



Drug Trafficking Act 1994

1994 CHAPTER 37

PART IV

MISCELLANEOUS AND SUPPLEMENTAL

Investigations into drug trafficking

55 Order to make material available

- (1) A constable may, for the purpose of an investigation into drug trafficking, apply to a Circuit judge 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 judge 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 for him to take away, or
 - (b) give a constable access to it,within such period as the order may specify.

This subsection has effect subject to section 59(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 judge 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 benefited from drug trafficking;
 - (b) that there are reasonable grounds for suspecting that the material to which the application relates—
 - (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

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- (ii) does not consist of or include items subject to legal privilege or excluded material; 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 judge makes an order under subsection (2)(b) above in relation to material on any premises he may, on the application of a constable, 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) An application under subsection (1) or (5) above may be made ex parte to a judge in chambers.
- (7) Provision may be made by Crown Court Rules as to—
 - (a) the discharge and variation of orders under this section; and
 - (b) proceedings relating to such orders.
- (8) An order of a Circuit judge under this section shall have effect as if it were an order of the Crown Court.
- (9) Where the material to which an application under subsection (1) above 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.
- (10) An order under subsection (2) above—
 - (a) shall not confer any right to production of, or access to, items subject to legal privilege or excluded material;
 - (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;
 and in this subsection “authorised government department” means a government department which is an authorised department for the purposes of the Crown Proceedings Act 1947.

56 Authority for search

- (1) A constable may, for the purpose of an investigation into drug trafficking, apply to a Circuit judge for a warrant under this section in relation to specified premises.
- (2) On such application the judge may issue a warrant authorising a constable to enter and search the premises if the judge is satisfied—

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- (a) that an order made under section 55 of this Act in relation to material on the premises has not been complied with;
 - (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—
- (a) that there are reasonable grounds for suspecting that a specified person has carried on or has benefited from drug trafficking;
 - (b) that the conditions in subsection (4)(b) and (c) of section 55 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;
 - (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 purpose of which the application is made might be seriously prejudiced unless a constable 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 benefited from drug trafficking;
 - (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;
 - (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 arriving at the premises could secure immediate entry to them.
- (5) Where a constable 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 and excluded material, 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.

57 Provisions supplementary to sections 55 and 56

- (1) For the purposes of sections 21 and 22 of the Police and Criminal Evidence Act 1984 (access to, and copying and retention of, seized material)—
- (a) an investigation into drug trafficking shall be treated as if it were an investigation of or in connection with an offence; and

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- (b) material produced in pursuance of an order under section 55(2)(a) of this Act shall be treated as if it were material seized by a constable.
- (2) In sections 55 and 56 of this Act “excluded material”, “items subject to legal privilege” and “premises” have the same meaning as in the 1984 Act.

58 Offence of prejudicing investigation

- (1) Where, in relation to an investigation into drug trafficking—
 - (a) an order under section 55 of this Act has been made or has been applied for and has not been refused, or
 - (b) a warrant under section 56 of this Act has been issued,a person is guilty of an offence if, knowing or suspecting that the investigation is taking place, he makes any disclosure which is likely to prejudice the investigation.
- (2) In proceedings against a person for an offence under this section, it is a defence to prove—
 - (a) that he did not know or suspect that the disclosure was likely to prejudice the investigation; or
 - (b) that he had lawful authority or reasonable excuse for making the disclosure.
- (3) Nothing in subsection (1) above makes it an offence for a professional legal adviser to disclose any information or other matter—
 - (a) to, or to a representative of, a client of his in connection with the giving by the adviser of legal advice to the client; or
 - (b) to any person—
 - (i) in contemplation of, or in connection with, legal proceedings; and
 - (ii) for the purpose of those proceedings.
- (4) Subsection (3) above does not apply in relation to any information or other matter which is disclosed with a view to furthering any criminal purpose.
- (5) A person guilty of an offence under this section shall be liable—
 - (a) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum or to both; and
 - (b) on conviction on indictment, to imprisonment for a term not exceeding five years or to a fine or to both.

59 Disclosure of information held by government departments

- (1) Subject to subsection (4) below, the High Court may on an application by the prosecutor 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 sections 26(1) and 27(1) of this Act are exercisable by virtue of subsection (1) of section 25 of this Act; or
 - (b) those powers are exercisable by virtue of subsection (3) of that section and the court has made a restraint or charging order which has not been discharged;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 25 of this Act shall apply

for the purposes of this section as it applies for the purposes of sections 26 and 27 of this Act.

- (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 the defendant or by a person who has at any time held property which was realisable property;
 - (b) has been made by an officer of an authorised government department in relation to the defendant or such a person; or
 - (c) is correspondence which passed between an officer of an authorised government department and the defendant or 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 High Court that the material is likely to contain information that would facilitate the exercise of the powers conferred on the court by sections 26 to 29 of this Act or on a receiver appointed under section 26 or 29 of this Act or in pursuance of a charging order.
- (5) The court may by order authorise the disclosure to such a receiver 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.
- (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 any provision of this Act, apart from section 16, of the receiver or the Crown Court.
- (7) The court 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) any member of a police force;
 - (b) any member of the Crown Prosecution Service; and
 - (c) any officer within the meaning of the Customs and Excise Management Act 1979.
- (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.

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- (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 55(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 it, and such an order shall be served as if the proceedings were civil proceedings against the department.
- (12) The person on whom such an order 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; 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.
- (13) In this section “authorised government department” means a government department which is an authorised department for the purposes of the Crown Proceedings Act 1947.

Prosecution of offences etc

60 Prosecution by order of the Commissioners of Customs and Excise

- (1) Proceedings for a specified offence may be instituted by order of the Commissioners of Customs and Excise (“the Commissioners”).
- (2) Any proceedings for a specified offence which are so instituted shall be commenced in the name of an officer.
- (3) In the case of the death, removal, discharge or absence of the officer in whose name any proceedings for a specified offence were commenced, those proceedings may be continued by another officer.
- (4) Where the Commissioners investigate, or propose to investigate, any matter with a view to determining—
 - (a) whether there are grounds for believing that a specified offence has been committed, or
 - (b) whether a person should be prosecuted for a specified offence,
 that matter shall be treated as an assigned matter within the meaning of the Customs and Excise Management Act 1979.
- (5) Nothing in this section shall be taken—
 - (a) to prevent any person (including any officer) who has power to arrest, detain or prosecute any person for a specified offence from doing so; or
 - (b) to prevent a court from proceeding to deal with a person brought before it following his arrest by an officer for a specified offence, even though the proceedings have not been instituted by an order made under subsection (1) above.
- (6) In this section—

“officer” means a person commissioned by the Commissioners; and
 “specified offence” means—

- (a) an offence under Part III or section 58 of this Act;
- (b) attempting to commit, conspiracy to commit or incitement to commit any such offence; or
- (c) any other offence of a kind prescribed in regulations made by the Secretary of State for the purposes of this section;

and references to the institution of proceedings for an offence shall be construed in accordance with section 41(2) of this Act.

- (7) The power to make regulations under subsection (6) above shall be exercisable by statutory instrument.
- (8) Any such instrument shall be subject to annulment in pursuance of a resolution of either House of Parliament.

61 Extension of certain offences to Crown servants and exemptions for regulators etc

- (1) The Secretary of State may by regulations provide that, in such circumstances as may be prescribed, sections 49(2), 50 to 53 and 58 of this Act shall apply to such persons in the public service of the Crown, or such categories of person in that service, as may be prescribed.
- (2) Section 52 of this Act shall not apply—
 - (a) to any person designated by regulations made by the Secretary of State for the purposes of this paragraph; or
 - (b) in such circumstances as may be prescribed, to any person who falls within such category of person as may be prescribed for the purposes of this paragraph.
- (3) The Secretary of State may designate for the purposes of paragraph (a) of subsection (2) above any person appearing to him to be performing regulatory, supervisory, investigative or registration functions.
- (4) The categories of person prescribed by the Secretary of State for the purposes of paragraph (b) of subsection (2) above shall be such categories of person connected with the performance by any designated person of regulatory, supervisory, investigative or registration functions as he considers it appropriate to prescribe.
- (5) In this section—
 - “the Crown” includes the Crown in right of Her Majesty’s Government in Northern Ireland; and
 - “prescribed” means prescribed by regulations made by the Secretary of State.
- (6) Any power to make regulations under this section shall be exercisable by statutory instrument.
- (7) Any such instrument shall be subject to annulment in pursuance of a resolution of either House of Parliament.

Interpretation of Act

62 Meaning of “property” and related expressions

- (1) In this Act “property” includes money and all other property, real or personal, heritable or moveable, including things in action and other intangible or incorporeal property.
- (2) This Act applies to property whether it is situated in England and Wales or elsewhere.
- (3) In this Act “interest”, in relation to property, includes right.
- (4) In this Act—
 - (a) references to property held by a person include a reference to property vested in his trustee in bankruptcy, permanent or interim trustee within the meaning of the Bankruptcy (Scotland) Act 1985 or liquidator; and
 - (b) references to an interest held by a person beneficially in property include a reference to an interest which would be held by him beneficially if the property were not so vested.
- (5) For the purposes of this Act—
 - (a) property is held by any person if he holds any interest in it; and
 - (b) property is transferred by one person to another if the first person transfers or grants to the other any interest in the property.

63 General interpretation

- (1) In this Act—
 - “constable” includes a person commissioned by the Commissioners of Customs and Excise under section 6(3) of the Customs and Excise Management Act 1979;
 - “defendant” means a person against whom proceedings have been instituted (within the meaning given in section 41(2) of this Act) for a drug trafficking offence (whether or not he has been convicted);
 - “modifications” includes additions, alterations and omissions.
- (2) In this Act references to anything received in connection with drug trafficking include a reference to anything received both in that connection and in some other connection.
- (3) Subject to section 66(2) and (6) of this Act—
 - (a) any reference in this Act to an offence includes a reference to an offence committed before the commencement of this Act; and
 - (b) any reference in this Act to “drug trafficking” includes a reference to drug trafficking carried out before the commencement of this Act.

64 Index of defined expressions

In this Act the expressions listed below are defined by, or otherwise fall to be construed in accordance with, the provisions of this Act indicated below—

| | |
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| acting as an insolvency practitioner | section 35(4) |
| amount that might be realised | section 6(1) |

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| amount to be recovered | section 5(1) |
| benefited from drug trafficking | section 2(3) |
| charging order | section 27(2) |
| conclusion of an application | |
| —under section 13, 14 or 19 | section 41(4) |
| —under section 15 or 16 | section 41(5) |
| conclusion of proceedings for a drug trafficking offence | section 41(3) |
| confiscation order | section 2(9) |
| constable | section 63(1) |
| defendant | section 63(1) |
| drug trafficking | |
| —generally | section 1(1) and (2) |
| —for the application of Part II in Scotland and Northern Ireland | section 48(2) |
| drug trafficking offence | section 1(3) |
| gift caught by this Act | section 8(1) |
| “held”, in relation to property | section 62(5)(a) |
| institution of proceedings for an offence | section 41(2) |
| “interest”, in relation to property | section 62(3) |
| making a gift | section 8(2) |
| modifications | section 63(1) |
| proceeds of drug trafficking | |
| —generally | section 4(1)(a) |
| —for the application of Part II in Scotland and Northern Ireland | section 48(2) |
| property | section 62(1) |
| realisable property | section 6(2) |
| restraint order | section 26(1) |
| “satisfied”, in relation to a confiscation order | section 41(6) and (7) |
| “subject to appeal”, in relation to an order | section 41(8) |
| “transferred” in relation to property | section 62(5)(b) |
| value of gift, payment or reward | section 7(2) |
| value of proceeds of drug trafficking | section 4(1)(b) |
| value of property | section 7(1). |

Supplemental

65 Consequential amendments and modifications of other Acts

- (1) The enactments mentioned in Schedule 1 to this Act shall have effect subject to the amendments there specified (being amendments consequential upon the provisions of this Act).
- (2) In section 1(2)(a) of the Rehabilitation of Offenders Act 1974 (failure to pay fines etc. not to prevent person becoming rehabilitated) the reference to a fine or other sum adjudged to be paid by or imposed on a conviction does not include a reference to an amount payable under a confiscation order.
- (3) Section 281(4) of the Insolvency Act 1986 (discharge of bankrupt not to release him from liabilities in respect of fines, etc.) shall have effect as if the reference to a fine included a reference to a confiscation order.
- (4) Section 55(2) of the Bankruptcy (Scotland) Act 1985 (discharge of debtor not to release him from liabilities in respect of fines etc.) shall have effect as if the reference to a fine included a reference to a confiscation order.

66 Transitional provisions and savings

- (1) The transitional provisions and savings set out in Schedule 2 to this Act shall have effect.
- (2) Part I and section 59 of this Act shall not apply—
 - (a) in relation to any proceedings for, or in respect of, an offence if the person accused (or, as the case may be, convicted) of that offence was charged with the offence (whether by the laying of an information or otherwise) before the date on which this Act comes into force, or
 - (b) in relation to any proceedings not within paragraph (a) above instituted before that date,and references in this subsection to proceedings include a reference to any order made by a court in the proceedings.
- (3) Accordingly (and without prejudice to section 16 of the Interpretation Act 1978), the relevant enactments and any instrument made under any of those enactments shall continue to apply in relation to any proceedings within subsection (2)(a) or (b) above (and, in particular, in relation to any confiscation order, within the meaning of the Drug Trafficking Offences Act 1986, made in any such proceedings) as if this Act had not been passed.
- (4) In subsection (3) above “the relevant enactments” are—
 - (a) the enactments reproduced in Part I and section 59 of this Act,
 - (b) any other enactment reproduced by this Act, so far as applicable in relation to any of the enactments reproduced in that Part or that section, and
 - (c) any enactment amended by this Act,but do not include any enactment which, immediately before the date on which this Act comes into force, had not come into force.
- (5) Subsection (2) above is without prejudice to section 4(7), 7(4), 26(3) or 29(7) of this Act.

- (6) Nothing in section 19(3) or (4) of this Act shall apply to any proceedings—
- (a) for an offence committed before the commencement of this Act; or
 - (b) for one or more offences, any one of which was so committed.

67 Repeals etc

- (1) The enactments mentioned in Schedule 3 to this Act are repealed to the extent specified in the third column of that Schedule.
- (2) Paragraph 9 of Schedule 2 to the Criminal Justice (Confiscation) (Northern Ireland) Order 1990 (which amends section 29(1) of the Criminal Justice (International Co-operation) Act 1990) is hereby revoked.

68 Extent

- (1) Subject to the following provisions of this section, this Act extends to England and Wales only.
- (2) The following provisions of this Act also extend to Scotland—
- (a) section 11(11);
 - (b) sections 32 to 35 and 36(1);
 - (c) Part II;
 - (d) section 59(10) to (13);
 - (e) this section;
 - (f) section 69;
 - (g) sections 1, 41, 62, 63, 64, 65(1), 66 and 67(1), so far as they relate to provisions which extend to Scotland; and
 - (h) Schedule 2.
- (3) The following provisions of this Act also extend to Northern Ireland—
- (a) Part II;
 - (b) this section;
 - (c) section 69;
 - (d) sections 63, 64, 65(1), 66 and 67(1), so far as they relate to provisions which extend to Northern Ireland; and
 - (e) Schedule 2.
- (4) Section 67(2) of this Act extends to Northern Ireland only.
- (5) The modifications of other enactments specified in section 65(2) to (4) of this Act, and the amendments specified in Schedule 1 to this Act, have the same extent as the enactments to which they relate.
- (6) Subject to subsection (7) below, the repeals contained in Schedule 3 to this Act have the same extent as the provisions to which they relate.
- (7) The repeals of—
- (a) sections 14 and 23A of the Criminal Justice (International Co-operation) Act 1990, and
 - (b) paragraph 5 of Schedule 4 to the Criminal Justice Act 1993,
- extend to England and Wales only.

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69 Short title and commencement

- (1) This Act may be cited as the .
- (2) This Act comes into force at the end of the period of three months beginning with the day on which it is passed.