
STATUTORY INSTRUMENTS

1994 No. 2795

The Criminal Justice (Northern Ireland) Order 1994

PART II

FINES AND PENALTIES

Forfeiture

Power to deprive offenders of property used, or intended for use, for purposes of crime

11.—(1) Subject to the following provisions of this Article, where a person is convicted of an offence and—

- (a) the court by or before which he is convicted is satisfied that any property which has been lawfully seized from him or which was in his possession or under his control at the time when he was apprehended for the offence or when a summons in respect of it was issued—
 - (i) has been used for the purpose of committing, or facilitating the commission of, any offence; or
 - (ii) was intended by him to be used for that purpose; or
- (b) the offence, or an offence which the court has taken into consideration in determining his sentence, consists of unlawful possession of property which—
 - (i) has been lawfully seized from him; or
 - (ii) was in his possession or under his control at the time when he was apprehended for the offence of which he has been convicted or when a summons in respect of that offence was issued,

the court may make an order under this Article in respect of that property, and may do so whether or not it also deals with the offender in respect of the offence in any other way and without regard to any restrictions on forfeiture in a relevant provision.

(2) In considering whether to make such an order in respect of any property a court shall have regard—

- (a) to the value of the property; and
 - (b) to the likely financial and other effects on the offender of the making of the order (taken together with any other order that the court contemplates making).
- (3) Where a person commits an offence to which this paragraph applies by—
- (a) driving, attempting to drive or being in charge of a vehicle, or
 - (b) failing to comply with a requirement made under Article 146 of the Road Traffic (Northern Ireland) Order 1981(1) (failure to provide specimen for analysis or laboratory test) in the course of an investigation into whether the offender had committed an offence while driving, attempting to drive or being in charge of a vehicle, or

- (c) failing, as the driver of a vehicle, to comply with Article 175(1) of that Order (duty to stop and give information or report accident),

the vehicle shall be regarded for the purposes of paragraph (1)(a) (and paragraph (7)(b)) as used for the purpose of committing the offence (and for the purpose of committing any offence of aiding, abetting, counselling or procuring the commission of the offence).

(4) Paragraph (3) applies to—

- (a) an offence under the Road Traffic (Northern Ireland) Order 1981 which is punishable with imprisonment,
- (b) an offence of manslaughter, and
- (c) an offence under section 35 of the Offences against the Person Act 1861⁽²⁾ (wanton and furious driving).

(5) Facilitating the commission of an offence shall be taken for the purposes of this Article to include the taking of any steps after it has been committed for the purpose of disposing of any property to which it relates or of avoiding apprehension or detection, and references in this Article to an offence punishable with imprisonment shall be construed without regard to any prohibition or restriction imposed by or under any statutory provision on the imprisonment of young offenders.

(6) An order under this Article shall operate to deprive the offender of his rights, if any, in the property to which it relates, and the property shall (if not already in their possession) be taken into the possession of the police.

(7) The Police (Property) Act 1897⁽³⁾ shall apply, with the following modifications, to property which is in the possession of the police by virtue of this Article—

- (a) no application shall be made under section 1(1) of that Act by any claimant of the property after the expiration of 6 months from the date on which the order in respect of the property was made under this Article; and
- (b) no such application shall succeed unless the claimant satisfies the court either that he had not consented to the offender having possession of the property or, where an order is made under paragraph (1)(a), that he did not know, and had no reason to suspect, that the property was likely to be used for the purpose mentioned in that sub-paragraph.

(8) In relation to property which is in the possession of the police by virtue of this Article, regulations under section 2(1) of the Police (Property) Act 1897 (disposal of property in cases where the owner of the property has not been ascertained and no order of a competent court has been made with respect thereto) may make provision for disposal in cases where no application by a claimant of the property has been made within the period specified in paragraph (7)(a) or no such application has succeeded.

(9) In this Article “relevant provision” means a provision contained in an Act or Order mentioned in the definition of “relevant provision” in Article 2(2) being such an Act or Order passed or made before this Order is made.

Application of proceeds of forfeited property

12.—(1) Where a court makes an order under Article 11 in a case where—

- (a) the offender has been convicted of an offence which has resulted in a person suffering personal injury, loss or damage; or
- (b) any such offence is taken into consideration by the court in determining sentence,

⁽²⁾ 1861 c. 100

⁽³⁾ 1897 c. 30

the court may also make an order that any proceeds which arise from the disposal of the property and which do not exceed a sum specified by the court shall be paid to that person.

(2) The court may only make an order under this Article if it is satisfied that but for the inadequacy of the means of the offender it would have made a compensation order under which the offender would have been required to pay compensation of an amount not less than the specified amount.

(3) An order under this Article has no effect—

- (a) before the end of the period specified in Article 11(7)(a); or
- (b) if a successful application under section 1(1) of the Police (Property) Act 1897⁽⁴⁾ has been made.

Forfeiture for drug offences

13. In section 27(1) of the Misuse of Drugs Act 1971⁽⁵⁾ (forfeiture on conviction of an offence under that Act) after the words “1987 relates” there shall be inserted the words “or a drug trafficking offence, as defined in Article 2(2) of the Criminal Justice (Confiscation) (Northern Ireland) Order 1990”.

(4) 1897 c. 30

(5) 1971 c. 38