



# Drug Trafficking Act 1994

## 1994 CHAPTER 37

### PART I

#### CONFISCATION ORDERS

##### *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

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- 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.

## **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 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

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- (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.
- (10) In subsection (9) above, the reference to a restraint order includes a reference to a restraint order within the meaning of Part I of the Criminal Justice (Scotland) Act 1987, and in relation to such an order "realisable property" has the same meaning as in that Part.
- (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 Charges Act 1972 and the Land 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.

## **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;
  - (c) shall provide for notice to be given to persons affected by the order; and

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- (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 Orders Act 1979.

## **28 Charging orders: supplementary provisions**

- (1) The Land Charges Act 1972 and the Land 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.