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STATUTORY INSTRUMENTS

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**1996 No. 1299**

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

**PART I**

**INTRODUCTORY**

**Title and commencement**

- 1.—(1) This Order may be cited as the Proceeds of Crime (Northern Ireland) Order 1996.  
(2) This Order shall come into operation on 25th August 1996.

**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.

(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;

“charging order” means an order made under Article 32 imposing on 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 under section 6(3) of the Customs and Excise Management Act 1979;

“confiscation order” means an order made by a court under Article 8 and includes, in particular, such an order made under Article 17, 18 or 24;

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

“criminal conduct” means conduct which constitutes an offence to which this Order applies or would constitute such an offence if it had occurred in Northern Ireland;

“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;
- (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 or would be such an offence if it took place in Northern Ireland;

- (e) in connection with proceeds of drug trafficking, acquiring, having possession of or using property in circumstances which amount to the commission of an offence under Article 45 or which would be such an offence if it took place in Northern Ireland;
- (f) in connection with proceeds of drug trafficking, conduct which is an offence under Article 47 or which would be such an offence if it took place in Northern Ireland;
- (g) using any ship for illicit traffic in controlled drugs in circumstances which amount to the commission of an offence under section 19 of the Criminal Justice (International Co-operation) Act 1990;

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),
 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 45, 46 or 47 in connection with proceeds of drug trafficking;
- (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 sub-paragraphs (a) to (e);
- (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
- (i) aiding, abetting, counselling or procuring the commission of any of those offences;

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

- (a) of recovering, or recovering the value of, property obtained, or payments or other rewards received, as a result of or in connection with conduct corresponding to an offence to which this Order applies; or
- (b) of depriving a person of a pecuniary advantage obtained as mentioned in sub-paragraph (a);

“financial investigator” means a person authorised under Article 49 to exercise the powers conferred by Schedule 2;

“modifications” includes additions, alterations and omissions;

“proceeds of criminal conduct”, in relation to any person who has benefited from criminal conduct, means that benefit;

“relevant criminal conduct”, in relation to a person convicted of an offence in any proceedings before a court, means (subject to Article 9(4)) that offence taken together with any other offences of a relevant description which are either—

- (a) offences of which he is convicted in the same proceedings, or
- (b) offences which the court will be taking into consideration in determining his sentence for the offence in question;

“restraint order” means an order made by the High Court under Article 31;

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

(3) The expressions listed in the left hand column below are defined by, or otherwise fall to be construed in accordance with, the provisions of this Order listed in the right hand column in relation to those expressions—

acting as an insolvency practitioner	Article 2(12)
amount that might be realised	Article 5(1)
benefited from drug trafficking	Article 2(8)
benefit from the offence	Article 2(7)(a) and (b)
benefited from an offence	Article 2(6)
charging order	Article 2(2)
conclusion of an application	
– under Article 17, 18 or 24	Article 4(4)
– under Article 19 or 21	Article 4(5)
conclusion of proceedings for an offence	Article 4(3)
confiscation order	Article 2(2)
constable	Article 2(2)
criminal conduct	Article 2(2)
dealing with property	Article 31(9)
defendant	Article 2(2)
drug trafficking	Article 2(2)
drug trafficking offence	Article 2(2)
gift caught by this Order	Article 7(1)
“held”, in relation to property	Article 3(5)
institution of proceedings for an offence	Article 4(2)
“interest”, in relation to property	Article 3(2)

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making a gift	Article 7(3)
modifications	Article 2(2)
offence of a relevant description	Article 2(5)
offence to which this Order applies	Article 2(4)
proceeds of criminal conduct	Article 2(2)
proceeds of drug trafficking	Article 2(9)(a)
property	Article 3(1)
realisable property	Article 5(2)
relevant criminal conduct	Article 2(2)
restraint order	Article 2(2)
“satisfied”, in relation to a confiscation order	Article 4(6) and (7)
“subject to appeal”, in relation to an order	Article 4(8)
“transferred” in relation to property	Article 3(8)
value of gift, payment or reward	Article 6(2)
value of proceeds of drug trafficking	Article 2(9)(b)
value of the benefit from the offence	Article 2(7)(c)
value of property	Article 6(1)

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- (4) References to an offence to which this Order applies are references to an offence which—
- (a) is listed in Schedule 1; or
  - (b) if not so listed, is an offence punishable on conviction on indictment (whether punishable only on conviction on indictment or either on conviction on indictment or on summary conviction) other than an offence under Part III of the Prevention of Terrorism (Temporary Provisions) Act 1989.
- (5) For the purposes of this Order an offence is an offence of a relevant description—
- (a) in the case of an offence of which a person is convicted in any proceedings before the Crown Court or which is or will be taken into consideration by the Crown Court in determining any sentence, if it is an offence to which this Order applies other than a drug trafficking offence; and
  - (b) in the case of an offence of which a person is convicted in any proceedings before a court of summary jurisdiction or which is or will be taken into consideration by a court of summary jurisdiction in determining any sentence, if it is an offence listed in Schedule 1.
- (6) For the purposes of this Order, a person who obtains property, or derives a pecuniary advantage, as a result of or in connection with the commission of an offence has benefited from the offence.
- (7) For the purposes of this Order—
- (a) any property obtained by a person as a result of or in connection with the commission of an offence is his benefit from the offence;
  - (b) any pecuniary advantage derived by a person as a result of or in connection with the commission of an offence is his benefit from the offence;

(c) the value of his benefit from the offence is the value of the property or a sum of money equal to the value of the pecuniary advantage or the aggregate of the values of the property and money.

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

(9) 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 this Order) 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.

(10) Subject to paragraph 1(1) and (5) of Schedule 4, references in this Order to offences include a reference to offences committed before the coming into operation of this Order.

(11) Subject to paragraph 1(1) and (5) of Schedule 4, references in this Order to drug trafficking include references to any trafficking carried out before the coming into operation of this Order.

(12) 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.

### **Meaning of “property” and related expressions**

**3.—**(1) In this Order “property” includes money and all other property, real or personal, heritable or movable, and including things in action and other intangible or incorporeal property.

(2) In this Order “interest” in relation to property, includes right.

(3) This Order applies to property wherever situated.

(4) 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.

(5) In this Order—

(a) references to property held by a person include a reference to property vested in his trustee in bankruptcy or liquidator;

(b) 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.

(6) For the purposes of this Order—

(a) property is held by any person if he holds any interest in it;

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