



Criminal Justice (Scotland) Act 1987

1987 CHAPTER 41

PART I

CONFISCATION OF PROCEEDS OF DRUG TRAFFICKING ETC.

Investigations and disclosure of information

38 Order to make material available

- (1) The procurator fiscal may, for the purpose of an investigation into drug trafficking, apply to the sheriff for an order under subsection (2) below in relation to particular material or material of a particular description.
- (2) If on such an application the sheriff is satisfied that the conditions in subsection (4) below are fulfilled, he may make an order that the person who appears to him to be in possession of the material to which the application relates shall—
 - (a) produce it to a constable or person commissioned by the Commissioners of Customs and Excise for him to take away, or
 - (b) give a constable or person so commissioned access to it,within such period as the order may specify.

This subsection is subject to section 41(11) of this Act.

- (3) The period to be specified in an order under subsection (2) above shall be seven days unless it appears to the sheriff that a longer or shorter period would be appropriate in the particular circumstances of the application.
- (4) The conditions referred to in subsection (2) above are—
 - (a) that there are reasonable grounds for suspecting that a specified person has carried on, or has derived financial or other rewards from, drug trafficking,
 - (b) that there are reasonable grounds for suspecting that the material to which the application relates—

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- (i) is likely to be of substantial value (whether by itself or together with other material) to the investigation for the purpose of which the application is made, and
 - (ii) does not consist of or include items subject to legal privilege, and
- (c) that there are reasonable grounds for believing that it is in the public interest, having regard—
 - (i) to the benefit likely to accrue to the investigation if the material is obtained, and
 - (ii) to the circumstances under which the person in possession of the material holds it,
 that the material should be produced or that access to it should be given.
- (5) Where the sheriff makes an order under subsection (2)(b) above in relation to material on any premises he may, on the application of the procurator fiscal, order any person who appears to him to be entitled to grant entry to the premises to allow a constable to enter the premises to obtain access to the material.
- (6) Provision may be made by rules of court as to—
 - (a) the discharge and variation of orders under this section, and
 - (b) proceedings relating to such orders.
- (7) Where the material to which an application under this section relates consists of information contained in a computer—
 - (a) an order under subsection (2)(a) above shall have effect as an order to produce the material in a form in which it can be taken away and in which it is visible and legible, and
 - (b) an order under subsection (2)(b) above shall have effect as an order to give access to the material in a form in which it is visible and legible.
- (8) An order under subsection (2) above—
 - (a) shall not confer any right to production of, or access to, items subject to legal privilege,
 - (b) shall have effect notwithstanding any obligation as to secrecy or other restriction upon the disclosure of information imposed by statute or otherwise, and
 - (c) may be made in relation to material in the possession of an authorised government department.

39 Authority for search

- (1) The procurator fiscal may, for the purpose of an investigation into drug trafficking, apply to the sheriff for a warrant under this section in relation to specified premises.
- (2) On such application the sheriff may issue a warrant authorising a constable, or person commissioned by the Commissioners of Customs and Excise, to enter and search the premises if the sheriff is satisfied—
 - (a) that an order made under section 38 of this Act in relation to material on the premises has not been complied with, or
 - (b) that the conditions in subsection (3) below are fulfilled, or
 - (c) that the conditions in subsection (4) below are fulfilled.
- (3) The conditions referred to in subsection (2)(b) above are—

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- (a) that there are reasonable grounds for suspecting that a specified person has carried on, or has derived financial or other rewards from, drug trafficking, and
 - (b) that the conditions in section 38(4)(b) and (c) of this Act are fulfilled in relation to any material on the premises, and
 - (c) that it would not be appropriate to make an order under that section in relation to the material because—
 - (i) it is not practicable to communicate with any person entitled to produce the material, or
 - (ii) it is not practicable to communicate with any person entitled to grant access to the material or entitled to grant entry to the premises on which the material is situated, or
 - (iii) the investigation for the purposes of which the application is made might be seriously prejudiced unless a constable or person commissioned as aforesaid could secure immediate access to the material.
- (4) The conditions referred to in subsection (2)(c) above are—
- (a) that there are reasonable grounds for suspecting that a specified person has carried on, or has derived financial or other rewards from, drug trafficking, and
 - (b) that there are reasonable grounds for suspecting that there is on the premises material relating to the specified person or to drug trafficking which is likely to be of substantial value (whether by itself or together with other material) to the investigation for the purpose of which the application is made, but that the material cannot at the time of the application be particularised, and
 - (c) that—
 - (i) it is not practicable to communicate with any person entitled to grant entry to the premises, or
 - (ii) entry to the premises will not be granted unless a warrant is produced, or
 - (iii) the investigation for the purpose of which the application is made might be seriously prejudiced unless a constable or person commissioned as aforesaid arriving at the premises could secure immediate entry to them.
- (5) Where a constable or person commissioned as aforesaid has entered premises in the execution of a warrant issued under this section, he may seize and retain any material, other than items subject to legal privilege, which is likely to be of substantial value (whether by itself or together with other material) to the investigation for the purpose of which the warrant was issued.

40 Interpretation of sections 38 and 39

In sections 38 and 39 of this Act—

"items subject to legal privilege" means—

- (a) communications between a professional legal adviser and his client, or
- (b) communications made in connection with or in contemplation of legal proceedings and for the purposes of these proceedings,

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being communications which would in legal proceedings be protected from disclosure by virtue of any rule of law relating to the confidentiality of communications; and

"premises" includes any place and, in particular, includes—

- (a) any vehicle, vessel, aircraft or hovercraft,
- (b) any offshore installation within the meaning of section 1 of the Mineral Workings (Offshore Installations) Act 1971, and
- (c) any tent or movable structure.

41 Disclosure of information held by government departments

(1) Subject to subsection (4) below, the Court of Session may on an application by the Lord Advocate order any material mentioned in subsection (3) below which is in the possession of an authorised government department to be produced to the Court within such period as the Court may specify.

(2) The power to make an order under subsection (1) above is exercisable if—

- (a) the powers conferred on the Court by subsection (1) of section 8 of this Act are exercisable by virtue of paragraph (a) thereof, or
- (b) those powers are exercisable by virtue of paragraph (b) of subsection (1) of that section and the Court has made a restraint order which has not been recalled;

but, where the power to make an order under subsection (1) above is exercisable by virtue only of paragraph (b) above, subsection (4) of section 9 of this Act shall for the purposes of this section apply in relation to that order as the said subsection (4) applies, for the purposes of that section, in relation to a restraint order made by virtue of paragraph (b) of subsection (1) of the said section 8.

(3) The material referred to in subsection (1) above is any material which—

- (a) has been submitted to an officer of an authorised government department by a person who holds, or has at any time held, realisable property,
- (b) has been made by an officer of an authorised government department in relation to such a person, or
- (c) is correspondence which passed between an officer of an authorised government department and such a person;

and an order under that subsection may require the production of all such material or of a particular description of such material, being material in the possession of the department concerned.

(4) An order under subsection (1) above shall not require the production of any material unless it appears to the Court of Session that the material is likely to contain information that would facilitate the exercise of the powers conferred on the Court by section 8, 13 or 24 of this Act or on an administrator appointed under subsection (1) of the said section 13.

(5) The Court may by order authorise the disclosure to such an administrator of any material produced under subsection (1) above or any part of such material; but the Court shall not make an order under this subsection unless a reasonable opportunity has been given for an officer of the department to make representations to the Court.

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- (6) Material disclosed in pursuance of an order under subsection (5) above may, subject to any conditions contained in the order, be further disclosed for the purposes of the functions under this Act of the administrator or the High Court.
- (7) The Court of Session may by order authorise the disclosure to a person mentioned in subsection (8) below of any material produced under subsection (1) above or any part of such material; but the Court shall not make an order under this subsection unless—
- (a) a reasonable opportunity has been given for an officer of the department to make representations to the Court, and
 - (b) it appears to the Court that the material is likely to be of substantial value in exercising functions relating to drug trafficking.
- (8) The persons referred to in subsection (7) above are—
- (a) a constable,
 - (b) the Lord Advocate or any procurator fiscal, and
 - (c) a person commissioned by the Commissioners of Customs and Excise.
- (9) Material disclosed in pursuance of an order under subsection (7) above may, subject to any conditions contained in the order, be further disclosed for the purposes of functions relating to drug trafficking.
- (10) Material may be produced or disclosed in pursuance of this section notwithstanding any obligation as to secrecy or other restriction upon the disclosure of information imposed by statute or otherwise.
- (11) An order under subsection (1) above and, in the case of material in the possession of an authorised government department, an order under section 38(2) of this Act may require any officer of the department (whether named in the order or not) who may for the time being be in possession of the material concerned to comply with such order; and any such order shall be served as if the proceedings were civil proceedings against the department.
- (12) The person on whom an order under subsection (1) above is served—
- (a) shall take all reasonable steps to bring it to the attention of the officer concerned, and
 - (b) if the order is not brought to that officer's attention within the period referred to in subsection (1) above, shall report the reasons for the failure to the Court of Session;
- and it shall also be the duty of any other officer of the department in receipt of the order to take such steps as are mentioned in paragraph (a) above.