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STATUTORY INSTRUMENTS

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**1996 No. 1299**

**The Proceeds of Crime (Northern Ireland) Order 1996**

**PART II**

**CONFISCATION ORDERS**

*Confiscation orders*

**Confiscation orders: supplementary provisions**

**12.**—(1) Subject to Article 11(7), a confiscation order shall be made by the court before sentencing or otherwise dealing with the defendant in respect of—

- (a) in the case of an offence of a relevant description, the offence or any other criminal conduct; or
- (b) in the case of a drug trafficking offence, the offence in respect of which the defendant is convicted or any such offences.

(2) In sentencing, or otherwise dealing with, the defendant in respect of any offences, at any time during a period specified under Article 11(1) or (4), the court shall not—

- (a) impose any fine on him; or
- (b) make an order such as is mentioned in paragraph (3)(b) or (c).

(3) 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 14 of the Criminal Justice (Northern Ireland) Order 1994 (compensation orders); or
- (c) making any order under—
  - (i) section 27 of the Misuse of Drugs Act 1971 (forfeiture orders); or
  - (ii) Article 11 of the Criminal Justice (Northern Ireland) Order 1994 (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.

(4) Where a court has proceeded under Article 8 by virtue of Article 11(7), paragraph (3) shall have effect as if after “determining” there were inserted “in relation to any offence in respect of which he has not been sentenced or otherwise dealt with”.

(5) Where the court has sentenced the defendant under Article 11(7) during a period specified under Article 11(1) or (4) it may, after the end of that period, vary the sentence by imposing a fine or making any order such as is mentioned in paragraph (3)(b) or (c), so long as it does so within a

period corresponding to that allowed by section 49(2) or (3) of the Judicature (Northern Ireland) Act 1978 (time allowed for varying a sentence) but beginning with the end of the specified period.

- (6) The standard of proof required to determine any question arising under this Order as to—
- (a) whether a person has benefited from any relevant criminal conduct or, as the case may be, from drug trafficking, or
  - (b) the amount to be recovered in his case,

shall be that applicable in civil proceedings.

(7) 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.

(8) Where—

- (a) a court makes both a confiscation order and an order for the payment of compensation under Article 14 of the Criminal Justice (Northern Ireland) Order 1994 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.