



Criminal Law (Consolidation) (Scotland) Act 1995

1995 CHAPTER 39

PART V

DRUG TRAFFICKING

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—
 - (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—

Status: Point in time view as at 01/04/1996.

Changes to legislation: Criminal Law (Consolidation) (Scotland) Act 1995, Cross Heading: Offences 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) 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
 - (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

Status: Point in time view as at 01/04/1996.

Changes to legislation: Criminal Law (Consolidation) (Scotland) Act 1995, Cross Heading: Offences 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)

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—
- (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—

Status: Point in time view as at 01/04/1996.

Changes to legislation: Criminal Law (Consolidation) (Scotland) Act 1995, Cross Heading: Offences 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 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.
- (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.

Status: Point in time view as at 01/04/1996.

Changes to legislation: Criminal Law (Consolidation) (Scotland) Act 1995, Cross Heading: Offences 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)

- (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 ^{M1}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
 - (b) on conviction on indictment, to imprisonment for a term not exceeding five years or a fine, or to both.

Marginal Citations

M1 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

Status: Point in time view as at 01/04/1996.

Changes to legislation: Criminal Law (Consolidation) (Scotland) Act 1995, Cross Heading: Offences 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)

- 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.
- (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 ^{M2}Criminal Procedure (Scotland) Act 1995 (fines) but subject to section 10(3)(a) of the ^{M3}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—

Status: Point in time view as at 01/04/1996.

Changes to legislation: Criminal Law (Consolidation) (Scotland) Act 1995, Cross Heading: Offences 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) 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

- M2 [1995 c.46.](#)
M3 [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—
 - (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—

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

Changes to legislation: Criminal Law (Consolidation) (Scotland) Act 1995, Cross Heading: Offences 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)

“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 ^{M4}Crown Proceedings Act 1947;
 - “confiscation order” means an order under section 1(1), 11(4), 12(3) or 13 of the ^{M5}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 ^{M6}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 ^{M7}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.

Marginal Citations

- M4** 1947 c.44.
- M5** 1995 c.43.
- M6** 1995 c.46.
- M7** 1987 c.41.

Status:

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

Changes to legislation:

Criminal Law (Consolidation) (Scotland) Act 1995, Cross Heading: Offences 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.