
STATUTORY INSTRUMENTS

1990 No. 2588 (N.I. 17)

NORTHERN IRELAND

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

Made

19th December 1990

Coming into operation on days to be appointed under Article 1(2)

ARRANGEMENT OF ORDER

Article

Introductory

1. Title and commencement.
2. Interpretation.
3. Definition of principal terms used.

Confiscation orders

4. Confiscation of proceeds of offences other than drug trafficking offences.
5. Confiscation of proceeds of drug trafficking.
6. Assessing the proceeds of drug trafficking.
7. Postponed confiscation orders.
8. Confiscation orders: supplementary provisions.
9. Statements, etc., relevant to making confiscation orders.

Enforcement, etc., of confiscation orders

10. Application of procedure for enforcing fines.
11. Interest on sums unpaid under confiscation orders.
12. Cases in which restraint orders and charging orders may be made.
13. Restraint orders.
14. Charging orders in respect of land, securities, etc.
15. Charging orders: supplementary provisions.
16. Realisation of property.
17. Increase in realisable property.
18. Application of proceeds of realisation and other sums.

THE CRIMINAL JUSTICE (CONFISCATION) (NI) ORDER 1990
SI 1990/2588 (NI 17)

19. Exercise of powers by High Court or receiver.
20. Variation of confiscation orders.
21. Bankruptcy of defendant, etc.
22. Winding up of company holding realisable property.
23. Insolvency officers dealing with property subject to restraint order.
24. Receivers: supplementary provisions.
25. Compensation.

Enforcement of external orders

26. Enforcement of orders made in England and Wales or Scotland.
27. Enforcement of other external orders.
28. Registration of external confiscation orders.

Drug trafficking offences

29. Assisting another to retain the benefit of drug trafficking.
30. Concealing or transferring proceeds of drug trafficking.

Investigations into drug trafficking

31. Order to make material available.
32. Authority for search.
33. Articles 31 and 32: supplementary provisions.
34. Disclosure of information held by government departments.
35. Offence of prejudicing investigation.

Miscellaneous and supplemental

36. Disclosure of information subject to contractual restriction upon disclosure.
37. Authorisation of delay in notifying arrest, etc., and drug trafficking offences to be serious arrestable offences.
38. Amendments, transitional provisions and savings.

SCHEDULES:

Schedule 1—Confiscation orders.

Part I—Offences in respect of which a court of summary jurisdiction may make confiscation orders.

Part II—Orders varying list of offences.

Schedule 2—Amendments.

Schedule 3—Transitional provisions and savings.

At the Court at Buckingham Palace, the 19th day of December 1990

Present,

The Queen's Most Excellent Majesty in Council

Whereas a draft of this Order has been approved by a resolution of each House of Parliament:

Now, therefore, Her Majesty, in exercise of the powers conferred by paragraph 1 of Schedule 1 to the Northern Ireland Act 1974 and of all other powers enabling Her in that behalf, is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:—

1974 c. 28

Introductory

Title and commencement

1.—(1) This Order may be cited as the Criminal Justice (Confiscation) (Northern Ireland) Order 1990.

(2) This Order shall come into operation on such day or days as the Secretary of State may by order appoint.

Interpretation

2.—(1) The Interpretation Act (Northern Ireland) 1954 shall apply to Article 1 and the following provisions of this Order as it applies to a Measure of the Northern Ireland Assembly.

1954 c. 33 (N.I.)

(2) In this Order—

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

1947 c. 44

“charging order” means an order made under Article 14 imposing on any such realisable property as may be specified in the order a charge for securing the payment of money to the Crown;

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

“confiscation order” means an order made by a court under Article 4 or 5;

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

1971 c. 38

“the defendant” means a person against whom proceedings have been instituted for an offence to which this Order applies (whether or not he has been convicted);

“drug trafficking” means doing or being concerned in any of the following, whether in Northern Ireland or elsewhere—

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

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

THE CRIMINAL JUSTICE (CONFISCATION) (NI) ORDER 1990
SI 1990/2588 (NI 17)

- (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;
- (d) manufacturing or supplying a scheduled substance within the meaning of section 12 of the Criminal Justice (International Co-operation) Act 1990 where the manufacture or supply is an offence under that section;
- 1990 c. 5 and includes a person doing the following, whether in Northern Ireland 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),
- 1971 c. 38 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 Article 29 or 30;
- (e) an offence under section 12 or 19 of the Criminal Justice (International Co-operation) Act 1990;
- (f) an offence under Article 9 of the Criminal Attempts and Conspiracy (Northern Ireland) Order 1983 of conspiracy to commit any of the offences in subparagraphs (a) to (e);
- 1979 c. 2 (g) an offence under Article 3 of that Order of attempting to commit any of those offences;
- (h) 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
- 1983 NI 13 (i) aiding, abetting, counselling or procuring the commission of any of those offences;

THE CRIMINAL JUSTICE (CONFISCATION) (NI) ORDER 1990
SI 1990/2588 (NI 17)

“external confiscation order” means an order made by a court in a designated country for the purpose—

(a) of recovering—

- (i) property obtained as a result of or in connection with conduct corresponding to an offence to which this Order applies, other than a drug trafficking offence; or
- (ii) the value of property obtained as mentioned in head (i); or
- (iii) payments or other rewards received in connection with drug trafficking; or
- (iv) the value of payments or other rewards as mentioned in head (iii); or

(b) of depriving a person of a pecuniary advantage obtained as mentioned in sub-paragraph (a)(i);

“interest”, in relation to property, includes right;

“modifications” includes additions, alterations and omissions;

“property” includes money and all other property, real or personal, heritable or moveable, including things in action and other intangible or incorporeal property;

“restraint order” means an order made by the High Court under Article 13;

“statutory provision” has the meaning assigned to it by section 1(f) of the Interpretation Act (Northern Ireland) 1954.

1954 c. 33 (N.I.)

(3) The expressions listed in the left hand column below fall to be construed in accordance with the provisions of this Order listed in the right hand column in relation to those expressions.

<i>Expression</i>	<i>Relevant provision</i>
Benefited from drug trafficking	Article 5(2)
Benefited from an offence	Article 4(4)
Dealing with property	Article 13(9)
Gift caught by this Order	Article 3(10)
Making a gift	Article 3(12)
Proceeds of drug trafficking	Article 6(1)(a)
Realisable property	Article 3(1)
Value of gift, payment or reward	Article 3(7) and (8)
Value of proceeds of drug trafficking	Article 6(1)(b)
Value of property	Article 3(4) to (6)

(4) References to an offence to which this Order applies are references to any offence which—

(a) is listed in Schedule 1; or

THE CRIMINAL JUSTICE (CONFISCATION) (NI) ORDER 1990
SI 1990/2588 (NI 17)

1989 c. 4

(b) if not so listed, is an indictable offence other than an offence under Part III of the Prevention of Terrorism (Temporary Provisions) Act 1989.

(5) This Order applies to property wherever situated.

(6) References in this Order to offences include a reference to offences committed before the coming into operation of this Order; but nothing in this Order imposes any duty or confers any power on any court in or in connection with proceedings against a person for an offence instituted before the coming into operation of this Order.

(7) References in this Order to property obtained, or to a pecuniary advantage derived, or to anything received, in connection with the commission of an offence or drug trafficking include a reference to property obtained or to a pecuniary advantage derived or to anything received, both in that connection and in some other connection.

(8) The following provisions shall have effect for the interpretation of this Order.

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

(10) References to property held by a person include a reference to property vested in his trustee in bankruptcy or liquidator.

(11) 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.

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

(13) Proceedings for an offence are instituted—

1981 NI 26

(a) when a summons or warrant is issued under Article 20 of the Magistrates' Courts (Northern Ireland) Order 1981 in respect of that offence;

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

(c) when an indictment is presented under section 2(2)(c), (e) or (f) of the Grand Jury (Abolition) Act (Northern Ireland) 1969;

1969 c. 15 (N.I.)

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

(14) Proceedings for an offence are concluded—

(a) when (disregarding any power of a court to grant leave to appeal out of time) there is no further possibility of a confiscation order being made in the proceedings;

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

(15) An order is subject to appeal until (disregarding any power of a court to grant leave to appeal out of time) there is no further possibility of an appeal on which the order could be varied or set aside.

(16) References in this Order to "acting as an insolvency practitioner" shall be construed in accordance with Article 3 of the Insolvency (Northern Ireland) Order 1989 except that for the purposes of such construction paragraph (5) of that Article (which provides that nothing in the Article is to apply to anything done by the official receiver) shall be disregarded; and the expression shall include the official receiver acting as receiver or manager of the property.

1989 NI 19

Definition of principal terms used

3.—(1) In this Order, "realisable property" means, subject to paragraph (2)—

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

(2) Property is not realisable property if—

- (a) an order under Article 7 of the Criminal Justice (Northern Ireland) Order 1980 (deprivation orders);
- (b) an order under section 27 of the Misuse of Drugs Act 1971 (forfeiture orders); or
- (c) an order under section 13(2), (3) or (4) of the Prevention of Terrorism (Temporary Provisions) Act 1989 (forfeiture orders),

1980 NI 6

1971 c. 38

1989 c. 4

is in force in respect of the property.

(3) For the purposes of this Order the amount that might be realised at the time a confiscation order is made is—

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

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

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

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

(b) in any other case, is its market value.

(5) References in this Order to the value at any time (referred to in paragraph (6) as “the material time”) of any property obtained by a person as a result of or in connection with the commission of an offence are references to—

(a) the value of the property to him when he obtained it adjusted to take account of subsequent changes in the value of money; or

(b) where paragraph (6) applies, the value there mentioned, whichever is the greater.

(6) If at the material time he holds—

(a) the property which he obtained (not being cash); or

(b) property which, in whole or in part, directly or indirectly represents in his hands the property which he obtained,

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

(7) Subject to paragraph (12), references in this Order to the value at any time (referred to in paragraph (8) as “the material time”) of a gift caught by this Order or of any payment or reward are references to—

(a) the value of the gift, payment or reward to the recipient when he received it adjusted to take account of subsequent changes in the value of money; or

(b) where paragraph (8) applies, the value there mentioned, whichever is the greater.

(8) Subject to paragraph (12), if at the material time he holds—

(a) the property which he received (not being cash); or

(b) property which, in whole or in part, directly or indirectly represents in his hands the property which he received;

the value referred to in paragraph (7) is the value to him at the material time of the property mentioned in sub-paragraph (a) or, as the case may be, of the property mentioned in sub-paragraph (b) so far as it so represents the property which he received, but disregarding any charging order.

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

(a) pay an amount due in respect of a fine, or other order of a court, imposed or made on conviction of an offence, where the fine was imposed or order made before the confiscation order; or

(b) pay any sum which would be included among the preferential debts (within the meaning given by Article 346 of the Insolvency (Northern Ireland) Order 1989) in the defendant's bankruptcy commencing on the date of the confiscation order or winding up under an order of the court made on that date.

1989 NI 19

(10) A gift (including a gift made before the coming into operation of this Order) is caught by this Order if—

(a) in the case of an offence to which this Order applies other than a drug trafficking offence—

(i) it was made by the defendant at any time after the commission of the offence or, if more than one, the earliest of the offences to which the proceedings for the time being relate; and

(ii) the court considers it appropriate in all the circumstances to take the gift into account; or

(b) in the case of a drug trafficking offence—

(i) it was made by the defendant at any time since the beginning of the period of 6 years ending when the proceedings were instituted against him, or

(ii) it was made by the defendant at any time and was a gift of property—

(aa) received by the defendant in connection with drug trafficking carried on by him or another, or

(ab) which in whole or in part directly or indirectly represented in the defendant's hands property received by him in that connection.

(11) The reference in paragraph (10)(a)(i) to an offence to which the proceedings for the time being relate includes, where the proceedings have resulted in the conviction of the defendant, a reference to any offence which the court takes into consideration when determining his sentence.

(12) For the purposes of this Order—

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

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

Confiscation orders

Confiscation of proceeds of offences other than drug trafficking offences

4.—(1) The Crown Court and a court of summary jurisdiction shall each have power, in addition to dealing with an offender in any other way, to make an order (a confiscation order) requiring him to pay such amount as the court thinks fit, being an amount which must be at least the minimum amount, but must not exceed—

- (a) the benefit in respect of which it is made; or
- (b) the amount appearing to the court to be the amount that might be realised at the time the order is made,

whichever is the less.

(2) The Crown Court may make such an order against an offender where—

- (a) he is convicted of any offence to which this Order applies other than a drug trafficking offence; and

(b) it is satisfied—

- (i) that he has benefited from that offence or from that offence taken together with some other offence of which he is convicted in the same proceedings, or which the Court takes into consideration in determining his sentence, and which is not a drug trafficking offence; and
- (ii) that his benefit is at least the minimum amount.

(3) A court of summary jurisdiction may make such an order against an offender where—

- (a) he is convicted of an offence listed in Schedule 1; and

(b) it is satisfied—

- (i) that he has benefited from that offence or from that offence taken together with some other offence listed in Schedule 1 of which he is convicted in the same proceedings, or which the court takes into consideration in determining his sentence; and
- (ii) that his benefit is at least the minimum amount.

(4) For the purposes of this Order a person benefits from an offence if he obtains property as a result of or in connection with its commission and his benefit is the value of property so obtained.

(5) Where a person derives a pecuniary advantage as a result of or in connection with the commission of an offence, he is to be treated for the purposes of this Order as if he had obtained as a result of or in connection with the commission of the offence a sum of money equal to the value of the pecuniary advantage.

(6) A court shall not make a confiscation order under this Article unless the prosecution has given written notice to the court to the effect that it appears to the prosecution that, were the court to consider that it ought to make such an order, it would be able to make an order requiring the offender to pay at least the minimum amount.

(7) If the prosecution gives the court such a notice, the court shall determine whether it ought to make a confiscation order under this Article.

(8) When considering whether to make a confiscation order under this Article the court may take into account any information that has been placed before it showing that a victim of an offence to which the proceedings relate has instituted, or intends to institute, civil proceedings against the defendant in respect of loss, injury or damage sustained in connection with the offence.

(9) If the court determines that it ought to make such an order, the court shall, subject to Article 7, before sentencing or otherwise dealing with the defendant in respect of the offence or, as the case may be, any of the offences concerned, determine the amount to be recovered in his case by virtue of this Article and make a confiscation order for that amount, specifying the offence or offences.

(10) For the purposes of this Order the minimum amount is £10,000 or such other amount as the Secretary of State may specify by order.

(11) An order under paragraph (10) 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.

1946 c. 36

Confiscation of proceeds of drug trafficking

5.—(1) Where a person is convicted in the Crown Court of one or more drug trafficking offences and the Court determines that he has benefited from drug trafficking the Court shall, subject to Article 7, before sentencing or otherwise dealing with him in respect of the offence or, as the case may be, any of the offences concerned, make an order (a confiscation order) requiring him to pay—

- (a) subject to sub-paragraph (b), the amount the Court assesses to be the value of the defendant's proceeds of drug trafficking; or
- (b) if the Court is satisfied that the amount that might be realised at the time the confiscation order is made is less than the amount the Court assesses to be the value of the defendant's proceeds of drug trafficking, the amount that might be so realised.

(2) For the purposes of this Order, a person who has at any time (whether before or after the coming into operation of this Article) received any payment or other reward in connection with drug trafficking carried on by him or another has benefited from drug trafficking.

Assessing the proceeds of drug trafficking

6.—(1) For the purposes of this Order—

- (a) any payments or other rewards received by a person at any time (whether before or after the coming into operation of Article 5) in connection with drug trafficking carried on by him or another are his proceeds of drug trafficking, and
- (b) the value of his proceeds of drug trafficking is the aggregate of the values of the payments or other rewards.

(2) The Crown 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—

(a) that any property appearing to the Court—

(i) to have been held by him at any time since his conviction, or

(ii) to have been transferred to him at any time since the beginning of the period of 6 years ending when the proceedings were instituted against him,

was received by him, at the earliest time at which he appears to the Court to have held it, as a payment or reward in connection with drug trafficking carried on by him,

(b) that any expenditure of his since the beginning of that period was met out of payments received by him in connection with drug trafficking carried on by him, and

(c) that, for the purpose of valuing any property received or assumed to have been received by him at any time as such a reward, he received the property free of any other interests in it.

(3) Paragraph (2) 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 Article 29 or 30.

(4) 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 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.

(5) References in paragraph (4) to a confiscation order include a confiscation order within the meaning of the Drug Trafficking Offences Act 1986 or Part I of the Criminal Justice (Scotland) Act 1987.

1986 c. 32
1987 c. 41

Postponed confiscation orders

7.—(1) Subject to paragraph (2), a court, if it considers that it requires further information before making a confiscation order,

may, subject to paragraph (3), postpone making such an order for a period not exceeding 6 months after the date of conviction for the purpose of enabling that information to be obtained; but, without prejudice to Article 50 of the Magistrates' Courts (Northern Ireland) Order 1981 and Article 11 of the Treatment of Offenders (Northern Ireland) Order 1989, may notwithstanding such postponement proceed to sentence or to otherwise deal with the person in respect of the conviction.

1981 NI 26
1989 NI 15

(2) A court shall not impose any fine or make an order such as is mentioned in Article 8(1)(b) or (c) before a confiscation order is made.

(3) If during the period of postponement notice of appeal or of application for leave to appeal is given under section 16(1) of the Criminal Appeal (Northern Ireland) Act 1980 or, as the case may be, Article 144(1) of the Magistrates' Courts (Northern Ireland) Order 1981, the court may, on the application of the prosecution, extend that period to a date up to 3 months after the date of the determination of the appeal.

1980 c. 47

Confiscation orders: supplementary provisions

8.—(1) Where a court makes a confiscation order against a defendant in any proceedings, the court shall, in respect of any offence of which he is convicted in those proceedings, take account of the order before—

(a) imposing any fine on him, or

(b) making any order involving any payment by him, other than an order under Article 3 of the Criminal Justice (Northern Ireland) Order 1980 (compensation orders); or

1980 NI 6

(c) making any order under—

(i) section 27 of the Misuse of Drugs Act 1971 (forfeiture orders); or

1971 c. 38

(ii) Article 7 of the Criminal Justice (Northern Ireland) Order 1980 (deprivation orders),

but subject to that shall leave the order out of account in determining the appropriate sentence or other manner of dealing with him.

(2) No statutory provision 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 a confiscation order restrict the court from dealing with an offender in any way it considers appropriate in respect of an offence to which this Order applies.

1980 NI 6

(3) Where—

(a) a court makes both a confiscation order and an order for the payment of compensation under Article 3 of the Criminal Justice (Northern Ireland) Order 1980 against the same person in the same proceedings; and

(b) it appears to the court that he will not have sufficient means to satisfy both the orders in full,

it shall direct that so much of the compensation as will not in its opinion be recoverable because of the insufficiency of his means shall be paid out of any sums recovered under the confiscation order.

Statements, etc., relevant to making confiscation orders

9.—(1) Where—

(a) there is tendered to the court by the prosecution a statement as to any matters relevant—

(i) in the case of a defendant who has been convicted of an offence to which this Order applies other than a drug trafficking offence,—

(aa) to the determination whether the defendant has benefited from the offence or from any other offence to which this Order applies other than a drug trafficking offence of which he is convicted in the same proceedings or which is taken into account in determining his sentence; or

(ab) to the assessment of the value of his benefit from that offence or that other offence; or

(ii) in the case of a defendant who has been convicted of a drug trafficking offence,—

(aa) to the determination whether the defendant has benefited from drug trafficking; or

(ab) to the assessment of the value of his proceeds of drug trafficking; and

(b) the defendant accepts to any extent any allegation in the statement;

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

(2) Where—

(a) a statement is tendered under paragraph (1)(a), and

(b) the court is satisfied that a copy of that statement has been served on the defendant,

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

(3) If the defendant fails in any respect to comply with a requirement under paragraph (2), he may be treated for the purposes of this Article 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—
 - (i) in the case of a defendant who has been convicted of an offence to which this Order applies other than a drug trafficking offence benefited from an offence or that any property was obtained by him as a result of or in connection with the commission of an offence; or
 - (ii) in the case of a defendant who has been convicted of a drug trafficking offence, benefited from drug trafficking or that any payment or other reward was received by him in connection with drug trafficking carried on by him or another.

(4) Where—

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

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

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

- (a) orally before the court; or
- (b) in writing in accordance with Crown Court rules or magistrates' court rules.

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

(7) If the court is satisfied as to any matter relevant for determining the amount that might be realised at the time the confiscation order is made (whether by an acceptance under this Article or otherwise), the court may issue a certificate giving the court's opinion as to the matters concerned and shall do so if satisfied that the amount that might be realised at the time the confiscation order is made is less than the amount the court assesses to be the value of the defendant's benefit from the offence or, if more than one, all the offences in respect of which the order may be made, or as the case may be, the defendant's proceeds from drug trafficking.

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

THE CRIMINAL JUSTICE (CONFISCATION) (NI) ORDER 1990
SI 1990/2588 (NI 17)

1945 c. 15 (N.I.) 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;

1968 c. 29 (N.I.)

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.

1970 c. 18 (N.I.)

(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 sub-paragraph (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 subparagraph, 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 subparagraph (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.

1970 c. 18 (N.I.) (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.

1946 c. 36 (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—

1986 c. 53 “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;

1981 NI 6 “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 sum-

mary 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 subparagraph (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).

1945 c. 15 (N.I.)

(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).

1954 c. 9 (N.I.)

(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).

1945 c. 15 (N.I.)

(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.

1989 NI 19

(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.

1989 NI 19

(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.

1979 c. 2

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

1986 c. 32
1987 c. 41

THE CRIMINAL JUSTICE (CONFISCATION) (NI) ORDER 1990
SI 1990/2588 (NI 17)

1988 c. 33

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;

1980 c. 43

- (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.

1946 c. 36

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;

1986 c. 32
1988 c. 33

(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.

1946 c. 36

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.

Drug trafficking offences

Assisting another to retain the benefit of drug trafficking

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

- (a) the retention or control by or on behalf of another (call him "A") of A's proceeds of drug trafficking is facilitated (whether by concealment, removal from the jurisdiction, transfer to nominees or otherwise), or
- (b) A's proceeds of drug trafficking—
 - (i) are used to secure that funds are placed at A's disposal, or
 - (ii) are used for A's benefit to acquire property by way of investment,

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

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

(3) Where a person discloses to a constable a suspicion or belief that any funds or investments are derived from or used in connection with drug trafficking or any matter on which such a suspicion or belief is based, if he does any act in contravention of paragraph (1) and the disclosure relates to the arrangement concerned, he does not commit an offence under this Article if the disclosure is made—

- (a) before he does the act concerned, being an act done with the consent of the constable, or
- (b) after he does the act, but the disclosure is made on his initiative and as soon as it is reasonable for him to make it.

(4) In proceedings against a person for an offence under this Article, 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 paragraph (1), or

(c) that—

(i) he intended to disclose to a constable such a suspicion, belief or matter as is mentioned in paragraph (3) in relation to the arrangement, but

(ii) there is reasonable excuse for his failure to make disclosure in accordance with paragraph (3).

(5) A person guilty of an offence under this Article shall be liable—

(a) on conviction on indictment, to imprisonment for a term not exceeding 14 years or to a fine or to both, and

(b) on summary conviction, to imprisonment for a term not exceeding 6 months or to a fine not exceeding the statutory maximum or to both.

Concealing or transferring proceeds of drug trafficking

30.—(1) A person is guilty of an offence if he—

(a) conceals or disguises any property which is, or in whole or in part directly or indirectly represents, his proceeds of drug trafficking; or

(b) converts or transfers that property or removes it from the jurisdiction,

for the purpose of avoiding prosecution for a drug trafficking offence or the making or enforcement in his case of a confiscation order.

(2) A person is guilty of an offence if, knowing or having reasonable grounds to suspect that any property is, or in whole or in part directly or indirectly represents, another person's proceeds of drug trafficking, he—

(a) conceals or disguises that property; or

(b) converts or transfers that property or removes it from the jurisdiction,

for the purpose of assisting any person to avoid prosecution for a drug trafficking offence or the making or enforcement of a confiscation order.

(3) A person is guilty of an offence if, knowing or having reasonable grounds to suspect that any property is, or in whole or in part directly or indirectly represents, another person's proceeds of drug trafficking, he acquires that property for no, or for inadequate, consideration.

(4) In paragraphs (1)(a) and (2)(a) the references to concealing or disguising any property include references to concealing or disguising

its nature, source, location, disposition, movement or ownership or any rights with respect to it.

(5) For the purposes of paragraph (3) consideration given for any property is inadequate if its value is significantly less than the value of that property, and there shall not be treated as consideration the provision for any person of services or goods which are of assistance to him in drug trafficking.

(6) A person guilty of an offence under this Article shall be liable—

- (a) on conviction on indictment, to imprisonment for a term not exceeding 14 years or to a fine or to both, and
- (b) on summary conviction, to imprisonment for a term not exceeding 6 months or to a fine not exceeding the statutory maximum or to both.

Investigations into drug trafficking

Order to make material available

31.—(1) A constable may, for the purpose of an investigation into drug trafficking, apply to a county court judge for an order under paragraph (2) in relation to particular material or material of a particular description.

(2) Subject to Article 34(11) if on such an application the judge is satisfied that the conditions in paragraph (4) 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.

(3) The period to be specified in an order under paragraph (2) shall be 7 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 paragraph (2) are—

- (a) that there are reasonable grounds for suspecting that a specified person has carried on or has benefited from drug trafficking,
- (b) that there are reasonable grounds for suspecting that the material to which the application relates—
 - (i) is likely to be of substantial value (whether by itself or together with other material) to the investigation for the purpose of which the application is made, and
 - (ii) does not consist of or include items subject to legal privilege or excluded material, and

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

(5) Where the judge makes an order under paragraph (2)(b) in relation to material on any premises he may, on the 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 Article, and
 - (b) proceedings relating to such orders.

(7) An order of a county court judge under this Article shall have effect as if it were an order of the Crown Court.

(8) Where the material to which an application under this Article relates consists of information contained in a computer—

- (a) an order under paragraph (2)(a) shall have effect as an order to produce the material in a form in which it can be taken away and in which it is visible and legible, and
 - (b) an order under paragraph (2)(b) 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 paragraph (2)—
 - (a) shall not confer any right to production of, or access to, items subject to legal privilege or excluded material,
 - (b) shall have effect notwithstanding any obligation as to secrecy or other restriction upon the disclosure of information imposed by statute or otherwise, and
 - (c) may be made in relation to material in the possession of an authorised government department.

Authority for search

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

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

- (a) that an order made under Article 31 in relation to material on the premises has not been complied with, or
- (b) that the conditions in paragraph (3) are fulfilled, or

- (c) that the conditions in paragraph (4) are fulfilled.
- (3) The conditions referred to in paragraph (2)(b) are—
 - (a) that there are reasonable grounds for suspecting that a specified person has carried on or has benefited from drug trafficking, and
 - (b) that the conditions in Article 31(4)(b) and (c) are fulfilled in relation to any material on the premises, and
 - (c) that it would not be appropriate to make an order under that Article in relation to the material because—
 - (i) it is not practicable to communicate with any person entitled to produce the material, or
 - (ii) it is not practicable to communicate with any person entitled to grant access to the material or entitled to grant entry to the premises on which the material is situated, or
 - (iii) the investigation for the purposes of which the application is made might be seriously prejudiced unless a constable could secure immediate access to the material.
- (4) The conditions referred to in paragraph (2)(c) are—
 - (a) that there are reasonable grounds for suspecting that a specified person has carried on or has benefited from drug trafficking, and
 - (b) that there are reasonable grounds for suspecting that there is on the premises material relating to the specified person or to drug trafficking which is likely to be of substantial value (whether by itself or together with other material) to the investigation for the purpose of which the application is made, but that the material cannot at the time of the application be particularised, and
 - (c) that—
 - (i) it is not practicable to communicate with any person entitled to grant entry to the premises, or
 - (ii) entry to the premises will not be granted unless a warrant is produced, or
 - (iii) the investigation for the purpose of which the application is made might be seriously prejudiced unless a constable arriving at the premises could secure immediate entry to them.
- (5) Where a constable has entered premises in the execution of a warrant issued under this Article, he may seize and retain any material, other than items subject to legal privilege and excluded material, which is likely to be of substantial value (whether by itself or together with other material) to the investigation for the purpose of which the warrant was issued.

Articles 31 and 32: supplementary provisions

33.—(1) For the purposes of Articles 23 and 24 of the Police and

Criminal Evidence (Northern Ireland) Order 1989 (access to, and copying and retention of, seized material)— 1989 NI 12

- (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 Article 31(2)(a) shall be treated as if it were material seized by a constable.

(2) In Articles 31 and 32 “items subject to legal privilege”, “excluded material” and “premises” have the same meanings as in that Order of 1989.

Disclosure of information held by government departments

34.—(1) Subject to paragraph (4), the High Court may for the purpose of an investigation into drug trafficking on an application by the prosecution order any material mentioned in paragraph (3) which is in the possession of an authorised government department to be produced to the Court within such period as the Court may specify.

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

- (a) the powers conferred on the Court by Articles 13(1) and 14(1) are exercisable by virtue of paragraph (1) of Article 12, or
- (b) those powers are exercisable by virtue of paragraph (2) of that Article and the Court has made a restraint or charging order which has not been discharged;

but where the power to make an order under paragraph (1) is exercisable by virtue only of sub-paragraph (b), Article 12(3) shall apply for the purposes of this Article as it applies for the purposes of Articles 13 and 14.

(3) The material referred to in paragraph (1) is any material which—

- (a) has been submitted to an officer of an authorised government department by the defendant or by a person who has at any time held property which was realisable property,
- (b) has been made by an officer of an authorised government department in relation to the defendant or such a person, or
- (c) is correspondence which passed between an officer of an authorised government department and the defendant or such a person,

and an order under that paragraph may require the production of all such material or of a particular description of such material, being material in the possession of the department concerned.

(4) An order under paragraph (1) shall not require the production of any material unless it appears to the High Court that the material is likely to contain information that would facilitate the exercise of

the powers conferred on the Court by Articles 13 to 16 or on a receiver appointed under Article 13 or 16 or in pursuance of a charging order.

(5) The High Court may by order authorise the disclosure to such a receiver of any material produced under paragraph (1) or any part of such material; but the Court shall not make an order under this paragraph unless a reasonable opportunity has been given for an officer of the department to make representations to the Court.

(6) Material disclosed in pursuance of an order under paragraph (5) may, subject to any conditions contained in the order, be further disclosed for the purposes of the functions under this Order of the receiver or the Crown Court.

(7) The High Court may by order authorise the disclosure to a person mentioned in paragraph (8) of any material produced under paragraph (1) or any part of such material; but the Court shall not make an order under this paragraph unless—

- (a) a reasonable opportunity has been given for an officer of the department to make representations to the Court, and
- (b) it appears to the Court that the material is likely to be of substantial value in exercising functions relating to drug trafficking.

(8) The persons referred to in paragraph (7) are—

- (a) any member of the Royal Ulster Constabulary,
- (b) the Director of Public Prosecutions for Northern Ireland or any person acting on his behalf, and
- (c) any officer within the meaning of the Customs and Excise Management Act 1979.

1979 c. 2

(9) Material disclosed in pursuance of an order under paragraph (7) may, subject to any conditions contained in the order, be further disclosed for the purposes of functions relating to drug trafficking.

(10) Material may be produced or disclosed in pursuance of this Article notwithstanding any obligation as to secrecy or other restriction upon the disclosure of information imposed by statute or otherwise.

(11) An order under paragraph (1) and, in the case of material in the possession of an authorised government department, an order under Article 31(2) may require any officer of the department (whether named in the order or not) who may for the time being be in possession of the material concerned to comply with it, and such an order shall be served as if the proceedings were civil proceedings against the department.

(12) The person on whom such an order is served—

- (a) shall take all reasonable steps to bring it to the attention of the officer concerned, and
- (b) if the order is not brought to that officer's attention within

the period referred to in paragraph (1), shall report the reasons for the failure to the High Court; and it shall also be the duty of any other officer of the department in receipt of the order to take such steps as are mentioned in subparagraph (a).

Offence of prejudicing investigation

35.—(1) Where, in relation to an investigation into drug trafficking, an order under Article 31 has been made or has been applied for and has not been refused or a warrant under Article 32 has been issued, a person who, knowing or suspecting that the investigation is taking place, makes any disclosure which is likely to prejudice the investigation is guilty of an offence.

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

- (a) that he did not know or suspect that the disclosure was likely to prejudice the investigation, or
- (b) that he had lawful authority or reasonable excuse for making the disclosure.

(3) A person guilty of an offence under this Article shall be liable—

- (a) on conviction on indictment, to imprisonment for a term not exceeding 5 years or to a fine or to both, and
- (b) on summary conviction, to imprisonment for a term not exceeding 6 months or to a fine not exceeding the statutory maximum or to both.

Miscellaneous and supplemental

Disclosure of information subject to contractual restriction upon disclosure

36. Where a person discloses to a constable—

- (a) a suspicion or belief that any property—
 - (i) has been obtained as a result of or in connection with the commission of an offence to which this Order applies or, as the case may be, is used in connection with drug trafficking; or
 - (ii) derives from any property so obtained or, as the case may be, from drug trafficking; or
- (b) any matter on which such a suspicion or belief is based,

the disclosure shall not be treated as a breach of any restriction upon the disclosure of information imposed by contract.

Authorisation of delay in notifying arrest, etc., and drug trafficking offences to be serious arrestable offences

1989 NI 12

37.—(1) The Police and Criminal Evidence (Northern Ireland) Order 1989 shall be amended as follows.

(2) In Article 53 (interpretation of Part VI)—

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

““drug trafficking” and “drug trafficking offence” have the same meaning as in the Criminal Justice (Confiscation) (Northern Ireland) Order 1990”; and

(b) at the end of that Article there shall be inserted—
“References in this Part to any person’s proceeds of drug trafficking are to be construed in accordance with the Criminal Justice (Confiscation) (Northern Ireland) Order 1990”.

(3) In Article 57 (right to have someone informed when arrested)—

(a) at the beginning of paragraph (5) there shall be inserted “Subject to paragraph (5A)”; and

(b) after paragraph (5) there shall be inserted—

“(5A) An officer may also authorise delay where the serious arrestable offence is an offence to which the Criminal Justice (Confiscation) (Northern Ireland) Order 1990 applies (offences in respect of which confiscation orders under that Order may be made) and the officer has reasonable grounds for believing—

(a) in the case of an offence other than a drug trafficking offence, that the detained person has benefited from the offence and that the recovery of the value of the property obtained by that person from or in connection with the offence or of the pecuniary advantage derived by him from or in connection with it will be hindered by telling the named person of the arrest; and

(b) in the case of a drug trafficking offence, that the detained person has benefited from drug trafficking and 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.”.

(4) In Article 59 (access to legal advice)—

(a) at the beginning of paragraph (8) there shall be inserted “Subject to paragraph (8A)”; and

(b) after paragraph (8) there shall be inserted—

“(8A) An officer may also authorise delay where the serious arrestable offence is an offence to which the Criminal Justice (Confiscation) (Northern Ireland) Order

1990 applies (offences in respect of which confiscation orders under that Order may be made) and the officer has reasonable grounds for believing—

- (a) in the case of an offence other than a drug trafficking offence, that the detained person has benefited from the offence and that the recovery of the value of the property obtained by that person from or in connection with the offence or of the pecuniary advantage derived by him from or in connection with it will be hindered by the exercise of the right conferred by paragraph (1); and
- (b) in the case of a drug trafficking offence, that the detained person has benefited from drug trafficking and 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 paragraph (1)."

(5) In Article 87(2) (arrestable offences that are always serious) after sub-paragraph (a) there shall be inserted—

"(aa) any of the offences mentioned in sub-paragraphs (a) to (e) of the definition of "drug trafficking offence" in Article 2(2) of the Criminal Justice (Confiscation) (Northern Ireland) Order 1990;"

Amendments, transitional provisions and savings

38.—(1) The statutory provisions specified in Schedule 2 shall have effect subject to the amendments specified in that Schedule, being amendments consequential upon the provisions of this Order.

(2) The transitional and saving provisions contained in Schedule 3 shall have effect.

G. I. de Deney
Clerk of the Privy Council

SCHEDULES

Article 4.

SCHEDULE 1

CONFISCATION ORDERS

PART I

**OFFENCES IN RESPECT OF WHICH A COURT OF SUMMARY JURISDICTION MAY
MAKE CONFISCATION ORDERS**

Enactment	Description of offence
VIDEO RECORDINGS ACT 1984 (c. 39)	
Section 9	Supplying video recording of unclassified work.
Section 10	Possession of video recording of unclassified work for the purposes of supply.
LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) (NORTHERN IRELAND) ORDER 1985 (NI 15)	
Schedule 2 paragraphs 20 and 21	Offences relating to sex establishments.

PART II

ORDERS VARYING LIST OF OFFENCES

1. The Secretary of State may by order amend Part I by removing any offence from or adding any offence to the offences listed in it.

2. 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.

1946 c. 36

Article 38(1).

SCHEDULE 2

AMENDMENTS

The Rehabilitation of Offenders (Northern Ireland) Order 1978 (NI 27)

1. In Article 3(2)(a) (failure to pay fines, etc., not to prevent person becoming rehabilitated) the reference to a fine or other sum adjudged to be paid by or imposed on a conviction does not include a reference to an amount payable under a confiscation order.

The Bankruptcy Amendment (Northern Ireland) Order 1980 (NI 4)

2. Article 31 (effect of order of discharge) shall have effect as if amounts payable under confiscation orders were debts excepted under paragraph (1)(a) of that Article.

The Magistrates' Courts (Northern Ireland) Order 1981 (NI 26)

3. In Article 2(5) (interpretation of "sum adjudged to be paid by a conviction") for "or compensation" substitute " , compensation or other sums".

The Criminal Justice Act 1988 (c. 33)

4. For section 152(4) (remands of suspected drug offenders to customs detention) substitute—

"(4) In the application of this section to Northern Ireland, "drug trafficking offence" means a drug trafficking offence as defined by Article 2(2) of the Criminal Justice (Confiscation) (Northern Ireland) Order 1990 (other than offences under Article 29 of that Order (assisting another to retain the benefit of drug trafficking))."

The Extradition Act 1989 (c. 33)

5. At the end of section 22(4)(h) (extradition offences under Conventions) there shall be inserted—

"and

(iii) any drug trafficking offence within the meaning of the Criminal Justice (Confiscation) (Northern Ireland) Order 1990;"

6. In paragraph 15 of Schedule 1 (extradition offences treated as within jurisdiction of foreign states) after paragraph (k) insert—

"or

(l) a drug trafficking offence within the meaning of the Criminal Justice (Confiscation) (Northern Ireland) Order 1990;"

The Insolvency (Northern Ireland) Order 1989 (NI 19)

7. Article 255 (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.

The Criminal Justice (International Co-operation) Act 1990 (c. 5)

8. In section 24(2) (interpretation of Part II) at the end insert "and, in section 22(1), "drug trafficking offences" includes drug trafficking offences within the meaning of the Criminal Justice (Confiscation) (Northern Ireland) Order 1990".

9. In section 29(1) (interpretation of Part III)—

(a) in the definition of "drug trafficking" at the end add "or, as respects Northern Ireland, in the Criminal Justice (Confiscation) (Northern Ireland) Order 1990";

(b) in the definition of "the proceeds of drug trafficking" after "1987" insert "or in the said Order of 1990".

SCHEDULE 3

Article 38(2).

TRANSITIONAL PROVISIONS AND SAVINGS

1. In the case of a confiscation order made before the coming into operation of the Insolvency (Northern Ireland) Order 1989, Article 3(9) shall have effect as if for paragraph (b) there were substituted—

1989 NI 19

EXPLANATORY NOTE

(This note is not part of the Order)

This Order—

- (a) provides for courts to order the confiscation of assets of offenders convicted of highly profitable crimes;**
- (b) provides for courts to order the confiscation of proceeds of drug trafficking;**
- (c) provides for certain enhancements of court enforcement powers in order to secure payment of confiscation orders; and**
- (d) makes further provision in connection with drug trafficking.**