
STATUTORY INSTRUMENTS

1996 No. 1299

The Proceeds of Crime (Northern Ireland) Order 1996

PART II

CONFISCATION ORDERS

Further proceedings in connection with confiscation orders

Reconsideration of cases where proceeds of crime not assessed

17.—(1) If, in any case where a person has been convicted of an offence to which this Order applies but the Crown Court or, as the case may be, the court of summary jurisdiction has not proceeded under Article 8, the prosecution has evidence—

- (a) which, at the date of conviction or, if later, when any determination not to proceed under Article 8 was made, was not available to the prosecution (and, accordingly, was not considered by the court);
- (b) but which the prosecution believes would have led the court to determine that the defendant had benefited from relevant criminal conduct or, as the case may be, drug trafficking, if—
 - (i) the prosecution had asked the court to proceed under Article 8(1)(a), and
 - (ii) the evidence had been considered by the court,

the prosecution may apply to the relevant court for it to consider the evidence.

(2) If, having considered the evidence, the relevant court is satisfied, having regard to all the circumstances of the case, that it is appropriate to do so, it shall proceed under Article 8 and Article 11 shall apply accordingly.

(3) Where, having decided to proceed under Article 8, the relevant court—

- (a) in a case of an offence of a relevant description, determines that the defendant did benefit from relevant criminal conduct—
 - (i) Article 8(2) shall not apply with respect to the amount to be recovered in that case; but
 - (ii) that court may make 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 under Article 8(2) if that paragraph had applied;
- (b) in the case of a drug trafficking offence, proposes to make a confiscation order against the defendant, it shall order the payment of such amount as it thinks just in all the circumstances of the case.

(4) In considering the circumstances of any case the relevant court shall have regard, in particular, to—

- (a) any fine imposed on the defendant in respect of any relevant criminal conduct or, as the case may be, the offence or offences in question; and

- (b) any order made in connection with the offence or offences under Article 14 of the Criminal Justice (Northern Ireland) Order 1994 (compensation orders).

Re-assessment of proceeds of crime

18.—(1) If, in any case where the Crown Court or a court of summary jurisdiction has made a determination under Article 8(1) (“the original determination”) that the defendant has not benefited from any relevant criminal conduct or, as the case may be, drug trafficking, the prosecution has evidence—

- (a) which was not considered by the court making the original determination, but
- (b) which the prosecution believes would have led the court to determine that the defendant had benefited from relevant criminal conduct or, as the case may be, from drug trafficking, if it had been considered by the court,

the prosecution may apply to the relevant court for it to consider that evidence.

(2) If, having considered the evidence, the relevant court is satisfied that it would have determined that the defendant had benefited from relevant criminal conduct or, as the case may be, from drug trafficking if that evidence had been available to it, the court shall, as if it were proceeding under Article 8,—

- (a) make a fresh determination under Article 8(1); and
- (b) apply Article 8(2) or, as the case may be, (3) with respect to the amount to be recovered under that Article;

and may, subject to paragraph (3), make an order under that Article.

(3) In a case of an offence of a relevant description, the court shall not, under paragraph (2), make any order for the payment of an amount which exceeds the amount which the court would have ordered under Article 8(2).

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”;

(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.

Provisions supplementary to Articles 17,18 and 19

20.—(1) In this Article “application” means an application under Article 17, 18 or 19.

(2) Where, on an application under Article 17 or 18, the prosecution asks the court to apply the provisions of Article 9, that Article shall apply (subject to paragraph (3)) to any determination on the application as if it were a determination in proceedings to which Article 9(1) applies.

(3) For the purposes of any determination to which Article 9 applies by virtue of paragraph (2), or for the purposes of any assessment on an application under Article 19 in any case to which Article 9 applies, none of the assumptions specified in Article 9(2) shall be made in relation to any property unless it is property held by or transferred to the defendant on or after the date of conviction.

(4) On an application the relevant court may take into account any payment or other reward received by the defendant on or after the date of conviction, the original determination or the current assessment, as the case may require, but only-

(a) in a case of an offence of a relevant description, to the extent that they represent respects in which the defendant has benefited from any relevant criminal conduct; and

(b) in a case of a drug trafficking offence, if the prosecution shows that it was received by the defendant in connection with drug trafficking carried on by the defendant or another person on or before that date.

(5) In considering under this Article in a case of a drug trafficking offence, any evidence which relates to any payment or reward to which paragraph (4) applies, the court shall not make the assumptions which would otherwise be required by Article 10.

(6) No application shall be entertained by a court if it is made after the end of the period of 6 years from the date of conviction.

(7) Article 11 shall apply where the court is acting on an application as it applies where the court is acting under Article 8.

(8) Articles 15 and 16 shall apply where the prosecution makes an application as they apply where the prosecution asks the court to proceed under Article 8(1), but—

- (a) as if any reference in Article 15(1) to Article 9 were a reference to paragraph (2); and
- (b) as if any reference in Article 15(10) to the time the confiscation order is made were a reference to the time the order or, as the case may be, the assessment is made on that application.

(9) In Article 17 and this Article “the date of conviction” means—

- (a) in a case not falling within sub-paragraph (b), the date on which the defendant was convicted of the offence in question, or
- (b) where he was convicted of that offence and one or more other offences in the same proceedings and those convictions were not all on the same date, the date of the latest of those convictions.

(10) In Articles 17 to 19 and this Article “the relevant court” means—

- (a) where the application is in respect of a conviction, determination or assessment in proceedings before the Crown Court, that Court; and
- (b) where that conviction, determination or assessment was in proceedings before a court of summary jurisdiction, a court of summary jurisdiction for the same county court division.

Increase in realisable property

21.—(1) This Article applies where by virtue of Article 8(2) or (3) the amount which a person is ordered to pay by a confiscation order is less than the benefit in respect of which it is made or, as the case may be, the amount assessed to be the value of his proceeds of drug trafficking.

(2) If, on an application made in accordance with paragraph (3), the High Court is satisfied that the amount that might be realised in the case of the person in question is greater than the amount taken into account in making the confiscation order (whether it was greater than was thought when the order was made or has subsequently increased), the Court shall issue a certificate to that effect, giving the Court’s reasons.

(3) An application under paragraph (2) may be made either by the prosecution or by a receiver appointed under this Order in relation to the realisable property of the person in question under Article 31 or 34 or in pursuance of a charging order.

(4) Where a certificate has been issued under paragraph (2) the prosecution may apply—

- (a) where the confiscation order was made by the Crown Court, to that Court; and
- (b) where the confiscation order was made by a court of summary jurisdiction, to a court of summary jurisdiction for the same county court division,

for an increase in the amount to be recovered under the confiscation order.

(5) The Crown Court may, on an application under paragraph (4)—

- (a) substitute for the amount to be recovered under the confiscation order such amount (not exceeding the amount of the benefit in respect of which it is made or, as the case may be, the amount assessed as the value of the proceeds of drug trafficking) as appears to the Court to be appropriate having regard to the amount now shown to be realisable; and
- (b) increase the term of imprisonment or detention fixed in respect of the confiscation order under section 35(1)(c) of the Criminal Justice Act (Northern Ireland) 1945 (as it has effect

by virtue of Article 13) if the effect of the substitution is to increase the maximum period applicable in relation to the order under subsection (2) of that section.

(6) A court of summary jurisdiction may, on an application under paragraph (4), substitute for the amount to be recovered under the order such amount (not exceeding the amount of the benefit in respect of which it is made) as appears to the court to be appropriate having regard to the amount now shown to be realisable.

Inadequacy of realisable property

22.—(1) If, on an application in respect of a confiscation order by —

- (a) the defendant, or
- (b) a receiver appointed under Article 31 or 34 or in pursuance of a charging order,

the High Court is satisfied that the realisable property is inadequate for the payment of any amount remaining to be recovered under the order, the Court shall issue a certificate to that effect, giving the Court's reasons.

(2) For the purposes of paragraph (1)—

- (a) in the case of realisable property held by a person who has been adjudged bankrupt the Court shall take into account the extent to which any property held by him may be distributed among creditors; and
- (b) the Court may disregard any inadequacy in the realisable property which appears to the Court to be attributable wholly or partly to anything done by the defendant for the purpose of preserving any property held by a person to whom the defendant had directly or indirectly made a gift caught by this Order from any risk of realisation under this Order.

(3) Where a certificate has been issued under paragraph (1), the person who applied for it may apply—

- (a) where the confiscation order was made by the Crown Court, to that Court; and
- (b) where the confiscation order was made by a court of summary jurisdiction, to a court of summary jurisdiction for the same county court division,

for the amount to be recovered under the confiscation order to be reduced.

(4) The Crown Court shall, on an application under paragraph (3)—

- (a) substitute for the amount to be recovered under the confiscation order such lesser amount as the Court thinks just in all the circumstances of the case; and
- (b) 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 confiscation order a shorter term determined in accordance with that section (as it has effect by virtue of Article 13) in respect of the lesser amount.

(5) A court of summary jurisdiction shall, on an application under paragraph (3), substitute for the amount to be recovered under the order such lesser amount as the court thinks just in all the circumstances of the case.

(6) Crown Court rules, magistrates' courts rules and rules of court may make provision—

- (a) for the giving of notice of any application under this Article; and
- (b) for any person appearing to the court to be likely to be affected by any exercise of its powers under this Article to be given an opportunity to make representations to the court.

Compensation

23.—(1) If proceedings are instituted against a person for an offence or offences to which this Order applies and either—

- (a) the proceedings do not result in his conviction for any such offence, or
 - (b) he is convicted of one or more such offences but—
 - (i) the conviction or convictions concerned are quashed, or
 - (ii) he is pardoned by Her Majesty in respect of the conviction or convictions concerned,
- the High Court may, on an application by a person who held property which was realisable property, order compensation to be paid to the applicant if, having regard to all the circumstances, it considers it appropriate to make such an order.

(2) The High Court shall not order compensation to be paid in any case unless the Court is satisfied—

- (a) that there has been some serious default on the part of a person concerned in the investigation or prosecution of the offence concerned, being a person mentioned in paragraph (5); and
- (b) that the applicant has suffered loss in consequence of anything done in relation to the property by or in pursuance of an order of the High Court under Articles 30 to 34.

(3) The High Court shall not order compensation to be paid in any case where it appears to the Court that the proceedings would have been instituted or continued even if the serious default had not occurred.

(4) The amount of compensation to be paid under this Article shall be such as the High Court thinks just in all the circumstances of the case.

(5) Compensation payable under this Article shall be paid—

- (a) where the person in default was or was acting as a member of the Royal Ulster Constabulary, by the Police Authority for Northern Ireland;
- (b) where the person in default was a financial investigator, by the Police Authority for Northern Ireland;
- (c) where the person in default was a member of the Office of the Director of Public Prosecutions for Northern Ireland, by the Director of Public Prosecutions for Northern Ireland;
- (d) where the person in default was a member of the Serious Fraud Office, by the Director of that Office;
- (e) where the person in default was an officer within the meaning of the Customs and Excise Management Act 1979, by the Commissioners of Customs and Excise; and
- (f) where the person in default was an officer of the Commissioners of Inland Revenue, by those Commissioners.