

David Feldman

**CRIMINAL CONFISCATION
ORDERS -
The New Law**

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Criminal Confiscation Orders The New Law

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Preface

The recent legislation for depriving criminals of the proceeds of their crimes has created substantial powers to obtain information about where suspected criminals have invested their assets, to freeze assets with restraint and charging orders, and to confiscate them from convicted defendants. These powers have already begun to affect conveyancers (the current state of the property market making it an attractive medium for laundering hot money profitably) and are liable to affect any investment adviser, as well as being of concern to investigators and criminal practitioners. This book is the first to provide a comprehensive practical account of the powers of the police, Customs and Excise, courts and receivers, and the responsibilities of those professional advisers who may come upon evidence which tends to suggest that their clients hold the proceeds of crimes.

The first three chapters sketch the background to the legislation, offer a bird's eye view of its main features, and explain the criminal sanctions which back up the drive to identify and secure the proceeds of drug trafficking in particular. Chapters 4 to 7 examine powers available to investigators and prosecutors in the course of investigations and after a person has been charged, including a full discussion of restraint and charging orders in chapter 5. Chapters 8 and 9 look at the making and enforcement of confiscation orders after a defendant has been convicted. Finally, chapter 10 deals with the reimbursement, indemnification and compensation of people who might be adversely affected by the operation of the legislation. Appendices contain the text of the relevant legislation.

There are some matters, such as search warrants, orders for production of or access to material under the Police and Criminal Evidence Act 1984, and the treatment of items subject to legal privilege and excluded and special procedure material, which I have already discussed in detail in *The Law Relating to Entry, Search and Seizure* (Butterworth, 1986). Rather than reproduce

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those discussions here, I have provided references to them where appropriate.

It is always a pleasant task to acknowledge my debts to the people who have helped me. I am grateful to David Warren and Mike Lloyd, senior members of Regional Drugs Squads who first suggested that there was a need for an explanation of the powers under the confiscation legislation and put their considerable experience at my disposal. Discussions with David Roberts, of the solicitors Veale Benson, were, as ever, extremely helpful. My colleagues in the Faculty of Law at the University of Bristol have continued to provide as stimulating and supportive an environment for scholarship as anyone could wish for. In particular, Jonathan Hill gave me valuable advice in relation to property law and Nigel Furey pointed me in the direction of helpful information on insolvency law.

Once again, I have had cause to be grateful to all at Butterworths for their kindness and efficiency, and for their patience when the government's decision to call a General Election in 1987, necessitating the ditching of much of the relevant material in the then current Criminal Justice Bill, led to the book taking longer to complete than planned.

My greatest debt is to my family: to Jonathan, for being patient, and never asking when I was going to get the thing finished; to Rebecca, for remembering who I was on the rare occasions when I emerged from my study; and to Jill, for providing support and encouragement beyond anything a husband is entitled to expect and (equally important) keeping the children occupied while I was writing. The book is for them, with the hope that they will never fall foul of its subject matter.

May 1988

David Feldman

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