
STATUTORY INSTRUMENTS

1990 No. 2588

**The Criminal Justice (Confiscation)
(Northern Ireland) Order 1990**

Enforcement, etc., of confiscation orders

Application of procedure for enforcing fines

10.—(1) Where the Crown Court orders the defendant to pay any amount under this Order, section 35(1), (2) and (4) of the Criminal Justice Act (Northern Ireland) 1945 (powers of Crown Court in relation to fines) shall have effect as if—

- (a) that amount were a fine imposed on him by the Crown Court, and
- (b) in section 35(2) (imprisonment in default), for the reference to twelve months there were substituted a reference to the periods set out in the second column of the following Table applicable respectively to the amounts set out opposite thereto—

Table

An amount not exceeding £50	7 days
An amount exceeding £50 but not exceeding £100	14 days
An amount exceeding £100 but not exceeding £400	30 days
An amount exceeding £400 but not exceeding £1,000	60 days
An amount exceeding £1,000 but not exceeding £2,000	90 days
An amount exceeding £2,000 but not exceeding £5,000	6 months
An amount exceeding £5,000 but not exceeding £10,000	9 months
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 this Order in respect of an offence; and
- (b) at the time the warrant is issued, the defendant is liable to serve a term of custody in respect of the offence; the term of imprisonment or of detention under section 5 of the Treatment of Offenders Act (Northern Ireland) 1968 (detention of persons aged 16 to 21 for default) to be served in default of payment of the amount shall not begin to run until after the term mentioned in sub-paragraph (b).

(3) The reference in paragraph (2) to the term of custody which the defendant is liable to serve in respect of the offence is a reference to the term of imprisonment or of detention under section 5 of the Treatment of Offenders Act (Northern Ireland) 1968 which he is liable to serve in respect of the offence; and for the purposes of this paragraph—

- (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 of imprisonment or order for detention suspended under section 18 of the Treatment of Offenders Act (Northern Ireland) 1968 which has not taken effect at the time the warrant is issued; and
 - (ii) any term of imprisonment or detention fixed under section 35(1)(c) of the Criminal Justice Act (Northern Ireland) 1945 for which a warrant of commitment has not been issued at that time.

(4) An amount payable under a confiscation order is not a fine, costs, damages or compensation for the purposes of section 76 of the Children and Young Persons Act (Northern Ireland) 1968 (enforcement of fines imposed on young offenders) or a sum adjudged to be paid by a conviction for the purposes of Article 91(5) of the Magistrates' Courts (Northern Ireland) Order 1981 (remission of sum).

(5) In Article 17(2) of the Fines and Penalties (Northern Ireland) Order 1984 (power to alter sums specified in certain provisions) at the end there shall be added—

- “(i) the Table in section 35(2) of the Criminal Justice Act (Northern Ireland) 1945 (imprisonment in default) as it has effect by virtue of Article 10(1)(b) of the Criminal Justice (Confiscation) (Northern Ireland) Order 1990.”.

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

Interest on sums unpaid under confiscation orders

11.—(1) If any sum required to be paid by a person under a confiscation order is not paid when it is required to be paid (whether forthwith on the making of the order or at a time specified under section 35(1) of the Criminal Justice Act (Northern Ireland) 1945) or, as the case may be, Article 91(1) of the Magistrates' Courts (Northern Ireland) Order 1981 that person shall be liable to pay interest on that sum for the period for which it remains unpaid and the amount of the interest shall for the purposes of enforcement be treated as part of the amount to be recovered from him under the confiscation order.

(2) The Crown Court may, on the application of the prosecution, increase the term of imprisonment or detention fixed in respect of the confiscation order under section 35(1)(c) of that Act of 1945 (imprisonment in default of payment) if the effect of paragraph (1) is to increase the maximum period applicable in relation to the order under subsection (2) of that section as it has effect by virtue of Article 10(1)(b).

(3) The rate of interest under paragraph (1) shall be that for the time being applying to a money judgment of the High Court.

Cases in which restraint orders and charging orders may be made

12.—(1) The powers conferred on the High Court by Articles 13(1) and 14(1) are exercisable where—

- (a) proceedings have been instituted in Northern Ireland against the defendant for an offence to which this Order applies;
- (b) the proceedings have not been concluded; and
- (c) in the case of proceedings for an offence to which this Order applies other than a drug trafficking offence, either a confiscation order has been made or it appears to the Court that there are reasonable grounds for thinking that a confiscation order may be made in them;
- (d) in the case of proceedings for a drug trafficking offence, the Court is satisfied that there is reasonable cause to believe that the defendant has benefited from drug trafficking.

(2) Those powers are also exercisable where—

- (a) the High Court is satisfied that, whether by the making of a complaint or otherwise, a person is to be charged with an offence to which this Order applies; and
- (b) it appears to the Court that a confiscation order may be made in proceedings for the offence or, as the case may be, that there is reasonable cause to believe that he has benefited from drug trafficking.

(3) For the purposes of Articles 13 and 14 at any time when those powers are exercisable before proceedings have been instituted—

- (a) references to the defendant shall be construed as references to the person referred to in paragraph (2)(a);
- (b) references to the prosecution 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 to realisable property shall be construed as if, immediately before that time, proceedings had been instituted against the person referred to in paragraph (2)(a) for an offence to which this Order applies.

(4) Where the High Court has made an order under Article 13(1) or 14(1) by virtue of paragraph (2), the Court shall discharge the order if proceedings in respect of the offence are not instituted (whether by the making of a complaint or otherwise) within such time as the Court considers reasonable.

Restraint orders

13.—(1) The High Court may by order (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) Without prejudice to the generality of paragraph (1), a restraint order may make such provision as the High Court thinks fit for living expenses or legal expenses.

(3) 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.
- (4) This Article shall not have effect in relation to any property for the time being subject to a charge under Article 14.
- (5) A restraint order—
- (a) may be made only on an application by the prosecution;
 - (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.
- (6) A restraint order—
- (a) may be discharged or varied in relation to any property; and
 - (b) shall be discharged when proceedings for the offence are concluded.
- (7) An application for the discharge or variation of a restraint order may be made by any person affected by it.
- (8) 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 Article to give possession of it to the receiver.
- (9) For the purposes of this Article, 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 Northern Ireland.
- (10) Where the High Court has made a restraint order, a constable may for the purpose of preventing any realisable property being removed from Northern Ireland, seize the property.
- (11) Property seized under paragraph (10) shall be dealt with in accordance with the directions of the High Court.
- (12) The prosecution shall be treated for the purposes of section 66 of the Land Registration Act (Northern Ireland) 1970 (cautions) as a person interested in relation to any registered land to which a restraint order or an application for such an order relates.
- (13) On the application of the prosecution, the Registrar shall, in respect of any registered land to which a restraint order or an application for such an order relates, make an entry inhibiting any dealing with the land without the consent of the High Court.
- (14) Subsections (2) and (4) of section 67 of the Land Registration Act (Northern Ireland) 1970 (inhibitions) shall apply to an entry made on the application of the prosecution under subparagraph (13) as they apply to an entry made on the application of any person interested in the registered land under subsection (1) of that section 67.
- (15) Where a restraint order has been protected by an entry registered under the Land Registration Act (Northern Ireland) 1970 or the Registration of Deeds Acts, an order under paragraph (6) discharging the restraint order may direct that the entry be vacated.

(16) In this Article “Registrar” and “entry” have the same meanings as in the Land Registration Act (Northern Ireland) 1970.

Charging orders in respect of land, securities, etc.

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

- (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) A charging order—

- (a) may be made only on an application by the prosecution;
- (b) may be made on an ex parte application to a judge in chambers;
- (c) shall provide for notice to be given to persons affected by the order; and
- (d) may be made subject to such conditions as the Court thinks fit and, without prejudice to the generality of this sub-paragraph, such conditions as it thinks fit as to the time when the charge is to become effective.

(3) Subject to paragraph (5), 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 Order—
 - (i) in any asset of a kind mentioned in paragraph (4); 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 sub-paragraph (a) be imposed by a charging order on the whole beneficial interest under the first-mentioned trust.

(4) The assets referred to in paragraph (3) are—

- (a) land in Northern Ireland; or
- (b) securities of any of the following kinds—
 - (i) government funds or stock;
 - (ii) stock of any body incorporated within Northern Ireland (other than a building society);
 - (iii) stock of any body incorporated outside Northern Ireland (other than a building society incorporated in Great Britain) or of any country or territory outside the United Kingdom, being stock registered in a register kept at any place within Northern Ireland;
 - (iv) units of any unit trust in respect of which a register of the unit holders is kept at any place within Northern Ireland.

(5) In any case where a charge is imposed by a charging order on any interest in an asset of a kind mentioned in paragraph (4)(b), the High Court may provide for the charge to extend to any interest or dividend payable in respect of the asset.

(6) The High 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.

(7) An application for the discharge or variation of a charging order may be made by any person affected by it.

Charging orders: supplementary provisions

15.—(1) Subject to any provision made under Article 16 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 or persons who are entitled to make such charges over the realisable property.

(2) Where a charging order has been protected by an entry registered under the Land Registration Act (Northern Ireland) 1970 or the Registration of Deeds Acts, an order under Article 14(6) discharging the charging order may direct that the entry be vacated.

(3) The Secretary of State may by order amend Article 14 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.

(4) An order under paragraph (3) shall be subject to annulment in pursuance of a resolution of either House of Parliament in like manner as a statutory instrument and section 5 of the Statutory Instruments Act 1946 shall apply accordingly.

(5) In this Article and Article 14—

“building society” has the same meaning as in the Building Societies Act 1986;

“dividend” includes any distribution in respect of any unit of a unit trust;

“government funds or stocks” has the same meaning as in the Judgments Enforcement (Northern Ireland) Order 1981;

“stock” includes shares, debentures and any securities of the body concerned, whether or not constituting a charge on the assets of that body;

“unit trust” means any trust established for the purpose or having the effect, of providing, for persons having funds available for investment, facilities for the participation by them, as beneficiaries under the trust, in any profits or income arising from the acquisition, holding, management or disposal of any property whatsoever.

Realisation of property

16.—(1) Where—

(a) a confiscation order is made;

(b) the order is not subject to appeal; and

(c) the proceedings in which it was made have not been concluded, the High Court may, on an application by the prosecution, exercise the powers conferred by paragraphs (2) to (6).

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

(3) The Court may empower a receiver appointed under paragraph (2), under Article 13 or in pursuance of a charging order—

(a) to enforce any charge imposed under Article 14 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 Article 14, 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 (including the manner of conveyance or transfer of property which is land) 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 Order 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) Paragraphs (4) to (6) do not apply to property for the time being subject to a charge under Article 14.

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

Increase in realisable property

17.—(1) Where by virtue of Article 4(1)(b) or 5(1)(b) the amount which a person is ordered to pay by a confiscation order is less than the benefit in respect of which it is made or, as the case may be, the amount assessed to be the value of his proceeds of drug trafficking, on an application made in accordance with paragraph (2) the High Court, if satisfied that the amount that might be realised in the case of that person is greater than the amount taken into account in making the confiscation order (whether it was greater than was thought when the order was made or has subsequently increased), shall issue a certificate to that effect, giving the Court's reasons.

(2) An application under paragraph (1) may be made either by the prosecution or by a receiver appointed under this Order in relation to the realisable property of the person mentioned in that paragraph.

(3) Where a certificate has been issued under paragraph (1) the prosecution may apply—

- (a) where the confiscation order was made by the Crown Court, to that Court; and
- (b) where the confiscation order was made by a court of summary jurisdiction, to a court of summary jurisdiction for the same county court division, for the amount to be recovered under the order to be increased.

(4) The Crown Court may, on an application under paragraph (3)—

- (a) substitute for the amount to be recovered under the order such amount (not exceeding the amount of the benefit in respect of which it is made or, as the case may be, the amount assessed as the value of the proceeds of drug trafficking) as appears to the Court to be appropriate having regard to the amount now shown to be realisable; and
- (b) increase the term of imprisonment or detention fixed in respect of the order under section 35(1)(c) of the Criminal Justice Act (Northern Ireland) 1945 (imprisonment in default of payment) if the effect of the substitution under sub-paragraph (a) is to increase the maximum period applicable in relation to the order under subsection (2) of that section as it has effect by virtue of Article 10(1)(b).

(5) A court of summary jurisdiction may, on an application under paragraph (3), substitute for the amount to be recovered under the order such amount (not exceeding the amount of the benefit in respect of which it is made) as appears to the court to be appropriate having regard to the amount now shown to be realisable.

Application of proceeds of realisation and other sums

18.—(1) Subject to paragraph (2), the following sums in the hands of a receiver appointed under this Order or in pursuance of a charging order, that is—

- (a) the proceeds of the enforcement of any charge imposed under Article 14;

- (b) proceeds of the realisation, other than by the enforcement of such a charge, of any property under Article 13 or 16; and
 - (c) any other sums, being property held by the defendant; shall first be applied in payment of such expenses incurred by a person acting as an insolvency practitioner as are payable under Article 23(2) and then shall, after such payments (if any) as the High Court may direct have been made out of those proceeds and sums, be applied on the defendant's behalf towards the satisfaction of the confiscation order.
- (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 them—
- (a) among such of those who held property which has been realised under this Order, and
 - (b) in such proportions, as the High Court may direct after giving reasonable opportunity for such persons to make representations to the Court.
- (3) The receipt of any sum by the proper officer on account of an amount payable under a confiscation order shall reduce the amount so payable, but the proper officer shall apply the money received for the purposes specified in this Article and in the order so specified.
- (4) The proper officer shall first pay any expenses incurred by a person acting as an insolvency practitioner and payable under Article 23(2) but not already paid under paragraph (1).
- (5) If the money was paid to the proper officer by a receiver appointed under this Order or in pursuance of a charging order, the proper officer shall next pay the receiver's remuneration and expenses.
- (6) After making—
- (a) any payment required by paragraph (4); and
 - (b) in a case to which paragraph (5) applies, any payment required by that paragraph, the proper officer shall reimburse any amount paid under Article 24(2).
- (7) The proper officer shall finally pay any compensation directed to be paid out of any sums recovered under the confiscation order under Article 8(3).
- (8) Any balance in the hands of the proper officer after he has made all payments required by the foregoing provisions of this Article shall be treated as a fine for the purposes of section 20 of the Administration of Justice (Northern Ireland) Act 1954 (application of fines).
- (9) Where under paragraph (3) a sum falls to be applied in payment both of compensation and of other outgoings—
- (a) the person entitled to the compensation shall be liable to pay into the Consolidated Fund of the United Kingdom such an amount as bears to the remuneration or expenses the same proportion as the amount payable in accordance with the direction under Article 8(3) bears to the total amount payable under the confiscation order;
 - (b) the proper officer shall deduct from the amount falling to be applied in payment of the compensation an amount equal to the amount of any liability arising by virtue of sub-paragraph (a);
 - (c) notwithstanding the deduction under sub-paragraph (b), the person entitled to compensation shall be treated as having received the whole of the amount which falls to be applied in payment of it; and
 - (d) the amount deducted shall be treated as a fine for the purposes of section 20 of the Administration of Justice Act (Northern Ireland) 1954.
- (10) In this Article "the proper officer" means, where the confiscation order is made by a court of summary jurisdiction, the clerk of petty sessions and, where the confiscation order is made by the Crown Court, the appropriate officer of the Crown Court.

Exercise of powers by High Court or receiver

19.—(1) This Article applies to the powers conferred on the High Court by Articles 13 to 16 and 18, or on a receiver appointed under this Order or in pursuance of a charging order.

(2) Subject to the following provisions of this Article, 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 Order 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 (including the Crown in right of Her Majesty's Government in Northern Ireland).

(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

20.—(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 paragraph (1)—

(a) in the case of realisable property held by a person who has been adjudged bankrupt 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 Order from any risk of realisation under this Order.

(3) Where a certificate has been issued under paragraph (1), the defendant may apply—

(a) where the confiscation order was made by the Crown Court, to that Court; and

(b) where the confiscation order was made by a court of summary jurisdiction, to a court of summary jurisdiction for the same county court division, for the amount to be recovered under the order to be reduced.

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

(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 detention fixed in respect of the order under section 35(1)(c) of the Criminal Justice Act (Northern Ireland) 1945 (imprisonment in default of payment) a shorter term if the effect of the substitution under sub-paragraph (a) is to reduce the maximum period applicable in relation to the order under subsection (2) of that section as it has effect by virtue of Article 10(1)(b).

(5) A court of summary jurisdiction shall, on an application under paragraph (3), 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.

Bankruptcy of defendant, etc.

- 21.**—(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
 - (b) any proceeds of property realised by virtue of Article 13(8) or 16(5) or (6) for the time being in the hands of a receiver appointed under Article 13 or 16, is excluded from the bankrupt's estate for the purposes of Part IX of the Insolvency (Northern Ireland) Order 1989.
- (2) Where a person has been adjudged bankrupt, the powers conferred on the High Court by Articles 13 to 16 and 18 or on a receiver so appointed 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 of the Order of 1989;
 - (b) property in respect of which his trustee in bankruptcy may (without leave of the High Court) serve a notice under Article 280 or 281 of that Order of 1989 (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 Article 254(2)(c) of that Order of 1989.
- (3) Nothing in that Order of 1989 shall be taken as restricting, or enabling the restriction of, the exercise of those powers.
- (4) Paragraph (2) 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 Article 259 of that Order of 1989 and any property of the debtor is subject to a restraint order, the powers conferred on the receiver by virtue of that Order of 1989 do not apply to property for the time being subject to the restraint order.
- (6) Where a person is adjudged bankrupt and has directly or indirectly made a gift caught by this Order—
- (a) no order shall be made under Article 312 or 367 of that Order of 1989 (avoidance of certain transactions) in respect of the making of the gift at any time when proceedings for an offence to which this Order applies 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 Articles after the conclusion of the proceedings shall take into account any realisation under this Order of property held by the person to whom the gift was made.

Winding up of company holding realisable property

- 22.**—(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 Article 13(8) or 16(5) or (6) for the time being in the hands of a receiver appointed under Article 13 or 16.

(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 Articles 13 to 16 and 18 or on a receiver so appointed 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 (Northern Ireland) Order 1989 shall be taken as restricting, or enabling the restriction of, the exercise of those powers.

(4) Paragraph (2) 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 Article—

“company” means any company which may be wound up under the Insolvency (Northern Ireland) Order 1989; 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 High 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.

Insolvency officers dealing with property subject to restraint order

23.—(1) Without prejudice to the generality of the Insolvency (Northern Ireland) Order 1989 or any other statutory provision, where—

- (a) any person acting as an insolvency practitioner seizes or disposes of any property in relation to which his functions are not exercisable because it is for the time being subject to a restraint order; and
- (b) at the time of the seizure or disposal he believes, and has reasonable grounds for believing, that he is entitled (whether in pursuance of an order of the High Court or otherwise) to seize or dispose of that property, he shall not be liable to any person in respect of any loss or damage resulting from the seizure or disposal except in so far as the loss or damage is caused by his negligence in so acting; and a person so acting shall have a lien on the property, or the proceeds of its sale, for such of his expenses as were incurred in connection with the liquidation, bankruptcy or other proceedings in relation to which the seizure or disposal purported to take place and for so much of his remuneration as may reasonably be assigned for his acting in connection with those proceedings.

(2) Any person who, acting as an insolvency practitioner, incurs expenses—

- (a) in respect of such property as is mentioned in sub-paragraph (a) of paragraph (1) and in so doing does not know and has no reasonable grounds to believe that the property is for the time being subject to a restraint order; or
- (b) other than in respect of such property as is so mentioned, being expenses which, but for the effect of a restraint order, might have been met by taking possession of and realising the property, shall be entitled (whether or not he has seized or disposed of that property so as to have a lien under that paragraph) to payment of those expenses under Article 18(1) or (4).

Receivers: supplementary provisions

24.—(1) Where a receiver appointed under this Order or in pursuance of a charging order takes any action—

- (a) in relation to any 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, 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 Article 18(5), be paid by the prosecution or, in a case where proceedings for an offence to which this Order applies are not instituted, by the person on whose application the receiver was appointed.

Compensation

25.—(1) If proceedings are instituted against a person for an offence or offences to which this Order applies and either—

- (a) the proceedings do not result in his conviction for any such offence, or
- (b) where he is convicted of one or more such offences—
 - (i) the conviction or convictions concerned are quashed, 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 if, having regard to all the circumstances, it considers it appropriate to make such an order.

(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 concerned, being a person mentioned in paragraph (5); and
- (b) that the applicant has suffered loss in consequence of anything done in relation to the property by or in pursuance of an order under this Order.

(3) The High Court shall not order compensation to be paid in any case where it appears to the Court that the proceedings would have been instituted or continued even if the serious default had not occurred.

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

(5) Compensation payable under this Article shall be paid—

- (a) where the person in default was or was acting as a member of the Royal Ulster Constabulary, by the Police Authority for Northern Ireland;
- (b) where the person in default was a member of the Office of the Director of Public Prosecutions for Northern Ireland, by the Director of Public Prosecutions for Northern Ireland;
- (c) where the person in default was a member of the Serious Fraud Office, by the Director of that Office;
- (d) where the person in default was an officer within the meaning of the Customs and Excise Management Act 1979, by the Commissioners of Customs and Excise; and

- (e) where the person in default was an officer of the Commissioners of Inland Revenue, by those Commissioners.

Enforcement of external orders Enforcement of orders made in England and Wales or Scotland

26.—(1) The Secretary of State may by order provide that for the purpose of the enforcement in Northern Ireland of orders made under the Drug Trafficking Offences Act 1986, Part I of the Criminal Justice (Scotland) Act 1987 and Part VI of the Criminal Justice Act 1988, this Order (except Article 10) shall have effect as if—

- (a) references to confiscation orders included a reference to confiscation orders made under the 1986 Act, Part I of the 1987 Act and Part VI of the 1988 Act;
- (b) in relation to England and Wales—
 - (i) references to drug trafficking offences included a reference to drug trafficking offences within the meaning of the 1986 Act;
 - (ii) references to offences to which the Order applies included a reference to offences to which Part VI of the 1988 Act applies;
 - (iii) references to proceedings in Northern Ireland or to the institution or conclusion in Northern Ireland of proceedings included a reference to proceedings in England and Wales or to the institution or conclusion in England and Wales of proceedings, as the case may be; and
 - (iv) the references to the making of a complaint in Article 12(2) and (4) included references to laying an information under section 1 of the Magistrates' Courts Act 1980;
- (c) in relation to Scotland—
 - (i) references to drug trafficking offences included a reference to offences to which section 1 of the 1987 Act relates;
 - (ii) such other modifications were made as may be specified in the order, being modifications which appear to the Secretary of State to be requisite or desirable having regard to procedural differences which may for the time being exist between Northern Ireland and Scotland; and without prejudice to the generality of this head modifications may include provision as to the circumstances in which proceedings in Scotland are to be treated for the purpose of such enforcement in Northern Ireland as instituted or as concluded.

(2) An order under paragraph (1) may provide for the provisions of this Order to have effect in relation to anything done or to be done in England and Wales or, as the case may be, in Scotland subject to such further modifications as may be specified in the order.

(3) An order under paragraph (1) may contain such incidental, consequential and transitional provisions as the Secretary of State considers expedient.

(4) An order under paragraph (1) shall be subject to annulment in pursuance of a resolution of either House of Parliament in like manner as a statutory instrument and section 5 of the Statutory Instruments Act 1946 shall apply accordingly.

Enforcement of other external orders

27.—(1) The Secretary of State may by order—

- (a) direct in relation to a country or territory outside the United Kingdom designated by an Order in Council under section 26 of the Drug Trafficking Offences Act 1986 or section 96 of the Criminal Justice Act 1988 (“a designated country”) that, subject to such

modifications as may be specified, this Order shall apply to external confiscation orders and to proceedings which have been or are to be instituted in the designated country and may result in an external confiscation order being made there;

- (b) make—
 - (i) such provision in connection with the taking of action in the designated country with a view to satisfying a confiscation order;
 - (ii) such provision as to evidence or proof of any matter for the purposes of this Article and Article 28; and
 - (iii) such incidental, consequential and transitional provision, as appear to the Secretary of State to be expedient; and
- (c) without prejudice to the generality of this paragraph, direct that in such circumstances as may be specified proceeds which arise out of action taken in the designated country with a view to satisfying a confiscation order and which are retained there shall nevertheless be treated as reducing the amount payable under the order to such extent as may be specified.

(2) The power to make an order under this Article includes power to modify this Order in such a way as to confer power on a person to exercise a discretion.

(3) An order under paragraph (1) shall be subject to annulment in pursuance of a resolution of either House of Parliament in like manner as a statutory instrument and section 5 of the Statutory Instruments Act 1946 shall apply accordingly.

Registration of external confiscation orders

28.—(1) On an application made by or on behalf of the government of a designated country, the High Court may register an external confiscation order made there if—

- (a) it is satisfied that at the time of registration the order is in force and not subject to appeal;
- (b) it 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) it is of the opinion that enforcing the order in Northern Ireland would not be contrary to the interests of justice.

(2) In paragraph (1) “appeal” includes—

- (a) any proceedings by way of discharging or setting aside a judgment; and
- (b) an application for a new trial or a stay of execution.

(3) The High Court shall cancel the registration of an external confiscation order if it appears to the Court that the order has been satisfied by payment of the amount due under it or by the person against whom it was made serving imprisonment in default of payment or by any other means.