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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**

*Proceedings in connection with confiscation orders where defendant has died or absconded*

**Powers of High Court where defendant has died or absconded**

**24.**—(1) Paragraph (2) applies where a person has been convicted of one or more offences to which this Order applies.

(2) If the prosecution asks it to proceed under this Article, the High Court may exercise the powers of the Crown Court under this Order to make a confiscation order against the defendant if satisfied that the defendant has died or absconded.

(3) Paragraph (4) applies where proceedings for one or more offences to which this Order applies have been instituted against a person but have not been concluded.

(4) If the prosecution asks it to proceed under this Article, the High Court may exercise the powers of the Crown Court under this Order to make a confiscation order against the defendant if satisfied that the defendant has absconded.

(5) The power conferred by paragraph (4) may not be exercised at any time before the end of the period of 2 years from the date which is, in the opinion of the Court, the date on which the defendant absconded.

(6) In any proceedings on an application under this Article—

- (a) Articles 9(1) and 10(1) shall not apply;
- (b) Article 15 shall apply as it applies where the prosecution asks the Court to proceed under Article 8, but with the omission of paragraphs (3), (5) and (6);
- (c) the Court shall not make a confiscation order against a person who has absconded unless it is satisfied that the prosecution has taken reasonable steps to contact him; and
- (d) any person appearing to the Court to be likely to be affected by the making of a confiscation order by the Court may appear before the Court and make representations.

(7) Subject to paragraph (8), Article 13 shall apply in relation to confiscation orders made by the High Court under this Article as it applies in relation to confiscation orders made by the Crown Court, and shall have effect for that purpose as if references to the Crown Court in the provisions of the 1945 Act referred to in Article 13(1) were references to the High Court.

(8) Where the High Court makes a confiscation order under this Article in relation to a defendant who has died, Article 13(1) shall have effect as if referring only to section 35(1) of the 1945 Act.

(9) Where the High Court—

- (a) has been asked to proceed under this Article in relation to an offender who has absconded, but

(b) has decided not to make a confiscation order against him,  
Article 18 shall not apply at any time while he remains an absconder.

(10) Where a confiscation order has been made in relation to any defendant under this Article, Article 19 shall not apply at any time while he is an absconder.

#### **Effect of conviction where High Court has acted under Article 24**

**25.**—(1) Where, in the case of any defendant, the High Court has made a confiscation order under Article 24, the Crown Court shall, in respect of the offence or, as the case may be, any of the offences concerned—

(a) take account of the order before—

- (i) imposing any fine on the defendant;
- (ii) making any order involving any payment by him; or
- (iii) making any order under section 27 of the Misuse of Drugs Act 1971 (forfeiture orders) or Article 11 of the Criminal Justice (Northern Ireland) Order 1994 (deprivation orders); and

(b) subject to sub-paragraph (a), leave the order out of account in determining the appropriate sentence or other manner of dealing with him.

(2) Where the High Court has made a confiscation order under Article 24 and the defendant subsequently appears before the Crown Court in respect of one or more of the offences concerned, Article 8(1) shall not apply so far as his appearance is in respect of that offence or those offences.

#### **Variation of confiscation orders made under Article 24**

**26.**—(1) This Article applies where—

- (a) the High Court has made a confiscation order under Article 24(4), and
- (b) the defendant has ceased to be an absconder.

(2) If the defendant alleges that—

- (a) the value of his benefit from relevant criminal conduct or, as the case may be, proceeds of drug trafficking in the period by reference to which the assessment in question was made (the “original value”), or
- (b) the amount that might have been realised at the time the confiscation order was made,

was less than the amount ordered to be paid under the confiscation order, he may apply to the High Court for it to consider his evidence.

(3) If, having considered that evidence, the Court is satisfied that the defendant’s allegation is correct, it—

(a) shall apply—

- (i) Article 8(2) with respect to the amount of the value of the defendant’s benefit from relevant criminal conduct; or
- (ii) Article 8(3) with respect to the amount the court assesses to be the value of the defendant’s proceeds of drug trafficking; and

(b) may, if it considers it just in all the circumstances, vary the amount to be recovered under the confiscation order.

(4) In the case of any application of Article 8(3) under this Article, Article 10(5) shall not apply in relation to any of the defendant’s proceeds of drug trafficking taken into account in assessing the original value.

- (5) Where the Court varies a confiscation order under this Article—
- (a) 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 shorter term determined in accordance with that section (as it has effect by virtue of Article 13) in respect of the lesser amount; and
  - (b) on the application of a person who held property which was realisable property, it may order compensation to be paid to the applicant in accordance with Article 29 if—
    - (i) it is satisfied that the applicant has suffered loss as a result of the making of the confiscation order; and
    - (ii) having regard to all the circumstances of the case, the Court considers it to be appropriate.
- (6) No application shall be entertained by the Court under this Article if it is made after the end of the period of 6 years from the date on which the confiscation order was made.

#### **Compensation, etc., where absconder is acquitted**

- 27.—(1) This Article applies where—
- (a) the High Court has made a confiscation order under Article 24(4), and
  - (b) the defendant is subsequently tried for the offence or offences concerned and acquitted on all counts.
- (2) The Court by which the defendant is acquitted shall cancel the confiscation order.
- (3) The High Court may, on the application of a person who held property which was realisable property, order compensation to be paid to the applicant in accordance with Article 29 if it is satisfied that the applicant has suffered loss as a result of the making of the confiscation order.

#### **Power to discharge confiscation order and order compensation where absconder returns**

- 28.—(1) This Article applies where—
- (a) the High Court has made a confiscation order under Article 24(4);
  - (b) the defendant has ceased to be an absconder; and
  - (c) Article 27 does not apply.
- (2) The High Court may, on the application of the defendant, cancel the confiscation order if it is satisfied that—
- (a) there has been undue delay in continuing the proceedings in respect of which the power under Article 24(4) was exercised; or
  - (b) the prosecution does not intend to proceed.
- (3) Where the High Court cancels a confiscation order under this Article it may, on the application of the person who held property which was realisable property, order compensation to be paid to the applicant in accordance with Article 29, if it is satisfied that the applicant has suffered loss as a result of the making of the confiscation order.

#### **Provisions supplementary to Articles 26, 27 and 28**

- 29.—(1) Where the High Court orders compensation to be paid under Article 26, 27 or 28, the amount of that compensation shall be such as the Court considers just in all the circumstances of the case.
- (2) Rules of court may make provision—

- (a) for the giving of notice of any application under Article 26, 27 or 28; and
  - (b) for any person appearing to the Court to be likely to be affected by the exercise of its powers under any of those Articles to be given an opportunity to make representations to the Court.
- (3) Where the Court cancels a confiscation order under Article 27 or 28 it may make such consequential or incidental order as it considers appropriate in connection with the cancellation.