
STATUTORY INSTRUMENTS

1996 No. 1299

The Proceeds of Crime (Northern Ireland) Order 1996

PART II

CONFISCATION ORDERS

Confiscation orders

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8.—(1) Where a defendant is convicted, in any proceedings before the Crown Court or a court of summary jurisdiction, of an offence to which this Order applies the court shall—

- (a) if the prosecution asks it to proceed under this Article, or
- (b) if the court considers that, even though it has not been asked to do so, it is appropriate for it so to proceed,

determine whether the defendant has benefited from any relevant criminal conduct, or as the case may be, from drug trafficking.

(2) Subject to paragraph (4) if, in the case of an offence of a relevant description, the court determines that the defendant has benefited from any relevant criminal conduct, the court shall make an order (a confiscation order) ordering the defendant to pay—

- (a) the amount equal to the value of the defendant's benefit from the relevant criminal conduct; or
- (b) the amount appearing to the court to be the amount that might be realised at the time the order is made,

whichever is the less.

(3) If, in the case of a drug trafficking offence, the Crown Court determines that the defendant has benefited from drug trafficking, the Court shall make an order (a confiscation order) ordering the defendant to pay—

- (a) subject to sub-paragraph (b), the amount the Court assesses to be the value of the defendant's proceeds of drug trafficking; or
- (b) if the Court is satisfied that the amount that might be realised at the time the confiscation order is made is less than the amount the Court assesses to be the value of the defendant's proceeds of drug trafficking,—
 - (i) the amount appearing to the Court to be the amount that might be so realised, or
 - (ii) a nominal amount, where it appears to the Court (on the information available to it at the time) that the amount that might be so realised is nil.

(4) If, in a case where the court determines that a defendant has benefited from any relevant criminal conduct, the court is satisfied that a victim of that conduct has instituted, or intends to institute, civil proceedings against the defendant in respect of loss, injury or damage sustained in connection with that conduct paragraph (2) shall not apply but the court may make an order (a

confiscation order) ordering the defendant to pay such amount as the court thinks fit, being an amount which shall not exceed the amount which the court would have ordered him to pay under paragraph (2) if that paragraph had applied.

Confiscation relating to a course of criminal conduct

9.—(1) Where, on the conviction of a defendant of an offence of a relevant description, the prosecution asks the court to proceed under Article 8 and the defendant—

- (a) is convicted in the same proceedings of at least one other offence to which this Order applies, or
- (b) has been convicted of at least one other such offence during the period of 6 years ending when the proceedings were instituted against him,

if the prosecution also asks the court to apply the provisions of this Article, the Crown Court or a court of summary jurisdiction may, for the purpose—

- (i) of determining whether the defendant has benefited from relevant criminal conduct; and
- (ii) if he has, of assessing the value of the defendant's benefit from such conduct,

subject to paragraph (3), make the assumptions set out in paragraph (2).

(2) Those assumptions are—

- (a) that any property appearing to the court—
 - (i) to be held by the defendant at the date of conviction or at any time since that date, or
 - (ii) to have been transferred to him at any time since the beginning of the period of 6 years ending when the proceedings were instituted against him,
 was received by him, at the earliest time when he appears to the court to have held it, as a result of or in connection with the commission of offences to which this Order applies;
- (b) that any expenditure of his since the beginning of that period was met out of payments received by him as a result of or in connection with the commission of offences to which this Order applies; and
- (c) that, for the purposes of valuing any benefit which he had or which he is assumed to have had at any time, he received the benefit free of any other interests in it.

(3) The court shall not make any of the assumptions set out in paragraph (2) in relation to any particular property or expenditure if —

- (a) that assumption is shown to be incorrect in the defendant's case;
- (b) that assumption is shown to be correct in relation to an offence the defendant's benefit from which has been the subject of a previous confiscation order; or
- (c) the court is satisfied that there would (for any other reason) be a serious risk of injustice in the defendant's case if the assumption were to be made.

(4) Where the assumptions set out in paragraph (2) are made, the offences from which, in accordance with those assumptions, the defendant is assumed to have benefited shall be treated as if they were comprised, for the purposes of this Order, in the conduct which is to be treated, in that case, as relevant criminal conduct in relation to the defendant.

(5) In paragraph (3)(b) the reference to a previous confiscation order includes a confiscation order within the meaning of—

- (a) the Criminal Justice (Confiscation) (Northern Ireland) Order 1990;
- (b) Part VI of the Criminal Justice Act 1988;
- (c) the Drug Trafficking Act 1994; or

- (d) the Proceeds of Crime (Scotland) Act 1995.
- (6) In this Article “the date of conviction” means—
 - (a) in a case not falling within sub-paragraph (b), the date on which the defendant is convicted of the offence in question, or
 - (b) where he is convicted of that offence and one or more other offences in the proceedings in question and those convictions are not all on the same date, the date of the latest of those convictions.

Assessing the proceeds of drug trafficking

- 10.**—(1) Subject to paragraphs (3) and (4), the Crown Court shall, for the purpose—
- (a) of determining whether the defendant has benefited from drug trafficking, and
 - (b) if he has, of assessing the value of his proceeds of drug trafficking,
- make the assumptions set out in paragraph (2).
- (2) The assumptions are—
- (a) that any property appearing to the Court—
 - (i) to have been held by the defendant at any time since his conviction; or
 - (ii) to have been transferred to him at any time since the beginning of the period of 6 years ending when the proceedings were instituted against him,was received by him, at the earliest time when he appears to the Court to have held it, as a payment or reward in connection with drug trafficking carried on by him,
 - (b) that any expenditure of his since the beginning of that period was met out of payments received by him in connection with drug trafficking carried on by him; and
 - (c) that, for the purpose of valuing any property received or assumed to have been received by him at any time as such a reward, he received the property free of any other interests in it.
- (3) The Court shall not make any of the assumptions set out in paragraph (2) in relation to any particular property or expenditure if—
- (a) that assumption is shown to be incorrect in the defendant’s case; or
 - (b) the Court is satisfied that there would be a serious risk of injustice in the defendant’s case if the assumption were to be made;
- and where, by virtue of this paragraph, the Court does not make one or more of the required assumptions, it shall state its reasons.
- (4) Paragraph (1) does not apply if the only drug trafficking offence in respect of which the defendant is convicted is an offence under Article 4546 or 47.
- (5) For the purpose of assessing the value of the defendant’s proceeds of drug trafficking in a case where a confiscation order has previously been made against him, the Court shall leave out of account any of his proceeds of drug trafficking that are shown to the Court to have been taken into account in determining the amount to be recovered under that order.
- (6) References in paragraph (5) to a confiscation order include a confiscation order within the meaning of—
- (a) the Criminal Justice (Confiscation) (Northern Ireland) Order 1990;
 - (b) the Drug Trafficking Act 1994; or
 - (c) the Proceeds of Crime (Scotland) Act 1995.

Postponed confiscation orders

11.—(1) Where a court is acting under Article 8 but considers that it requires further information before—

- (a) determining whether the defendant has benefited from any relevant criminal conduct or, as the case may be, from drug trafficking, or
- (b) assessing the amount to be recovered in his case,

it may, for the purpose of enabling that information to be obtained, postpone making the determination or assessment for such period as it may specify.

(2) More than one postponement may be made under paragraph (1) in relation to the same case.

(3) Unless it is satisfied that there are exceptional circumstances, the court shall not specify a period under paragraph (1) which—

- (a) by itself; or
- (b) where there have been one or more previous postponements under paragraph (1) or (4), when taken together with the earlier specified period or periods,

exceeds 6 months from the date of the conviction.

(4) Where the defendant appeals against his conviction, the court may, on that account—

- (a) postpone making the determination or the assessment or both mentioned in paragraph (1) for such period as it may specify; or
- (b) where it has already exercised its powers under this Article to postpone, extend the specified period.

(5) A postponement or extension under paragraph (1) or (4) may be made—

- (a) on application by the defendant or the prosecution; or
- (b) by the court of its own motion.

(6) Unless the court is satisfied that there are exceptional circumstances, any postponement or extension under paragraph (4) shall not exceed the period ending 3 months after the date on which the appeal is determined or otherwise disposed of.

(7) Where the court exercises its power under paragraph (1) or (4), subject to Article 12(2), it may nevertheless proceed to sentence or to otherwise deal with the defendant in respect of—

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

and where a court has so proceeded, in a case of an offence of a relevant description, Article 8 shall have effect as if an offence that will be taken into consideration in determining any sentence included an offence that has been so taken into account.

(8) In this Article “the date of conviction” means—

- (a) the date on which the defendant was convicted; or
- (b) where he was convicted in the same proceedings, but on different dates, of 2 or more offences which are comprised in relevant criminal conduct or, as the case may be, 2 or more drug trafficking offences, the date of the latest of those convictions;

and references to an appeal include references to an application under Article 146 of the Magistrates' Courts (Northern Ireland) Order 1981 (statement of case by magistrates' court).

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.

Application of procedure for enforcing fines

13.—(1) Where the Crown Court orders the defendant to pay any amount under this Order, section 35(1), (2) and (4) of the Criminal Justice Act (Northern Ireland) 1945 (powers of Crown Court in relation to fines) shall have effect as if the amount were a fine imposed on him by the Crown Court.

(2) Where—

- (a) a warrant of commitment is issued for a default in payment of an amount ordered to be paid under this Order in respect of an offence; and
- (b) at the time the warrant is issued, the defendant is liable to serve a term of custody in respect of the offence;

the term of imprisonment or of detention under section 5 of the Treatment of Offenders Act (Northern Ireland) 1968 (detention of persons aged 16 to 21 for default) to be served in default of payment of the amount shall not begin to run until after the term mentioned in sub-paragraph (b).

(3) The reference in paragraph (2) to the term of custody which the defendant is liable to serve in respect of the offence is a reference to the term of imprisonment or of detention under section 5 of the Treatment of Offenders Act (Northern Ireland) 1968 which he is liable to serve in respect of the offence; and for the purposes of this paragraph—

- (a) consecutive terms and terms which are wholly or partly concurrent shall be treated as a single term; and
- (b) there shall be disregarded—
 - (i) any sentence of imprisonment or order for detention suspended under section 18 of the Treatment of Offenders Act (Northern Ireland) 1968 (suspended sentences or orders for detention) which has not taken effect at the time the warrant is issued; and
 - (ii) any term of imprisonment or detention fixed under section 35(1)(c) of the Criminal Justice Act (Northern Ireland) 1945 for which a warrant of commitment has not been issued at that time.

(4) An amount payable under a confiscation order is not a fine, costs, damages or compensation for the purposes of section 76 of the Children and Young Persons Act (Northern Ireland) 1968 (N.I.) (enforcement of fines imposed on young offenders) or a sum adjudged to be paid by a conviction for the purposes of Article 91(5) of the Magistrates' Courts (Northern Ireland) Order 1981 (remission of sum).

(5) Where the defendant serves a term of imprisonment or detention in default of paying any amount due under a confiscation order, his serving that term does not prevent the confiscation order from continuing to have effect, so far as any other method of enforcement is concerned.

(6) This Article applies in relation to confiscation orders made by —

- (a) the Court of Appeal, or
- (b) the House of Lords on appeal from the Court of Appeal,

as it applies in relation to confiscation orders made by the Crown Court, and the reference in paragraph (1) to the Crown Court shall be construed accordingly.

Interest on sums unpaid under confiscation orders

14.—(1) If any sum required to be paid by a person under a confiscation order is not paid when it is required to be paid (whether forthwith on the making of the order or at a time specified under

section 35(1)(a) of the Criminal Justice Act (Northern Ireland) 1945 or, as the case may be, Article 91(1) of the Magistrates' Courts (Northern Ireland) Order 1981—

- (a) that person shall be liable to pay interest on that sum for the period for which it remains unpaid, and
- (b) the amount of the interest shall for the purposes of enforcement be treated as part of the amount to be recovered from him under the confiscation order.

(2) The Crown Court may, on the application of the prosecution, increase the term of imprisonment or detention fixed in respect of the confiscation order under section 35(1)(c) of that Act of 1945 (as it has effect by virtue of Article 13) if the effect of paragraph (1) is to increase the maximum period applicable in relation to the order under subsection (2) of that section.

(3) The rate of interest under paragraph (1) shall be that for the time being applying to a money judgment of the High Court.