

Drug Trafficking Offences Act 1986

CHAPTER 32

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1986 CHAPTER 32

An Act to make provision for the recovery of the proceeds of drug trafficking and other provision in connection with drug trafficking, to make provision about the supply of articles which may be used or adapted for use in the administration of controlled drugs or used to prepare a controlled drug for administration and to increase the number of assistant commissioners of police for the metropolis. [8th July 1986]

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

Confiscation of proceeds of drug trafficking

1.—(1) Subject to subsection (7) below, where a person appears before the Crown Court to be sentenced in respect of one or more drug trafficking offences (and has not previously been sentenced or otherwise dealt with in respect of his conviction for the offence or, as the case may be, any of the offences concerned), the court shall act as follows. Confiscation orders.

(2) The court shall first determine whether he has benefited from drug trafficking.

(3) For the purposes of this Act, a person who has at any time (whether before or after the commencement of this section)

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trafficking carried on by him or another has benefited from drug trafficking.

(4) If the court determines that he has so benefited, the court shall, before sentencing or otherwise dealing with him in respect of the offence or, as the case may be, any of the offences concerned, determine in accordance with section 4 of this Act the amount to be recovered in his case by virtue of this section.

(5) The court shall then, in respect of the offence or offences concerned—

- (a) order him to pay that amount,
- (b) take account of the order before—
 - (i) imposing any fine on him, or
 - (ii) making any order involving any payment by him, or
 - (iii) making any order under section 27 of the Misuse of Drugs Act 1971 (forfeiture orders), section 39 of the Powers of Criminal Courts Act 1973 (criminal bankruptcy orders) or section 43 of that Act (deprivation orders), and
- (c) subject to paragraph (b) above, leave the order out of account in determining the appropriate sentence or other manner of dealing with the defendant.

1971 c. 38.
1973 c. 62.

(6) No enactment restricting the power of a court dealing with an offender in a particular way from dealing with him also in any other way shall by reason only of the making of an order under this section restrict the Crown Court from dealing with an offender in any way the court considers appropriate in respect of a drug trafficking offence.

(7) Subsection (1) above does not apply in relation to any offence for which a person appears before the Crown Court to be sentenced if—

- (a) he has been committed to the Crown Court for sentence in respect of that offence under section 37(1) of the Magistrates' Courts Act 1980 (committal to Crown Court with a view to sentence of youth custody), or
- (b) the powers of the court (apart from this section) to deal with him in respect of that offence are limited to dealing with him in any way in which a magistrates' court might have dealt with him in respect of the offence.

1980 c. 43.

(8) In this Act—

- (a) an order under this section is referred to as a "confiscation order", and

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- (b) a person against whom proceedings have been instituted for a drug trafficking offence is referred to (whether or not he has been convicted) as "the defendant".

2.—(1) For the purposes of this Act—

- (a) any payments or other rewards received by a person at any time (whether before or after the commencement of section 1 of this Act) in connection with drug trafficking carried on by him or another are his proceeds of drug trafficking, and
- (b) the value of his proceeds of drug trafficking is the aggregate of the values of the payments or other rewards.

(2) The Court may, for the purpose of determining whether the defendant has benefited from drug trafficking and, if he has, of assessing the value of his proceeds of drug trafficking, make the following assumptions, except to the extent that any of the assumptions are shown to be incorrect in the defendant's case.

(3) Those assumptions are—

- (a) that any property appearing to the court—
- (i) to have been held by him at any time since his conviction, or
 - (ii) to have been transferred to him at any time since the beginning of the period of six years ending when the proceedings were instituted against him,
- was received by him, at the earliest time at which he appears to the court to have held it, as a payment or reward in connection with drug trafficking carried on by him,
- (b) that any expenditure of his since the beginning of that period was met out of payments received by him in connection with drug trafficking carried on by him, and
- (c) that, for the purpose of valuing any property received or assumed to have been received by him at any time as such a reward, he received the property free of any other interests in it.

(4) Subsection (2) above does not apply if the only drug trafficking offence in respect of which the defendant appears before the court to be sentenced is an offence under section 24 of this Act.

(5) For the purpose of assessing the value of the defendant's proceeds of drug trafficking in a case where a confiscation order has previously been made against him, the court shall leave

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out of account any of his proceeds of drug trafficking that are shown to the court to have been taken into account in determining the amount to be recovered under that order.

Statements
relating to
drug
trafficking.

3.—(1) Where—

- (a) there is tendered to the Crown Court by the prosecutor a statement as to any matters relevant to the determination whether the defendant has benefited from drug trafficking or to the assessment of the value of his proceeds of drug trafficking, and
- (b) the defendant accepts to any extent any allegation in the statement,

the court may, for the purposes of that determination and assessment, treat his acceptance as conclusive of the matters to which it relates.

(2) Where—

- (a) a statement is tendered under subsection (1)(a) above, and
- (b) the court is satisfied that a copy of that statement has been served on the defendant,

the court may require the defendant to indicate to what extent he accepts each allegation in the statement and, so far as he does not accept any such allegation, to indicate any matters he proposes to rely on.

(3) If the defendant fails in any respect to comply with a requirement under subsection (2) above he may be treated for the purposes of this section as accepting every allegation in the statement apart from—

- (a) any allegation in respect of which he has complied with the requirement, and
- (b) any allegation that he has benefited from drug trafficking or that any payment or other reward was received by him in connection with drug trafficking carried on by him or another.

(4) Where—

- (a) there is tendered to the Crown Court by the defendant a statement as to any matters relevant to determining the amount that might be realised at the time the confiscation order is made, and
- (b) the prosecutor accepts to any extent any allegation in the statement,

the court may, for the purposes of that determination, treat the acceptance by the prosecutor as conclusive of the matters to which it relates.

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(5) An allegation may be accepted or a matter indicated for the purposes of this section either—

- (a) orally before the court, or
- (b) in writing in accordance with Crown Court Rules.

(6) No acceptance by the defendant under this section that any payment or other reward was received by him in connection with drug trafficking carried on by him or another shall be admissible in evidence in any proceedings for an offence.

4.—(1) Subject to subsection (3) below, the amount to be recovered in the defendant's case under the confiscation order shall be the amount the Crown Court assesses to be the value of the defendant's proceeds of drug trafficking. Amount to be recovered under confiscation order.

(2) If the court is satisfied as to any matter relevant for determining the amount that might be realised at the time the confiscation order is made (whether by an acceptance under section 3 of this Act or otherwise), the court may issue a certificate giving the court's opinion as to the matters concerned and shall do so if satisfied as mentioned in subsection (3) below.

(3) If the court is satisfied that the amount that might be realised at the time the confiscation order is made is less than the amount the court assesses to be the value of his proceeds of drug trafficking, the amount to be recovered in the defendant's case under the confiscation order shall be the amount appearing to the court to be the amount that might be so realised.

5.—(1) In this Act, "realisable property" means, subject to subsection (2) below— Definition of principal terms used.

- (a) any property held by the defendant, and
- (b) any property held by a person to whom the defendant has directly or indirectly made a gift caught by this Act.

(2) Property is not realisable property if—

- (a) an order under section 43 of the Powers of Criminal 1973 c. 62.

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(3) For the purposes of sections 3 and 4 of this Act the amount that might be realised at the time a confiscation order is made against the defendant is—

- (a) the total of the values at that time of all the realisable property held by the defendant, less
- (b) where there are obligations having priority at that time, the total amounts payable in pursuance of such obligations,

together with the total of the values at that time of all gifts caught by this Act.

(4) Subject to the following provisions of this section, for the purposes of this Act the value of property (other than cash) in relation to any person holding the property—

- (a) where any other person holds an interest in the property, is—
 - (i) the market value of the first mentioned person's beneficial interest in the property, less
 - (ii) the amount required to discharge any incumbrance (other than a charging order) on that interest, and
- (b) in any other case, is its market value.

(5) Subject to subsection (10) below, references in this Act to the value at any time (referred to in subsection (6) below as "the material time") of a gift caught by this Act or of any payment or reward are references to—

- (a) the value of the gift, payment or reward to the recipient when he received it adjusted to take account of subsequent changes in the value of money, or
- (b) where subsection (6) below applies, the value there mentioned,

whichever is the greater.

(6) Subject to subsection (10) below, if at the material time the recipient holds—

- (a) the property which he received (not being cash), or
- (b) property which, in whole or in part, directly or indirectly represents in his hands the property which he received,

the value referred to in subsection (5)(b) above is the value to him at the material time of the property mentioned in paragraph (a) above or, as the case may be, of the property mentioned in paragraph (b) above so far as it so represents the property which he received, but disregarding in either case any charging order.

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(7) For the purposes of subsection (3) above, an obligation has priority at any time if it is an obligation of the defendant to—

- (a) pay an amount due in respect of a fine, or other order of a court, imposed or made on conviction of an offence, where the fine was imposed or order made before the confiscation order, or
- (b) pay any sum which would be included among the preferential debts (within the meaning given by section 386 of the Insolvency Act 1986) in the defendant's bankruptcy commencing on the date of the confiscation order or winding up under an order of the court made on that date.

(8) In the case of a confiscation order made before the coming into force of the Insolvency Act 1986, subsection (7) above shall have effect as if for paragraph (b) there were substituted—

“(b) pay any sum which, if the defendant had been adjudged bankrupt or was being wound up, would be among the preferential debts.”;

and in that paragraph “the preferential debts”—

- (a) in relation to bankruptcy, means the debts to be paid in priority under section 33 of the Bankruptcy Act 1914 c. 59, 1914 (assuming the date of the confiscation order to be the date of the receiving order) and
- (b) in relation to winding up, means the preferential debts listed in Schedule 19 to the Companies Act 1985 1985 c. 6. (assuming the date of the confiscation order to be the relevant date for the purpose of that Schedule).

(9) A gift (including a gift made before the commencement of section 1 of this Act) is caught by this Act if—

- (a) it was made by the defendant at any time since the beginning of the period of six years ending when the proceedings were instituted against him, or
- (b) it was made by the defendant at any time and was a gift of property—
 - (i) received by the defendant in connection with drug trafficking carried on by him or another, or
 - (ii) which in whole or in part directly or indirectly represented in the defendant's hands property received by him in that connection.

(10) For the purposes of this Act—

- (a) the circumstances in which the defendant is to be treated as making a gift include those where he transfers property to another person directly or indirectly for a consideration the value of which is significantly less than the value of the consideration provided by the defendant, and

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- (b) in those circumstances, the preceding provisions of this section shall apply as if the defendant had made a gift of such share in the property as bears to the whole property the same proportion as the difference between the values referred to in paragraph (a) above bears to the value of the consideration provided by the defendant.

Enforcement etc. of confiscation orders

Application
of procedure
for enforcing
fines.
1973 c. 62.

6.—(1) Where the Crown Court orders the defendant to pay any amount under section 1 of this Act, sections 31(1) to (3C) and 32(1) and (2) of the Powers of Criminal Courts Act 1973 (powers of Crown Court in relation to fines and enforcement of Crown Court fines) shall have effect as if—

- (a) that amount were a fine imposed on him by the Crown Court, and
(b) in the Table in section 31(3A) (imprisonment in default), for the entry relating to an amount exceeding £10,000 there were substituted—

“ An amount exceeding £10,000
but not exceeding £20,000.....12 months
An amount exceeding £20,000
but not exceeding £50,000.....18 months
An amount exceeding £50,000
but not exceeding £100,000.....2 years
An amount exceeding £100,000
but not exceeding £250,000.....3 years
An amount exceeding £250,000
but not exceeding £1 million.....5 years
An amount exceeding £1 million.....10 years ”.

(2) Where—

- (a) a warrant of commitment is issued for a default in payment of an amount ordered to be paid under section 1 of this Act in respect of an offence or offences, and
(b) at the time the warrant is issued, the defendant is liable to serve a term of custody in respect of the offence or offences,

1982 c. 48.

the term of imprisonment or of detention under section 9 of the Criminal Justice Act 1982 (detention of persons aged 17 to 20 for default) to be served in default of payment of the amount shall not begin to run until after the term mentioned in paragraph (b) above.

(3) The reference in subsection (2) above to the term of custody which the defendant is liable to serve in respect of the offence or offences is a reference to the term of imprisonment,

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youth custody or detention under section 4 or 9 of the said Act of 1982 which he is liable to serve in respect of the offence or offences; and for the purposes of this subsection—

(a) consecutive terms and terms which are wholly or partly concurrent shall be treated as a single term, and

(b) there shall be disregarded—

(i) any sentence suspended under section 22(1) of the said Act of 1973 which has not taken effect at the time the warrant is issued,

(ii) in the case of a sentence of imprisonment passed with an order under section 47(1) of the Criminal Law Act 1977, any part of the sentence 1977 c. 45. which the defendant has not at that time been required to serve in prison, and

(iii) any term of imprisonment or detention fixed under section 31(2) of the said Act of 1973 for which a warrant of commitment has not been issued at that time.

(4) In the application of Part III of the Magistrates' Courts Act 1980 c. 43. Act 1980 to amounts payable under confiscation orders—

(a) such an amount is not a sum adjudged to be paid by a conviction for the purposes of section 81 (enforcement of fines imposed on young offenders) or a fine for the purposes of section 85 (remission of fines), and

(b) in section 87 (enforcement by High Court or county court), subsection (3) shall be omitted.

(5) The reference in section 143(2) of that Act (power to alter sums specified in certain provisions) to the Table in section 31(3A) of the Powers of Criminal Courts Act 1973 includes a reference to that Table as it has effect by virtue of subsection 1973 c. 62. (1) above.

(6) This section applies in relation to confiscation orders made by the criminal division of the Court of Appeal, or by the House of Lords on appeal from that division, as it applies in relation to confiscation orders made by the Crown Court, and the reference in subsection (1)(a) above to the Crown Court shall be construed accordingly.

7.—(1) The powers conferred on the High Court by sections 8(1) and 9(1) of this Act are exercisable where—

(a) proceedings have been instituted in England and Wales against the defendant for a drug trafficking offence,

(b) the proceedings have not been concluded, and

(c) the court is satisfied that there is reasonable cause to believe that the defendant has benefited from drug trafficking.

Cases in which restraint orders and charging orders may be made.

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(2) Those powers are also exercisable ~~where~~ where the court is satisfied—

1980 c. 43.

- (a) that an information is to be laid under section 1 of the Magistrates' Courts Act 1980 that a person has or is suspected of having committed a drug trafficking offence, and
- (b) that there is reasonable cause to believe that he has benefited from drug trafficking.

(3) For the purposes of sections 8, 9 and 22 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 (2)(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 (2)(a) above for a drug trafficking offence.

(4) Where the court has made an order under section 8(1) or 9(1) of this Act by virtue of subsection (2) above, the court shall discharge the order if the proposed proceedings are not instituted within such time as the court considers reasonable.

Restraint
orders.

8.—(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 9 of this Act.

(4) A restraint order—

- (a) may be made only on an application by the prosecutor,

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- (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 when proceedings for the offences are concluded.

(6) Where the High Court has made a restraint order, the court may at any time appoint a receiver—

- (a) to take possession of any realisable property, and
- (b) 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 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.

(7) For the purposes of this section, dealing with property held by any person includes (without prejudice to the generality of the 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.

(8) Where the High Court has made a restraint order, a constable may for the purpose of preventing any realisable property being removed from Great Britain, seize the property.

(9) Property seized under subsection (8) above shall be dealt with in accordance with the court's directions.

9.—(1) The High Court may make a charging order on realisable property for securing the payment to the Crown—

Charging orders in respect of land, securities etc.

- (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) in any other case, 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.

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- (3) A charging order—
- (a) may be made only on an application by the prosecutor, and
 - (b) may be made on an ex parte application to a judge in chambers.
- (4) Subject to subsection (6) below, a charge may be imposed by a charging order only on—
- (a) any interest in realisable property, being 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—
 - (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 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 first-mentioned 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) The court may make an order discharging or varying the charging order and shall make an order discharging the charging order if the proceedings for the offence are concluded or the amount payment of which is secured by the charge is paid into court.

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10.—(1) A charging order may be made either absolutely or subject to conditions as to notifying any person holding any interest in the property to which the order relates or as to the time when the charge is to become enforceable, or as to other matters.

Charging orders:
supplementary provisions.

(2) 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 issued or made for the purpose of enforcing judgments.

1972 c. 61.
1925 c. 21.

(3) 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.

(4) Subject to any provision made under section 11 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.

(5) 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 9(7) of this Act discharging the charging order may direct that the entry be cancelled.

(6) The Secretary of State may by order made by statutory instrument amend section 9 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.

An order under this subsection shall be subject to annulment in pursuance of a resolution of either House of Parliament.

(7) In this section and section 9 of this Act, "building society", "dividend", "government stock", "stock" and "unit trust" have the same meanings as in the Charging Orders Act 1979.

1979 c. 53.

11.—(1) Where—

- (a) in proceedings instituted for a drug trafficking offence, a confiscation order is made,
- (b) the order is not subject to appeal, and
- (c) the proceedings have not been concluded,

Realisation of property.

the High Court may, on an application by the prosecutor, exercise the powers conferred by subsections (2) to (6) below.

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(2) The court may appoint a receiver in respect of realisable property.

(3) The court may empower a receiver appointed under subsection (2) above, under section 8 of this Act or in pursuance of a charging order—

- (a) to enforce any charge imposed under section 9 of this Act on realisable property or on interest or dividends payable in respect of such property, and
- (b) in relation to any realisable property other than property for the time being subject to a charge under section 9 of this Act, to take possession of the property subject to such conditions or exceptions as may be specified by the court.

(4) The court may order any person having possession of realisable property to give possession of it to any such receiver.

(5) The court may empower any such receiver to realise any realisable property in such manner as the court may direct.

(6) The court may order any person holding an interest in realisable property to make such payment to the receiver in respect of any beneficial interest held by the defendant or, as the case may be, the recipient of a gift caught by this Act as the court may direct and the court may, on the payment being made, by order transfer, grant or extinguish any interest in the property.

(7) Subsections (4) to (6) above do not apply to property for the time being subject to a charge under section 9 of this Act.

(8) The court shall not in respect of any property exercise the powers conferred by subsection (3)(a), (5) or (6) above unless a reasonable opportunity has been given for persons holding any interest in the property to make representations to the court.

Application
of proceeds of
realisation and
other sums.

12.—(1) Subject to subsection (2) below, the following sums in the hands of a receiver appointed under section 8 or 11 of this Act or in pursuance of a charging order, that is—

- (a) the proceeds of the enforcement of any charge imposed under section 9 of this Act,
- (b) the proceeds of the realisation, other than by the enforcement of such a charge, of any property under section 8 or 11 of this Act, and
- (c) any other sums, being property held by the defendant, shall, after such payments (if any) as the High Court may direct have been made out of those sums, be applied on the defendant's behalf towards the satisfaction of the confiscation order.

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(2) If, after the amount payable under the confiscation order has been fully paid, any such sums remain in the hands of such a receiver, the receiver shall distribute those sums—

- (a) among such of those who held property which has been realised under this Act, and
- (b) in such proportions,

as the High Court may direct after giving a reasonable opportunity for such persons to make representations to the court.

(3) The receipt of any sum by a justices' clerk on account of an amount payable under a confiscation order shall reduce the amount so payable, but the sum shall be applied as follows—

- (a) if paid by a receiver under subsection (1) above, it shall first be applied in payment of his remuneration and expenses,
- (b) subject to paragraph (a) above, it shall be applied in reimbursement of any sums paid by the prosecutor under section 18(2) of this Act,

and the balance shall be treated for the purposes of section 61 of the Justices of the Peace Act 1979 (application of fines, etc.) as if it were a fine imposed by a magistrates' court. 1979 c. 55.

In this subsection, "justices' clerk" has the same meaning as in the Justices of the Peace Act 1979.

13.—(1) The following provisions apply to the powers conferred on the High Court by sections 8 to 12 of this Act, or on the Court of Session by sections 20 to 22 of this Act, or on a receiver appointed under section 8 or 11 of this Act or in pursuance of a charging order. Exercise of powers by High Court or receiver.

(2) Subject to the following provisions of this section, the powers shall be exercised with a view to making available for satisfying the confiscation order or, as the case may be, any confiscation order that may be made in the defendant's case the value for the time being of realisable property held by any person by the realisation of such property.

(3) In the case of realisable property held by a person to whom the defendant has directly or indirectly made a gift caught by this Act, the powers shall be exercised with a view to realising no more than the value for the time being of the gift.

(4) The powers shall be exercised with a view to allowing any person other than the defendant or the recipient of any such gift to retain or recover the value of any property held by him.

(5) An order may be made or other action taken in respect of a debt owed by the Crown.

Drug Trafficking Offences Act 1986

(6) In exercising those powers, no account ~~shall be~~ taken of any obligations of the defendant or of the recipient of any such gift which conflict with the obligation to satisfy the confiscation order.

Variation of
confiscation
orders.

14.—(1) If, on an application by the defendant in respect of a confiscation order, the High Court is satisfied that the realisable property is inadequate for the payment of any amount remaining to be recovered under the order the court shall issue a certificate to that effect, giving the court's reasons.

(2) For the purposes of subsection (1) above—

(a) in the case of realisable property held by a person who has been adjudged bankrupt or whose estate has been sequestrated the court shall take into account the extent to which any property held by him may be distributed among creditors, and

(b) the court may disregard any inadequacy in the realisable property which appears to the court to be attributable wholly or partly to anything done by the defendant for the purpose of preserving any property held by a person to whom the defendant had directly or indirectly made a gift caught by this Act from any risk of realisation under this Act.

(3) Where a certificate has been issued under subsection (1) above, the defendant may apply to the Crown Court for the amount to be recovered under the order to be reduced.

(4) The Crown Court shall, on an application under subsection (3) above—

(a) substitute for the amount to be recovered under the order such lesser amount as the court thinks just in all the circumstances of the case, and

(b) substitute for the term of imprisonment or of detention fixed under subsection (2) of section 31 of the Powers of Criminal Courts Act 1973 in respect of the amount to be recovered under the order a shorter term determined in accordance with that section (as it has effect by virtue of section 6 of this Act) in respect of the lesser amount.

1973 c. 62.

Bankruptcy of
defendant etc. 15.—(1) Where a person who holds realisable property is adjudged bankrupt—

(a) property for the time being subject to a restraint order made before the order adjudging him bankrupt, and

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- (b) any proceeds of property realised by virtue of section 8(6) or 11(5) or (6) of this Act for the time being in the hands of a receiver appointed under section 8 or 11 of this Act,

is excluded from the bankrupt's estate for the purposes of Part IX of the Insolvency Act 1986.

(2) Where a person has been adjudged bankrupt, the powers conferred on the High Court by sections 8 to 12 of this Act or on a receiver so appointed or on the Court of Session by sections 20 to 22 of this Act shall not be exercised in relation to—

- (a) property for the time being comprised in the bankrupt's estate for the purposes of that Part,
- (b) property in respect of which his trustee in bankruptcy may (without leave of court) serve a notice under section 307 or 308 of that Act (after-acquired property and tools, clothes etc. exceeding value of reasonable replacement), and
- (c) property which is to be applied for the benefit of creditors of the bankrupt by virtue of a condition imposed under section 280(2)(c) of that Act.

(3) Nothing in that Act shall be taken as restricting, or enabling the restriction of, the exercise of those powers.

(4) Subsection (2) above does not affect the enforcement of a charging order—

- (a) made before the order adjudging the person bankrupt, or
- (b) on property which was subject to a restraint order when the order adjudging him bankrupt was made.

(5) Where, in the case of a debtor, an interim receiver stands appointed under section 286 of that Act and any property of the debtor is subject to a restraint order—

- (a) the powers conferred on the receiver by virtue of that Act do not apply to property for the time being subject to the restraint order,
- (b) section 287(4) of that Act (receiver's immunity), as it applies to the receiver by virtue of section 286(3) of that Act, shall have effect in relation to such property as if references to property were substituted for references to property which is not comprised in the bankrupt's estate, and
- (c) any such property in the hands of the receiver shall, subject to a lien for any expenses (including his remuneration) properly incurred in respect of the property, be

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dealt with in such manner as the High Court may direct.

(6) Where a person is adjudged bankrupt and has directly or indirectly made a gift caught by this Act—

(a) no order shall be made under section 339 or 423 of that Act (avoidance of certain transactions) in respect of the making of the gift at any time when proceedings for a drug trafficking offence have been instituted against him and have not been concluded or when property of the person to whom the gift was made is subject to a restraint order or charging order, and

(b) any order made under either of those sections after the conclusion of the proceedings shall take into account any realisation under this Act of property held by the person to whom the gift was made.

(7) In any case in which a petition in bankruptcy is presented, or a receiving order or adjudication in bankruptcy is made, before the date on which the Insolvency Act 1986 comes into force, this section has effect with the following modifications—

(a) for references to the bankrupt's estate for the purposes of Part IX of that Act there are substituted references to the property of the bankrupt for the purposes of the Bankruptcy Act 1914,

(b) for references to the Act of 1986 and sections 280(2)(c), 286, 339 and 423 of that Act there are respectively substituted references to the Act of 1914 and to sections 26(2), 8, 27 and 42 of that Act,

(c) the references in subsection (5) to an interim receiver appointed as there mentioned include, where a receiving order has been made, a reference to the receiver constituted by virtue of section 7 of the Act of 1914, and

(d) subsections (2)(b) and (5)(a) and (b) are omitted.

1914 c. 59.

Sequestration
in Scotland of
defendant etc.

16.—(1) Where the estate of a person who holds realisable property is sequestrated—

(a) property for the time being subject to a restraint order made before the award of sequestration, and

(b) any proceeds of property realised by virtue of section 8(6) or 11(5) or (6) of this Act for the time being in the hands of a receiver appointed under section 8 or 11 of this Act,

is excluded from the debtor's estate for the purposes of the Bankruptcy (Scotland) Act 1985.

1985 c. 66.

(2) Where an award of sequestration has been made, the powers conferred on the High Court by sections 8 to 12 of this

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Act or on a receiver so appointed or on the Court of Session by sections 20 to 22 of this Act shall not be exercised in relation to—

- (a) property comprised in the whole estate of the debtor within the meaning of section 31(8) of that Act,
 - (b) any income of the debtor which has been ordered, under subsection (2) of section 32 of that Act, to be paid to the permanent trustee or any estate which, under subsection (6) of that section, vests in the permanent trustee.
- (3) Nothing in that Act shall be taken as restricting, or enabling the restriction of, the exercise of those powers.
- (4) Subsection (2) above does not affect the enforcement of a charging order—
- (a) made before the award of sequestration, or
 - (b) on property which was subject to a restraint order when the award of sequestration was made.
- (5) Where, during the period before sequestration is awarded, an interim trustee stands appointed under the proviso to section 13(1) of that Act and any property in the debtor's estate is subject to a restraint order—
- (a) the powers conferred on the trustee by virtue of that Act do not apply to property for the time being subject to the restraint order,
 - (b) the trustee, if he seizes or disposes of any property for the time being subject to the restraint order and, when he does so, believes and has reasonable grounds for believing that he is entitled (whether in pursuance of an order of a court or otherwise) to do so—
 - (i) shall not (except insofar as the same has been caused by his negligence) be liable to any person in respect of any loss or damage resulting from his seizure or disposal of the property, and
 - (ii) shall have a lien on the property, or the proceeds of its sale, for such of the expenses of the sequestration as were incurred in connection with the seizure or disposal, and
 - (c) any such property in the hands of the trustee shall, subject to a lien for any expenses (including his remuneration) properly incurred in respect of the property, be dealt with in such manner as the High Court may direct.
- (6) Where the estate of a person is sequestrated and he has directly or indirectly made a gift caught by this Act—
- (a) no decree shall be granted under section 34 or 36 of that Act (gratuitous alienations and unfair preferences) in

Drug Trafficking Offences Act 1986

respect of the making of the gift at any time when proceedings for a drug trafficking offence have been instituted against him and have not been concluded or when property of the person to whom the gift was made is subject to a restraint order or charging order, and

- (b) any decree made under either of those sections after the conclusion of the proceedings shall take into account any realisation under this Act of property held by the person to whom the gift was made.

1985 c. 66.
1913 c. 20.

(7) In any case in which, notwithstanding the coming into force of the Bankruptcy (Scotland) Act 1985 the Bankruptcy (Scotland) Act 1913 applies to a sequestration, subsection (2) above shall have effect as if for paragraphs (a) and (b) thereof there were substituted the following paragraphs—

- “(a) property comprised in the whole property of the debtor which vests in the trustee under section 97 of the Bankruptcy (Scotland) Act 1913,
- (b) any income of the bankrupt which has been ordered under subsection (2) of section 98 of that Act, to be paid to the trustee or any estate which, under subsection (1) of that section, vests in the trustee”;

and subsection (3) above shall have effect as if for the reference therein to the Act of 1985 there were substituted a reference to the Act of 1913.

Winding up of
company
holding
realisable
property.

17.—(1) Where realisable property is held by a company and an order for the winding up of the company has been made or a resolution has been passed by the company for the voluntary winding up, the functions of the liquidator (or any provisional liquidator) shall not be exercisable in relation to—

- (a) property for the time being subject to a restraint order made before the relevant time, and
- (b) any proceeds of property realised by virtue of section 8(6) or 11(5) or (6) of this Act for the time being in the hands of a receiver appointed under section 8 or 11 of this Act;

but there shall be payable out of such property any expenses (including the remuneration of the liquidator or provisional liquidator) properly incurred in the winding up in respect of the property.

(2) Where, in the case of a company, such an order has been made or such a resolution has been passed, the powers conferred on the High Court by sections 8 to 12 of this Act or on a receiver so appointed or on the Court of Session by sections

Drug Trafficking Offences Act 1986

20 to 22 of this Act shall not be exercised in relation to any realisable property held by the company in relation to which the functions of the liquidator are exercisable—

- (a) so as to inhibit him from exercising those functions for the purpose of distributing any property held by the company to the company's creditors, or
- (b) so as to prevent the payment out of any property of expenses (including the remuneration of the liquidator or any provisional liquidator) properly incurred in the winding up in respect of the property.

(3) Nothing in the Insolvency Act 1986 shall be taken as restricting, or enabling the restriction of, the exercise of those powers.

(4) Subsection (2) above does not affect the enforcement of a charging order made before the relevant time or on property which was subject to a restraint order at the relevant time.

(5) In this section—

“company” means any company which may be wound up under the Insolvency Act 1986; and

“the relevant time” means—

(a) where no order for the winding up of the company has been made, the time of the passing of the resolution for voluntary winding up,

(b) where such an order has been made and, before the presentation of the petition for the winding up of the company by the court, such a resolution had been passed by the company, the time of the passing of the resolution, and

(c) in any other case where such an order has been made, the time of the making of the order.

(6) In any case in which a winding up of a company has commenced, or is treated as having commenced, before the date on which the Insolvency Act 1986 comes into force, this section has effect with the substitution for references to that Act of references to the Companies Act 1985.

1985 c. 6.

18.—(1) Where a receiver appointed under section 8 or 11 of this Act or in pursuance of a charging order takes any action—

Receivers:
supplementary
provisions.

- (a) in relation to property which is not realisable property, being action which he would be entitled to take if it were such property,
- (b) believing, and having reasonable grounds for believing, that he is entitled to take that action in relation to that property,

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he shall not be liable to any person in respect of any loss or damage resulting from his action except in so far as the loss or damage is caused by his negligence.

(2) Any amount due in respect of the remuneration and expenses of a receiver so appointed shall, if no sum is available to be applied in payment of it under section 12(3)(a) of this Act, be paid by the prosecutor or, in a case where proceedings for a drug trafficking offence are not instituted, by the person on whose application the receiver was appointed.

Compensation.

19.—(1) If proceedings are instituted against a person for a drug trafficking offence or offences and either—

- (a) the proceedings do not result in his conviction for any drug trafficking offence, or
- (b) where he is convicted of one or more drug trafficking offences—
 - (i) the conviction or convictions concerned are quashed (and no conviction for any drug trafficking offence is substituted), or
 - (ii) he is pardoned by Her Majesty in respect of the conviction or convictions concerned,

the High Court may, on an application by a person who held property which was realisable property, order compensation to be paid to the applicant.

(2) The High Court shall not order compensation to be paid in any case unless the court is satisfied—

- (a) that there has been some serious default on the part of a person concerned in the investigation or prosecution of the offence or offences concerned, being a person mentioned in subsection (4) below, and that, but for that default, the proceedings would not have been instituted or continued, and
- (b) that the applicant has suffered substantial loss in consequence of anything done in relation to the property by or in pursuance of—
 - (i) an order of the High Court under sections 8 to 11 of this Act, or
 - (ii) an order of the Court of Session under section 20, 21 or 22 of this Act.

(3) The amount of compensation to be paid under this section shall be such as the High Court thinks just in all the circumstances of the case.

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- (4) Compensation payable under this section shall be paid—
- (a) where the person in default was or was acting as a member of a police force, out of the police fund out of which the expenses of that police force are met,
 - (b) where the person in default was a member of the Crown Prosecution Service or acting on behalf of the service, by the Director of Public Prosecutions, and
 - (c) where the person in default was an officer within the meaning of the Customs and Excise Management Act 1979 c. 2, 1979, by the Commissioners of Customs and Excise.

Enforcement in Scotland

20.—(1) An order to which this section applies shall, subject to this section and section 21 of this Act, have effect in the law of Scotland but shall be enforced in Scotland only in accordance with this section and that section.

Recognition and enforcement in Scotland of orders and functions under sections 8, 11, 12 and 30.

(2) A receiver's functions under or for the purposes of section 8, 11 or 12 of this Act shall, subject to this section and section 21 of this Act, have effect in the law of Scotland.

(3) If an order to which this section applies is registered under this section—

- (a) the Court of Session shall have, in relation to its enforcement, the same power,
- (b) proceedings for or with respect to its enforcement may be taken, and
- (c) proceedings for or with respect to any contravention of such an order (whether before or after such registration) may be taken,

as if the order had originally been made in that Court.

(4) Nothing in this section enables any provision of an order which empowers a receiver to do anything in Scotland under section 11(3)(a) of this Act to have effect in the law of Scotland.

(5) The orders to which this section applies are orders of the High Court—

- (a) made under sections 8, 11, 12 or 30 of this Act,
- (b) relating to the exercise by that Court of its powers under those sections, or
- (c) relating to receivers in the performance of their functions under sections 8, 11 or 12 of this Act,

but not including an order in proceedings for enforcement of any such order.

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(6) References in this section to an order under section 8 of this Act include references to a discharge under section 7(4) of this Act of such an order.

(7) In this section and in sections 21 and 23, "order" means any order, direction or judgment (by whatever name called).

(8) Nothing in any order of the High Court under section 11(6) of this Act prejudices any enactment or rule of law in respect of the recording of deeds relating to heritable property in Scotland or the registration of interests therein.

Provisions
supplementary
to section 20.

21.—(1) The Court of Session shall, on application made to it in accordance with rules of court for registration of an order to which section 20 applies, direct that the order shall, in accordance with such rules, be registered in that Court.

(2) Subsections (1) and (3) of section 20 of this Act and subsection (1) above are subject to any provision made by rules of court—

- (a) as to the manner in which and conditions subject to which orders to which that section applies are to be enforced in Scotland,
- (b) for the sisting of proceedings for enforcement of such an order,
- (c) for the modification or cancellation of the registration of such an order if the order is modified or revoked or ceases to have effect.

(3) This section and section 20 are without prejudice to any enactment or rule of law as to the effect of notice or the want of it in relation to orders of the High Court.

1972 c. 59.

(4) The Court of Session shall have the like power to make an order under section 1 of the Administration of Justice (Scotland) Act 1972 (extended power to order inspection of documents etc.) in relation to proceedings brought or likely to be brought under this Act in the High Court as if those proceedings had been brought or were likely to be brought in the Court of Session.

(5) The Court of Session may, additionally, for the purpose of—

- (a) assisting the achievement in Scotland of the purposes of orders to which section 20 of this Act applies, or
 - (b) assisting receivers performing functions there under or for the purposes of section 8, 11 or 12 of this Act,
- make such orders and do otherwise as seems to it appropriate.

Drug Trafficking Offences Act 1986

22.—(1) On the application of the prosecutor, the Court of Inhibition and Session may, in respect of any property in Scotland, being arrestment of property to which a restraint order registered in that Court property in Scotland, relates—

- (a) where the property is heritable, grant warrant for inhibition in respect of the property against any person with an interest in it, or
- (b) where the property is moveable and would, if the person entitled to it were a debtor, be arrestable property, grant warrant for arrestment of the property,

and on the grant of such a warrant the enactments and rules of law relating to inhibition and arrestment shall, subject to the provisions of this section, apply respectively as if the warrant had been granted on the dependence of an action for debt at the instance of the prosecutor against the person against whom the warrant for inhibition is granted or, as the case may be, whose property falls to be arrested.

(2) Section 155 of the Titles to Land Consolidation (Scotland) 1868 c. 101. Act 1868 (effective date of inhibitions) shall apply in relation to an inhibition proceeding upon a warrant under this section.

(3) In the application of section 158 of the said Act of 1868 (recall of inhibitions) to an inhibition proceeding upon a warrant under this section, the references to a particular Lord Ordinary in the Court of Session shall be construed as references to any such Lord Ordinary.

(4) Any power of the Court of Session to recall, loose or restrict inhibitions or arrestments shall, in relation to an inhibition or arrestment proceeding upon a warrant under this section and without prejudice to any other consideration lawfully applying to the exercise of the power, be exercised with a view to achieving the purposes specified in section 13 of this Act.

(5) The Court of Session shall have power to restrict the effect of an inhibition proceeding upon a warrant under this section to particular property.

(6) The fact that such an inhibition or arrestment has been executed as respects any property shall not prejudice the exercise of a receiver's powers under or for the purposes of section 8, 11 or 12 of this Act in respect of that property.

(7) An inhibition or arrestment under this section shall cease to have effect upon the restraint order to which it relates ceasing to have effect and, where an inhibition ceases to have effect, it shall thereupon be the duty of the prosecutor to discharge it.

Drug Trafficking Offences Act 1986

Proof in
Scotland of
High Court
Orders.

23. A document purporting to be a copy of an order under or for the purposes of this Act by the High Court and to be certified as such by a proper officer of that Court shall, in Scotland, be sufficient evidence of the order.

Offence of assisting drug traffickers

Assisting
another to
retain the
benefit of
drug
trafficking.

24.—(1) Subject to subsection (3) below, if a person enters into or is otherwise concerned in an arrangement whereby—

- (a) the retention or control by or on behalf of another (call him "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,

knowing or suspecting that A is a person who carries on or has carried on drug trafficking or has benefited from drug trafficking, he is guilty of an offence.

(2) In this section, references to any person's proceeds of drug trafficking include a reference to any property which in whole or in part directly or indirectly represented in his hands his proceeds of drug trafficking.

(3) Where a person discloses to a constable a suspicion or belief that any funds or investments are derived from or used in connection with drug trafficking or 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 contract, and
- (b) if he does any act in contravention of subsection (1) above and the disclosure relates to the arrangement concerned, he does not commit an offence under this section if the disclosure is made in accordance with this paragraph, that is—
 - (i) it is made before he does the act concerned, being an act done with the consent of the constable, or
 - (ii) it is made after he does the act, but is made on his initiative and as soon as it is reasonable for him to make it.

Drug Trafficking Offences Act 1986

(4) 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 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 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 subsection (3)(b) above.

(5) A person guilty of an offence under this section 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.

(6) In Part II of Schedule 1 to the Criminal Justice Act 1982 1982 c. 48. (persons convicted of offences under certain enactments not eligible for early release), after paragraph 25 there is inserted—

“ DRUG TRAFFICKING OFFENCES ACT 1986 (c. 32)

26. Section 24 (assisting another to retain the benefit of drug trafficking).”

Enforcement of external orders

25.—(1) Her Majesty may by Order in Council provide that, Enforcement of Northern Ireland orders. for the purposes of sections 7 to 19 of this Act, this Act shall have effect as if—

- (a) references to confiscation orders included a reference to orders made by courts in Northern Ireland which appear to Her Majesty to correspond to confiscation orders,
- (b) references to drug trafficking offences included a reference to any offence under the law of Northern Ireland (not being a drug trafficking offence) which appears to Her Majesty to correspond to such an offence,

Drug Trafficking Offences Act 1986

- 1980 c. 43.
S.I. 1981/
1675 (N.I. 26).
- (c) references to proceedings in England and Wales or to the institution or conclusion in England and Wales of proceedings included a reference to proceedings in Northern Ireland or to the institution or conclusion in Northern Ireland of proceedings, as the case may be, and
 - (d) references to the laying of an information or the issue of a summons or warrant under section 1 of the Magistrates' Courts Act 1980 included a reference to making a complaint or issuing a summons or warrant (as the case may be) under Article 20 of the Magistrates' Courts (Northern Ireland) Order 1981.

(2) An Order in Council under this section may provide for those sections to have effect in relation to anything done or to be done in Northern Ireland subject to such further modifications as may be specified in the order.

(3) An Order in Council varying or revoking a previous Order in Council under this section may contain such incidental, consequential and transitional provisions as Her Majesty considers expedient.

(4) An Order in Council under this section shall not be made unless a draft of the order has been laid before Parliament and approved by resolution of each House of Parliament.

Enforcement
of other
external
orders.

26.—(1) Her Majesty may by Order in Council apply this section to any order made after the Order in Council comes into force by a court of a country or territory outside the United Kingdom, being an order—

- (a) of a description specified in the Order in Council, and
- (b) made for the purpose of recovering payments or other rewards received in connection with drug trafficking or their value.

(2) An order to which this section applies is referred to below in this section as an "external confiscation order"; and in this section "designated country" means a country or territory outside the United Kingdom designated by an Order in Council under this section.

(3) The High Court may, on an application by or on behalf of the government of a designated country, register an external confiscation order made there, subject to subsection (4) below.

(4) The High Court shall not register an external confiscation order unless—

- (a) the court is satisfied that at the time of registration the order is in force in the designated country and is not subject to appeal in the designated country,

Drug Trafficking Offences Act 1986

- (b) the court is satisfied, where the person against whom the order is made did not appear in the proceedings, that he received notice of the proceedings in sufficient time to enable him to defend them, and
- (c) the court is of the opinion that enforcing the order in England and Wales would not be contrary to the interests of justice.

(5) The High Court shall cancel the registration of an external confiscation order if it appears to the court that the order has been satisfied (whether by payment of the amount due under the order, by the person against whom the order is made serving imprisonment in default or otherwise).

(6) In relation to an external confiscation order registered under this section, sections 8 to 18 of this Act shall have effect subject to such modifications as may be specified in an Order in Council under this section as they have effect in relation to a confiscation order.

(7) In subsection (4) above, "appeal" includes any proceedings by way of discharging or setting aside a judgment or an application for a new trial or a stay of execution.

(8) In any case where the High Court is satisfied, on an application by or on behalf of the government of a designated country, that proceedings which might result in an external confiscation order being made against a person have been instituted in the designated country and have not been concluded, sections 8 to 10 of this Act shall have effect in relation to those proceedings—

- (a) as they would have effect in relation to proceedings instituted in England and Wales against that person for a drug trafficking offence which have not been concluded, and
- (b) as if references to a confiscation order were references to an external confiscation order and references to an application by the prosecutor were references to an application by or on behalf of that government, and
- (c) subject to such other modifications as may be specified in an Order in Council under this section.

(9) An Order in Council under this section may include such provision—

- (a) as to evidence or proof of any matter for the purposes of this section, and
- (b) as to the circumstances in which proceedings are to be treated for those purposes as instituted or concluded in any designated country,

as Her Majesty considers expedient.

Drug Trafficking Offences Act 1986

(10) An Order in Council varying or revoking a previous Order in Council under this section may contain such incidental, consequential and transitional provisions as Her Majesty considers expedient.

(11) An Order in Council under this section shall not be made unless a draft of the order has been laid before Parliament and approved by resolution of each House of Parliament.

Investigations into drug trafficking

Order to make material available.

27.—(1) A constable or, in Scotland, the procurator fiscal may, for the purpose of an investigation into drug trafficking, apply to a Circuit judge or, in Scotland, 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 judge or, as the case may be, the sheriff is satisfied that the conditions in subsection (4) below are fulfilled, he may make an order that the person who appears to him to be in possession of the material to which the application relates shall—

- (a) produce it to a constable for him to take away, or
- (b) give a constable access to it,

within such period as the order may specify.

This subsection is subject to section 30(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 or, as the case may be, 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 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
 - (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

Drug Trafficking Offences Act 1986

(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 or, as the case may be, the sheriff makes an order under subsection (2)(b) above in relation to material on any premises he may, on the application of a constable or, in Scotland, the procurator fiscal order any person who appears to him to be entitled to grant entry to the premises to allow a constable to enter the premises to obtain access to the material.

(6) Provision may be made by Crown Court Rules or, as respects Scotland, rules of court as to—

- (a) the discharge and variation of orders under this section, and
- (b) proceedings relating to such orders.

(7) An order of a Circuit Judge under this section shall have effect as if it were an order of the Crown Court.

(8) 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.

(9) 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.

28.—(1) A constable or, in Scotland, the procurator fiscal may, Authority for the purpose of an investigation into drug trafficking, apply to for search. a Circuit judge or, in Scotland, the sheriff for a warrant under this section in relation to specified premises.

(2) On such application the judge or, as the case may be, the sheriff may issue a warrant authorising a constable to enter and search the premises if he is satisfied—

- (a) that an order made under section 27 of this Act in relation to material on the premises has not been complied with, or

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- (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, and
 - (b) that the conditions in section 27(4)(b) and (c) of this Act are fulfilled in relation to any material on the premises, and
 - (c) that it would not be appropriate to make an order under that section in relation to the material because—
 - (i) it is not practicable to communicate with any person entitled to produce the material, or
 - (ii) it is not practicable to communicate with any person entitled to grant access to the material or entitled to grant entry to the premises on which the material is situated, or
 - (iii) the investigation for the purposes of which the application is made might be seriously prejudiced unless a constable 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, 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 arriving at the premises could secure immediate entry to them.

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(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.

29.—(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)—

Sections 27
and 28:
supplementary
provisions.
1984 c. 60.

(a) an investigation into drug trafficking shall be treated as if it were an investigation of or in connection with an offence, and

(b) material produced in pursuance of an order under section 27(2)(a) of this Act shall be treated as if it were material seized by a constable.

(2) Subject to subsection (3) below, in sections 27 and 28 of this Act “items subject to legal privilege”, “excluded material” and “premises” have the same meanings as in the said Act of 1984.

(3) As respects Scotland, in sections 27 and 28 of this Act the references to excluded material shall be omitted, and—

“items subject to legal privilege” means—

(a) communications between a professional legal adviser and his client,

(b) communications made in connection with or in contemplation of legal proceedings and for the purposes of these proceedings,

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

“premises” includes any place and, in particular, includes—

(a) any vehicle, vessel, aircraft or hovercraft,

(b) any offshore installation within the meaning of section 1 of the Mineral Workings (Offshore Installations) Act 1971, and

1971 c. 61.

(c) any tent or movable structure.

30.—(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.

Disclosure of
information
held by
government
departments.

Drug Trafficking Offences Act 1986

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

- (a) the powers conferred on the court by sections 8(1) and 9(1) of this Act are exercisable by virtue of subsection (1) of section 7 of this Act, or
- (b) those powers are exercisable by virtue of subsection (2) 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 (3) of section 7 of this Act shall apply for the purposes of this section as it applies for the purposes of sections 8 and 9 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 8 to 11 of this Act or on a receiver appointed under section 8 or 11 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

Drug Trafficking Offences Act 1986

order, be further disclosed for the purposes of the functions under this Act 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.

(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 27(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.

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Offence of
prejudicing
investigation.

31.—(1) Where, in relation to an investigation into drug trafficking, an order under section 27 of this Act has been made or has been applied for and has not been refused or a warrant under section 28 of this Act has been issued, a person who, knowing or suspecting that the investigation is taking place, makes any disclosure which is likely to prejudice the investigation is guilty of an offence.

(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) A person guilty of an offence under this section 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.

Authorisation
of delay in
notifying
arrest,
1984 c. 60.

32.—(1) In section 56 of the Police and Criminal Evidence Act 1984 (right to have someone informed when arrested), at the beginning of subsection (5) there is inserted "Subject to subsection (5A) below" and after that subsection there is inserted—

"(5A) An officer may also authorise delay where the serious arrestable offence is a drug trafficking offence and the officer has reasonable grounds for believing—

- (a) that the detained person has benefited from drug trafficking, and
- (b) that the recovery of the value of that person's proceeds of drug trafficking will be hindered by telling the named person of the arrest."

(2) In section 58 of that Act (access to legal advice) at the beginning of subsection (8) there is inserted "Subject to subsection (8A) below" and after that subsection there is inserted—

"(8A) An officer may also authorise delay where the serious arrestable offence is a drug trafficking offence and the officer has reasonable grounds for believing—

- (a) that the detained person has benefited from drug trafficking, and
- (b) that the recovery of the value of that person's proceeds of drug trafficking will be hindered by the exercise of the right conferred by subsection (1) above."

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(3) In section 65 of that Act (interpretation)—

(a) after the definition of “appropriate consent” there is inserted—

““drug trafficking” and “drug trafficking offence” have the same meaning as in the Drug Trafficking Offences Act 1986”, and

(b) at the end of that section there is inserted “and references in this Part to any person’s proceeds of drug trafficking are to be construed in accordance with the Drug Trafficking Offences Act 1986”.

(4) Without prejudice to section 20(2) of the Interpretation 1978 c. 30, Act 1978, the Police and Criminal Evidence Act 1984 (Application to Customs and Excise) Order 1985 applies to sections 56 S.I. 1985/1800 and 58 of the Police and Criminal Evidence Act 1984 as those 1984 c. 60, sections have effect by virtue of this section.

Miscellaneous and Supplemental

33.—(1) The Chief Land Registrar (in this section referred to as “the registrar”) shall, on an application under subsection (2) or (4) below made in relation to a person specified in the application or to property so specified, provide the applicant with any information kept by the registrar under the Land Registration Act 1925 which relates to the person or property so specified. Power to inspect Land Register etc.
1925 c. 21.

(2) An application may be made by—

- (a) any police officer not below the rank of superintendent,
- (b) any Crown Prosecutor, or
- (c) any person commissioned by the Commissioners of Customs and Excise not below the rank of senior executive officer,

and on an application under this subsection an appropriate certificate shall be given to the registrar.

(3) In subsection (2) above, “appropriate certificate” means a certificate—

- (a) that there are reasonable grounds for suspecting that there is information kept by the registrar which is likely to be of substantial value (whether by itself or together with other information) to an investigation into drug trafficking, or
- (b) that—
 - (i) a person specified in the certificate has committed or there are reasonable grounds for suspecting that a person so specified has committed a drug trafficking offence, and

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(ii) there are reasonable grounds for suspecting that there is information kept by the registrar which is likely to be of substantial value (whether by itself or together with other information) to an investigation into whether the person so specified has benefited from drug trafficking or in facilitating the recovery of the value of his proceeds of drug trafficking.

(4) An application may be made by a receiver appointed under section 8 or 11 of this Act and on an application under this subsection there shall be given to the registrar—

- (a) a document certified by the proper officer of the court to be a true copy of the order appointing the receiver, and
- (b) a certificate that there are reasonable grounds for suspecting that there is information kept by the registrar which is likely to facilitate the exercise of the powers conferred on the receiver in respect of the person or property specified in the application.

(5) The reference in subsection (1) above to the provision of information is a reference to its provision in documentary form.

Drug administration kits etc.

Prohibition of
supply etc. of
articles for
administering
or preparing
controlled
drugs.
1971 c. 38.

34.—(1) After section 9 of the Misuse of Drugs Act 1971 there is inserted the following section—

" Prohibition
of supply etc.
of articles for
administer-
ing or
preparing
controlled
drugs.

9A.—(1) A person who supplies or offers to supply any article which may be used or adapted to be used (whether by itself or in combination with another article or other articles) in the administration by any person of a controlled drug to himself or another, believing that the article (or the article as adapted) is to be so used in circumstances where the administration is unlawful, is guilty of an offence.

(2) It is not an offence under subsection (1) above to supply or offer to supply a hypodermic syringe, or any part of one.

(3) A person who supplies or offers to supply any article which may be used to prepare a controlled drug for administration by any person to himself or another believing that the article is to be so used in circumstances where the administration is unlawful is guilty of an offence.

(4) For the purposes of this section, any administration of a controlled drug is unlawful except—

- (a) the administration by any person of a controlled drug to another in circumstances

Drug Trafficking Offences Act 1986

where the administration of the drug is not unlawful under section 4(1) of this Act, or

- (b) the administration by any person of a controlled drug to himself in circumstances where having the controlled drug in his possession is not unlawful under section 5(1) of this Act.

(5) In this section, references to administration by any person of a controlled drug to himself include a reference to his administering it to himself with the assistance of another ”.

(2) In Schedule 4 to that Act, after the entry relating to section 9 there is inserted—

“ Section 9A. Prohibition of supply etc. of articles for administering or preparing controlled drugs.	Summary — — — 6 months or level 5 on the standard scale, or both.”
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Miscellaneous and Supplemental

35. In section 2 of the Metropolitan Police Act 1856 (power to appoint two assistant commissioners of police for the metropolis, increased to five by the Metropolitan Police Act 1933) for the word “ two ” there is substituted “ six ”; and the Metropolitan Police Act 1933 is repealed.

Power to appoint additional assistant commissioner.
1856 c. 2.
1933 c. 33.

36. In section 116(2) of the Police and Criminal Evidence Act 1984 (arrestable offences that are always serious) after paragraph (a) there is inserted—

Drug trafficking offences to be serious

“ (aa) any of the offences mentioned in paragraphs (a) to (d) of the definition of “ drug trafficking offence ” in section 38(1) of the Drug Trafficking Offences Act 1984 ”.

arrestable offences.
1984 c. 60.

37. There shall be paid out of money provided by Parliament any increase attributable to this Act in the sums payable out of money so provided under any other Act.

38.—(1) In this Act—

General interpretation.

“ authorised government department ” means a government department which is an authorised department for the purposes of the Crown Proceedings Act 1947 ;

1947 c. 44.

“ constable ” includes a person commissioned by the Commissioners of Customs and Excise ;

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1971 c. 38.

"corresponding law" has the same meaning as in the Misuse of Drugs Act 1971;

"drug trafficking" means doing or being concerned in any of the following, whether in England and Wales or elsewhere—

(a) producing or supplying a controlled drug where the production or supply contravenes section 4(1) of the Misuse of Drugs Act 1971 or a corresponding law;

(b) transporting or storing a controlled drug where possession of the drug contravenes section 5(1) of that Act or a corresponding law;

(c) importing or exporting a controlled drug where the importation or exportation is prohibited by section 3(1) of that Act or a corresponding law;

and includes a person doing the following, whether in England and Wales or elsewhere, that is entering into or being otherwise concerned in an arrangement whereby—

(i) the retention or control by or on behalf of another person of the other person's proceeds of drug trafficking is facilitated, or

(ii) the proceeds of drug trafficking by another person are used to secure that funds are placed at the other person's disposal or are used for the other person's benefit to acquire property by way of investment;

"drug trafficking offence" means any of the following—

(a) an offence under section 4(2) or (3) or 5(3) of the Misuse of Drugs Act 1971 (production, supply and possession for supply of controlled drugs);

(b) an offence under section 20 of that Act (assisting in or inducing commission outside United Kingdom of offence punishable under a corresponding law);

(c) an offence under—

(i) section 50(2) or (3) of the Customs and Excise Management Act 1979 (improper importation),

(ii) section 68(2) of that Act (exportation), or

(iii) section 170 of that Act (fraudulent evasion), in connection with a prohibition or restriction on importation or exportation having effect by virtue of section 3 of the Misuse of Drugs Act 1971;

(d) an offence under section 24 of this Act;

1979 c. 2.

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(e) an offence under section 1 of the Criminal Law Act 1977 of conspiracy to commit any of the offences in paragraphs (a) to (d) above ;

(f) an offence under section 1 of the Criminal Attempts Act 1981 of attempting to commit any of those offences ;

(g) an offence of inciting another to commit any of those offences, whether under section 19 of the Misuse of Drugs Act 1971 or at common law ; and 1971 c. 38.

(h) aiding, abetting, counselling or procuring the commission of any of those offences ;

" interest ", in relation to property, includes right ;

" property " includes money and all other property, real or personal, heritable or moveable, including things in action and other intangible or incorporeal property.

(2) The expressions listed in the left hand column below are respectively defined or (as the case may be) fall to be construed in accordance with the provisions of this Act listed in the right hand column in relation to those expressions.

<i>Expression</i>	<i>Relevant provision</i>
Benefited from drug trafficking	Section 1(3)
Charging order	Section 9(2)
Confiscation order	Section 1(8)
Dealing with property	Section 8(7)
Defendant	Section 1(8)
Gift caught by this Act	Section 5(9)
Making a gift	Section 5(10)
Proceeds of drug trafficking	Section 2(1)(a)
Realisable property	Section 5(1)
Restraint order	Section 8(1)
Value of gift, payment or reward	Section 5
Value of proceeds of drug trafficking	Section 2(1)(b)
Value of property	Section 5(4).

(3) This Act applies to property whether it is situated in England and Wales or elsewhere.

(4) References in this Act to offences include a reference to offences committed before the commencement of section 1 of this Act ; 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 a drug trafficking offence instituted before the commencement of that section.

(5) References in this Act to anything received in connection with drug trafficking include a reference to anything received both in that connection and in some other connection.

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(6) The following provisions shall have effect for the interpretation of this Act.

(7) Property is held by any person if he holds any interest in it.

1985 c. 66. (8) 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.

(9) 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.

(10) Property is transferred by one person to another if the first person transfers or grants to the other any interest in the property.

(11) Proceedings for an offence are instituted in England and Wales—

1980 c. 43. (a) when a justice of the peace issues a summons or warrant under section 1 of the Magistrates' Courts Act 1980 in respect of the offence,

(b) when a person is charged with the offence after being taken into custody without a warrant,

1933 c. 36. (c) when a bill of indictment is preferred under section 2 of the Administration of Justice (Miscellaneous Provisions) Act 1933 in a case falling within paragraph (b) of subsection (2) of that section ;

and where the application of this subsection would result in there being more than one time for the institution of proceedings, they shall be taken to have been instituted at the earliest of those times.

(12) Proceedings in England and Wales for an offence are concluded on the occurrence of one of the following events—

(a) the discontinuance of the proceedings ;

(b) the acquittal of the defendant ;

(c) the quashing of his conviction for the offence ;

(d) the grant of Her Majesty's pardon in respect of his conviction for the offence ;

(e) the court sentencing or otherwise dealing with him in respect of his conviction for the offence without having made a confiscation order ; and

(f) the satisfaction of a confiscation order made in the proceedings (whether by payment of the amount due under the order or by the defendant serving imprisonment in default).

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(13) An order is subject to appeal so long as an appeal or further appeal is pending against the order or (if it was made on a conviction) against the conviction; and for this purpose an appeal or further appeal shall be treated as pending (where one is competent but has not been brought) until the expiration of the time for bringing that appeal.

39.—(1) Section 28 of the Bankruptcy Act 1914 (effect of order Minor of discharge) shall have effect as if amounts payable under confis- amendments, cation orders were debts excepted under subsection (1)(a) of 1914 c. 59. that section.

(2) In section 49(1)(g) of the Land Registration Act 1925 1925 c. 21. (protection of certain interests by notice) after "Charging Orders Act 1979" there is inserted "or the Drug Trafficking Offences Act 1986".

(3) In section 1(2)(a) of the Rehabilitation of Offenders Act 1974 c. 53. 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.

(4) After subsection (4) of section 18 of the Civil Juris- 1982 c. 27 diction and Judgements Act 1982 there is inserted the following subsection—

"(4A) This section does not apply as respects the enforcement in Scotland of orders made by the High Court in England and Wales under or for the purposes of the Drug Trafficking Offences Act 1986."

(5) 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.

(6) Section 55(2) of the Bankruptcy (Scotland) Act 1985 1985 c. 66. (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.

40.—(1) This Act may be cited as the Drug Trafficking Short title, Offences Act 1986. commencement and extent.

(2) This Act, except section 35 (which comes into force on the day on which this Act is passed), shall come into force on such day as the Secretary of State may by order made by statutory instrument appoint and different days may be appointed for different provisions and for different purposes.

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(3) Subject to subsections (4) and (5) below, this Act extends to England and Wales only.

(4) This Act has effect in Scotland as follows—

(a) sections 7(4), 8 (but not subsection (8) or (9)), 11, 12 and 30 (but not subsection (10), (11) or (12)) extend also to Scotland, but only as provided by sections 20 and 21 of this Act ;

(b) section 7(3) ;

section 8(8) and (9) ;

section 13 ;

sections 15 to 17 ;

section 18(1) ;

section 24(3)(a) ;

sections 27 to 29 ;

section 30(10), (11) and (12) ;

section 34 ;

section 38, so far as relating to other provisions of this Act extending to Scotland ;

section 39(3), (4) and (6) ; and

this section, so far as relating to other provisions of this Act extending to Scotland,

extend also to Scotland ;

(c) sections 20 to 23 extend to Scotland only.

(5) Section 34 extends also to Northern Ireland.
