



# Drug Trafficking Act 1994

## 1994 CHAPTER 37

### PART I

#### CONFISCATION ORDERS

##### *Further proceedings in connection with confiscation orders*

#### **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—

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*Status: This is the original version (as it was originally enacted).*

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- (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.
- (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 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.