



# Criminal Law (Consolidation) (Scotland) Act 1995

## 1995 CHAPTER 39

### PART V

#### DRUG TRAFFICKING

##### *Investigations and disclosure of information*

#### **31 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, subject to section 35(11) of this Act, 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.
- (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—

*Status: Point in time view as at 01/04/1996.*

*Changes to legislation: Criminal Law (Consolidation) (Scotland) Act 1995, Part V is up to date with all changes known to be in force on or before 24 March 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- (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 or person commissioned as aforesaid 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.

## **32 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 31 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.

*Status: Point in time view as at 01/04/1996.*

*Changes to legislation: Criminal Law (Consolidation) (Scotland) Act 1995, Part V is up to date with all changes known to be in force on or before 24 March 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- (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 derived financial or other rewards from, drug trafficking; and
  - (b) that the conditions in subsection (4)(b) and (c) of section 31 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.

### 33 Interpretation of sections 31 and 32.

In sections 31 and 32 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,

*Status: Point in time view as at 01/04/1996.*

*Changes to legislation: Criminal Law (Consolidation) (Scotland) Act 1995, Part V is up to date with all changes known to be in force on or before 24 March 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

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 <sup>M1</sup>Mineral Workings (Offshore Installations) Act 1971; and
- (c) any tent or movable structure.

#### Marginal Citations

**M1** 1971 c.61.

### 34 Prosecution by order of the Commissioners of Customs and Excise.

- (1) Summary proceedings for a specified offence may be instituted by order of the Commissioners and shall, if so instituted, be commenced in the name of an officer.
- (2) 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.
- (3) 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 <sup>M2</sup>Customs and Excise Management Act 1979.
- (4) 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.
- (5) In this section—
 

“the Commissioners” means the Commissioners of Customs and Excise;

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

“specified offence” means—

  - (a) an offence under section 36, 37, 38, 39 or 40 of this Act or section 14 of the <sup>M3</sup>Criminal Justice (International Co-operation) Act 1990 (concealing or transferring proceeds of drug trafficking);
  - (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.

*Status: Point in time view as at 01/04/1996.*

*Changes to legislation: Criminal Law (Consolidation) (Scotland) Act 1995, Part V is up to date with all changes known to be in force on or before 24 March 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- (6) Regulations under subsection (5) above shall be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.

#### Marginal Citations

M2 1979 c.2.

M3 1990 c.5.

### 35 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 28 of the <sup>M4</sup>Proceeds of Crime (Scotland) Act 1995 are exercisable by virtue of subsection (2) of section 29 of that Act; or
  - (b) those powers are exercisable by virtue of subsection (3) of the said section 29 and the Court has made a restraint order (within the meaning of section 28 of that Act) which has not been recalled.
- (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 (within the meaning of section 4 of the said Act of 1995);
  - (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 28 of the said Act of 1995 or paragraph 1 or 12 of Schedule 1 to that Act or on an administrator appointed under sub-paragraph (1) of the said paragraph 1.
- (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.
- (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 the said Act of 1995 of the administrator or the High Court.

*Status: Point in time view as at 01/04/1996.*

*Changes to legislation: Criminal Law (Consolidation) (Scotland) Act 1995, Part V is up to date with all changes known to be in force on or before 24 March 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- (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 31(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.

#### Marginal Citations

**M4** 1995 c.43.

### Offences

#### 36 Offence of prejudicing investigation.

- (1) A person who, knowing or suspecting that an investigation into drug trafficking is taking place, does anything which is likely to prejudice the investigation is guilty of an offence.
- (2) In proceedings against a person for an offence under subsection (1) above, it is a defence to prove—

*Status: Point in time view as at 01/04/1996.*

**Changes to legislation:** Criminal Law (Consolidation) (Scotland) Act 1995, Part V is up to date with all changes known to be in force on or before 24 March 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

- (a) that he did not know or suspect, or have reasonable grounds to suspect, that by acting as he did he was likely to prejudice the investigation; or
  - (b) that he had lawful authority or reasonable excuse for acting as he did.
- (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 subsection (1) above shall be liable—
  - (a) on conviction on indictment, to imprisonment for a term not exceeding five years or to a fine or to both; and
  - (b) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum or to both.

### **37 Acquisition, possession or use of proceeds of drug trafficking.**

- (1) A person is guilty of an offence if, knowing that any property is, or in whole or in part directly or indirectly represents, another person's proceeds of drug trafficking, he acquires or uses that property or has possession of it.
- (2) It is a defence to a charge of committing an offence under this section that the person charged acquired or used the property or had possession of it for adequate consideration.
- (3) For the purposes of subsection (2) above—
  - (a) a person acquires property for inadequate consideration if the value of the consideration is significantly less than the value of the property; and
  - (b) a person uses or has possession of property for inadequate consideration if the value of the consideration is significantly less than the value of his use or possession of the property.
- (4) The provision for any person of services or goods which are of assistance to him in drug trafficking shall not be treated as consideration for the purposes of subsection (2) above.
- (5) Where a person discloses to a constable or to a person commissioned by the Commissioners of Customs and Excise a suspicion or belief that any property is, or in whole or in part directly or indirectly represents, another person's proceeds of drug trafficking, or discloses to a constable or a person so commissioned any matter on which such a suspicion or belief is based—
  - (a) the disclosure shall not be treated as a breach of any restriction upon the disclosure of information imposed by statute or otherwise; and
  - (b) if he does any act in relation to the property in contravention of subsection (1) above, he does not commit an offence under this section if—
    - (i) the disclosure is made before he does the act concerned and the act is done with the consent of the constable or person so commissioned, or

*Status: Point in time view as at 01/04/1996.*

*Changes to legislation: Criminal Law (Consolidation) (Scotland) Act 1995, Part V is up to date with all changes known to be in force on or before 24 March 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- (ii) the disclosure is made after he does the act, but on his initiative and as soon as it is reasonable for him to make it.
- (6) For the purposes of this section having possession of any property shall be taken to be doing an act in relation to it.
- (7) In proceedings against a person for an offence under this section, it is a defence to prove that—
  - (a) he intended to disclose to a constable or a person so commissioned such a suspicion, belief or matter as is mentioned in subsection (5) above; but
  - (b) there is reasonable excuse for his failure to make the disclosure in accordance with paragraph (b) of that subsection.
- (8) In the case of a person who was in employment at the relevant time, subsections (5) and (7) above shall have effect in relation to disclosures, and intended disclosures, to the appropriate person in accordance with the procedure established by his employer for the making of such disclosures as they have effect in relation to disclosures, and intended disclosures, to a constable or a person so commissioned.
- (9) A person guilty of an offence under this section is 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; or
  - (b) on conviction on indictment, to imprisonment for a term not exceeding fourteen years or to a fine or to both.
- (10) No constable, person so commissioned or other person shall be guilty of an offence under this section in respect of anything done by him in the course of acting in connection with the enforcement, or intended enforcement, of any provision of this Act or of any other enactment relating to drug trafficking or the proceeds of such trafficking.

### **38 Offence of assisting another to retain the proceeds of drug trafficking.**

- (1) Subject to subsection (3)(b) below, a person shall be guilty of an offence if, knowing or suspecting that another person (in this section referred to as “A”) is a person who carries on, or has carried on, or has derived financial or other rewards from, drug trafficking, he enters into, or is otherwise concerned in, an arrangement whereby—
  - (a) the retention or control, by or on behalf of A, of A’s proceeds of drug trafficking is facilitated (whether by concealment, removal from the jurisdiction, transfer to nominees or otherwise); or
  - (b) A’s proceeds of drug trafficking—
    - (i) are used to secure that funds are placed at A’s disposal; or
    - (ii) are used for A’s benefit to acquire property by way of investment.
- (2) In this section, references to proceeds of drug trafficking shall be construed as including any property which, whether in whole or in part, directly or indirectly constitutes such proceeds.
- (3) Where a person discloses to a constable or to a person commissioned by the Commissioners of Customs and Excise a suspicion or belief that any funds or investments are derived from or used in connection with drug trafficking or discloses to a constable or a person so commissioned any matter on which such a suspicion or belief is based—



*Status: Point in time view as at 01/04/1996.*

*Changes to legislation: Criminal Law (Consolidation) (Scotland) Act 1995, Part V is up to date with all changes known to be in force on or before 24 March 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- (a) the disclosure shall not be treated as a breach of any restriction imposed by statute or otherwise on the disclosure of information; and
  - (b) if the disclosure relates to an arrangement entry into which, or concern in which, by the person would (but for this paragraph) contravene subsection (1) above, he does not commit an offence under that subsection if—
    - (i) the disclosure is made before, with the consent of the constable or as the case may be of the person so commissioned, he enters into, or becomes concerned in, that arrangement; or
    - (ii) though made after he enters into, or becomes concerned in, that arrangement, it is made on his own initiative and as soon as it is reasonable for him to do so.
- (4) In proceedings against a person for an offence under subsection (1) above, it shall be a defence to prove—
  - (a) that he did not know or suspect that the arrangement related to any person's proceeds of drug trafficking; or
  - (b) that he did not know or suspect that by the arrangement the retention or control by or on behalf of A of any property was facilitated or, as the case may be, that by the arrangement any property was used as mentioned in subsection (1) above; or
  - (c) that—
    - (i) he intended to disclose to a constable or to a person commissioned as aforesaid such a suspicion, belief or matter as is mentioned in subsection (3) above in relation to the arrangement; but
    - (ii) there is reasonable excuse for his failure to make disclosure in accordance with paragraph (b) of that subsection.
- (5) In the case of a person who was in employment at the relevant time, subsections (3) and (4) above shall have effect in relation to disclosures, and intended disclosures, to the appropriate person in accordance with the procedure established by his employer for the making of such disclosures as they have effect in relation to disclosures, and intended disclosures, to a constable or a person commissioned as aforesaid.
- (6) A person guilty of an offence under subsection (1) above shall be liable—
  - (a) on conviction on indictment, to imprisonment for a term not exceeding fourteen years or to a fine or to both; and
  - (b) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum or to both.

### **39 Failure to disclose knowledge or suspicion of money laundering.**

- (1) A person is guilty of an offence if—
  - (a) he knows, or suspects, that another person is engaged in drug money laundering;
  - (b) the information, or other matter, on which that knowledge or suspicion is based came to his attention in the course of his trade, profession, business or employment; and
  - (c) he does not disclose the information or other matter to a constable or to a person commissioned by the Commissioners of Customs and Excise as soon as is reasonably practicable after it comes to his attention.

*Status: Point in time view as at 01/04/1996.*

**Changes to legislation:** Criminal Law (Consolidation) (Scotland) Act 1995, Part V is up to date with all changes known to be in force on or before 24 March 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

- (2) Subsection (1) above does not make it an offence for a professional legal adviser to fail to disclose any information or other matter which has come to him in privileged circumstances.
- (3) It is a defence to a charge of committing an offence under this section that the person charged had a reasonable excuse for not disclosing the information or other matter in question.
- (4) Where a person discloses to a constable or a person so commissioned—
  - (a) his suspicion or belief that another person is engaged in drug money laundering; or
  - (b) any information or other matter on which that suspicion or belief is based,
 the disclosure shall not be treated as a breach of any restriction imposed by statute or otherwise.
- (5) Without prejudice to subsection (3) or (4) above, in the case of a person who was in employment at the relevant time, it is a defence to a charge of committing an offence under this section that he disclosed the information or other matter in question to the appropriate person in accordance with the procedure established by his employer for the making of such disclosures.
- (6) A disclosure to which subsection (5) above applies shall not be treated as a breach of any restriction imposed by statute or otherwise.
- (7) In this section “drug money laundering” means doing any act which constitutes an offence under—
  - (a) section 37 or 38 of this Act; or
  - (b) section 14 of the <sup>M5</sup>Criminal Justice (International Co-operation) Act 1990 (concealing or transferring proceeds of drug trafficking),
 or, in the case of an act done otherwise than in Scotland, would constitute such an offence if done in Scotland.
- (8) For the purposes of subsection (7) above, having possession of any property shall be taken to be doing an act in relation to it.
- (9) For the purposes of this section, any information or other matter comes to a professional legal adviser in privileged circumstances if it is communicated, or given, to him—
  - (a) by, or by a representative of, a client of his in connection with the giving by the adviser of legal advice to the client;
  - (b) by, or by a representative of, a person seeking legal advice from the adviser; or
  - (c) by any person—
    - (i) in contemplation of, or in connection with, legal proceedings; and
    - (ii) for the purpose of those proceedings.
- (10) No information or other matter shall be treated as coming to a professional legal adviser in privileged circumstances if it is communicated or given with a view to furthering any criminal purpose.
- (11) 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 a fine not exceeding the statutory maximum or to both, or

*Status: Point in time view as at 01/04/1996.*

*Changes to legislation: Criminal Law (Consolidation) (Scotland) Act 1995, Part V is up to date with all changes known to be in force on or before 24 March 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- (b) on conviction on indictment, to imprisonment for a term not exceeding five years or a fine, or to both.

#### Marginal Citations

M5 1990 c.5.

## 40 Tipping-off.

- (1) A person is guilty of an offence if—
  - (a) he knows or suspects that a constable or a person commissioned by the Commissioners of Customs and Excise is acting, or is proposing to act, in connection with an investigation which is being, or is about to be, conducted into drug money laundering within the meaning of subsections (7) and (8) of section 39 of this Act; and
  - (b) he discloses to any other person information or any other matter which is likely to prejudice that investigation, or proposed investigation.
- (2) A person is guilty of an offence if—
  - (a) he knows or suspects that a disclosure has been made to a constable, or a person so commissioned, under section 37, 38 or 39 of this Act; and
  - (b) he discloses to any other person information or any other matter which is likely to prejudice any investigation which might be conducted following the disclosure.
- (3) A person is guilty of an offence if—
  - (a) he knows or suspects that a disclosure of a kind mentioned in section 37(8), 38(5) or 39(5) of this Act has been made; and
  - (b) he discloses to any person information or any other matter which is likely to prejudice any investigation which might be conducted following the disclosure.
- (4) Nothing in subsections (1) to (3) 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.
- (5) Subsection (4) above does not apply in relation to any information or other matter which is disclosed with a view to furthering any criminal purpose.
- (6) In proceedings against a person for an offence under subsection (1), (2) or (3) above, it is a defence to prove that he did not know or suspect that the disclosure was likely to be prejudicial in the way mentioned in that subsection.
- (7) 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 a fine not exceeding the statutory maximum or to both, or
  - (b) on conviction on indictment, to imprisonment for a term not exceeding five years or a fine, or to both.

*Status: Point in time view as at 01/04/1996.*

*Changes to legislation: Criminal Law (Consolidation) (Scotland) Act 1995, Part V is up to date with all changes known to be in force on or before 24 March 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- (8) No constable, person so commissioned or other person shall be guilty of an offence under this section in respect of anything done by him in the course of acting in connection with the enforcement, or intended enforcement, of any provision of this Act or of any other enactment relating to drug trafficking or the proceeds of such trafficking.

#### **41 Offences relating to controlled drugs: fines.**

- (1) Without prejudice to section 211(7) of the <sup>M6</sup>Criminal Procedure (Scotland) Act 1995 (fines) but subject to section 10(3)(a) of the <sup>M7</sup>Proceeds of Crime (Scotland) Act 1995, where a person is convicted on indictment of an offence to which this section relates and sentenced in respect of that offence to a period of imprisonment or detention, the Court where—
- (a) paragraph (b) below does not apply shall, unless it is satisfied that for any reason it would be inappropriate to do so, also impose a fine;
  - (b) it makes a confiscation order under section 1(1) of the Proceeds of Crime (Scotland) Act 1995 as regards the person, may also impose a fine.
- (2) In determining the amount of a fine imposed under paragraph (a) of subsection (1) above, the Court shall have regard to any profits likely to have been made by the person from the crime in respect of which he has been convicted.
- (3) This section relates to an offence which is a drug trafficking offence within the meaning of the said last mentioned Act of 1995.
- (4) Where in any proceedings a fine has been imposed by virtue of subsection (1) above 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.
- (5) The reference in subsection (4) 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 imposed on default of payment of a fine (or instalment thereof) or of a confiscation order (or instalment thereof); but only where that default has occurred before the warrant for imprisonment is issued for the default in relation to the fine imposed by virtue of subsection (1) of this section.

#### **Marginal Citations**

**M6** 1995 c.46.

**M7** 1995 c.43.

#### **42 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 36 to 40 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 39 of this Act shall not apply to—

*Status: Point in time view as at 01/04/1996.*

*Changes to legislation: Criminal Law (Consolidation) (Scotland) Act 1995, Part V is up to date with all changes known to be in force on or before 24 March 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- (a) any person designated by regulations made by the Secretary of State for the purpose of this paragraph; or
  - (b) in such circumstances as may be prescribed, any person who falls within such category of person as may be prescribed for the purpose of this paragraph.
- (3) The Secretary of State may designate, for the purpose 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 purpose 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) The 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.

#### **43 Interpretation of Part V.**

- (1) In this Part of this Act (except where the context otherwise requires)—
  - “authorised government department” means a government department which is an authorised department for the purposes of the <sup>M8</sup>Crown Proceedings Act 1947;
  - “confiscation order” means an order under section 1(1), 11(4), 12(3) or 13 of the <sup>M9</sup>Proceeds of Crime (Scotland) Act 1995; and
  - “drug trafficking” has the same meaning as in the said Act of 1995.
- (2) This Part of this Act shall (except where the context otherwise requires) be construed as one with the <sup>M10</sup>Criminal Procedure (Scotland) Act 1995.
- (3) This Part of this Act applies to property whether it is situated in Scotland or elsewhere.
- (4) References in this Part of this Act—
  - (a) to offences include a reference to offences committed before the commencement of section 1 of the <sup>M11</sup>Criminal Justice (Scotland) Act 1987; but nothing in this Act imposes any duty or confers any power on any court in or in connection with proceedings against a person for an offence to which that section relates instituted before the commencement of that section;
  - (b) to anything received in connection with drug trafficking include a reference to anything received both in that connection and in some other connection; and
  - (c) to property held by a person include a reference to property vested in the interim or permanent trustee in his sequestration or in his trustee in bankruptcy or liquidator.

*Status: Point in time view as at 01/04/1996.*

*Changes to legislation: Criminal Law (Consolidation) (Scotland) Act 1995, Part V is up to date with all changes known to be in force on or before 24 March 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Marginal Citations

- M8 1947 c.44.
- M9 1995 c.43.
- M10 1995 c.46.
- M11 1987 c.41.

**Status:**

Point in time view as at 01/04/1996.

**Changes to legislation:**

Criminal Law (Consolidation) (Scotland) Act 1995, Part V is up to date with all changes known to be in force on or before 24 March 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations.