

RECENT DEVELOPMENTS IN COMBATING DRUG TRAFFICKING: AREAS OF POSSIBLE COMMONWEALTH CO-ORDINATION

Paper by the Government of the UNITED KINGDOM

INTRODUCTION

In the final Communique (Appendix A) of their meeting in Nassau in October 1985, the Commonwealth Heads of Government expressed their deep concern at the rising level of drug abuse and illicit drug trafficking. The Communique called for enhanced cooperation between Commonwealth countries in this field and in particular invited Commonwealth Law Ministers to explore measures to reduce the extent to which the profits made by drug traffickers were used in criminal and subversive activities including those across international borders.

BACKGROUND

United Kingdom National Measures

1. The level of drug abuse and trafficking in the UK has increased considerably in recent years. Heroin remains the main drug of abuse. But other drugs such as cocaine and amphetamines are also abused.
2. The British Government attaches the highest priority to combatting drug abuse and has developed a comprehensive five-point strategy to attack the problem by:
 - (i) reducing supplies from abroad;
 - (ii) making enforcement more effective;
 - (iii) strengthening deterrents and tightening domestic controls;
 - (iv) developing prevention measures;
 - (v) improving treatment and rehabilitation.

An inter-departmental group, the Ministerial Group on the Misuse of Drugs, has been established to oversee, co-ordinate, give impetus to and review this strategy.

Domestic Measures

3. In 1985 the Government launched a major health education and information campaign to discourage drug misuse through educational leaflets, films, posters and video packages. Money has also been allocated to local education authorities for the appointment of drug advice co-ordinators. Health departments are involved in funding research projects.
4. The Government is improving and expanding the treatment and rehabilitation services available to drug misusers. Facilities will provide for a range of treatment for acute medical cases such as overdose, helping drugs misusers to withdraw from drugs and long-term consultation and support during rehabilitation.
5. HM Customs and Excise attach highest priority to the interdiction of drug traffickers. Greater emphasis has been placed, and additional resources provided, on

intelligence gathering and the use of mobile forces. The number of uniformed preventive staff on routine controls is also being increased. £10 million is being spent on the development and procurement of equipment to detect concealed drugs.

6. The police also accord a high priority to the investigation of drugs offences. All police forces in England and Wales and 7 of the 8 Scottish forces now have specialist drug squads. Co-operation between police and customs has been further enhanced by collaboration in the new National Drugs Intelligence Unit (NDIU) which provides both forces with nationally co-ordinated intelligence.

Legislation

7. The Misuse of Drugs Act 1971 has been strengthened over the past two years to bring more drugs under Government control, and the United Kingdom has recently ratified the UN Convention on Psychotropic Substances 1971. The Home Office are involved also in reviewing the security of premises licenced to hold controlled drugs.

8. In September 1985 the Controlled Drugs (Penalties) Act 1985 came into force. This provided the courts with the power to sentence those convicted of trafficking in the most dangerous drugs to life imprisonment, compared with the previous maximum sentence of 14 years.

9. Currently before Parliament is the Drug Trafficking Offence Bill (Appendix B). This provides new powers for tracing and freezing the proceeds of drug trafficking and for a confiscation order to be imposed on a person convicted of a drug trafficking offence. It also provides increased maximum periods of imprisonment in default where the amount of the confiscation order is not paid in full.

10. The Bill envisages making it an offence to assist another person to retain the proceeds of drug trafficking and an offence to disclose information likely to prejudice a drug trafficking investigation. The Bill gives new powers to the police and to HM Customs and Excise to obtain court orders for the disclosure of information from banks and financial institutions and to freeze the assets of an accused person. These powers have been so drawn up as to enable the police and customs forces to use information obtained from bank and other records to assist investigations by foreign law enforcement authorities.

11. The Bill provides also for international action to enable designated countries to apply for the recovery of drug trafficking profits lodged in England or Wales. This is designed to provide a basis for reciprocal agreements with other countries to enable courts in England and Wales to recover the overseas assets of convicted drug traffickers.

International Measures

12. International co-operation to reduce supplies of narcotics from overseas is an important part of the Government's overall strategy. The main international fora for discussing drugs matters are the United Nations drugs bodies:

- (1) United Nations Commission on Narcotics Drugs (UNCND) established in 1946 by the Economic and Social Council, responsible for overseeing the

effectiveness of the two existing UN conventions which regulate the trade in drugs world-wide, and directly concerned with the reduction of demand for, illicit production of and international trafficking in drugs. The UK has been an active member of the Commission since its inception;

- (ii) The International Narcotics Control Board (INCB) established in 1961 to promote compliance by Governments with the various drug control treaties. Members serve in their personal capacity and do not represent Governments;
- (iii) UN Fund for Drug Abuse Control (UNFDAC) established in 1971 and funded by voluntary contributions from Governments and private donors. UNFDAC is involved in developing and financing international programmes of assistance in countries where drugs are produced, trafficked or abused and which lack the means to mount effective measures against the problem. The UK attaches considerable importance to the work of the Fund and is a major contributor.

13. Within the framework of these Organisations assistance from the international community is directed at

- (i) stopping illicit drugs production through law enforcement, crop eradication and crop substitution/rural development;
- (ii) co-operating to prevent international trafficking; and
- (iii) exchanging information on means of preventing, reducing and treating drug abuse.

Experience suggests that only a combination of these 3 approaches stands any chance of success.

New UN Initiatives

14. There have been two important recent drugs initiatives within the United Nations:

- (i) in 1984 the UN adopted a Venezuelan resolution calling for a new UN Convention on drug trafficking. The existing conventions, the UN Single Convention on Narcotics Drugs 1961 and the UN Convention on Psychotropic Substances 1971, provide controls on the world-wide trade in opium and its derivatives, cocaine and cannabis and a wide range of synthetic drugs which act on the central nervous system. The aim of the proposed third UN Convention is to improve controls on international drug trafficking, including measures to facilitate the extradition of drug traffickers and the tracing, freezing and forfeiture of the proceeds of drug trafficking. Member nations have submitted proposals for possible elements to be included in the convention and a draft will be put to the Commission on Narcotic Drugs for consideration at its next meeting in 1987;
- (ii) in 1985 the UN adopted a Malaysian resolution calling for an international ministerial conference on drug abuse and trafficking to be held in Vienna in June 1987. One of the main purposes of the Conference will be to develop an international strategy for tackling the drugs problem to the end of the century. Proposals for incorporation in the strategy have been invited by the Commission on Narcotic Drugs who will consider a draft plan of action at its next meeting in 1987.

POSSIBILITIES FOR COMMONWEALTH ACTION

15. The United Nations has well-developed machinery through its various agencies for coordinating action against illicit drugs. It is, therefore, important that the Commonwealth avoid initiatives or activities which would overlap or duplicate those already being carried forward.

16. There are, however, areas of potential Commonwealth co-ordination which, without duplicating other efforts, could be of real value in combatting the misuse of drugs:

(i) Commonwealth-wide Legislation

Reciprocal agreements were envisaged under the Drug Trafficking Offences Bill (Appendix B) which would enable countries to confiscate the assets of convicted drug traffickers even when these were lodged overseas. Commonwealth Law Ministers might consider if there is scope for Commonwealth-wide arrangements for the confiscation of assets of convicted drug traffickers;

(ii) Penalties for drug trafficking offences

Commonwealth countries could agree to review their domestic legislation to ensure that the most stringent penalties are available to the courts;

(iii) Extradition and mutual assistance

Improved arrangements, which can have a significant impact upon the prevention of drug trafficking offences, are for discussion under other items of the Conference agenda;

(iv) Donations to the United Nations Fund for Drug Abuse Control

UNFDAC is, for example, under-subscribed for programmes in law enforcement, without which the widespread efforts to control illicit drug production and trafficking are unlikely to succeed;

(v) Co-operation between Drug Law Enforcement Authorities

Commonwealth countries could agree to encourage closer liaison between their drug law enforcement authorities, strengthening co-cooperation via liaison officers posted overseas and to develop the speedier exchange of operational intelligence;

(vi) Political commitment

Commonwealth countries could agree further to raise the profile of the drugs problem on their political agenda and, in particular, to ensure that the subject is raised in all appropriate bilateral discussions with governments of countries where drugs are produced or through which they are trafficked.

Extract from the Commonwealth Heads of Government
Nassau Communique, October 1985:

Drug Abuse and Illicit Trafficking

Heads of Government were deeply concerned at the rising incidence of drug abuse and illicit drug trafficking that was seriously threatening the social fabric and security of many countries. They recognised that it called for a wide range of responses, including urgent attention to problems affecting young persons and to the rehabilitation of its victims. They agreed that governments should co-operate, both to counter the international traffic in illicit drugs and to deny to those convicted of drug trafficking the proceeds of their crime, and looked to the early implementation of a scheme for enhanced co-operation between Commonwealth countries in this regard.

Heads of Government were also disturbed by the extent to which the profits made by drug traffickers were used in criminal and subversive activities often across international borders. They invited Commonwealth Law Ministers to explore measures to counter this trend. While supporting the work of existing international organisations in the field of narcotics control, Heads of Government welcomed the proposal of the United Nations Secretary-General for the convening of an international conference at a high political level in 1987 to deal with all aspects of drug abuse and trafficking and expressed the hope that action would be expedited on the related proposed new Convention.

Drug Trafficking Offences Bill

[AS AMENDED IN COMMITTEE]

ARRANGEMENT OF CLAUSES

Confiscation of proceeds of drug trafficking

Clause

1. Confiscation orders.
2. Assessing the proceeds of drug trafficking.
3. Statements relating to drug trafficking.
4. Amount to be recovered under confiscation order.
5. Confiscation orders: definition of terms.
6. Application of procedure for enforcing fines.
7. Cases in which restraint orders and charging orders may be made.
8. Restraint orders.
9. Charging orders in respect of land, securities etc.
10. Charging orders: supplementary provisions.
11. Realisation of property.
12. Application of proceeds of realisation and other sums.
13. Exercise of powers by High Court or receiver.
14. Variation of confiscation orders.
15. Compensation.
16. Enforcement of orders in Scotland.

Offence of assisting drug traffickers

17. Assisting another to retain the benefit of drug trafficking.

Enforcement of external orders

18. Enforcement of Northern Ireland orders.
19. Enforcement of other external orders.

Miscellaneous and supplemental

20. Order to make evidence available.
21. Authority for search.
22. Sections 20 and 21: supplementary provisions.
23. Disclosure of information held by government departments.
24. Offence of prejudicing investigation.
25. Authorisation of delay in notifying arrest.
26. Prohibition of supply etc. of articles for administering controlled drugs.
27. Power to appoint additional assistant commissioner.
28. Drug trafficking offences to be serious arrestable offences.
29. Expenses.
30. Interpretation.
31. Minor amendments.
32. Short title, commencement and extent.

[Bill 109]

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[AS AMENDED IN COMMITTEE]

INTITULED

An Act to make provision for the recovery of the proceeds A.D. 1986.
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 and to
increase the number of assistant commissioners of
police for the metropolis.

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:—

5 *Confiscation of proceeds of drug trafficking*

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

(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
15 time (whether before or after the commencement of this section)
received any payment or other reward in connection with drug

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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

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

(a) order him to pay that amount, 10

(b) take account of the order before—

(i) imposing any fine on him, or

(ii) making any order involving any payment (other than the payment of costs) by him, or

1971 c. 38.
1973 c. 62.
(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 15

(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. 20

(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. 25

(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— 30

1980 c. 43.
(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 35

(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. 40

(8) In this Act—

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

(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—

Assessing the
proceeds of
drug
trafficking.

5 (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

10 (b) the value of his proceeds of drug trafficking is the aggregate of—

- (i) in the case of payments, their amount, and
- (ii) in the case of other rewards, their market value at the time when he received them.

15 (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.

20 (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

25 (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,

30 (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

35 (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 17 of this Act.

(5) The court may adjust the assessment of the value of the defendant's proceeds of drug trafficking for the purpose of reflecting changes appearing to the court to have taken place since the defendant received the proceeds concerned in the value of those proceeds and in the value of money. 5

(6) 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 10 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 prosecuting 15 authority 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 20 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—

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- (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 30 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 35 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 40 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 from property available in respect of the defendant, and

(b) the prosecuting authority accepts to any extent any allegation in the statement,

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

(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 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 from property available in respect of the defendant (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 from the property available in respect of the defendant 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) For the purposes of this Act, property is available in respect of the defendant (subject to subsection (2) below) if—

Confiscation orders: definition of terms.

(a) the property is held by him, or

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- (b) the property has been held by him at any time since the beginning of the period of six years ending when the proceedings were instituted against him and has been transferred by him for less than full value, or
- (c) the property has been held by him at any time and either—
 - (i) was received by him in connection with drug trafficking carried on by him or another, or
 - (ii) directly or indirectly represented in his hands property received by him in that connection, 10
 and has been transferred by him for less than full value.

(2) Property is not available in respect of the defendant for those purposes if—

- 1973 c. 62. (a) an order under section 43 of the Powers of Criminal 15
Courts Act 1973 (deprivation orders), or
- 1971 c. 38. (b) an order under section 27 of the Misuse of Drugs Act 1971 (forfeiture orders),

is in force in respect of the property.

(3) In this Act, “relevant interest”, in relation to property 20
available in respect of the defendant, means—

- (a) any interest held by the defendant beneficially in that property, and
- (b) if that property is property available in respect of the defendant by virtue of subsection (1)(b) or (c) above, 25
any interest held by another person beneficially in the property, being an interest transferred or granted by the defendant or an interest derived from an interest so transferred or granted, unless it is shown that the property was not transferred to the person holding it, 30
or to a person (other than the defendant) through whom he claims it, for less than full value.

(4) In this Act—

- (a) references to property held by a person include a reference to property vested in his trustee in bankruptcy 35
or liquidator ; and
- (b) references to an interest held by a person beneficially in property include a reference to an interest which would be held by him beneficially if the property were not so vested. 40

(5) The following provisions apply for the purpose of interpreting sections 3 and 4 of this Act.

(6) The amount that might be realised at the time a confiscation order is made against the defendant from the property available in respect of the defendant is—

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

(7) For the purposes of subsection (6) above—

- 10 (a) where there is any interest in property other than a relevant interest, the value of the property is—
 - (i) the market value of the relevant interest in the property, less
 - 15 (ii) the amount required to discharge any incumbrance (other than a charging order) on the relevant interest, and
- (b) in any other case, the value of property (other than cash) is its market value.

(8) For the purposes of that subsection, an obligation has 20 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
- 25 (b) pay any sum which, if the defendant had been adjudged bankrupt or was being wound up, would be among the preferential debts.

(9) In subsection (8)(b) above, “preferential debts” means subject to the following paragraphs the debts listed in Part I of 30 Schedule 4 to the Insolvency Act 1985, assuming the date the 1985 c. 65. confiscation order is made to be the relevant date for the purposes of that Schedule, but—

- 35 (a) in relation to bankruptcy means, at any time before section 166 of that Act comes into force, the debts to be paid in priority under section 33 of the Bankruptcy 1914 c. 59. Act 1914, assuming the date the confiscation order is made to be the date of the receiving order for the purposes of section 33, and
- 40 (b) in relation to winding up means, at any time before section 89 of the Insolvency Act 1985 comes into force, the preferential debts listed in Schedule 19 to the Companies Act 1985, assuming the date the confisca- 1985 c. 6. tion order is made to be the relevant date for the purposes of that Schedule.

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 and 32 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—

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(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—

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“ 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

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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 20

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 25

(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. 30

(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, 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 40

(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, 45

(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 re-
quired to serve in prison, and

- 5 (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 1980 c. 43.
Act 1980 to amounts payable under confiscation orders—

- 10 (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
15 (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
20 (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
25 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 Cases in which
8(1) and 9(1) of this Act are exercisable where— restraint orders
and charging
orders may
be made.

- 30 (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.

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

- (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
40 offence, and
(b) that there is reasonable cause to believe that he has
benefited from drug trafficking.

(3) For the purposes of sections 8 and 9 of this Act, at any time when those powers are exercisable by virtue only of subsection (2) above—

- (a) references in this Act to the defendant shall be construed as references to the person referred to in subsection (2)(a) above, 5
- (b) references in this Act to the prosecuting authority shall be construed as references to the person who the court is satisfied is to have the conduct of the proposed proceedings, and 10
- (c) references in this Act to property available in respect of the defendant 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. 15

(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 property available in respect of the defendant, other than property for the time being subject to a charge under section 9 of this Act, subject to such conditions or exceptions as may be specified in the order. 20 25

(2) A restraint order—

- (a) may be made only on an application by the prosecuting authority,
- (b) may be made on an ex parte application to a judge in chambers ; and 30
- (c) shall provide for notice to be given to persons affected by the order.

(3) A restraint order—

- (a) may be discharged or varied in relation to any property on the application of any person holding the property, 35 and
- (b) shall be discharged when proceedings for the offences are concluded.

(4) Where the High Court has made a restraint order, the court may at any time appoint a receiver— 40

- (a) to take possession of any property available in respect of the defendant, other than property for the time being subject to a charge under section 9 of this Act, 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.

- (5) For the purposes of subsection (1) above, dealing with property includes removing it from the jurisdiction; and, where the High Court has made a restraint order, a constable may, for the purpose of preventing any property available in respect of the defendant being removed from the jurisdiction, seize the property.

- (6) Property seized under subsection (5) above shall be dealt with in accordance with the court's directions.

9.—(1) The High Court may make a charging order on property available in respect of the defendant for securing the payment to the Crown of any amount which is recoverable in the defendant's case under a confiscation order or which, if a confiscation order were made in the proceedings, might be recoverable in his case under the order.

Charging orders in respect of land, securities etc.

- (2) For the purposes of this Act, a charging order is an order made under this section imposing on any such property available in respect of the defendant as may be specified in the order a charge for securing the payment of money to the Crown.

- (3) A charging order—

- (a) may be made only on an application by the prosecuting authority, 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 relevant interest in property available in respect of the defendant, being an interest held beneficially—

- (i) in any asset of a kind mentioned in subsection (5) below, or
(ii) under any trust, or

- (b) any interest in property available in respect of the defendant 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) 5
incorporated within England and Wales,
 - (iii) stock of any body incorporated outside Eng-
land 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, 10
 - (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 15 (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, on the application of any person holding any interest in property to which a charging order relates, make an order discharging or varying the charging order and shall 20 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.

**Charging
orders:
supplementary
provisions.**

10.—(1) A charging order may be made either absolutely or subject to conditions as to notifying any person holding any 25 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.

1972 c. 61.
1925 c. 21.

(2) The Land Charges Act 1972 and the Land Registration Act 1925 shall apply in relation to charging orders as they apply in 30 relation to orders or writs issued or made for the purpose of enforcing judgments.

(3) 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 35 and in the same manner as an equitable charge created by the person holding the relevant interest or, as the case may be, the trustees by writing under their hand.

1979 c. 53.

(4) References in any enactment other than the Charging Orders Act 1979 to charging orders under section 1 of that Act 40 include a reference to charging orders under section 9 of this Act.

(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.

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

(2) The court may appoint a receiver in respect of the property available in respect of the defendant.

(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 property available in respect of the defendant or on interest or dividends payable in respect of such property, and

(b) in relation to any property available in respect of the defendant 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 property available in respect of the defendant to give possession of it to any such receiver.

(5) The court may empower any such receiver to realise any property available in respect of the defendant in such manner as the court may direct.

Realisation of property.

(6) The court may order any person holding an interest in property available in respect of the defendant to make such payment to the receiver in respect of any relevant interest 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. 5

(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 subsections (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. 10

Application
of proceeds of
realisation and
other sums.

12.—(1) 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— 15

- (a) the proceeds of the enforcement of any charge imposed under section 9 of this Act, after making such payments (if any) as the High Court may direct, in a case where the relevant interest is held by a person other than the defendant, to the other person, 20
- (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, after making such payments (if any) as the High Court may direct to any person holding an interest in the property, and 25
- (c) any other sums, being property available in respect of the defendant,

shall, subject to subsection (2) below, be applied on the defendant's behalf towards the satisfaction of the confiscation order. 30

(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 was property available in respect of the defendant, and 35
- (b) in such proportions,

as the High Court may direct.

(3) Any sum applied by any person towards the satisfaction of a confiscation order shall be treated—

1979 c. 55.

- (a) for the purposes of the Justices of the Peace Act 1979 40
and, in particular, section 61 of that Act (application of fines etc.), and

(b) for the purposes of section 139 of the Magistrates' 1980 c. 43.
Courts Act 1980 (disposal of sums adjudged to be paid
by conviction),

as if it were a fine imposed by a magistrates' court on a sum-
mary conviction.

13.—(1) The following provisions apply to the powers con- Exercise of
ferred on the High Court by sections 8 to 12 of this Act or on a powers by
receiver appointed under section 8 or 11 of this Act or in pur- High Court or
suance of a charging order. receiver.

10 (2) Those powers shall be exercised with a view to—

(a) 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 of any
property available in respect of the defendant (includ-
15 ing where it has been transferred by the defendant,
any increase in its value since the transfer), but

(b) allowing any person, other than the defendant, to retain
or recover any consideration given by him.

(3) In exercising those powers, no account shall be taken
20 of any obligations of the defendant or any other person which
conflict with the obligation to satisfy the confiscation order.

(4) Those powers shall not be exercised in the case of any
property vested in a trustee in bankruptcy or liquidator.

(5) Subsection (7) of section 5 of this Act applies for the
25 purposes of subsection (2) above as it applies for the purposes
of subsection (6) of that section.

14.—(1) If, on an application by the defendant in respect of Variation of
a confiscation order, the High Court is satisfied that the pro- confiscation
erty available in respect of the defendant is inadequate for the orders.
30 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, in the case of
property vested in a trustee in bankruptcy or liquidator the court
35 shall take into account the extent to which the property or pro-
ceeds of the realisation of the property may be distributed
among creditors.

(3) Where a certificate has been issued under subsection (1)
above, the defendant may apply to the Crown Court for the
40 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 5
- (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 10 by virtue of section 6 of this Act) in respect of the lesser amount.

1973 c. 62.

Compensation.

15.—(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 15 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 20 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 property available in respect of the defen- 25 dant, 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 30 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 conse- 35 quence 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 a court in Scotland made in pur- 40 suance of any provision made by an Order in Council under section 16 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. 45

(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,
- 5 (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.
- 10 1979, by the Commissioners of Customs and Excise.

16.—(1) Her Majesty may by Order in Council make provision for the purpose—

Enforcement of orders in Scotland.

- (a) of enabling property in Scotland which is property available in respect of the defendant to be used or realised for the payment of any amount payable under a confiscation order, and
- 15 (b) of securing that, where proceedings have been instituted in England and Wales for a drug trafficking offence and have not been concluded, property in Scotland which—
- 20 (i) if a confiscation order were made in the proceedings, might be used or realised for the payment of any such amount, and
- (ii) is property available in respect of the defendant,
- 25 will be available to be so used or realised.

(2) An Order in Council under this section may for the purposes set out in subsection (1) above amend or apply, with or without modifications, any enactment.

30 (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.

Offence of assisting drug traffickers

17.—(1) If a person enters into or is otherwise concerned in an arrangement whereby—

Assisting another to retain the benefit of drug trafficking.

- 40 (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 or having reasonable grounds to suspect that A is a person who carries on or has carried on drug trafficking or has benefitted 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 directly or indirectly represented in his hands his proceeds of drug trafficking.

(3) 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.

(4) 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.

1982 c. 48.

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

“DRUG TRAFFICKING OFFENCES ACT 1986

26. Section 17 (assisting another to retain the benefit of drug trafficking).”

Enforcement of external orders

Enforcement
of Northern
Ireland orders.

18.—(1) Her Majesty may by Order in Council provide that, for the purposes of sections 7 to 15 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,
 - 5 (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,
 - 10 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 1980 c. 43.
 - 15 a complaint or issuing a summons or warrant (as the case may be) under Article 20 of the Magistrates' S.I. 1981 - Courts (Northern Ireland) Order 1981. 1675 (N.I. 26).
- (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.
- 25 (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.
- 19.—(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—
- 30 of other external orders.
- (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.
- 35
- (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
- 40 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, 5
- (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 10 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 15 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 14 of this Act shall have effect subject to such modifications as may be specified in an Order 20 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. 25

(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— 30

- (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 35
- (b) as if references to a confiscation order were references to an external confiscation order and references to an application by the prosecuting authority were references to an application by or on behalf of that government, 40 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— 45

- (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.

5 (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.

10 (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.

Miscellaneous and supplemental

20.—(1) A constable may, for the purpose of an investigation Order to make into drug trafficking, apply to a Circuit judge for an order under evidence subsection (2) below in relation to particular material or material available. of a particular description.

(2) If on such an application the judge is satisfied that the conditions in subsection (4) below are fulfilled, he may make an order that the person who appears to him to be in possession of the material to which the application relates shall—

(a) produce it to a constable for him to take away, or

(b) give a constable access to it,

within such period as the order may specify.

This subsection is subject to section 23(6) of this Act.

25 (3) The period to be specified in an order under subsection (2) above shall be seven days unless it appears to the judge that a longer or shorter period would be appropriate in the particular circumstances of the application.

(4) The conditions referred to in subsection (2) above are—

30 (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—

35 (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

40 (ii) does not consist of or include items subject to legal privilege or excluded material, and

- (c) that there are reasonable grounds for believing that it is in the public interest, having regard—
 - (i) to the benefit likely to accrue to the investigation if the material is obtained, and
 - (ii) to the circumstances under which the person 5 in possession of the material holds it,
 that the material should be produced or that access to it should be given.

(5) Where the judge makes an order under subsection (2)(b) above in relation to material on any premises he may, on the 10 application of a constable, order any person who appears to him to be entitled to grant entry to the premises to allow a constable to enter the premises to obtain access to the material.

(6) Provision may be made by Crown Court Rules as to—

(a) the discharge and variation of orders under this section, 15 and

(b) proceedings relating to such orders.

(7) An order 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 20 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 25

(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 30 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 35 of an authorised government department.

Authority
for search.

21.—(1) A constable may, for the purpose of an investigation into drug trafficking, apply to a Circuit judge for a warrant under this section in relation to specified premises.

(2) On such an application the judge may issue a warrant 40 authorising a constable to enter and search the premises if he is satisfied—

(a) that an order made under section 20 of this Act in relation to material on the premises has not been com- 45 plied with, or

- (b) that the conditions in subsection (3) of that section are fulfilled in relation to any material on the premises but that it would not be appropriate to make an order under that section in relation to the material because—
- 5 (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
- 10 (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, or
- 15 (c) that the conditions in subsection (3) below are fulfilled.
- (3) Those conditions are—
- (a) that there are reasonable grounds for suspecting that a specified person has carried on or has benefited from drug trafficking, and
- 20 (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
- 25 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
- 30 (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
- 35 secure immediate entry to them.
- (4) 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
- 40 (whether by itself or together with other material) to the investigation for the purpose of which the warrant was issued.

Sections 20
and 21:
supplementary
provisions.
1984 c. 60.

22.—(1) For the purposes of sections 21 and 22 of the Police and Criminal Evidence Act 1984 (access to, and copying and retention of, seized material)—

- (a) an investigation into drug trafficking shall be treated as if it were an investigation of or in connection with an offence, and
- (b) material produced in pursuance of an order under section 20(2)(a) of this Act shall be treated as if it were material seized by a constable.

(2) In sections 20 and 21 of this Act “items subject to legal privilege”, “excluded material” and “premises” have the same meanings as in the said Act of 1984.

Disclosure of
information
held by
government
departments.

23.—(1) Subject to subsection (3) below, at any time after proceedings have been instituted against the defendant for a drug trafficking offence but before they have been concluded the High Court may, on an application by the prosecuting authority, order any material mentioned in subsection (2) below which is in the possession of an authorised government department to be disclosed to the court or to a receiver appointed under section 8 or 11 of this Act or in pursuance of a charging order.

(2) 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 property available in respect of the defendant,
- (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 disclosure of all such material or of a particular description of such material, being material in the possession of the department concerned.

(3) An order under subsection (1) above shall not require the disclosure of any material unless it appears to the High Court that the disclosure is likely to facilitate the exercise of the powers conferred on the court by sections 8 to 11 of this Act or on a receiver appointed as mentioned in subsection (1) above.

(4) Subject to subsection (5) below, where the court has made an order under subsection (1) above the court may, at any time after the material to which the order relates is disclosed, by

order authorise the disclosure of the material or any part of the material to the prosecuting authority subject to such conditions as may be specified in the order.

(5) An order under this section shall have effect notwithstanding any obligation as to secrecy or other restriction upon the disclosure of information imposed by statute or otherwise but an order under subsection (4) above shall not be made unless—

- 10 (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.

(6) An order under subsection (1) above and, in the case of 15 material in the possession of an authorised government department, an order under section 20(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 20 as if the proceedings were civil proceedings against the department.

(7) It shall be the duty of any person in receipt of such an order so served to bring the order to the attention of the officer concerned.

25 24.—(1) Where, in relation to an investigation into drug trafficking, an order under section 20 of this Act has been made or has been applied for and has not been refused or a war-
 30 rant under section 21 of this Act has been issued, a person who, knowing or suspecting or having reasonable grounds to suspect that the investigation is taking place, makes any disclosure which is likely to prejudice the investigation is guilty of an offence. Offence of prejudicing investigation.

(2) In proceedings against a person for an offence under this section, it is a defence to prove—

- 35 (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—

- 40 (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.

25.—(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.”

(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 Act 1978, the Police and Criminal Evidence Act 1984 (Application to Customs and Excise) Order 1985 applies to sections 56 and 58 of the Police and Criminal Evidence Act 1984 as those sections have effect by virtue of this section.

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

“ Prohibition of supply etc. of articles for administering controlled drugs. 5 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, is guilty of an offence. 10

(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) In proceedings against a person for an offence under this section in respect of any article it is a defence to prove that he believed on reasonable grounds that the article was to be used— 15

(a) in the administration by any person of a controlled drug to another in circumstances where the administration of the drug would not be unlawful under section 4(1) of this Act, or 20

(b) in the administration by any person of a controlled drug to himself in circumstances where having the controlled drug in his possession would not be unlawful under section 5(1) of this Act. 25

(4) 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”. 30

(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 controlled drugs. Summary — — — 6 months or level 5 on the standard scale, or both.” 35

27. 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. 40

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

- Drug trafficking offences to be serious arrestable offences.
1984 c. 60.
28. In section 116(2) of the Police and Criminal Evidence Act 1984 (arrestable offences that are always serious) after paragraph (a) there is inserted—
 “ (aa) any of the offences mentioned in paragraphs (a) to (d) of the definition of “ drug trafficking offence ” in section 30(1) of the Drug Trafficking Offences Act 1986 ”. 5
- Expenses.
29. 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. 10
- Interpretation.
- 30.—(1) In this Act—
 “ authorised government department ” means a government department which is an authorised department for the purposes of the Crown Proceedings Act 1947 ;
 1947 c. 44.
 “ charging order ” has the meaning given by section 9(2) of this Act ; 15
 “ confiscation order ” has the meaning given by section 1(8) of this Act ;
 “ constable ” includes a person commissioned by the Commissioners of Customs and Excise ; 20
 1971 c. 38.
 “ corresponding law ” has the same meaning as in the Misuse of Drugs Act 1971 ;
 “ defendant ” has the meaning given by section 1(8) of this Act ;
 “ 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 ; 30
 (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 ; 35
 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 17 of this Act ;

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

(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, including things in action and other intangible property ;

“ property available in respect of the defendant ” is to be construed in accordance with section 5 of this Act ;

“prosecuting authority”, in relation to any proceedings instituted for a drug trafficking offence, means the person having the conduct of the proceedings;

“relevant interest” is to be construed in accordance with section 5(3) of this Act; and 5

“restraint order” has the meaning given by section 8(1) of this Act.

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

(3) References in this Act to offences include a reference to 10 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. 15

(4) 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.

(5) The following provisions shall have effect for the interpretation of this Act. 20

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

(7) Property is transferred by one person to another if the first person transfers or grants to the other any interest in the property. 25

(8) Property is transferred by a person (call him “A”) to another (call him “B”) for less than full value if—

(a) A makes a gift of it to B or otherwise transfers it to B on terms that do not provide for A to receive any consideration, or 30

(b) A transfers it to B for a consideration the value of which is significantly less than the value of the consideration provided by A.

(9) Proceedings for an offence are instituted in England and Wales— 35

(a) where a justice of the peace issues a summons under section 1 of the Magistrates’ Courts Act 1980, when the information for the offence is laid before him,

(b) where a justice of the peace issues a warrant for the arrest of any person under that section, when the in- 40 formation for the offence is laid before him,

- (c) where a person is charged with the offence after being taken into custody without a warrant, when he is taken into custody,
- 5 (d) where 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, when the bill of indictment is preferred before the court ;

and where the application of this subsection would result in
10 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.

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

- 15 (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 ;
- 20 (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
25 under the order or by the defendant serving imprisonment in default).

(11) 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
30 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.

31.—(1) Section 28 of the Bankruptcy Act 1914 (effect of order of discharge) shall have effect as if amounts payable under confiscation orders were debts excepted under subsection (1)(a) of that section. Minor amendments.
1914 c. 59.
35

(2) In section 1(2)(a) of the Rehabilitation of Offenders Act 1974 (failure to pay fines etc. not to prevent person becoming rehabilitated) the reference to a fine or other sum adjudged to
40 be paid by or imposed on a conviction does not include a reference to an amount payable under a confiscation order.

1985 c. 65.

(3) Section 128(4) of the Insolvency Act 1985 (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.

Short title,
commence-
ment and
extent.

32.—(1) This Act may be cited as the Drug Trafficking 5
Offences Act 1986.

(2) This Act, except section 27 (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 10
for different provisions and for different purposes.

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

(4) Section 16 of this Act extends also to Scotland and section 26 extends also to Scotland and Northern Ireland. 15

Drug Trafficking Offences Bill

A

B I L L

[AS AMENDED IN COMMITTEE]

INTITLED

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 and to increase the number of assistant commissioners of police for the metropolis.

The Lord Glenarthur

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