



Criminal Justice (Scotland) Act 1987

1987 CHAPTER 41

PART I

CONFISCATION OF PROCEEDS OF DRUG TRAFFICKING ETC.

Confiscation orders

1 Confiscation orders.

- (1) Subject to the provisions of this Part of this Act, where a person is convicted in the [^{F1}High Court or sherrif court (in this section) and sections 2 to 7A of this Act referred to as "the court"] of an offence to which this section relates the court, on the application of the prosecutor, may], make an order (in this Act referred to as a "confiscation order") requiring the person to pay such amount as the [^{F2}court]considers appropriate, being an amount not exceeding—
 - (a) subject to paragraph (b) below, what it assesses to be the value of the proceeds of the person's drug trafficking; or
 - (b) if the [^{F3}court] is satisfied that the [^{F4}amount] that might be realised in terms of this Part of this Act at the time the confiscation order is made has a value less than that of the proceeds of the person's drug trafficking. what it assesses to be the value of [^{F5}that amount].
- (2) This section relates to any of the following [^{F6}offences when prosecuted either on indictment or on summary complaint before the sheriff if the offence is punishable by a fine in excess of level 5 or by imprisonment for a period of more than 3 months or by both such fine and imprisonment]—
 - (a) an offence under section 4(2) (production, or being concerned in production, of controlled drug), 4(3) (supply of, or offer to supply, or being concerned in supply of, controlled drug), 5(3) (possession of controlled drug with intent to supply) or 20 (assisting in, or inducing commission of, certain drug related offences punishable under foreign law) of the ^{M1}Misuse of Drugs Act 1971;
 - (b) in connection with a prohibition or restriction on importation [^{F7}and exportation] having effect by virtue of section 3 of the said Act of 1971, an

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offence under section 50(2) or (3) (improper importation), 68(2)(improper exportation); or 170 (fraudulent evasion of duty etc.) of the ^{M2}Customs and Excise Management Act 1979;

- [^{F8}(bb) an offence under section 42A of this Act;]
- (c) an offence under section 43 of this Act;
- [^{F9}(cc) an offence under sections 12, 14 or 19 of the Criminal Justice (International Co-operation) Act 1990;]
- (d) an offence of conspiring, inciting or attempting to commit an offence to which,; by virtue of paragraph (a), (b) [^{F10}(c) or (cc)]above, this section relates.

[^{F11}(2A) Any application under his sections shall be made —

- (a) in proceedings on indictment, when the prosecutor moves for sentence or, if the offender is remitted for sentence under section 104 of the 1975 Act, before sentence is pronounced; and
- (b) in summary proceedings following the conviction of the accused.

(2B) A confiscation order shall not be made unless the court orders some other disposal (including an absolute discharge) in respect of the offender.

(2C) If the court decides to make a confiscation order, it shall determine the amount to be payable thereunder before making any decision as to—

- (a) imposing a fine on the person;
- (b) making any order involving any other payment by him.

(2D) Where a court makes a confiscation order against an accused in any proceedings, it shall, in respect of any offence of which he is convicted in those proceedings, take account of the order before—

- (a) imposing any fine on him;
- (b) making any order involving any other payment by him,

but subject to that, the court shall leave the order out of account in determining the appropriate sentence or other manner of dealing with the accused.

(2E) Where a court makes both a confiscation order and a compensation order under section 58 of the Criminal Justice (Scotland) Act 1980 against the same person in the same proceedings in relation to the same offence and the offence involves the misappropriation of property, it shall direct that the compensation shall be paid first out of any sums applied towards the satisfaction of the confiscation order.]

(3) ^{F12}.....

(4) For the purposes of any appeal or review, a confiscation order is a sentence.

(5) No enactment restricting the power of a court dealing with a person in a particular way from dealing with him also in any other way shall by reason only of the making of an order under subsection (1) above (or the postponement of a decision as regards making such an order) restrict the High Court from dealing with a person in any way the Court considers appropriate in respect of an offence to which this section relates.

(6) In this Part of this Act, “drug trafficking” means doing or being concerned in any of the following, whether in Scotland or elsewhere—

- (a) producing or supplying a controlled drug where the production or supply contravenes section 4(1) of the said Act of 1971;

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- (b) transporting or storing such a drug where possession of it contravenes section 5(1) of that Act;
 - (c) importing or exporting such a drug where the importation or exportation is prohibited by section 3(1) of that Act;
 - (d) producing, supplying, transporting, storing, importing or exporting such a drug in contravention of a corresponding law (“corresponding law” having the meaning assigned by section 36(1) of that Act);
 - [^{F13}(e) manufacturing or supplying a scheduled substance within the meaning of section 12 of the Criminal Justice (International Co-operation) Act 1990 where the manufacture or supply is an offence under that section;]
 - [^{F14}(f) acquiring, having possession of or using property in contravention of section 42A of this Act;
 - (g) concealing or transferring the proceeds of drug trafficking in contravention of section 14 of the Act of 1990;
 - (h) using any ship for illicit traffic in controlled drugs in contravention of section 19 of the Act of 1990;] and includes, whether in Scotland or elsewhere, entering into or being otherwise concerned in an arrangement whereby—
 - (i) the retention or control by or on behalf of another person of the other person’s proceeds of drug trafficking is facilitated, or
 - (ii) 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.
- [^{F15}(7) In paragraphs (e) to (g) of subsection (6) above, references to conduct in contravention of the enactments mentioned in those paragraphs include conduct which would contravene the enactments if it took place in Scotland.]

Textual Amendments

- F1** Words in s. 1(1) substituted (31.3.1996) by 1995 c. 20, s. 113(3), **Sch. 5 para. 2(1)(a)**; S.I. 1996/517, **arts. 3(2), 5**
- F2** Word in s. 1(1) substituted (31.3.1996) by 1995 c. 20, s. 113(3), **Sch. 5 para. 2(1)(a)**; S.I. 1996/517, **arts. 3(2), 5**
- F3** Word in s. 1(1)(b) substituted (31.3.1996) by 1995 c. 20, s. 113(3), **Sch. 5 para. 2(1)(a)**; S.I. 1996/517, **arts. 3(2), 5**
- F4** Word in s. 1(1)(b) substituted (31.3.1996) by 1995 c. 20, s. 113(3), **Sch. 5 para. 2(1)(a)**; S.I. 1996/517, **arts. 3(2), 5**
- F5** Words in s. 1(1)(b) substituted (31.3.1996) by 1995 c. 20, s. 113(3), **Sch. 5 para. 2(1)(a)**; S.I. 1996/517, **arts. 3(2), 5**
- F6** Words in s. 1(2) substituted (31.3.1996) by 1995 c. 20, s. 113(3), **Sch. 5 para. 2(1)(a)**; S.I. 1996/517, **arts. 3(2), 5**
- F7** Words inserted by **Criminal Justice Act 1988 (c. 33, SIF 39:1)**, s. 103, **Sch. 5 para. 19, Sch. 8 para. 16**
- F8** S. 1(2)(bb) inserted (3.2.1995) by 1993 c. 36, **s. 24(13)**, (with s. 78(6)); S.I. 1995/43, art. 2, **Sch.**
- F9** S. 1(2)(cc) inserted (01.07.1991) by **Criminal Justice (International Co-operation) Act 1990 (c. 5, SIF 39:1)**, s. 31(1), **Sch. 4 para. 5(2)(a)**; S.I. 1991/1072 art.2(b), **Sch.**, Pt.II.
- F10** Words in 1(2)(d) substituted (01.07.1991) by **Criminal Justice (International Co-operation) Act 1990 (c. 5, SIF 39:1)**, s. 31(1), **Sch. 4 para. 5(2)(a)**; S.I. 1991/1072 art.2(b), **Sch.**, Pt.II.
- F11** S. 1(2A)-(2E) inserted (31.3.1996) by 1995 c. 20, s. 113(2), **Sch. 5 para. 2(c)**; S.I., 1996/517, arts. 3(2), 5
- F12** S. 1(3) repealed (31.3.1996) by 1995 c. 20, s. 117, **Sch. 7 Pt. II**; S.I. 1996/517, **arts. 3(2), 5**

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F13 S. 1(6)(e) inserted (01.07.1991) by Criminal Justice (International Co-operation) Act 1990 (c. 5, SIF 39:1), s. 31(1), **Sch. 4 para. 5(2)(b)**; S.I.1991/1072 art.2(b), Sch.,Pt. II.

F14 S. 1(6)(f)(g)(h) inserted (3.2.1995) by 1993 c. 36, s. 24(14),(with s. 78(6)); S.I. 1995/43, art. 2, **Sch.**

F15 S. 1(7) inserted (3.2.1995) by 1993 c. 36, s. 24(15),(with s. 78(6)); S.I. 1995/43, art. 2, **Sch.**

Marginal Citations

M1 1971 c. 38.

M2 1979 c. 2.

[^{F16}2

- (1) If the court considers that it has some, but not sufficient, relevant information for the purpose of enabling it to come to a decision as to whether to make a confiscation order or that it does not have sufficient relevant information to enable it to come to a decision as to the amount to be payable under the confiscation order, it may, subject as the case may be to subsection (6) or (10) below, postpone that decision for a period not exceeding 6 months after the date of conviction for the purpose of enabling further information to be obtained.
- (2) Without prejudice to sections 179 and 219 (or as the case may be sections 380 and 432) of the 1975 Act, the court may notwithstanding postponement under subsection (1) above and subject to subsection (3) below, proceed, on the prosecutor's motion therefor, to sentence or to otherwise deal with the accused in respect of the conviction.
- (3) Where the court proceeds as mentioned in subsection (2) above#??
 - (a) no fine shall be imposed on the accused; and
 - (b) no order shall be made involving any other payment by him,
 in relation to the conviction before the decision whether to make a confiscation order is taken.
- (4) Where in the case of conviction on indictment a decision has been postponed under subsection (1) above for a period, any intention to appeal under section 228 of the 1975 Act against conviction or against both conviction and any sentence passed during that period in respect of the conviction, shall be intimated under section 231(1) of the 1975 Act not within 2 weeks of the final determination of the proceedings but within 2 weeks of#??
 - (a) in the case of an appeal against conviction where there has been no such sentence, the day on which the period of postponement commences;
 - (b) in any other case, the day on which such sentence is passed in open court.
- (5) Notwithstanding any appeal of which intimation has been given by virtue of subsection (4) above, a person may appeal under section 228 of the 1975 Act against the confiscation order (if the decision is to make one) or against any other sentence passed, after the period of postponement, in respect of the conviction.
- (6) If during the period of postponement intimation is given by virtue of subsection (4) above by the person, the High Court may, on the application of the prosecutor, extend that period to a date up to 3 months after the date of disposal of the appeal.
- (7) This subsection applies where in the case of summary conviction a decision has been postponed under subsection (1) above for a period.

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- (8) Where subsection (7) above applies and the offender appeals under section 442 of the 1975 Act against conviction or against both conviction and any sentence passed during the period of postponement#??
- (a) his application for a stated case shall be made not within one week of the final determination of the proceedings but within one week of the day mentioned in paragraph (a) or (b) of subsection (4) above;
 - (b) his draft stated case shall be prepared and issued not within 3 weeks of the final determination of the proceedings but within 3 weeks of the said day.
- (9) Where subsection (7) above applies, then, notwithstanding any appeal against conviction or sentence or both the offender may appeal under section 442(1)(a)(ii), and the prosecutor may appeal under section 442(1)(b)(ii), of the 1975 Act against any confiscation order or against any other sentence passed, after the period of postponement, in respect of the conviction.
- (10) Where subsection (7) above applies, then, if during the period of postponement the offender applies for a stated case or lodges a note of appeal, the High Court may, on the application of the prosecutor, extend the period of postponement to a date up to 3 months after the date of disposal of the appeal.]

Textual Amendments

F16 S. 2 substituted (31.3.1996) by 1995 c. 20, s. 113(3), **Sch. 5 para. 3**; S.I. 1996/517, **arts. 3(2), 5**

3 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 section 1 of this Act) in connection with drug trafficking carried on by him or another 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) Without prejudice to section 4 of this Act the [F17 court] may, in making an assessment as regards a person under section 1(1) of this Act, make the following assumptions, except in so far as any of them may be shown to be incorrect in that person's case—
- (a) that any property appearing to the [F17 court]—
 - (i) to have been held by him at any time since his conviction, or
 - (ii) to have been transferred to him at any time since a date six years before his being indicted, [F18 or being served with the complaint (as the case maybe)]was received by him, at the earliest time at which he appears to the [F17 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 date mentioned in paragraph (a)(ii) above was met out of payments received by him in connection with drug trafficking carried on by him, and

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- (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.
- (3) Subsection (2) above does not apply if the only offence by virtue of which the assessment is being made is an offence under section [F19]42A or] 43 of this Act [F20] or section 14 of the Criminal Justice (International Co-operation) Act 1990].
- (4) The [F17] court] shall, in making an assessment as regards a person under section 1(1) of this Act, leave out of account any of his proceeds of drug trafficking that are shown to the court to have been taken into account in a case where a confiscation order (whether under this Act or under and within the meaning of—
- [F21](a) section 2 of the Drug Trafficking Act 1994; or]
- (b) any corresponding provision in Northern Ireland),
- has previously been made against him.
- (5) F22

Textual Amendments

- F17** Word in s. 3(2)(4) substituted (31.3.1996) by 1995 c. 20, s. 113(3), **Sch. 5 para. 4(a)**; S.I. 1996/517, art. 2, **Sch.**
- F18** Words in s. 3(2)(a)(ii) added (31.3.1996) by 1995 c. 20, s. 113(3), **Sch. 5 para. 4(b)**; S.I. 1996/517, **arts. 3(2), 5**
- F19** Words in s. 3(3) inserted (15.2.1994) by 1993 c. 36, **ss. 17(2)** (with s. 78(6)); S.I. 1994/71, art. 2, **Sch.**
- F20** Words in s. 3(3) inserted (01.07.1991) by Criminal Justice (International Co-operation) Act 1990 (c. 5, SIF 39:1), s. 31(1), **Sch. 4 para. 5(3)**; S.I. 1991/1072 art 2(b), Sch., Pt. II.
- F21** S. 3(4)(a) substituted (3.2.1995) by 1994 c. 37, ss. 65, 69(2), **Sch. 1 para. 12**
- F22** S. 3(5) repealed (31.3.1996) by 1995 c. 20, ss. 113(3), 117(2), Sch. 5 para. 4(c), **Sch. Sch. 7 Pt. II**

4 Statements relating to drug trafficking.

- (1) Without prejudice to section 150 [F23] or, as the case may be, section 354] of the M3 1975 Act, where the prosecutor has, as regards a person, moved for an order under section 1(1) of this Act the prosecutor may lodge with the clerk of court a statement as to any matters relevant to the assessment of the value of that person's proceeds of drug trafficking and if the person accepts to any extent any allegation in the statement the [F24] court] may, for the purposes of that assessment, treat that acceptance as conclusive of the matters to which it relates.
- (2) Where—
- (a) a statement is lodged under subsection (1) above, and
- (b) the [F24] court] is satisfied that a copy of that statement has been served on the person,
- the [F24] court] may require the person to indicate, within such period as the [F24] court] may specify, to what extent he accepts each allegation in the statement and, in so far as he does not accept any such allegation, to indicate the basis of such non-acceptance.
- (3) If the person fails in any respect to comply with a requirement under subsection (2) above, he may be treated for the purposes of this section as accepting every allegation

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in the statement apart from any allegation in respect of which he has complied with the requirement.

(4) Without prejudice to section 150 [^{F23}or, as the case may be, section 354]of the 1975 Act, where—

(a) there is lodged with the clerk of court by the person 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 [^{F24}court] may, for the purposes of that determination, treat that acceptance as conclusive of the matters to which it relates.

(5) No acceptance by the person under this section that any payment or other reward was received by him in connection with drug trafficking carried on by him or another shall be admissible in evidence in any proceedings, whether in Scotland or elsewhere, in respect of an offence.

[^{F25}(6) Without prejudice to section 2(1) of this Act, where—

(a) any allegation in the statement lodged under subsection (1) above is challenged by the accused; or

(b) the basis of the non-acceptance by the accused of any such allegation is challenged by the prosecutor,

the court shall consider the matters being challenged at a hearing.

(7) Where the judge presiding at a hearing held under subsection (6) above is not the trial judge he may, on the application of either party, if he considers that it would be in the interests of justice to do so, adjourn the hearing to a date when the trial judge is available.]

Textual Amendments

F23 Words in s. 4(1) and (4) inserted (31.3.1996) by 1995 c. 20, s. 113(3), **Sch. 5 para. 5(b)**; S.I. 1996/517, **arts. 3(2), 5**

F24 Word in s. 4(1)(2) and (4) substituted (31.3.1996) by 1995 c. 20, s. 113(3), **Sch. 5 para. 5(a)**; S.I. 1996/517, **arts. 3(2), 5**

F25 S. 4(6)(7) added (31.3.1996) by 1995 c. 20, s. 113(3), **Sch. 5 para. 5(c)**; S.I. 1996/517, **arts. 3(2), 5**

Marginal Citations

M3 1975 c. 21.

5 Realisable property.

[^{F26}(1) In this Part of this Act “realisable property” means, subject to subsection (2) below—

(a) the whole estate wherever situated of a person—

(i) against whom proceedings have been instituted for an offence to which section 1 of this Act relates; or

(ii) in respect of whom a restraint order has been made by virtue of section 8(4) of this Act;

(b) the whole estate wherever situated of a person to whom any person whose whole estate is realisable by virtue of paragraph (a) above has (directly or

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indirectly and whether in one transaction or in a series of transactions) made an implicative gift;

- (c) any other property in the possession or under the control of a person mentioned in paragraph (a) or (b) above; and
- (d) any income or estate vesting in a person mentioned in paragraph (a) or (b) above.

(2) Property is not realisable if—

- (a) held on trust by a person mentioned in subsection (1)(a) or (b) above for a person not so mentioned;
- (b) a suspended forfeiture order is in force in respect of the property; or
- (c) it is, for the time being, subject to a restraint order made in respect of other proceedings.

(3) For the purposes of this section proceedings for an offence are instituted against a person—

- (a) on his arrest without warrant;
- (b) when he is charged with the offence without being arrested;
- (c) when a warrant to arrest him is granted;
- (d) when a warrant to cite him is granted;
- (e) in summary proceedings, on the first calling of the case; or
- (f) when a petition is intimated to him or an indictment or a complaint is served on him,

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 be instituted at the earliest of those times.]

(4) Subject to subsection (7) below, for the purposes of sections 1(1)(b) and 4(4)(a) of this Act, the amount that might be realised at the time a confiscation order is made in respect of a person is the total value at that time of all [^{F27}his realisable property], and all implicative gifts which have been made, by him [^{F27}, less any amount due by him at that time in respect of any compensation order under section 58 of the Criminal Justice (Scotland) Act 1980 made before the confiscation order.].

(5) In assessing, for the purposes of section 1(1)(b) of this Act, the value—

- (a) of realisable property (other than money) owned by a person in respect of whom it proposes to make a confiscation order, the [^{F28}court] shall have regard to the [^{F29}likely] market value of the property at the date on which the order would be made; but it may also have regard to any security or real burden which would require to be discharged in realising the property or to any other factors which might reduce the amount recoverable by such realisation;
- [^{F30}(aa) of realisable property held by a person whose estate has been sequestered, or who has been adjudged bankrupt in England and Wales or Northern Ireland, the court shall take into account the extent to which the property is subject to, as the case may be, sequestration or bankruptcy procedure by virtue of section 33 or 34 of this Act;]
- (b) [^{F31}and in this subsection, “money” includes cheques, banknotes, postal orders, money orders and foreign currency]

^{F32}(6)

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(7) Without prejudice to section 47(3) of this Act, the [F33 court] may F34 . . ., for the purposes of section 1(1)(b) of this Act disregard the amount (or part of the amount) of an implicative gift if it considers it improbable that such amount (or part) could be realised.

[F35(7A) Where the court is satisfied, on the application of a person in receipt of an implicative gift made before or after a confiscation order has been made—

- (a) that the person received the gift not knowing, not suspecting and not having reasonable grounds to suspect that the giver was in any way concerned in drug trafficking; and
- (b) that he is not, and has never been, associated with the giver in drug trafficking; and
- (c) that he would suffer hardship if the application were not granted,

it may make an order declaring that the gift or a part of the gift shall not be an implicative gift and that the property or part of the property of the recipient of the gift shall not be, or shall cease to be, realisable for the purposes of this Part of this Act and, if a confiscation order has already been made, varying that order accordingly, where necessary.

(7B) An appeal shall lie to the High Court at the instance of—

- (a) the applicant against the refusal;
- (b) the prosecutor against the granting,

of an application under subsection (7A) above.

(7C) The procedure in an appeal under this section shall be the same as the procedure in an appeal against sentence.]

(8)

Textual Amendments

- F26 S. 5(1)-(3) substituted (31.3.1996) by 1995 c. 20, s. 113(3), **Sch. 5 para. 6(a)**; S.I. 1996/517, **arts. 3(2), 5**
- F27 Words in s. 5(4) substituted (31.3.1996) by 1995 c. 20, s. 113(3), **Sch. 5 para. 6(b)**; S.I. 1996/517, **arts. 3(2), 5**
- F28 Word in s. 5(5) substituted (31.3.1996) by 1995 c. 20, s. 113(3), **Sch. 5 para. 6(c)(i)**; S.I. 1996/517, **arts. 3(2), 5**
- F29 Word in s. 5(5) inserted (31.3.1996) by 1995 c. 20, s. 113(3), **Sch. 5 para. 6(c)(ii)**; S.I. 1996/517, **arts. 3(2), 5**
- F30 S. 5(5)(aa) inserted (31.3.1996) by 1995 c. 20, s. 113(3), **Sch. 5 para. 6(c)(iii)**; S.I. 1996/517, **arts. 3(2), 5**
- F31 Words in s. 5(5) added (31.3.1996) by 1995 c. 20, ss. 113(3), **Sch. 5 para. 6(c)(v)**; S.I. 1996/517, **arts. 3(2), 5**
- F32 S. 5(6) repealed (31.3.1996) by 1995 c. 20, ss. 113(3), 117(2), Sch. 5 para. 6(d), **Sch. 7 Pt. II**; S.I. 1996/517, **arts. 3(2), 5**
- F33 Word in s. 5(7) substituted (31.3.1996) by 1995 c. 20, s. 113(3), **Sch. 5 para. 6(e)(i)**; S.I. 1996/517, **arts. 3(2), 5**
- F34 Words in s. 5(7) repealed (31.3.1996) by 1995 c. 20, ss. 113(3), 117(2), Sch. 5 para. 6(e)(ii), **Sch. 7 Pt. II**; S.I. 1996/517, **arts. 3(2), 5**
- F35 S. 5(7A)-(7C) inserted (31.3.1996) by 1995 c. 20, s. 113(3), **Sch. 5 para. 6(f)**; S.I. 1996/517, **arts. 3(2), 5**

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6 Implicative gifts.

- (1) Subject to subsection (4) below, in this Part of this Act references to an “implicative gift” are references to a gift (whether made before or after the commencement of section 1 of this Act)—
- (a) made not more than six years before the date [^{F36}on which, in respect of a person suspected of, or charged with, an offence to which section 1 of this Act relates, [^{F37}the proceedings were commenced within the meaning of section 5(3) of this Act], or a restraint order was made (whichever first occurs).]; or
 - (b) made at any time if the gift was—
 - (i) of property received by the giver in connection with drug trafficking carried on by him or another, or
 - (ii) of property which, in whole or in part, directly or indirectly represented in the giver’s hands property received by him in that connection.
- [^{F38}(2) In assessing the value of an implicative gift, the court shall, subject to subsections (3) and (3A) below, take it to be the greater of—
- (a) the value of the gift when received adjusted to take account of subsequent changes in the value of money; or
 - (b) both of the following—
 - (i) the likely market value, on the date on which the confiscation order is to be made, of—
 - (A) the gift, if retained; or
 - (B) where the recipient of the gift retains only part of it, the retained part, and any property or part of any property which, directly or indirectly, represents the gift; or
 - (C) where the recipient of the gift retains no part of it, any property or part of any property which, directly or indirectly, represents the gift; and
 - (ii) the value of any other property and any other economic advantage which by reason of the making of the gift the recipient of the gift has obtained, directly or indirectly, prior to the date on which the confiscation order is to be made, adjusted to take account of subsequent changes in the value of money.
- (3) The circumstances in which the accused is to be treated as making a gift include those where he transfers an interest in property to another person directly or indirectly for a consideration the value of which is significantly less than the value of that interest at the time of transfer; and in those circumstances the value of the gift shall be the difference between the value of that consideration and the value of that interest at the time of transfer adjusted to take account of subsequent changes in the value of money.
- (3A) Where an implicative gift was in the form of money and the recipient of the gift shows that, on the balance of probabilities, the money or any of it has not been used to purchase goods or services or to earn interest or any other return, the value of the gift or such part of it as has not been so used shall be taken to be the face value of the money or, as the case may be, unused amount of the money.
- (3B) In subsection (3A) above, “money” includes cheques, banknotes, postal orders, money orders and foreign currency.]

Status: Point in time view as at 31/03/1996.

Changes to legislation: There are currently no known outstanding effects for the Criminal Justice (Scotland) Act 1987, Cross Heading: Confiscation orders. (See end of Document for details)

(4)

^{F39}(5)

Textual Amendments

- F36** Words substituted by Law Reform (Miscellaneous Provisions) Act 1990 (c. 40, SIF 39:1), s. 74(1), **Sch. 8 para. 37**
- F37** Words in s. 6(1) substituted (31.3.1996) by 1995 c. 20, s. 113(3), **Sch. 5 para. 7(a)**; S.I. 1996/517, **art. 3(2), 5**
- F38** S. 6(2)-(3B) substituted (31.3.1996) for s. 6(2) and (3) by 1995 c. 20, s. 113(3), Sch. 5 para. 7(b); S.I. 1996/517, **arts. 3(2), 5**
- F39** S. 6(4) and (5) repealed (31.3.1996) by 1995 c. 20, s. 117(2), **Sch. 7 Pt. II**; S.I. 1996/517, **arts. 3(2), 5**

[^{F40}6A Increase in value of proceeds of drug trafficking or realisable property.]

- (1) This section applies where the court which made a confiscation order is satisfied, on an application made by the prosecutor, that at the time the application is made the value of the proceeds of the person's drug trafficking, or the amount that might be realised, is greater than—
- (a) the value of the proceeds of the person's drug trafficking; or, as the case may be,
 - (b) the amount that might be realised,
- which was taken into account when the order was made.
- (2) The considerations by reference to which to court may be satisfied as mentioned in subsection (1) above shall include—
- (a) the value of the proceeds of the person's drug trafficking was greater than was taken into account when the confiscation order was made or has increased since the order was made; or
 - (b) further proceeds of drug trafficking have been obtained since the confiscation order was made; or
 - (c) the value of realisable property was greater than was taken into account when the confiscation order was made; or
 - (d) any realisable property taken into account at the time when the confiscation order was made has subsequently increased in value; or
 - (e) the amount, or part of the amount, of a gift which was disregarded under section 5(7) of this Act could now be realised.
- (3) An application under subsection (1) above shall be made as soon as is reasonably practicable after the relevant information becomes available to the prosecutor but in any event within 6 years commencing with the date when the person was convicted of the offence.
- (4) Where this section applies—
- (a) the court may make a new confiscation order for the payment of such sum as appears to the court to be appropriate having regard to what is now shown to be the value of the proceeds of drug trafficking or the amount that might be realised; and
 - (b) if the earlier confiscation order has not been satisfied, then the court, in making the new confiscation order, shall recall the earlier order and may take

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into account the amount unpaid (including any interest payable by virtue of section 15(1) of the Criminal Justice (International Co-operation) Act 1990) under the earlier order.

- (5) Section 4 of this Act shall, subject to any necessary modifications, apply in relation to the making of a new confiscation order in pursuance of this section as it applies where the prosecutor has moved for a confiscation order under section 1 of this Act.
- (6) The assumptions mentioned in section 3(2) of this Act shall not apply for the purposes of this section.]

Textual Amendments

F40 Ss. 6A and 6B inserted (31.3.1996) by 1995 c. 20, s. 113(3), **Sch. 5 para. 8**; S.I. 1996/517, **arts. 3(2), 5**

^{F41}**6B** Confiscation orders where proceeds of crime discovered at later date.

- (1) This section applies where no confiscation order has been made in relation to an offence under section 1 or 2 of this Act.
- (2) Where the court, on an application made to it by the prosecutor under this section, is satisfied—
 - (a) that a person convicted of an offence to which this Part of this Act relates was in receipt of the proceeds of drug trafficking in respect of that offence;
 - (b) that the information necessary to enable a confiscation order to be made on the date on which an application under section 1 of this Act was or could have been made was not available to the prosecutor,
 it may make a confiscation order in relation to that person.
- (3) An application under this section shall be made as soon as is reasonably practicable after the relevant information becomes available to the prosecutor but in any event within 6 years commencing with the date when the person was convicted of the offence.
- (4) In determining the sum to be payable under a confiscation order made in pursuance of this section, the court shall take into account—
 - (a) any order involving any payment by the offender;
 - (b) any order under section 87 of the Criminal Justice (Scotland) Act 1995 or an order for forfeiture under any other enactment made in respect of the offender, which forms part of the sentence already imposed for the offence concerned.
- (5) In determining such sum the court may take into account any payment or other reward received by the offender on or after the date of conviction, but only if the prosecutor satisfies the court that it was received by the offender in connection with drug trafficking carried on by the offender or another on or before that date.
- (6) Section 4 of this Act shall, subject to any necessary modifications, apply in relation to the making of a confiscation order in pursuance of this section as it applies where the prosecutor has moved for a confiscation order under section 1 of this Act.
- (7) Section 1(2B), (2C), (2D) and (2E) of this Act shall not apply in relation to a confiscation order made in pursuance of this section.

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- (8) The assumptions mentioned in section 3(2) of this Act shall not apply for the purposes of this section.
- (9) Where the court makes a confiscation order in pursuance of this section and a compensation order has been made under section 58 of the Criminal Justice (Scotland) Act 1980 in respect of misappropriation of property by the offender, the court shall direct that compensation shall first be paid out of any sums applied towards the satisfaction of the confiscation order to the extent of any sums outstanding in respect of the compensation order.
- (10) In this section “the court” means the court which had jurisdiction in respect of the offence concerned to make a confiscation order under section 1 of this Act.

Textual Amendments

F41 Ss. 6A and 6B inserted (31.3.1996) by 1995 c. 20, s. 113(3), **Sch. 5 para. 8**; S.I. 1996/517, **arts. 3(2), 5**

7 Application of provisions relating to fines to enforcement of confiscation

- (1) Section 196 and 203 [^{F42}or, as the case may be, 402 and 412]of the 1975 Act and, [^{F43}the provisions of that Act specified in subsection (2) below (or those provisions as applied by section 194 of that Act) shall], subject to the qualifications mentioned in subsection (2) below, apply in relation to confiscation orders as they apply in relation to fines; and section 91 of the ^{M4}Magistrates’ Courts Act 1980 and Article 96 of the ^{M5}Magistrates’ Courts (Northern Ireland) Order 1981 (provisions relating to transfer of fines from Scotland etc.) shall be construed accordingly.
- (2) The provisions mentioned in subsection (1) above are—
- section 396:
- Provided that any allowance under that section (or section 397) of time (or further time) for payment shall be without prejudice to the exercise by any administrator appointed in relation to the confiscation order of his powers and duties under this Act; and the court may, pending such exercise, postpone any decision as to refusing or allowing time (or further time) for payment;
- section 397;
- section 398 [^{F44}but as if subsection (1)—;
- (a) gave the prosecutor an opportunity to be heard at any enquiry thereunder; and
- (b) applied whether the offender was in prison or not;]
- section 399;
- Provided that any order of payment by instalments shall be without prejudice to such exercise as is above mentioned;
- section 400;
- section 401(2) and (3);
- section 403, except that for the purposes of subsections (4) and (6) of that section “confiscation order” in subsection (1) above shall be construed as including such an order within the meaning of the [^{F45}Drug Trafficking Act 1994]or of any corresponding provision in Northern Ireland;

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section 404;

section 406;

section 407;

Provided that where a court imposes a period of imprisonment both in respect of a fine and of a confiscation order the amounts in respect of which the period is imposed shall, for the purposes of subsection (1A) of that section, be aggregated:

Provided also that before imposing a period of imprisonment to which there is a liability by virtue of that section the court shall, if an administrator has been appointed in relation to the confiscation order, require a report from him as to whether and in what way he is likely to exercise his powers and duties under this Act and shall take that report into account; and the court may, pending such exercise, postpone any decision as to such imposition;

section 408;

section 409, except that the reference in subsection (1) of that section to the person paying a sum to the governor of the prison under conditions prescribed by rules made under the ^{M6}Prisons (Scotland) Act 1952 shall be construed as including a reference to an administrator appointed in relation to the confiscation order making such payment under this Act in respect of the person;

section 411, ^{F46} . . . :

Provided that an order for recovery by civil diligence shall not be made under the section where an administrator is appointed in relation to the confiscation order;

Schedule 7.

[^{F47}(2A) Where a court, by virtue of subsection (1) above, orders the sum due under a confiscation order to be recovered by civil diligence under section 411 of the Criminal Procedure (Scotland) Act 1975, any arrestment executed by a prosecutor under subsection (2) of section 11A of this Act shall be deemed to have been executed by the court as if that subsection authorised such execution.]

- (3) Where in any proceedings an order has been made under section 1(1) of this Act as regards a person and a period of imprisonment or detention is imposed on him in default of payment of its amount (or as the case may be of an instalment thereof), that period shall run from the expiry of any other period of imprisonment or detention (not being one of life imprisonment or detention for life) imposed on him in the proceedings.
- (4) The reference in subsection (3) above to “any other period of imprisonment or detention imposed” includes (without prejudice to the generality of the expression) a reference to such a period on default of payment of a fine (or instalment thereof); but only where that default has occurred before the warrant for imprisonment is issued for the default in relation to the order.

Status: Point in time view as at 31/03/1996.

Changes to legislation: There are currently no known outstanding effects for the Criminal Justice (Scotland) Act 1987, Cross Heading: Confiscation orders. (See end of Document for details)

Textual Amendments

- F42** Words in s. 7(1) inserted (31.3.1996) by 1995 c. 20, s. 113(3), **Sch. 5 para. 9(a)(i)**; S.I. 1996/517, **arts. 3(2), 5**
- F43** Words in s. 7(1) substituted (31.3.1996) by 1995 c. 20, s. 113(3), **Sch. 5 para. 9(a)(ii)**; S.I. 1996/517, **arts. 3(2), 5**
- F44** Words and paras (a) and (b) inserted (31.3.1996) by 1995 c. 20, s. 113(3), **Sch. 5 para. 9(b)(i)**; S.I. 1996/517, **arts. 3(2), 5**
- F45** Words in s. 7(2) entry substituted (3.2.1995) by 1994 c. 37, ss. 65, 69(2), **Sch. 1 para. 13**
- F46** Words in entry in s. 7(2) repealed (31.3.1996) by 1995 c. 20, ss. 113(3), 117(2), Sch. 5 para. 9(b)(ii), **Sch. 7 Pt. II**; S.I. 1996/517, **arts. 3(2), 5**
- F47** S. 7(2A) inserted (31.3.1996) by 1995 c. 20, s. 113(3), **Sch. 5 para. 9(c)**; S.I. 1996/517, **arts. 3(2), 5**

Marginal Citations

- M4** 1980 c. 43.
- M5** 1981/1675 (N.I. 26.)
- M6** 1952 c. 61.

[^{F48}7A Disposal of family home.

Section 111 of the Criminal Justice (Scotland) Act 1995 shall apply in respect of a person's family home if a confiscation order has been made in relation to that person as it applies in respect of a person's family home if a confiscation order has been made in relation to that person under section 70(1) of that Act but as if for subsection (1) there were substituted the following subsection—

- (1) This section applies where a confiscation order has been made in relation to any person and the prosecutor has not satisfied the court that the person's interest in his family home has been acquired by means of the proceeds of drug trafficking.]

Textual Amendments

- F48** S. 7A inserted (31.3.1996) by 1995 c. 20, s. 113(3), **Sch. 5 para. 10**; S.I. 1996/517, **arts. 3(2), 5**

Status:

Point in time view as at 31/03/1996.

Changes to legislation:

There are currently no known outstanding effects for the Criminal Justice (Scotland) Act 1987,
Cross Heading: Confiscation orders.