
STATUTORY INSTRUMENTS

1996 No. 1299

The Proceeds of Crime (Northern Ireland) Order 1996

PART II

CONFISCATION ORDERS

Restraint orders and charging orders

Cases in which restraint orders and charging orders may be made

30.—(1) The powers conferred on the High Court by Articles 31(1) and 32(1) are exercisable where—

- (a) proceedings have been instituted in Northern Ireland against the defendant for an offence to which this Order applies or an application has been made by the prosecution in respect of the defendant under Article 17, 18, 19, 21 or 24;
 - (b) the proceedings have not, or the application has not, been concluded; and
 - (c) the court is satisfied that there is reasonable cause to believe—
 - (i) in the case of an application under Article 19 or 21, that the court will be satisfied as mentioned in Article 19(2) or, as the case may be, Article 21(2); or
 - (ii) in any other case,
 - (aa) in proceedings for an offence of a relevant description, that the proceedings may result or have resulted in, or that the application is made by reference to, a conviction of the defendant for an offence of a relevant description from which he may be, or has been, shown to have benefited;
 - (ab) in proceedings for a drug trafficking offence, that the defendant has benefited from drug trafficking.
- (2) The Court shall not exercise those powers under paragraph (1) if it is satisfied.
- (a) that there has been undue delay in continuing the proceedings or application in question; or
 - (b) that the prosecution does not intend to proceed.
- (3) The powers mentioned in paragraph (1) are also exercisable where—
- (a) the 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 or that an application of a kind mentioned in paragraph (1)(a) is to be made; and
 - (b) the Court is also satisfied—
 - (i) in the case of proceedings for an offence of a relevant description, that the making or variation of a confiscation order may result from proceedings for that offence or, as the case may be, from the application;
 - (ii) in the case of proceedings for a drug trafficking offence, as mentioned in paragraph (1)(c)(i) and (ii)(ab).

(4) For the purposes of Articles 31 and 32 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 (3)(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 references to realisable property shall be construed as if, immediately before that time, proceedings had been instituted against the person referred to in paragraph (3)(a) for an offence to which this Order applies.

(5) Where the High Court has made an order under Article 31(1) or 32(1) by virtue of paragraph (3), the Court shall discharge the order if—

- (a) proceedings in respect of the offence are not instituted, whether by the making of a complaint or otherwise, or (as the case may be) if the application is not made, within such time as the Court considers reasonable; or
- (b) the Court is satisfied that the case has become a case in which, in pursuance of paragraph (2), it would be unable to exercise the powers conferred under paragraph (1).