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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**

*Further proceedings in connection with confiscation orders*

**Revised assessment of amount to be recovered**

**19.**—(1) Where the Crown Court or a court of summary jurisdiction has made an assessment of the amount to be recovered under any confiscation order (“the current assessment”) and the prosecution is of the opinion that the value of—

- (a) any benefit to the defendant from any relevant criminal conduct, or
- (b) the defendant’s proceeds of drug trafficking (including drug trafficking which took place before the period by reference to which the current assessment was made),

was greater than the value at which that benefit or, as the case may be, those proceeds of drug trafficking was assessed by the court on the current assessment, the prosecution may apply to the relevant court for the evidence on which the prosecution has formed that opinion to be considered by the court.

(2) If, having considered the evidence, the relevant court is satisfied that the value of the benefit from any relevant criminal conduct or, as the case may be, the value of the defendant’s proceeds from drug trafficking is greater than the value assessed on the current assessment (whether because its real value was higher at the time of the current assessment than was thought or because the value of the benefit or proceeds in question has subsequently increased), the relevant court shall, as if it were proceeding under Article 8, make a fresh assessment under that Article of—

- (a) in the case of an offence of a relevant description,—
  - (i) the amount by which the defendant has benefited from such conduct; and
  - (ii) the amount appearing to be the amount that might be realised at the time of the fresh assessment;
- (b) in the case of a drug trafficking offence, the amount to be recovered under that Article, being the amount that might be realised at the time of the fresh assessment; and

may increase, subject to paragraph (3), to such extent as it thinks just in all the circumstances of the case, the amount to be recovered under that Article and vary accordingly the confiscation order made by reference to the current assessment.

(3) In the case of an offence of a relevant description, the court shall not, under paragraph (2), vary any order so as to make it an order requiring the payment of any amount which is more than the lesser of the 2 amounts determined under paragraph (2)(a).

(4) In the case of any application of Article 8(3) under this Article—

- (a) Article 8(3)(b) shall have effect as if for “confiscation order is made” there were substituted “assessment is made”;
  - (b) Article 5 shall have effect as if—
    - (i) in paragraph (1) for “a confiscation order is made against the defendant” there were substituted “of the assessment”;
    - (ii) in paragraph (4) for “confiscation order” there were substituted “assessment”; and
  - (c) Article 10(5) shall not apply in relation to any of the defendant’s proceeds of drug trafficking taken into account in respect of the current assessment.
- (5) Where the Crown Court varies a confiscation order under paragraph (2), it shall substitute for the term of imprisonment or detention fixed under section 35(1)(c) of the Criminal Justice Act (Northern Ireland) 1945 in respect of the amount to be recovered under the order a longer term determined in accordance with that section (as it has effect by virtue of Article 13) in respect of any greater amount substituted under paragraph (2).
- (6) Paragraph (5) shall apply only if the effect of the substitution is to increase the maximum period applicable in relation to the order under section 35 of that Act of 1945.