in England and Wales;

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- (g) acquiring, having possession of or using property in circumstances which amount to the commission of an offence under section 51 of this Act or which would amount to such an offence if it took place in England and Wales.
- (2) “Drug trafficking” also includes a person doing the following, whether in England and Wales or elsewhere, that is to say, entering into or being otherwise concerned in an arrangement whereby—
- (a) the retention or control by or on behalf of another person of the other person’s proceeds of drug trafficking is facilitated; or
  - (b) the proceeds of drug trafficking by another person are used to secure that funds are placed at the other person’s disposal or are used for the other person’s benefit to acquire property by way of investment.
- (3) In this Act “drug trafficking offence” means any of the following—
- (a) an offence under section 4(2) or (3) or 5(3) of the Misuse<sup>M3</sup> of Drugs Act 1971 (production, supply and possession for supply of controlled drugs);
  - (b) an offence under section 20 of that Act (assisting in or inducing commission outside United Kingdom of offence punishable under a corresponding law);
  - (c) an offence under—
    - (i) section 50(2) or (3) of the Customs<sup>M4</sup> and Excise Management Act 1979 (improper importation),
    - (ii) section 68(2) of that Act (exportation), or
    - (iii) section 170 of that Act (fraudulent evasion),
 in connection with a prohibition or restriction on importation or exportation having effect by virtue of section 3 of the Misuse of Drugs Act 1971;
  - (d) an offence under section 12 of the Criminal<sup>M5</sup> Justice (International Co-operation) Act 1990 (manufacture or supply of substance specified in Schedule 2 to that Act);
  - (e) an offence under section 19 of that Act (using ship for illicit traffic in controlled drugs);
  - (f) an offence under section 49, 50 or 51 of this Act or section 14 of the Criminal Justice (International Co-operation) Act 1990 (which makes, in relation to Scotland and Northern Ireland, provision corresponding to section 49 of this Act);
  - (g) an offence under section 1 of the Criminal<sup>M6</sup> Law Act 1977 of conspiracy to commit any of the offences in paragraphs (a) to (f) above;
  - (h) an offence under section 1 of the Criminal<sup>M7</sup> Attempts Act 1981 of attempting to commit any of those offences; and
  - (i) an offence of inciting another person to commit any of those offences, whether under section 19 of the Misuse of Drugs Act 1971 or at common law;
- and includes aiding, abetting, counselling or procuring the commission of any of the offences in paragraphs (a) to (f) above.
- (4) In this section “corresponding law” has the same meaning as in the Misuse<sup>M8</sup> of Drugs Act 1971.
- (5) For the purposes of the application of Part II of this Act in Scotland and Northern Ireland, “drug trafficking” shall be construed in accordance with section 48(2) of this Act.

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#### Marginal Citations

- M1 1971 c. 38.
- M2 1990 c. 5.
- M3 1971 c. 38.
- M4 1979 c. 2.
- M5 1990 c. 5.
- M6 1977 c. 45.
- M7 1981 c. 47.
- M8 1971 c. 38.

### Confiscation orders

## 2 Confiscation orders.

- (1) Subject to subsection (7) below, where a defendant appears before the Crown Court to be sentenced in respect of one or more drug trafficking offences (and has not previously been sentenced or otherwise dealt with in respect of his conviction for the offence or, as the case may be, any of the offences concerned), then—
  - (a) if the prosecutor asks the court to proceed under this section, or
  - (b) if the court considers that, even though the prosecutor has not asked it to do so, it is appropriate for it to proceed under this section,it shall act as follows.
- (2) The court shall first determine whether the defendant has benefited from drug trafficking.
- (3) For the purposes of this Act, a person has benefited from drug trafficking if he has at any time (whether before or after the commencement of this Act) received any payment or other reward in connection with drug trafficking carried on by him or another person.
- (4) If the court determines that the defendant has so benefited, the court shall, before sentencing or otherwise dealing with him in respect of the offence or, as the case may be, any of the offences concerned, determine in accordance with section 5 of this Act the amount to be recovered in his case by virtue of this section.
- (5) The court shall then, in respect of the offence or offences concerned—
  - (a) order the defendant to pay that amount;
  - (b) take account of the order before—
    - (i) imposing any fine on him;
    - (ii) making any order involving any payment by him; or
    - (iii) making any order under section 27 of the <sup>M9</sup>Misuse of Drugs Act 1971 (forfeiture orders) or section 43 of the <sup>M10</sup>Powers of Criminal Courts Act 1973 (deprivation orders); and
  - (c) subject to paragraph (b) above, leave the order out of account in determining the appropriate sentence or other manner of dealing with him.
- (6) No enactment restricting the power of a court dealing with an offender in a particular way from dealing with him also in any other way shall by reason only of the making

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of an order under this section restrict the Crown Court from dealing with an offender in any way the court considers appropriate in respect of a drug trafficking offence.

- (7) Subsection (1) above does not apply in relation to any offence for which a defendant appears before the Crown Court to be sentenced if—
- (a) he has been committed to the Crown Court for sentence in respect of that offence under section 37(1) of the Magistrates' <sup>M11</sup> Courts Act 1980 (committal to Crown Court with a view to sentence of detention in a young offender institution); or
  - (b) the powers of the court (apart from this section) to deal with him in respect of that offence are limited to dealing with him in any way in which a magistrates' court might have dealt with him in respect of the offence.
- (8) The standard of proof required to determine any question arising under this Act as to—
- (a) whether a person has benefited from drug trafficking, or
  - (b) the amount to be recovered in his case by virtue of this section,
- shall be that applicable in civil proceedings.
- (9) In this Act “confiscation order” means an order under this section and includes, in particular, such an order made by virtue of section 13, 14 or 19 of this Act.

#### **Marginal Citations**

- M9** 1971 c. 38.  
**M10** 1973 c. 62.  
**M11** 1980 c. 43.

### **3 Postponed determinations.**

- (1) Where the Crown Court is acting under section 2 of this Act but considers that it requires further information before—
- (a) determining whether the defendant has benefited from drug trafficking, or
  - (b) determining the amount to be recovered in his case by virtue of that section,
- it may, for the purpose of enabling that information to be obtained, postpone making the determination for such period as it may specify.
- (2) More than one postponement may be made under subsection (1) above in relation to the same case.
- (3) Unless it is satisfied that there are exceptional circumstances, the court shall not specify a period under subsection (1) above which—
- (a) by itself, or
  - (b) where there have been one or more previous postponements under subsection (1) above or (4) below, when taken together with the earlier specified period or periods,
- exceeds six months beginning with the date of conviction.
- (4) Where the defendant appeals against his conviction, the court may, on that account—
- (a) postpone making either or both of the determinations mentioned in subsection (1) above for such period as it may specify; or

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- (b) where it has already exercised its powers under this section to postpone, extend the specified period.
- (5) A postponement or extension under subsection (1) or (4) above may be made—
- (a) on application by the defendant or the prosecutor; or
- (b) by the court of its own motion.
- (6) Unless the court is satisfied that there are exceptional circumstances, any postponement or extension under subsection (4) above shall not exceed the period ending three months after the date on which the appeal is determined or otherwise disposed of.
- (7) Where the court exercises its power under subsection (1) or (4) above, it may nevertheless proceed to sentence, or otherwise deal with, the defendant in respect of the relevant offence or any of the relevant offences.
- (8) Where the court has so proceeded, section 2 of this Act shall have effect as if—
- (a) in subsection (4), the words “before sentencing or otherwise dealing with him in respect of the offence or, as the case may be, any of the offences concerned” were omitted; and
- (b) in subsection (5)(c), after “determining” there were inserted “ in relation to any offence in respect of which he has not been sentenced or otherwise dealt with ”.
- (9) In sentencing, or otherwise dealing with, the defendant in respect of the relevant offence or any of the relevant offences at any time during the specified period, the court shall not—
- (a) impose any fine on him; or
- (b) make any such order as is mentioned in section 2(5)(b)(ii) or (iii) of this Act.
- (10) Where the court has sentenced the defendant under subsection (7) above during the specified period it may, after the end of that period, vary the sentence by imposing a fine or making any such order as is mentioned in section 2(5)(b)(ii) or (iii) of this Act, so long as it does so within a period corresponding to that allowed by section 47(2) or (3) of the Supreme<sup>M12</sup> Court Act 1981 (time allowed for varying a sentence) but beginning with the end of the specified period.
- (11) In this section—
- “the date of conviction” means—
- (a) the date on which the defendant was convicted; or
- (b) where he appeared to be sentenced in respect of more than one conviction, and those convictions were not all on the same date, the date of the latest of those convictions; and
- “the relevant offence” means the drug trafficking offence in respect of which the defendant appears (as mentioned in section 2(1) of this Act) before the court;
- and references to an appeal include references to an application under section 111 of the Magistrates’<sup>M13</sup> Courts Act 1980 (statement of case by magistrates’ court).

#### Marginal Citations

M12 1981 c. 54.

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M13 1980 c. 43.

#### 4 Assessing the proceeds of drug trafficking.

- (1) For the purposes of this Act—
  - (a) any payments or other rewards received by a person at any time (whether before or after the commencement of this Act) in connection with drug trafficking carried on by him or another person are his proceeds of drug trafficking; and
  - (b) the value of his proceeds of drug trafficking is the aggregate of the values of the payments or other rewards.
- (2) Subject to subsections (4) and (5) below, the Crown Court shall, for the purpose—
  - (a) of determining whether the defendant has benefited from drug trafficking, and
  - (b) if he has, of assessing the value of his proceeds of drug trafficking,
 make the required assumptions.
- (3) The required assumptions are—
  - (a) that any property appearing to the court—
    - (i) to have been held by the defendant at any time since his conviction, or
    - (ii) to have been transferred to him at any time since the beginning of the period of six years ending when the proceedings were instituted against him,
 was received by him, at the earliest time at which he appears to the court to have held it, as a payment or reward in connection with drug trafficking carried on by him;
  - (b) that any expenditure of his since the beginning of that period was met out of payments received by him in connection with drug trafficking carried on by him; and
  - (c) that, for the purpose of valuing any property received or assumed to have been received by him at any time as such a reward, he received the property free of any other interests in it.
- (4) The court shall not make any required assumption in relation to any particular property or expenditure if—
  - (a) that assumption is shown to be incorrect in the defendant’s case; or
  - (b) the court is satisfied that there would be a serious risk of injustice in the defendant’s case if the assumption were to be made;
 and where, by virtue of this subsection, the court does not make one or more of the required assumptions, it shall state its reasons.
- (5) Subsection (2) above does not apply if the only drug trafficking offence in respect of which the defendant appears before the court to be sentenced is an offence under section 49, 50 or 51 of this Act.
- (6) For the purpose of assessing the value of the defendant’s proceeds of drug trafficking in a case where a confiscation order has previously been made against him, the court shall leave out of account any of his proceeds of drug trafficking that are shown to the court to have been taken into account in determining the amount to be recovered under that order.

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- (7) References in subsection (6) above to a confiscation order include a reference to a confiscation order within the meaning of—
- (a) the Drug <sup>M14</sup> Trafficking Offences Act 1986; or
  - [<sup>F1</sup>(b) the Proceeds of Crime (Scotland) Act 1995;]
- (8) For the purposes of the application of Part II of this Act in Scotland and Northern Ireland, the expression “proceeds of drug trafficking” shall be construed in accordance with section 48(2) of this Act.

#### Textual Amendments

**F1** S. 4(7)(b) substituted (1.4.1996) for s. 7(4)(b)(c) by 1995 c. 40, ss. 5, 7(2), Sch. 4 para. 94(2)

#### Marginal Citations

**M14** 1986 c. 32.

## 5 Amount to be recovered under confiscation order.

- (1) Subject to subsection (3) below, the amount to be recovered in the defendant’s case under the confiscation order shall be the amount the Crown Court assesses to be the value of the defendant’s proceeds of drug trafficking.
- (2) If the court is satisfied as to any matter relevant for determining the amount that might be realised at the time the confiscation order is made (whether by reason of the acceptance of an allegation made in a statement given under section 11 of this Act or made in the giving of information under section 12 of this Act, or otherwise) the court may issue a certificate giving the court’s opinion as to the matters concerned, and shall do so if satisfied as mentioned in subsection (3) below.
- (3) If the court is satisfied that the amount that might be realised at the time the confiscation order is made is less than the amount the court assesses to be the value of his proceeds of drug trafficking, the amount to be recovered in the defendant’s case under the confiscation order shall be—
- (a) the amount appearing to the court to be the amount that might be so realised; or
  - (b) a nominal amount, where it appears to the court (on the information available to it at the time) that the amount that might be so realised is nil.

## 6 Meaning of “amount that might be realised” and “realisable property”.

- (1) For the purposes of this Act the amount that might be realised at the time a confiscation order is made against the defendant is—
- (a) the total of the values at that time of all the realisable property held by the defendant, less
  - (b) where there are obligations having priority at that time, the total amount payable in pursuance of such obligations,
- together with the total of the values at that time of all gifts caught by this Act.
- (2) In this Act “realisable property” means, subject to subsection (3) below—
- (a) any property held by the defendant; and
  - (b) any property held by a person to whom the defendant has directly or indirectly made a gift caught by this Act.

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- (3) Property is not realisable property if there is in force in respect of it an order under any of the following enactments, namely—
- (a) section 27 of the Misuse<sup>M15</sup> of Drugs Act 1971 (forfeiture orders);
  - (b) section 43 of the Powers<sup>M16</sup> of Criminal Courts Act 1973 (deprivation orders);
  - (c) section 223 or 436 of the Criminal<sup>M17</sup> Procedure (Scotland) Act 1975 (forfeiture of property);
  - (d) section 13(2), (3) or (4) of the Prevention<sup>M18</sup> of Terrorism (Temporary Provisions) Act 1989 (forfeiture orders).
  - [<sup>F2</sup>(e) Part II of the Proceeds of Crime (Scotland) Act 1995 (forfeiture of property used in crime);]
- (4) For the purposes of subsection (1) above, an obligation has priority at any time if it is an obligation of the defendant—
- (a) to pay an amount due in respect of a fine, or other order of a court, imposed or made on conviction of an offence, where the fine was imposed or the order was made before the confiscation order; or
  - (b) to pay any sum which would be included among the preferential debts (within the meaning given by section 386 of the Insolvency<sup>M19</sup> Act 1986) in the defendant's bankruptcy commencing on the date of the confiscation order or winding up under an order of the court made on that date.

#### Textual Amendments

**F2** S. 6(3)(e) substituted (1.4.1996) by 1995 c. 40, ss. 5, 7(2), **Sch. 4 para. 94(3)**

#### Marginal Citations

**M15** 1971 c. 38.  
**M16** 1973 c. 62.  
**M17** 1975 c. 21.  
**M18** 1989 c. 4.  
**M19** 1986 c. 45.

## 7 Value of property etc.

- (1) Subject to the following provisions of this section and to section 8 of this Act, for the purposes of this Act the value of property (other than cash) in relation to any person holding the property is the market value of the property, except that, where any other person holds an interest in the property, the value is—
- (a) the market value of the first-mentioned person's beneficial interest in the property, less
  - (b) the amount required to discharge any incumbrance (other than a charging order) on that interest.
- (2) Subject to section 8(2) of this Act, references in this Act to the value at any time (referred to in subsection (3) below as "the material time") of a gift caught by this Act or of any payment or reward are references to—
- (a) the value of the gift, payment or reward to the recipient when he received it, adjusted to take account of subsequent changes in the value of money, or
  - (b) where subsection (3) below applies, the value there mentioned,
- whichever is the greater.



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- (3) Subject to section 8(2) of this Act, if at the material time the recipient holds—
- (a) the property which he received (not being cash), or
  - (b) property which, in whole or in part, directly or indirectly represents in his hands the property which he received,
- the value referred to in subsection (2)(b) above is the value to him at the material time of the property mentioned in paragraph (a) above or, as the case may be, of the property mentioned in paragraph (b) above so far as it so represents the property which he received, but disregarding in either case any charging order.
- (4) References in this section to a charging order include a reference to a charging order within the meaning of the Drug<sup>M20</sup> Trafficking Offences Act 1986.

**Marginal Citations**  
M20 1986 c. 32.

## 8 Gifts caught by this Act.

- (1) A gift (including a gift made before the commencement of this Act) is caught by this Act if—
- (a) it was made by the defendant at any time since the beginning of the period of six years ending when the proceedings were instituted against him; or
  - (b) it was made by the defendant at any time and was a gift of property—
    - (i) received by the defendant in connection with drug trafficking carried on by him or another person; or
    - (ii) which in whole or in part directly or indirectly represented in the defendant's hands property received by him in that connection.
- (2) For the purposes of this Act—
- (a) the circumstances in which the defendant is to be treated as making a gift include those where he transfers property to another person directly or indirectly for a consideration the value of which is significantly less than the value of the consideration provided by the defendant; and
  - (b) in those circumstances, the provisions of subsection (1) above and of section 7 of this Act shall apply as if the defendant had made a gift of such share in the property as bears to the whole property the same proportion as the difference between the values referred to in paragraph (a) above bears to the value of the consideration provided by the defendant.

## 9 Application of procedure for enforcing fines.

- (1) Where the Crown Court orders the defendant to pay any amount under section 2 of this Act, sections 31(1) to (3C) and 32(1) and (2) of the Powers<sup>M21</sup> of Criminal Courts Act 1973 (powers of Crown Court in relation to fines and enforcement of Crown Court fines) shall have effect as if that amount were a fine imposed on him by the Crown Court.
- (2) Where—

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- (a) a warrant of commitment is issued for a default in payment of an amount ordered to be paid under section 2 of this Act in respect of an offence or offences, and
  - (b) at the time the warrant is issued, the defendant is liable to serve a term of custody in respect of the offence or offences,
- the term of imprisonment or of detention under section 9 of the Criminal<sup>M22</sup> Justice Act 1982 (detention of persons aged 18 to 20 for default) to be served in default of payment of the amount shall not begin to run until after the term mentioned in paragraph (b) above.
- (3) The reference in subsection (2) above to the term of custody which the defendant is liable to serve in respect of the offence or offences is a reference to the term of imprisonment, detention in a young offender institution, or detention under section 4 of the 1982 Act which he is liable to serve in respect of the offence or offences; and for the purposes of this subsection—
    - (a) consecutive terms and terms which are wholly or partly concurrent shall be treated as a single term; and
    - (b) there shall be disregarded—
      - (i) any sentence suspended under section 22(1) of the 1973 Act (power to suspend sentence of imprisonment) which has not taken effect at the time the warrant is issued;
      - (ii) in the case of a sentence of imprisonment passed with an order under section 47(1) of the Criminal<sup>M23</sup> Law Act 1977 (sentences of imprisonment partly served and partly suspended) any part of the sentence which the defendant has not at that time been required to serve in prison; and
      - (iii) any term of imprisonment or detention fixed under section 31(2) of the 1973 Act (term to be served in default of payment of fine etc) for which a warrant of commitment has not been issued at that time.
  - (4) In the application of Part III of the Magistrates’<sup>M24</sup> Courts Act 1980 to amounts payable under confiscation orders—
    - (a) such an amount is not a sum adjudged to be paid by a conviction for the purposes of section 81 (enforcement of fines imposed on young offenders), or a fine for the purposes of section 85 (remission of fines), of that Act; and
    - (b) in section 87 of that Act (enforcement by High Court or county court), subsection (3) shall be omitted.
  - (5) 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.
  - (6) This section applies in relation to confiscation orders made by—
    - (a) the criminal division of the Court of Appeal, or
    - (b) the House of Lords on appeal from that division,
 as it applies in relation to confiscation orders made by the Crown Court, and the last reference in subsection (1) above to the Crown Court shall be construed accordingly.

#### Marginal Citations

M21 1973 c. 62.

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- M22 1982 c. 48.
- M23 1977 c. 45.
- M24 1980 c. 43.

## 10 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<sup>M25</sup> of Criminal Courts Act 1973) 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 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 1973 Act (as it has effect by virtue of section 9 of this Act) if the effect of subsection (1) above is to increase the maximum period applicable in relation to the order under subsection (3A) of that section.
- (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<sup>M26</sup> Act 1838.

### Marginal Citations

- M25 1973 c. 62.
- M26 1838 c. 110.

*Statements etc in connection with confiscation orders*

## 11 Statements relating to drug trafficking.

- (1) Where the prosecutor asks the court to proceed under section 2 of this Act he shall give the court, within such period as it may direct, a statement of matters which he considers relevant in connection with—
  - (a) determining whether the defendant has benefited from drug trafficking; or
  - (b) assessing the value of his proceeds of drug trafficking.
- (2) In this section such a statement is referred to as a “prosecutor’s statement”.
- (3) Where the court proceeds under section 2 of this Act without the prosecutor having asked it to do so, it may require him to give it a prosecutor’s statement, within such period as it may direct.
- (4) Where the prosecutor has given a prosecutor’s statement—
  - (a) he may at any time give the court a further such statement; and
  - (b) the court may at any time require him to give it a further such statement, within such period as it may direct.
- (5) Where any prosecutor’s statement has been given and the court is satisfied that a copy of the statement has been served on the defendant, it may require the defendant—
  - (a) to indicate to it, within such period as it may direct, the extent to which he accepts each allegation in the statement; and

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- (b) so far as he does not accept any such allegation, to give particulars of any matters on which he proposes to rely.
- (6) Where the court has given a direction under this section it may at any time vary it by giving a further direction.
- (7) Where the defendant accepts to any extent any allegation in any prosecutor's statement, the court may, for the purposes of—
  - (a) determining whether the defendant has benefited from drug trafficking, or
  - (b) assessing the value of his proceeds of drug trafficking,
 treat his acceptance as conclusive of the matters to which it relates.
- (8) If the defendant fails in any respect to comply with a requirement under subsection (5) above he may be treated for the purposes of this section as accepting every allegation in the prosecutor's statement in question apart from—
  - (a) any allegation in respect of which he has complied with the requirement; and
  - (b) any allegation that he has benefited from drug trafficking or that any payment or other reward was received by him in connection with drug trafficking carried on by him or another person.
- (9) Where—
  - (a) there is given to the Crown Court by the defendant a statement as to any matters relevant to determining the amount that might be realised at the time the confiscation order is made, and
  - (b) the prosecutor accepts to any extent any allegation in the statement,
 the court may, for the purposes of that determination, treat the acceptance by the prosecutor as conclusive of the matters to which it relates.
- (10) An allegation may be accepted, or particulars of any matter may be given, for the purposes of this section in such manner as may be prescribed by rules of court or as the court may direct.
- (11) No acceptance by the defendant under this section that any payment or other reward was received by him in connection with drug trafficking carried on by him or another person shall be admissible in evidence in any proceedings for an offence.

#### **Extent Information**

**E1** S. 11 extends to England and Wales only except that s. 11(11) extends also to Scotland.

## **12 Provision of information by defendant.**

- (1) This section applies where—
  - (a) the prosecutor has asked the court to proceed under section 2 of this Act; or
  - (b) no such request has been made but the court is nevertheless proceeding, or considering whether to proceed, under section 2.
- (2) For the purpose of obtaining information to assist it in carrying out its functions, the court may at any time order the defendant to give it such information as may be specified in the order.

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- (3) An order under subsection (2) above may require all, or any specified part, of the required information to be given to the court in such manner, and before such date, as may be specified in the order.
- (4) Crown Court Rules may make provision as to the maximum or minimum period that may be allowed under subsection (3) above.
- (5) If the defendant fails, without reasonable excuse, to comply with any order under this section, the court may draw such inference from that failure as it considers appropriate.
- (6) Where the prosecutor accepts to any extent any allegation made by the defendant in giving to the court information required by an order under this section, the court may treat that acceptance as conclusive of the matters to which it relates.
- (7) For the purposes of this section, an allegation may be accepted in such manner as may be prescribed by Crown Court Rules or as the court may direct.

*Further proceedings in connection with confiscation orders*

### **13 Reconsideration of case where court has not proceeded under section 2.**

- (1) This section applies where the defendant has appeared before the Crown Court to be sentenced in respect of one or more drug trafficking offences but the court has not proceeded under section 2 of this Act.
- (2) If the prosecutor has evidence—
  - (a) which was not available to him when the defendant appeared to be sentenced (and accordingly was not considered by the court), but
  - (b) which the prosecutor believes would have led the court to determine that the defendant had benefited from drug trafficking if—
    - (i) the prosecutor had asked the court to proceed under section 2 of this Act, and
    - (ii) the evidence had been considered by the court,he may apply to the Crown Court for it to consider the evidence.
- (3) The court shall proceed under section 2 of this Act if, having considered the evidence, it is satisfied that it is appropriate to do so.
- (4) In considering whether it is appropriate to proceed under that section, the court shall have regard to all the circumstances of the case.
- (5) Where, having decided to proceed under that section, the court proposes to make a confiscation order against the defendant, it shall order the payment of such amount as it thinks just in all the circumstances of the case.
- (6) In considering the circumstances of any case the court shall have regard, in particular, to the amount of any fine or fines imposed on the defendant in respect of the offence or offences in question.
- (7) Where the court is proceeding under section 2 of this Act by virtue of this section, subsection (4) of that section shall have effect as if the words “before sentencing or otherwise dealing with him in respect of the offence or, as the case may be, any of the offences concerned” were omitted.

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- (8) The court may take into account any payment or other reward received by the defendant on or after the date of conviction, but only if the prosecutor shows that it was received by the defendant in connection with drug trafficking carried on by the defendant or another person on or before that date.
- (9) In considering under this section any evidence which relates to any payment or reward to which subsection (8) above applies, the court shall not make the assumptions which would otherwise be required by section 4 of this Act.
- (10) 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 of conviction.
- (11) Sections 11 and 12 of this Act shall apply where the prosecutor makes an application under this section as they apply where the prosecutor asks the court to proceed under section 2 of this Act.
- (12) In this section “the date of conviction” means—
  - (a) the date on which the defendant was convicted; or
  - (b) where he appeared to be sentenced in respect of more than one conviction, and those convictions were not all on the same date, the date of the latest of those convictions.

#### **14 Re-assessment of whether defendant has benefited from drug trafficking.**

- (1) This section applies where the court has made a determination under section 2(2) of this Act (“the section 2(2) determination”) that the defendant has not benefited from drug trafficking.
- (2) If the prosecutor has evidence—
  - (a) which was not considered by the court in making the section 2(2) determination, but
  - (b) which the prosecutor believes would have led the court to determine that the defendant had benefited from drug trafficking if it had been considered by the court,
 he may apply to the Crown Court for it to consider that evidence.
- (3) If, having considered the evidence, the court is satisfied that it would have determined that the defendant had benefited from drug trafficking if that evidence had been available to it, the court—
  - (a) shall make—
    - (i) a fresh determination under subsection (2) of section 2 of this Act; and
    - (ii) a determination under subsection (4) of that section of the amount to be recovered by virtue of that section; and
  - (b) may make an order under that section.
- (4) Where the court is proceeding under section 2 of this Act by virtue of this section, subsection (4) of that section shall have effect as if the words “before sentencing or otherwise dealing with him in respect of the offence or, as the case may be, any of the offences concerned” were omitted.
- (5) The court may take into account any payment or other reward received by the defendant on or after the date of the section 2(2) determination, but only if the

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prosecutor shows that it was received by the defendant in connection with drug trafficking carried on by the defendant or another person on or before that date.

- (6) In considering under this section any evidence which relates to any payment or reward to which subsection (5) above applies, the court shall not make the assumptions which would otherwise be required by section 4 of this Act.
- (7) 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 of conviction; and in this subsection “the date of conviction” has the same meaning as in section 13 of this Act.
- (8) Sections 11 and 12 of this Act shall apply where the prosecutor makes an application under this section as they apply where the prosecutor asks the court to proceed under section 2 of this Act.

## **15 Revised assessment of proceeds of drug trafficking.**

- (1) This section applies where the court has made a determination under subsection (4) of section 2 of this Act of the amount to be recovered in a particular case by virtue of that section (“the current section 2(4) determination”).
- (2) Where the prosecutor is of the opinion that the real value of the defendant’s proceeds of drug trafficking was greater than their assessed value, the prosecutor may apply to the Crown Court for the evidence on which the prosecutor has formed his opinion to be considered by the court.
- (3) Sections 11 and 12 of this Act shall apply where the prosecutor makes such an application as they apply where the prosecutor asks the court to proceed under section 2 of this Act, but subject (in the case of section 11) to subsection (9)(a) below.
- (4) If, having considered the evidence, the court is satisfied that the real value of the defendant’s proceeds of drug trafficking is greater than their assessed value (whether because the real value at the time of the current section 2(4) determination was higher than was thought or because the value of the proceeds in question has subsequently increased), the court shall make a fresh determination under subsection (4) of section 2 of this Act of the amount to be recovered by virtue of that section.
- (5) In subsections (2) and (4) above—
  - “assessed value” means the value of the defendant’s proceeds of drug trafficking as assessed by the court in accordance with section 5(1) of this Act; and
  - “real value” means the value of the defendant’s proceeds of drug trafficking which took place—
    - (a) in the period by reference to which the current section 2(4) determination was made; or
    - (b) in any earlier period.
- (6) Where the court is proceeding under section 2 of this Act by virtue of this section, subsection (4) of that section shall have effect as if the words “before sentencing or otherwise dealing with him in respect of the offence or, as the case may be, any of the offences concerned” were omitted.
- (7) Any determination under section 2(4) of this Act by virtue of this section shall be by reference to the amount that might be realised at the time when the determination is made.

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- (8) In the case of any determination under section 2(4) of this Act by virtue of this section, section 4(6) of this Act shall not apply in relation to any of the defendant’s proceeds of drug trafficking taken into account in respect of the current section 2(4) determination.
- (9) In relation to any such determination by virtue of this section—
- (a) sections 5(2), 6(4) and 11(9)(a) of this Act shall have effect as if for “confiscation order” there were substituted “determination”;
  - (b) section 5(3) shall have effect as if for “confiscation order is made” there were substituted “determination is made”; and
  - (c) section 6(1) of this Act shall have effect as if for “a confiscation order is made against the defendant” there were substituted “of the determination”.
- (10) The court may take into account any payment or other reward received by the defendant on or after the date of the current section 2(4) determination, but only if the prosecutor shows that it was received by the defendant in connection with drug trafficking carried on by the defendant or another person on or before that date.
- (11) In considering under this section any evidence which relates to any payment or reward to which subsection (10) above applies, the court shall not make the assumptions which would otherwise be required by section 4 of this Act.
- (12) If, as a result of making the fresh determination required by subsection (4) above, the amount to be recovered exceeds the amount set by the current section 2(4) determination, the court may substitute for the amount to be recovered under the confiscation order which was made by reference to the current section 2(4) determination such greater amount as it thinks just in all the circumstances of the case.
- (13) Where the court varies a confiscation order under subsection (12) above it shall substitute for the term of imprisonment or of detention fixed under section 31(2) of the Powers<sup>M27</sup> of Criminal Courts Act 1973 in respect of the amount to be recovered under the order a longer term determined in accordance with that section (as it has effect by virtue of section 9 of this Act) in respect of the greater amount substituted under subsection (12) above.
- (14) Subsection (13) above shall apply only if the effect of the substitution is to increase the maximum period applicable in relation to the order under section 31(3A) of the 1973 Act.
- (15) 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 of conviction; and in this subsection “the date of conviction” has the same meaning as in section 13 of this Act.

**Marginal Citations**

M27 1973 c. 62.

**16 Increase in realisable property.**

- (1) This section applies where, by virtue of section 5(3) of this Act, 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.



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- (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 in relation to the realisable property of the person in question under section 26 or 29 of this Act or in pursuance of a charging order.
- (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<sup>M28</sup> of Criminal Courts Act 1973 (as it has effect by virtue of section 9 of this Act) if the effect of the substitution is to increase the maximum period applicable in relation to the order under subsection (3A) of that section.

#### Marginal Citations

M28 1973 c. 62.

### 17 Inadequacy of realisable property.

- (1) If, on an application made in respect of a confiscation order by—
  - (a) the defendant, or
  - (b) a receiver appointed under section 26 or 29 of this Act or in pursuance of a charging order,the High Court is satisfied that the realisable property is inadequate for the payment of any amount remaining to be recovered under the confiscation order, the court shall issue a certificate to that effect, giving the court's reasons.
- (2) For the purposes of subsection (1) above—
  - (a) in the case of realisable property held by a person who has been adjudged bankrupt or whose estate has been sequestrated the court shall take into account the extent to which any property held by him may be distributed among creditors; and
  - (b) the court may disregard any inadequacy in the realisable property which appears to the court to be attributable wholly or partly to anything done by the defendant for the purpose of preserving any property held by a person to whom the defendant had directly or indirectly made a gift caught by this Act from any risk of realisation under this Act.
- (3) Where a certificate has been issued under subsection (1) above, the person who applied for it may apply to the Crown Court for the amount to be recovered under the confiscation order to be reduced.
- (4) The Crown Court shall, on an application under subsection (3) above—

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- (a) substitute for the amount to be recovered under the order such lesser amount as the court thinks just in all the circumstances of the case; and
  - (b) substitute for the term of imprisonment or of detention fixed under subsection (2) of section 31 of the Powers<sup>M29</sup> 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 9 of this Act) in respect of the lesser amount.
- (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.

#### Marginal Citations

M29 1973 c. 62.

## 18 Compensation.

- (1) If proceedings are instituted against a person for any drug trafficking offence or offences and either—
- (a) the proceedings do not result in his conviction for any drug trafficking offence, or
  - (b) he is convicted of one or more drug trafficking offences but—
    - (i) the conviction or convictions concerned are quashed, or
    - (ii) he is pardoned by Her Majesty in respect of the conviction or convictions concerned,
- the High Court may, on an application by a person who held property which was realisable property, order compensation to be paid to the applicant if, having regard to all the circumstances, it considers it appropriate to make such an order.
- (2) The High Court shall not order compensation to be paid in any case unless the court is satisfied—
- (a) that there has been some serious default on the part of a person concerned in the investigation or prosecution of the offence or offences concerned, being a person mentioned in subsection (5) below; and
  - (b) that the applicant has suffered loss in consequence of anything done in relation to the property by or in pursuance of—
    - (i) an order of the High Court or a county court under sections 26 to 29 of this Act; or
    - [<sup>F3</sup>(ii) an order of the Court of Session under section 32, 33, 34 or 35 of the Proceeds of Crime (Scotland) Act 1995 (recognition and enforcement of orders under this Act and inhibition and arrestment of property affected by restraint orders);]
- (3) The High Court shall not order compensation to be paid in any case where it appears to the court that the proceedings would have been instituted or continued even if the serious default had not occurred.

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- (4) The amount of compensation to be paid under this section shall be such as the High Court thinks just in all the circumstances of the case.
- (5) Compensation payable under this section shall be paid—
  - (a) where the person in default was, or was acting as, a member of a police force, out of the police fund out of which the expenses of that police force are met;
  - (b) where the person in default was a member of the Crown Prosecution Service or was acting on behalf of the service, by the Director of Public Prosecutions; and
  - (c) where the person in default was an officer within the meaning of the Customs<sup>M30</sup> and Excise Management Act 1979, by the Commissioners of Customs and Excise.

#### Textual Amendments

**F3** S. 18(2)(ii) substituted (1.4.1996) by 1995 c. 40, ss. 5, 7(2), Sch. 4 para. 94(4)

#### Marginal Citations

**M30** 1979 c. 2.

### *Confiscation orders where defendant has absconded or died*

## **19 Powers of High Court where defendant has absconded or died.**

- (1) Subsection (2) below applies where a person has been convicted of one or more drug trafficking offences.
- (2) If the prosecutor asks it to proceed under this section, the High Court may exercise the powers of the Crown Court under this Act to make a confiscation order against the defendant if satisfied that the defendant has died or absconded.
- (3) Subsection (4) below applies where proceedings for one or more drug trafficking offences have been instituted against a person but have not been concluded.
- (4) If the prosecutor asks it to proceed under this section, the High Court may exercise the powers of the Crown Court under this Act to make a confiscation order against the defendant if satisfied that the defendant has absconded.
- (5) The power conferred by subsection (4) above may not be exercised at any time before the end of the period of two years beginning with the date which is, in the opinion of the court, the date on which the defendant absconded.
- (6) In any proceedings on an application under this section—
  - (a) section 4(2) of this Act shall not apply;
  - (b) section 11 of this Act shall apply as it applies where the prosecutor asks the court to proceed under section 2 of this Act, but with the omission of subsections (5), (7) and (8);
  - (c) the court shall not make a confiscation order against a person who has absconded unless it is satisfied that the prosecutor has taken reasonable steps to contact him; and

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- (d) any person appearing to the court to be likely to be affected by the making of a confiscation order by the court shall be entitled to appear before the court and make representations.
- (7) Subject to subsection (8) below, section 9 of this Act applies in relation to confiscation orders made by the High Court by virtue of this section as it applies in relation to confiscation orders made by the Crown Court and, for that purpose, references to the Crown Court in the provisions of the 1973 Act referred to in subsection (1) of that section (except in section 32(1)(b) of that Act) shall be construed as references to the High Court.
- (8) Where the High Court makes a confiscation order by virtue of this section in relation to a defendant who has died, section 9(1) of this Act shall be read as referring only to sections 31(1) and 32(1) of the 1973 Act.
- (9) Where the High Court—
  - (a) has been asked to proceed under this section in relation to a defendant who has absconded, but
  - (b) has decided not to make a confiscation order against him,
 section 14 of this Act shall not apply at any time while he remains an absconder.
- (10) Where a confiscation order has been made in relation to any defendant by virtue of this section, section 15 of this Act shall not apply at any time while he is an absconder.

## **20 Effect of conviction where High Court has acted under section 19.**

- (1) Where, in the case of any defendant, the High Court has made a confiscation order by virtue of section 19 of this Act, the Crown Court shall, in respect of the offence or, as the case may be, any of the offences concerned—
  - (a) take account of the order before—
    - (i) imposing any fine on the defendant;
    - (ii) making any order involving any payment by him; or
    - (iii) making any order under section 27 of the Misuse<sup>M31</sup> of Drugs Act 1971 (forfeiture orders) or section 43 of the Powers<sup>M32</sup> of Criminal Courts Act 1973 (deprivation orders); and
  - (b) subject to paragraph (a) above, leave the order out of account in determining the appropriate sentence or other manner of dealing with him.
- (2) Where the High Court has made a confiscation order by virtue of section 19 of this Act and the defendant subsequently appears before the Crown Court to be sentenced in respect of one or more of the offences concerned, section 2(1) of this Act shall not apply so far as his appearance is in respect of that offence or those offences.

### **Marginal Citations**

**M31** 1971 c. 38.

**M32** 1973 c. 62.

## **21 Variation of confiscation orders made by virtue of section 19.**

- (1) This section applies where—

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- (a) the High Court has made a confiscation order by virtue of section 19(4) of this Act, and
  - (b) the defendant has ceased to be an absconder.
- (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 2 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) In the case of any determination under section 2 of this Act by virtue of this section, section 4(6) 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 <sup>M33</sup> 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 19 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 in accordance with section 24 of this Act 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) 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.

**Marginal Citations**

M33 1973 c. 62.

**22 Compensation etc where absconder is acquitted.**

- (1) This section applies where—
- (a) the High Court has made a confiscation order by virtue of section 19(4) of this Act, and

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- (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 in accordance with section 24 of this Act if it is satisfied that the applicant has suffered loss as a result of the making of the confiscation order.
- 23 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 19(4) of this Act in relation to an absconder;
    - (b) the defendant has ceased to be an absconder; and
    - (c) section 22 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 19(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 in accordance with section 24 of this Act if it is satisfied that the applicant has suffered loss as a result of the making of the confiscation order.
- 24 Provisions supplementary to sections 21, 22 and 23.**
- (1) Where the High Court orders compensation to be paid under section 21, 22 or 23 of this Act, the amount of that compensation shall be such as the court considers just in all the circumstances of the case.
  - (2) Rules of court may make provision—
    - (a) for the giving of notice of any application under section 21, 22 or 23 of this Act; and
    - (b) for any person appearing to the court to be likely to be affected by any exercise of its powers under any of those sections to be given an opportunity to make representations to the court.
  - (3) Any payment of compensation under any of those sections shall be made by the Lord Chancellor.
  - (4) Where the court cancels a confiscation order under section 22 or 23 of this Act it may make such consequential or incidental order as it considers appropriate in connection with the cancellation.

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### *Restraint orders and charging orders*

## **25 Cases in which restraint orders and charging orders may be made.**

- (1) The powers conferred on the High Court by sections 26(1) and 27(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 13, 14, 15, 16 or 19 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—
    - (i) in the case of an application under section 15 or 16 of this Act, that the court will be satisfied as mentioned in section 15(4) or, as the case may be, 16(2) of this Act; or
    - (ii) in any other case, that the defendant has benefited from drug trafficking.
- (2) The court shall not exercise those powers by virtue of subsection (1) above if it is satisfied—
  - (a) that there has been undue delay in continuing the proceedings or application in question; or
  - (b) that the prosecutor does not intend to proceed.
- (3) The powers mentioned in subsection (1) above 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.
- (4) For the purposes of sections 26 and 27 of this Act, at any time when those powers are exercisable before proceedings have been instituted—
  - (a) references in this Act to the defendant shall be construed as references to the person referred to in subsection (3)(a) above;
  - (b) references in this Act to the prosecutor shall be construed as references to the person who the High Court is satisfied is to have the conduct of the proposed proceedings; and
  - (c) references in this Act to realisable property shall be construed as if, immediately before that time, proceedings had been instituted against the person referred to in subsection (3)(a) above for a drug trafficking offence.
- (5) Where the court has made an order under section 26(1) or 27(1) of this Act by virtue of subsection (3) above, the court shall discharge the order if proceedings in respect of the offence are not instituted, whether by the laying of an information or otherwise, or (as the case may be) if the application is not made, within such time as the court considers reasonable.

*Status: Point in time view as at 01/04/1996.*

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#### Modifications etc. (not altering text)

- C2** S. 25(1)(c) amended (1.2.1998) by S.I. 1996/2880, art. 3(2), **Sch. 2 para.8(c)** (as substituted (1.2.1998) by S.I. 1997/2980, **arts. 3, 4**)

## 26 Restraint orders.

- (1) The High Court may by order (in this Act referred to as a “restraint order”) prohibit any person from dealing with any realisable property, subject to such conditions and exceptions as may be specified in the order.
- (2) A restraint order may apply—
  - (a) to all realisable property held by a specified person, whether the property is described in the order or not; and
  - (b) to realisable property held by a specified person, being property transferred to him after the making of the order.
- (3) This section shall not have effect in relation to any property for the time being subject to a charge under section 27 of this Act or section 9 of the Drug <sup>M34</sup> Trafficking Offences Act 1986.
- (4) A restraint order—
  - (a) may be made only on an application by the prosecutor;
  - (b) may be made on an ex parte application to a judge in chambers; and
  - (c) shall provide for notice to be given to persons affected by the order.
- (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.
- (6) An application for the discharge or variation of a restraint order may be made by any person affected by it.
- (7) Where the High Court has made a restraint order, the High Court or a county court—
  - (a) may at any time appoint a receiver—
    - (i) to take possession of any realisable property, and
    - (ii) in accordance with the court’s directions, to manage or otherwise deal with any property in respect of which he is appointed,
 subject to such exceptions and conditions as may be specified by the court; and
  - (b) may require any person having possession of property in respect of which a receiver is appointed under this section to give possession of it to the receiver.
- (8) For the purposes of this section, dealing with property held by any person includes (without prejudice to the generality of that expression)—
  - (a) where a debt is owed to that person, making a payment to any person in reduction of the amount of the debt; and
  - (b) removing the property from Great Britain.
- (9) Where a restraint order has been made a constable may seize any realisable property for the purpose of preventing its removal from Great Britain.



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- (10) In subsection (9) above, the reference to a restraint order includes a reference to a restraint order within the meaning of [F<sup>4</sup>the Proceeds of Crime (Scotland) Act 1995, and in relation to such an order “realisable property” has the same meaning as in that Act]
- (11) Property seized under subsection (9) above shall be dealt with in accordance with the directions of the court which made the order.
- (12) The Land <sup>M35</sup> Charges Act 1972 and the Land <sup>M36</sup> Registration Act 1925 shall apply—
- (a) in relation to restraint orders, as they apply in relation to orders affecting land made by the court for the purpose of enforcing judgments or recognisances; and
  - (b) in relation to applications for restraint orders, as they apply in relation to other pending land actions.
- (13) The prosecutor shall be treated for the purposes of section 57 of the Land Registration Act 1925 (inhibitions) as a person interested in relation to any registered land to which a restraint order or an application for such an order relates.

#### Extent Information

- E2** S. 26 as originally enacted extended to England and Wales only but see amendment by 1995 c. 43, ss. 35(2)(4), 44 (with Sch. 2 para. 2(2))

#### Textual Amendments

- F4** Words in s. 26(10) substituted (1.4.1996) by 1995 c. 40, ss. 5, 7(2), Sch. 4 para. 94(5)

#### Modifications etc. (not altering text)

- C3** S. 26 extended to Scotland (1.4.1996) (subject to ss. 35, 36 of the amending Act) by 1995 c. 43, ss. 35(2)(4), 44 (with Sch. 2 para. 2(2))

#### Marginal Citations

- M34** 1986 c. 32.  
**M35** 1972 c. 61.  
**M36** 1925 c. 21.

## 27 Charging orders in respect of land, securities etc.

- (1) The High Court may make a charging order on realisable property for securing the payment to the Crown—
- (a) where a confiscation order has not been made, of an amount equal to the value from time to time of the property charged; and
  - (b) where a confiscation order has been made, of an amount not exceeding the amount payable under the confiscation order.
- (2) For the purposes of this Act a charging order is an order made under this section imposing on any such realisable property as may be specified in the order a charge for securing the payment of money to the Crown.
- (3) A charging order—
- (a) may be made only on an application by the prosecutor;
  - (b) may be made on an ex parte application to a judge in chambers;

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- (c) shall provide for notice to be given to persons affected by the order; and
  - (d) may be made subject to such conditions as the court thinks fit including, without prejudice to the generality of this paragraph, such conditions as it thinks fit as to the time when the charge is to become effective.
- (4) Subject to subsection (6) below, a charge may be imposed by a charging order only on—
- (a) any interest in realisable property which is an interest held beneficially by the defendant or by a person to whom the defendant has directly or indirectly made a gift caught by this Act and is an interest—
    - (i) in any asset of a kind mentioned in subsection (5) below; or
    - (ii) under any trust; or
  - (b) any interest in realisable property held by a person as trustee of a trust (“the relevant trust”) if the interest is in such an asset or is an interest under another trust and a charge may by virtue of paragraph (a) above be imposed by a charging order on the whole beneficial interest under the relevant trust.
- (5) The assets referred to in subsection (4) above are—
- (a) land in England and Wales; or
  - (b) securities of any of the following kinds—
    - (i) government stock;
    - (ii) stock of any body (other than a building society) incorporated within England and Wales;
    - (iii) stock of any body incorporated outside England and Wales or of any country or territory outside the United Kingdom, being stock registered in a register kept at any place within England and Wales;
    - (iv) units of any unit trust in respect of which a register of the unit holders is kept at any place within England and Wales.
- (6) In any case where a charge is imposed by a charging order on any interest in an asset of a kind mentioned in subsection (5)(b) above, the court may provide for the charge to extend to any interest or dividend payable in respect of the asset.
- (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) An application for the discharge or variation of a charging order may be made by any person affected by it.
- (9) In this section “building society”, “dividend”, “government stock”, “stock” and “unit trust” have the same meaning as in the Charging <sup>M37</sup> Orders Act 1979.

#### Marginal Citations

M37 1979 c. 53.

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## 28 Charging orders: supplementary provisions.

- (1) The Land <sup>M38</sup> Charges Act 1972 and the Land <sup>M39</sup> Registration Act 1925 shall apply in relation to charging orders as they apply in relation to orders or writs made or issued for the purpose of enforcing judgments.
- (2) Where a charging order has been registered under section 6 of the Land Charges Act 1972, subsection (4) of that section (effect of non-registration of writs and orders registrable under that section) shall not apply to an order appointing a receiver made in pursuance of the charging order.
- (3) Subject to any provision made under section 29 of this Act or by rules of court, a charge imposed by a charging order shall have the like effect and shall be enforceable in the same courts and in the same manner as an equitable charge created by the person holding the beneficial interest or, as the case may be, the trustees by writing under their hand.
- (4) Where a charging order has been protected by an entry registered under the Land Charges Act 1972 or the Land Registration Act 1925, an order under section 27(7) of this Act discharging the charging order may direct that the entry be cancelled.
- (5) The Secretary of State may by order made by statutory instrument amend section 27 of this Act by adding to or removing from the kinds of asset for the time being referred to there any asset of a kind which in his opinion ought to be so added or removed.
- (6) An order under subsection (5) above shall be subject to annulment in pursuance of a resolution of either House of Parliament.

### Marginal Citations

M38 1972 c. 61.

M39 1925 c. 21.

## *Realisation of property*

## 29 Realisation of property.

- (1) Where a confiscation order—
  - (a) has been made under this Act,
  - (b) is not satisfied, and
  - (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.
- (2) The court may appoint a receiver in respect of realisable property.
- (3) The court may empower a receiver appointed under subsection (2) above, under section 26 of this Act or in pursuance of a charging order—
  - (a) to enforce any charge imposed under section 27 of this Act on realisable property or on interest or dividends payable in respect of such property; and
  - (b) in relation to any realisable property other than property for the time being subject to a charge under section 27 of this Act, to take possession of the

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property subject to such conditions or exceptions as may be specified by the court.

- (4) The court may order any person having possession of realisable property to give possession of it to any such receiver.
- (5) The court may empower any such receiver to realise any realisable property in such manner as the court may direct.
- (6) The court may—
  - (a) order any person holding an interest in realisable property to make to the receiver such payment as it may direct in respect of any beneficial interest held by the defendant or, as the case may be, the recipient of a gift caught by this Act; and
  - (b) on the payment being made, by order transfer, grant or extinguish any interest in the property.
- (7) Subsections (4) to (6) above do not apply to property for the time being subject to a charge under section 27 of this Act or section 9 of the Drug<sup>M40</sup> Trafficking Offences Act 1986.
- (8) The court shall not in respect of any property exercise the powers conferred by subsection (3)(a), (5) or (6) above unless a reasonable opportunity has been given for persons holding any interest in the property to make representations to the court.

#### Extent Information

**E3** [S. 29](#) as originally enacted extended to England and Wales only but see amendment by [1995 c. 43, ss. 35\(20\)\(4\)](#) (with [Sch. 2 para. 2\(2\)](#))

#### Modifications etc. (not altering text)

**C4** [S. 29](#) extended to Scotland (1.4.1996) (subject to ss. 35, 36 of the amending Act) by [1995 c. 43, ss. 35\(2\)\(4\), 44](#) (with [Sch. 2 para. 2\(2\)](#))

#### Marginal Citations

**M40** [1986 c. 32](#).

### 30 Application of proceeds of realisation and other sums.

- (1) The following sums in the hands of a receiver appointed under section 26 or 29 of this Act or in pursuance of a charging order, that is—
  - (a) the proceeds of the enforcement of any charge imposed under section 27 of this Act,
  - (b) the proceeds of the realisation, other than by the enforcement of such a charge, of any property under section 26 or 29 of this Act, and
  - (c) any other sums, being property held by the defendant,
 shall be applied, subject to subsection (2) below, on the defendant's behalf towards the satisfaction of the confiscation order.
- (2) Before any such sums are so applied they shall be applied—
  - (a) first, in payment of such expenses incurred by a person acting as an insolvency practitioner as are payable under section 35(3) of this Act; and

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- (b) second, in making such payments (if any) as the High Court or a county court may direct.
- (3) If, after the amount payable under the confiscation order has been fully paid, any such sums remain in the hands of such a receiver as is mentioned in subsection (1) above, the receiver shall distribute those sums—
- (a) among such of those who held property which has been realised under this Act, and
- (b) in such proportions,
- as the High Court or a county court may direct after giving a reasonable opportunity for such persons to make representations to the court.
- (4) The receipt of any sum by a justices' clerk on account of an amount payable under a confiscation order shall reduce the amount so payable, but the justices' clerk shall apply the money received for the purposes specified in this section and in the order so specified.
- (5) The justices' clerk shall first pay any expenses incurred by a person acting as an insolvency practitioner and payable under section 35(3) of this Act but not already paid under subsection (2) above.
- (6) If the money was paid to the justices' clerk by a receiver appointed under section 26 or 29 of this Act or in pursuance of a charging order the justices' clerk shall next pay the receiver's remuneration and expenses.
- (7) After making—
- (a) any payment required by subsection (5) above, and
- (b) in a case to which subsection (6) above applies, any payment required by that subsection,
- the justices' clerk shall reimburse any amount paid under section 36(2) of this Act.
- (8) Any balance in the hands of the justices' clerk after he has made all payments required by the preceding provisions of this section shall be treated for the purposes of section 61 of the Justices<sup>M41</sup> of the Peace Act 1979 (application of fines, etc.) as if it were a fine imposed by a magistrates' court.
- (9) In this section "justices' clerk" has the same meaning as in the Justices of the Peace Act 1979.

#### **Extent Information**

**E4** S. 30 as originally enacted extended to England and Wales only but see amendment by 1995 c. 43, ss. 35(2)(4), 44 (with Sch. 2 para. 2(2))

#### **Modifications etc. (not altering text)**

**C5** S. 30 extended to Scotland (1.4.1996) (subject to ss. 35, 36 of the amending Act) by 1995 c. 43, ss. 35(2)(4), 44 (with Sch. 2 para. 2(2))

#### **Marginal Citations**

**M41** 1979 c. 55.

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### *Exercise of powers for the realisation of property*

#### **31 Exercise by High Court, county court or receiver of powers for the realisation of property.**

- (1) The following provisions apply to the powers conferred—
  - (a) on the High Court or a county court by sections 26 to 30 of this Act; or
  - (b) on a receiver appointed under section 26 or 29 of this Act or in pursuance of a charging order.
- (2) Subject to the following provisions of this section, the powers shall be exercised with a view to making available for satisfying the confiscation order or, as the case may be, any confiscation order that may be made in the defendant’s case, the value for the time being of realisable property held by any person, by means of the realisation of such property.
- (3) In the case of realisable property held by a person to whom the defendant has directly or indirectly made a gift caught by this Act, the powers shall be exercised with a view to realising no more than the value for the time being of the gift.
- (4) The powers shall be exercised with a view to allowing any person other than the defendant or the recipient of any such gift to retain or recover the value of any property held by him.
- (5) In exercising the powers, no account shall be taken of any obligations of the defendant or of the recipient of any such gift which conflict with the obligation to satisfy the confiscation order.
- (6) An order may be made or other action taken in respect of a debt owed by the Crown.

#### **Modifications etc. (not altering text)**

C6 S. 31(2)-(6) applied (S.) (1.4.1996) by 1995 c. 43, ss. 16(7), 50(2)

### *Insolvency of defendants etc*

#### **32 Bankruptcy of defendant etc.**

- (1) Where a person who holds realisable property is adjudged bankrupt—
  - (a) property for the time being subject to a restraint order made before the order adjudging him bankrupt, and
  - (b) any proceeds of property realised by virtue of section 26(7) or 29(5) or (6) of this Act for the time being in the hands of a receiver appointed under section 26 or 29 of this Act,
 is excluded from the bankrupt’s estate for the purposes of Part IX of the Insolvency Act 1986 (“the 1986 Act”).<sup>M42</sup>
- (2) Where a person has been adjudged bankrupt, the powers conferred on the High Court or a county court by sections 26 to 30 of this Act or on a receiver so appointed shall not be exercised in relation to—
  - (a) property for the time being comprised in the bankrupt’s estate for the purposes of Part IX of the 1986 Act;

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- (b) property in respect of which his trustee in bankruptcy may (without leave of the court) serve a notice under section 307, 308 or 308A of that Act (after-acquired property and tools, clothes etc. exceeding value of reasonable replacement, and certain tenancies); and
  - (c) property which is to be applied for the benefit of creditors of the bankrupt by virtue of a condition imposed under section 280(2)(c) of that Act;
- but nothing in that Act shall be taken as restricting, or enabling the restriction of, the exercise of those powers.
- (3) Subsection (2) above does not affect the enforcement of a charging order—
    - (a) made before the order adjudging the person bankrupt; or
    - (b) on property which was subject to a restraint order when the order adjudging him bankrupt was made.
  - (4) Where, in the case of a debtor, an interim receiver stands appointed under section 286 of the 1986 Act and any property of the debtor is subject to a restraint order, the powers conferred on the receiver by virtue of that Act do not apply to property for the time being subject to the restraint order.
  - (5) Where a person is adjudged bankrupt and has directly or indirectly made a gift caught by this Act—
    - (a) no order shall be made under section 339 or 423 of the 1986 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 13, 14, 15, 16 or 19 of this Act 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.

#### **Marginal Citations**

**M42** 1986 c. 45.

### **33 Sequestration in Scotland of defendant etc.**

- (1) Where the estate of a person who holds realisable property is sequestrated—
  - (a) property for the time being subject to a restraint order made before the award of sequestration, and
  - (b) any proceeds of property realised by virtue of section 26(7) or 29(5) or (6) of this Act for the time being in the hands of a receiver appointed under section 26 or 29 of this Act,is excluded from the debtor’s estate for the purposes of the Bankruptcy<sup>M43</sup> (Scotland) Act 1985 (“the 1985 Act”).
- (2) Where an award of sequestration has been made, the powers conferred on the High Court or a county court by sections 26 to 30 of this Act or on a receiver so appointed shall not be exercised in relation to—

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- (a) property comprised in the whole estate of the debtor within the meaning of section 31(8) of the 1985 Act; and
  - (b) any income of the debtor which has been ordered, under section 32(2) of that Act, to be paid to the permanent trustee or any estate which, under section 31(10) or 32(6) of that Act, vests in the permanent trustee;
- and it shall not be competent to submit a claim in relation to the confiscation order to the permanent trustee in accordance with section 48 of that Act.
- (3) Nothing in the 1985 Act shall be taken as restricting, or enabling the restriction of, the exercise of the powers mentioned in subsection (2) above.
- (4) Subsection (2) above does not affect the enforcement of a charging order—
- (a) made before the award of sequestration; or
  - (b) on property which was subject to a restraint order when the award of sequestration was made.
- (5) Where, during the period before sequestration is awarded—
- (a) an interim trustee stands appointed under section 2(5) of the 1985 Act, and
  - (b) any property in the debtor’s estate is subject to a restraint order,
- the powers conferred on the trustee by virtue of that Act do not apply to property for the time being subject to the restraint order.
- (6) Where the estate of a person is sequestrated and he has directly or indirectly made a gift caught by this Act—
- (a) no decree shall be granted under section 34 or 36 of the 1985 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 13, 14, 15, 16 or 19 of this Act 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 the person to whom the gift was made.
- (7) In any case in which, notwithstanding the coming into force of the 1985 Act, the Bankruptcy <sup>M44</sup> (Scotland) Act 1913 applies to a sequestration, subsection (2) above shall have effect as if for paragraphs (a) and (b) there were substituted—
- “(a) property comprised in the whole property of the debtor which vests in the trustee under section 97 of the Bankruptcy (Scotland) Act 1913; and
  - (b) any income of the bankrupt which has been ordered under subsection (2) of section 98 of that Act to be paid to the trustee, or any estate which, under subsection (1) of that section, vests in the trustee;”and subsection (3) above shall have effect as if for the reference in that subsection to the 1985 Act there were substituted a reference to the Act of 1913.



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#### Marginal Citations

M43 1985 c. 66.

M44 1913 c. 20.

### 34 Winding up of company holding realisable property.

- (1) Where realisable property is held by a company and an order for the winding up of the company has been made or a resolution has been passed by the company for the voluntary winding up of the company, the functions of the liquidator (or any provisional liquidator) shall not be exercisable in relation to—
  - (a) property for the time being subject to a restraint order made before the relevant time; and
  - (b) any proceeds of property realised by virtue of section 26(7) or 29(5) or (6) of this Act for the time being in the hands of a receiver appointed under section 26 or 29 of this Act.
- (2) Where, in the case of a company, such an order has been made or such a resolution has been passed, the powers conferred on the High Court or a county court by sections 26 to 30 of this Act or on a receiver so appointed shall not be exercised in relation to any realisable property held by the company in relation to which the functions of the liquidator are exercisable—
  - (a) so as to inhibit him from exercising those functions for the purpose of distributing any property held by the company to the company’s creditors; or
  - (b) so as to prevent the payment out of any property of expenses (including the remuneration of the liquidator or any provisional liquidator) properly incurred in the winding up in respect of the property;but nothing in the Insolvency <sup>M45</sup> Act 1986 shall be taken as restricting, or enabling the restriction of, the exercise of those powers.
- (3) Subsection (2) above does not affect the enforcement of a charging order made before the relevant time or on property which was subject to a restraint order at the relevant time.
- (4) In this section—

“ company” means any company which may be wound up under the Insolvency Act 1986; and

“the relevant time” means—

  - (a) where no order for the winding up of the company has been made, the time of the passing of the resolution for voluntary winding up;
  - (b) where—
    - (i) such an order has been made, but
    - (ii) before the presentation of the petition for the winding up of the company by the court, such a resolution had been passed by the company,the time of the passing of the resolution; and
  - (c) in any other case where such an order has been made, the time of the making of the order.

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#### Marginal Citations

M45 1986 c. 45.

### *Protection for insolvency officers etc*

#### **35 Insolvency officers dealing with property subject to restraint order.**

(1) Without prejudice to the generality of any enactment contained in the Insolvency Act 1986 or in any other Act, where—

- (a) any person acting as an insolvency practitioner seizes or disposes of any property in relation to which his functions are not exercisable because it is for the time being subject to a restraint order, and
- (b) at the time of the seizure or disposal he believes, and has reasonable grounds for believing, that he is entitled (whether in pursuance of an order of the court or otherwise) to seize or dispose of that property,

he shall not be liable to any person in respect of any loss or damage resulting from the seizure or disposal except in so far as the loss or damage is caused by his negligence in so acting.

(2) A person acting as an insolvency practitioner shall, in the circumstances mentioned in subsection (1)(a) and (b) above, have a lien on the property, or the proceeds of its sale, for such of his expenses as were incurred in connection with the liquidation, bankruptcy or other proceedings in relation to which the seizure or disposal purported to take place and for so much of his remuneration as may reasonably be assigned for his acting in connection with those proceedings.

(3) Where a person acting as an insolvency practitioner—

- (a) incurs expenses in respect of such property as is mentioned in paragraph (a) of subsection (1) above and in so doing does not know and has no reasonable grounds to believe that the property is for the time being subject to a restraint order, or
- (b) incurs expenses other than expenses in respect of such property as is so mentioned, being expenses which, but for the effect of a restraint order, might have been met by taking possession of and realising the property,

that person shall be entitled (whether or not he has seized or disposed of that property so as to have a lien under subsection (2) above) to payment of those expenses under section 30(2) or (5) of this Act.

(4) In this Act the expression “acting as an insolvency practitioner” shall be construed in accordance with section 388 of the Insolvency <sup>M46</sup> Act 1986 (interpretation) except that for the purposes of such construction—

- (a) the reference in subsection (2)(a) of that section to a permanent or interim trustee in sequestration shall be taken to include a reference to a trustee in sequestration; and
- (b) subsection (5) of that section (which includes provision to the effect that nothing in the section is to apply to anything done by the official receiver) shall be disregarded;

and the expression shall also comprehend the official receiver acting as receiver or manager of the property.

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#### Marginal Citations

M46 1986 c. 45.

### 36 Receivers: supplementary provisions.

- (1) Where a receiver appointed under section 26 or 29 of this Act or in pursuance of a charging order—
  - (a) takes any action in relation to property which is not realisable property, being action which he would be entitled to take if it were such property, and
  - (b) believes, and has reasonable grounds for believing, that he is entitled to take that action in relation to that property,he shall not be liable to any person in respect of any loss or damage resulting from his action except in so far as the loss or damage is caused by his negligence.
- (2) Any amount due in respect of the remuneration and expenses of a receiver so appointed shall, if no sum is available to be applied in payment of it under section 30(6) of this Act, be paid by the prosecutor or, in a case where proceedings for a drug trafficking offence are not instituted, by the person on whose application the receiver was appointed.

#### Extent Information

E5 S. 36 extends to England and Wales only except that s. 36(1) extends also to Scotland.

#### *Enforcement of orders made outside England and Wales*

### 37 Recognition and enforcement of orders and functions under Part I of the Criminal Justice (Scotland) Act 1987.

- (1) Her Majesty may by Order in Council make such provision as Her Majesty considers expedient for the purpose [<sup>F5</sup>in connection with a drug trafficking offence within the meaning of the Proceeds of Crime (Scotland) Act 1995]—
  - (a) of enabling property in England and Wales which is realisable property for the purposes of [<sup>F6</sup>that Act] to be used or realised for the payment of any amount payable under a confiscation order made under [<sup>F7</sup>that Part of]that Act; and
  - (b) of securing that, where no confiscation order has been made under [<sup>F7</sup> that Part of]that Act, property in England and Wales which is realisable property for the purposes of [<sup>F7</sup>that Part of] that Act is available, in the event that such an order is so made, to be used or realised for the payment of any amount payable under it.
- (2) Without prejudice to the generality of the power conferred by subsection (1) above, an Order in Council under this section may—
  - (a) provide that, subject to any specified conditions—
    - (i) the functions of a person appointed under [<sup>F8</sup>Schedule 1 to the Proceeds of Crime (Scotland) Act 1995], and
    - (ii) such descriptions of orders made under or for the purposes of [<sup>F9</sup>Part I of]that Act as may be specified,

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- shall have effect in the law of England and Wales;
- (b) make provision—
- (i) for the registration in the High Court of such descriptions of orders made under or for the purposes of [<sup>F7</sup>that Part of] that Act as may be specified; and
  - (ii) for the High Court to have, in relation to the enforcement of orders made under or for the purposes of [<sup>F7</sup>that Part of] that Act which are so registered, such powers as may be specified; and
- (c) make provision as to the proof in England and Wales of orders made under or for the purposes of [<sup>F7</sup>that Part of] that Act.
- (3) In subsection (2) above “specified” means specified in an Order in Council under this section.
- (4) An Order in Council under this section may amend or apply, with or without modifications, any enactment.
- (5) An Order in Council under this section may contain such incidental, consequential and transitional provisions as Her Majesty considers expedient.
- (6) An Order in Council under this section shall be subject to annulment in pursuance of a resolution of either House of Parliament.

#### Textual Amendments

- F5** Words in s. 37(1) inserted (1.4.1996) by 1995 c. 40, ss. 5, 7(2), **Sch. 4 para. 94(6)(a)(i)**
- F6** Words in s. 37(1)(a) substituted (1.4.1996) by 1995 c. 40, ss. 5, 7(2), **Sch. 4 para. 94(6)(a)(ii)**
- F7** Words in s. 37 ceased to have effect (1.4.1996) by virtue of 1995 c. 40, ss. 5, 7(2), **Sch. 4 para. 94** (6) (a)(iii)(b)(ii) and the said words in s. 37 expressed to be repealed (for Scotland only) (1.4.1996) by 1995 c. 40, ss. 6(1), 7(2)(3), **Sch. 5** (with s. 3, **Sch. 3** paras. 1, 3)
- F8** Words in s. 37(2)(a)(i) substituted (1.4.1996) by 1995 c. 40, ss. 5, 7(2), **Sch. 4 para. 94(6)(b)(i)**
- F9** Words in s. 37(2)(a)(ii) ceased to have effect (1.4.1996) by virtue of 1995 c. 40, ss. 5, 7(2), **Sch. 4 para. 94(6)(b)(i)** and the said words in s. 37 expressed to be repealed (for Scotland only) (1.4.1996) by 1995 c. 40, ss. 6(1), 7(2)(3), **Sch. 5** (with s. 3, **Sch. 3** paras. 1, 3)

### 38 Enforcement of Northern Ireland orders.

- (1) Her Majesty may by Order in Council provide that, for the purposes of sections 17 and 25 to 36 of this Act, this Act shall have effect as if—
- (a) references to confiscation orders included a reference to orders made by courts in Northern Ireland which appear to Her Majesty to correspond to confiscation orders;
  - (b) references to drug trafficking offences included a reference to any offence under the law of Northern Ireland (not being a drug trafficking offence) which appears to Her Majesty to correspond to such an offence;
  - (c) references to proceedings in England and Wales or to the institution or conclusion in England and Wales of proceedings included a reference to proceedings in Northern Ireland or to the institution or conclusion in Northern Ireland of proceedings, as the case may be; and
  - (d) the references to the laying of an information in section 25(3) and (5) of this Act included references to making a complaint under Article 20 of the Magistrates’ <sup>M47</sup> Courts (Northern Ireland) Order 1981.

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- (2) An Order in Council under this section may provide for those sections to have effect, in relation to anything done or to be done in Northern Ireland, subject to such further modifications as may be specified in the order.
- (3) An Order in Council under this section may contain such incidental, consequential and transitional provisions as Her Majesty considers expedient.
- (4) An Order in Council under this section may, in particular, provide for section 18 of the Civil<sup>M48</sup> Jurisdiction and Judgments Act 1982 (enforcement of United Kingdom judgments in other parts of the United Kingdom) not to apply in relation to such orders as may be prescribed by the Order.
- (5) An Order in Council under this section shall be subject to annulment in pursuance of a resolution of either House of Parliament.

#### Marginal Citations

M47 S.I. 1981/1675 (N.I. 26).

M48 1982 c. 27.

### 39 Enforcement of external confiscation orders.

- (1) Her Majesty may by Order in Council—
  - (a) direct in relation to a country or territory outside the United Kingdom designated by the Order (a “designated country”) that, subject to such modifications as may be specified, the relevant provisions of this Act shall apply to external confiscation orders and to proceedings which have been or are to be instituted in the designated country and may result in an external confiscation order being made there;
  - (b) make—
    - (i) such provision in connection with the taking of action in the designated country with a view to satisfying a confiscation order,
    - (ii) such provision as to evidence or proof of any matter for the purposes of this section and section 40 of this Act, and
    - (iii) such incidental, consequential and transitional provision, as appears to Her Majesty to be expedient; and
  - (c) (without prejudice to the generality of this subsection) direct that, in such circumstances as may be specified, proceeds which arise out of action taken in the designated country with a view to satisfying a confiscation order shall be treated as reducing the amount payable under the order to such extent as may be specified.
- (2) In this section “external confiscation order” means an order made by a court in a designated country for the purpose of recovering, or recovering the value of, payments or other rewards received in connection with drug trafficking.
- (3) An Order in Council under this section may make different provision for different cases or classes of case.
- (4) The power to make an Order in Council under this section includes power to modify the relevant provisions of this Act in such a way as to confer power on a person to exercise a discretion.

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- (5) An Order in Council under this section shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (6) For the purposes of this section, “the relevant provisions of this Act” are this Part, except sections 10 and 16, and Part IV.

#### **40 Registration of external confiscation orders.**

- (1) On an application made by or on behalf of the Government of a designated country, the High Court may register an external confiscation order made there if—
  - (a) it is satisfied that at the time of registration the order is in force and not subject to appeal;
  - (b) it is satisfied, where the person against whom the order is made did not appear in the proceedings, that he received notice of the proceedings in sufficient time to enable him to defend them; and
  - (c) it is of the opinion that enforcing the order in England and Wales would not be contrary to the interests of justice.
- (2) In subsection (1) above “appeal” includes—
  - (a) any proceedings by way of discharging or setting aside a judgment; and
  - (b) an application for a new trial or a stay of execution.
- (3) The High Court shall cancel the registration of an external confiscation order if it appears to the court that the order has been satisfied by payment of the amount due under it.
- (4) In this section “designated country” and “external confiscation order” have the same meaning as in section 39 of this Act.

#### *Interpretation*

#### **41 Interpretation of Part I.**

- (1) This section shall have effect for the interpretation of this Part.
- (2) Proceedings for an offence are instituted—
  - (a) when a justice of the peace issues a summons or warrant under section 1 of the Magistrates’<sup>M49</sup> Courts Act 1980 (issue of summons to, or warrant for arrest of, accused) in respect of the 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 Administration<sup>M50</sup> of Justice (Miscellaneous Provisions) Act 1933 in a case falling within paragraph (b) of subsection (2) of that section (preferment by direction of the criminal division of the Court of Appeal or by direction, or with the consent, of a High Court judge);

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.
- (3) Proceedings for a drug trafficking offence are concluded—
  - (a) when the defendant is acquitted on all counts;

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- (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.
- (4) An application under section 13, 14 or 19 of this Act is concluded—
- (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.
- (5) An application under section 15 or 16 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.
- (6) A confiscation order is satisfied when no amount is due under it.
- (7) For the purposes of this section as it applies to sections 32 and 33 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.
- (8) 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.

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**Marginal Citations**

**M49** 1980 c. 43.

**M50** 1933 c. 36.

**Status:**

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**Changes to legislation:**

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