

---

STATUTORY INSTRUMENTS

---

**1996 No. 1299**

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

**PART II**

**CONFISCATION ORDERS**

**Interpretation of Part II**

4.—(1) This Article shall have effect for the interpretation of this Part.

(2) Proceedings for an offence are instituted—

- (a) when a summons or warrant is issued under Article 20 of the Magistrates' Courts (Northern Ireland) Order 1981 in respect of that offence;
- (b) when a person is charged with the offence after being taken into custody without a warrant;
- (c) when an indictment is presented under section 2(2)(c), (e) or (f) of the Grand Jury (Abolition) Act (Northern Ireland) 1969;

and where the application of this paragraph would result in there being more than one time for the institution of proceedings, they shall be taken to have been instituted at the earliest of those times.

(3) Proceedings for an offence are concluded—

- (a) when the defendant is acquitted on all counts;
- (b) if he is convicted on one or more counts, but the court decides not to make a confiscation order against him, when it makes that decision; or
- (c) if a confiscation order is made against him in those proceedings when the order is satisfied.

(4) An application under Article 17, 18 or 24 is concluded—

- (a) if the court decides not to make a confiscation order against the defendant, when it makes that decision; or
- (b) if a confiscation order is made against him as a result of that application, when the order is satisfied; or
- (c) if the application is withdrawn, when the prosecution notifies the withdrawal of the application to the court to which it was made.

(5) An application under Article 19 or 21 is concluded—

- (a) if the court decides not to vary the confiscation order in question, when it makes that decision; or
- (b) if the court varies the confiscation order as a result of the application, when the order is satisfied; or
- (c) if the application is withdrawn, when the prosecution notifies the withdrawal of the application to the court to which it was made.

(6) A confiscation order is satisfied when no amount is due under it.

(7) For the purposes of this Article as it applies to Article 37, a confiscation order is also satisfied when the defendant in respect of whom it was made has served a term of imprisonment or detention in default of payment of the amount due under the order.

(8) An order is subject to appeal until (disregarding any power of a court to grant leave to appeal out of time) there is no further possibility of an appeal on which the order could be varied or set aside.

### **Meaning of “amount that might be realised” and “realisable property”**

5.—(1) For the purposes of this Order the amount that might be realised at the time a confiscation order is made against the defendant is—

- (a) the total of the values at that time of all the realisable property held by the defendant, less
- (b) where there are obligations having priority at that time, the total amounts payable in pursuance of such obligations,

together with the total of the values at that time of all gifts caught by this Order.

(2) In this Order “realisable property” means, subject to paragraph (3)—

- (a) any property held by the defendant; and
- (b) any property held by a person to whom the defendant has directly or indirectly made a gift caught by this Order.

(3) Property is not realisable property if there is in force in respect of it an order under—

- (a) Article 11 of the Criminal Justice (Northern Ireland) Order 1994 (deprivation orders);
- (b) section 27 of the Misuse of Drugs Act 1971 (forfeiture orders); or
- (c) section 13(2), (3) or (4) of the Prevention of Terrorism (Temporary Provisions) Act 1989 (forfeiture orders).

(4) For the purposes of paragraph (1), an obligation has priority at any time if it is an obligation of the defendant to—

- (a) pay an amount due in respect of a fine, or other order of a court, imposed or made on conviction of an offence, where the fine was imposed or order made before the confiscation order; or
- (b) pay any sum which would be included among the preferential debts (within the meaning given by Article 346 of the Insolvency (Northern Ireland) Order 1989) in the defendant’s bankruptcy commencing on the date of the confiscation order or winding up under an order of the court made on that date.

### **Value of property, etc.**

6.—(1) Subject to the following provisions of this Article and to Article 7, for the purposes of this Order the value of property (other than cash) in relation to any person holding the property is the market value of the property, except that, where any other person holds an interest in the property, the value is—

- (a) the market value of the first-mentioned person’s beneficial interest in the property, less
- (b) the amount required to discharge any incumbrance (other than a charging order) on that interest.

(2) Subject to Article 7(3), references in this Order to the value at any time (referred to in paragraph (3) as “the material time”) of—

- (a) any property obtained by a person as a result of or in connection with the commission of an offence;
- (b) a gift caught by this Order or of any payment or reward;

are references to—

- (i) the value of the property, gift, payment or reward to the recipient when he obtained or received it, adjusted to take account of subsequent changes in the value of money; or
  - (ii) where paragraph (3) applies, the value there mentioned, whichever is the greater.
- (3) Subject to Article 7(3), if at the material time he holds—
- (a) the property which he obtained (not being cash); or
  - (b) property which in whole or in part directly or indirectly represents in his hands the property which he obtained,

the value referred to in paragraph (2)(b)(ii) is the value to him at the material time of the property mentioned in sub-paragraph (a) or, as the case may be, of the property mentioned in sub-paragraph (b), so far as it so represents the property which he obtained, but disregarding any charging order.

(4) References in this Article to a charging order include a reference to a charging order within the meaning of the Criminal Justice (Confiscation) (Northern Ireland) Order 1990.

### **Gifts caught by this Order**

7.—(1) A gift (including a gift made before the coming into operation of this Order) is caught by this Order if—

- (a) in the case of an offence of a relevant description—
  - (i) it was made by the defendant at any time after the commission of the offence or, if more than one, the earliest of the offences to which the proceedings for the time being relate; and
  - (ii) the court considers it appropriate in all the circumstances to take the gift into account; or
- (b) in the case of a drug trafficking offence—
  - (i) it was made by the defendant at any time since the beginning of the period of 6 years ending when the proceedings were instituted against him, or
  - (ii) it was made by the defendant at any time and was a gift of property—
    - (aa) received by the defendant in connection with drug trafficking carried on by him or another, or
    - (ab) which in whole or in part directly or indirectly represented in the defendant's hands property received by him in that connection.

(2) The reference in paragraph (1)(a)(i) to an offence to which the proceedings for the time being relate includes, where the proceedings have resulted in the conviction of the defendant, a reference to any offence which the court takes into consideration when determining his sentence.

- (3) For the purposes of this Order—
- (a) the circumstances in which the defendant is to be treated as making a gift include those where he transfers property to another person directly or indirectly for a consideration the value of which is significantly less than the value of the consideration provided by the defendant; and
  - (b) in those circumstances, the provisions of paragraph (1) and of Article 6 shall apply as if the defendant had made a gift of such share in the property as bears to the whole property the same proportion as the difference between the values referred to in sub-paragraph (a) bears to the value of the consideration provided by the defendant.

*Confiscation orders***Confiscation orders**

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.

*Statements, etc., in connection with confiscation orders***Provision of information by the prosecution**

**15.**—(1) Where the prosecution asks the court to proceed under Article 8(1)(a) or the court is proceeding under Article 8(1)(b) and requires a statement under this Article from the prosecution, the prosecution shall, within such period as the court may direct, give the court a statement as to any matters relevant in connection with—

- (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 value of the defendant's benefit from that conduct or, as the case may be, his proceeds of drug trafficking;

and, where such a statement is given in a case in which the prosecution asks the court to apply the provisions of Article 9, that statement shall also set out all such information available to the prosecution as may be relevant for the purposes of Article 9(2) and 3(b) or (c).

(2) Where the prosecution has given a statement under this Article—

- (a) the prosecution may at any time give to the court a further statement; and
- (b) the court may at any time require the prosecution to give it a further such statement within such period as it may direct.

(3) Where the prosecution has given any statement under this Article and the court is satisfied that a copy of the statement has been served on the defendant, the court may require the defendant—

- (a) to indicate to it, within such period as the court may direct, the extent to which he accepts each allegation in the statement; and
- (b) so far as he does not accept any such allegation, to give particulars of any matters on which he proposes to rely.

(4) Where the court has given a direction under this Article it may at any time vary it by giving a further direction.

(5) Where the defendant accepts to any extent any allegation in any statement given by the prosecution under this Article, the court may, for the purposes of—

- (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 value of the defendant's benefit from such conduct or, as the case may be, proceeds from drug trafficking,

treat his acceptance as conclusive of the matters to which it relates.

(6) If the defendant fails in any respect to comply with a requirement under paragraph (3), he may be treated for the purposes of this Article as accepting every allegation in the statement in question given by the prosecution under this Article apart from—

- (a) any allegation in respect of which he has complied with the requirement; and
- (b) any allegation that he has—
  - (i) in a case of an offence of a relevant description, benefited from an offence or that any property was obtained by him as a result of or in connection with the commission of an offence; or
  - (ii) in a case of a drug trafficking offence, benefited from drug trafficking or that any payment or other reward was received by him in connection with drug trafficking carried on by him or another person.

(7) Where—

- (a) there is given to the court by the defendant a statement as to any matters relevant to assessing the amount that might be realised at the time the confiscation order is made; and
- (b) the prosecution accepts to any extent any allegation in the statement;

the court may, for the purposes of that assessment, treat the acceptance by the prosecution as conclusive of the matters to which it relates.

(8) An allegation may be accepted, or particulars of any matter may be given, for the purposes of this Article in such manner as may be prescribed by Crown Court rules or magistrates' courts rules or as the court may direct.

(9) No acceptance by the defendant under this Article that any payment or other reward was received by him in connection with drug trafficking carried on by him or another shall be admissible in evidence in any proceedings for an offence.

(10) If the court is satisfied as to any matter relevant for assessing the amount that might be realised at the time the confiscation order is made (whether by reason of the acceptance of an allegation made in a statement given under this Article or made in the giving of information under Article 16, or otherwise), the court may issue a certificate giving the court's opinion as to the matters concerned and shall do so if 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 benefit from any relevant criminal conduct or, as the case may be, proceeds from drug trafficking.

#### **Provision of information by the defendant**

**16.—**(1) Where the prosecution has asked the court to proceed under Article 8(1)(a), or the court is proceeding under Article 8(1)(b), or is considering whether so to proceed for the purpose of obtaining information to assist it in carrying out its functions under this Order, the court may at any time order the defendant to give it such information as may be specified in the order.

(2) An order under paragraph (1) may require all, or any specified part, of the required information to be given to the court in such manner, and before such date, as may be specified in the order.

(3) Crown Court rules or magistrates' courts rules may make provision as to the maximum or minimum period that may be allowed under paragraph (2).

(4) If the defendant fails, without reasonable excuse, to comply with any order under this Article, the court may draw such inference from that failure as it considers appropriate.

(5) Where the prosecution accepts to any extent any allegation made by the defendant in giving to the court information required by an order under this Article, the court may treat that acceptance as conclusive of the matter to which it relates.

(6) For the purposes of this Article, an allegation may be accepted in such manner as may be prescribed by Crown Court rules or magistrates' courts rules or as the court may direct.

#### *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 is made 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.

*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.

*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).

### **Restraint orders**

**31.**—(1) The High Court may by order (a restraint order) prohibit any person from dealing with any realisable property, subject to such conditions and exceptions as may be specified in the order.

(2) Without prejudice to the generality of paragraph (1), a restraint order may make such provision as the High Court thinks fit for living expenses or legal expenses.

(3) A restraint order may apply—

- (a) to all realisable property held by a specified person, whether the property is described in the order or not; and
- (b) to realisable property held by a specified person, being property transferred to him after the making of the order.

(4) This Article shall not have effect in relation to any property for the time being subject to a charge under Article 32 or under Article 14 of the Criminal Justice (Confiscation) (Northern Ireland) Order 1990.

(5) A restraint order—

- (a) may be made only on an application by the prosecution;
- (b) may be made on an ex parte application to a judge in chambers; and
- (c) shall provide for notice to be given to persons affected by the order.

(6) A restraint order—

- (a) may be discharged or varied in relation to any property; and
- (b) shall be discharged on the conclusion of the proceedings or of the application in question.

(7) An application for the discharge or variation of a restraint order may be made by any person affected by it.

(8) Where the High Court has made a restraint order, the Court may at any time appoint a receiver—

- (a) to take possession of any realisable property; and
- (b) in accordance with the Court's directions, to manage or otherwise deal with any property in respect of which he is appointed;

subject to such exceptions and conditions as may be specified by the Court; and may require any person having possession of property in respect of which a receiver is appointed under this Article to give possession of it to the receiver.

(9) For the purposes of this Article, dealing with property held by any person includes (without prejudice to the generality of the expression)—

- (a) where a debt is owed to that person, making a payment to any person in reduction of the amount of the debt; and

(b) removing the property from Northern Ireland.

(10) Where the High Court has made a restraint order, a constable may for the purpose of preventing any realisable property being removed from Northern Ireland, seize the property.

(11) Property seized under paragraph (10) shall be dealt with in accordance with the directions of the High Court.

(12) The prosecution shall be treated for the purposes of section 66 of the Land Registration Act (Northern Ireland) 1970 (cautions) as a person interested in relation to any registered land to which a restraint order or an application for such an order relates.

(13) Upon being served with a copy of a restraint order, the Registrar shall, in respect of any registered land to which a restraint order or an application for such an order relates, make an entry inhibiting any dealing with the land without the consent of the High court.

(14) Subsections (2) and (4) of section 67 of the Land Registration Act (Northern Ireland) 1970 (inhibitions) shall apply to an entry made under sub-paragraph (13) as they apply to an entry made on the application of any person interested in the registered land under subsection (1) of that section 67.

(15) Where a restraint order has been protected by an entry registered under the Land Registration Act (Northern Ireland) 1970 or the Registration of Deeds Acts, an order under paragraph (6) discharging the restraint order may direct that the entry be vacated.

(16) In this Article “Registrar” and “entry” have the same meanings as in the Land Registration Act (Northern Ireland) 1970.

### **Charging orders in respect of land, securities, etc.**

**32.**—(1) The High Court may make a charging order on realisable property for securing the payment to the Crown—

- (a) where a confiscation order has not been made, of an amount equal to the value from time to time of the property charged; and
- (b) in any other case, of an amount not exceeding the amount payable under the confiscation order.

(2) A charging order—

- (a) may be made only on an application by the prosecution;
- (b) may be made on an ex parte application to a judge in chambers;
- (c) shall provide for notice to be given to persons affected by the order; and
- (d) may be made subject to such conditions as the Court thinks fit and, without prejudice to the generality of this sub-paragraph, such conditions as it thinks fit as to the time when the charge is to become effective.

(3) Subject to paragraph (5), a charge may be imposed by a charging order only on—

- (a) any interest in realisable property, which is an interest held beneficially by the defendant or by a person to whom the defendant has directly or indirectly made a gift caught by this Order and is an interest—
  - (i) in any asset of a kind mentioned in paragraph (4); or
  - (ii) under any trust; or
- (b) any interest in realisable property held by a person as trustee of a trust if the interest is in such an asset or is an interest under another trust and a charge may by virtue of sub-paragraph (a) be imposed by a charging order on the whole beneficial interest under the first-mentioned trust.

(4) The assets referred to in paragraph (3) are—

- (a) land in Northern Ireland; or
  - (b) securities of any of the following kinds—
    - (i) government funds or stock;
    - (ii) stock of any body incorporated within Northern Ireland (other than a building society);
    - (iii) stock of any body incorporated outside Northern Ireland (other than a building society incorporated in Great Britain) or of any country or territory outside the United Kingdom, being stock registered in a register kept at any place within Northern Ireland;
    - (iv) units of any unit trust in respect of which a register of the unit holders is kept at any place within Northern Ireland.
- (5) In any case where a charge is imposed by a charging order on any interest in an asset of a kind mentioned in paragraph (4)(b), the High Court may provide for the charge to extend to any interest or dividend payable in respect of the asset.
- (6) In relation to a charging order, the Court—
- (a) may make an order discharging or varying it; and
  - (b) shall make an order discharging it—
    - (i) on the conclusion of the proceedings or of the application in question; or
    - (ii) on payment into court of the amount payment of which is secured by the charge.
- (7) An application for the discharge or variation of a charging order may be made by any person affected by it.

### **Charging orders: supplementary provisions**

**33.**—(1) Subject to any provision made under Article 34 or by rules of court, a charge imposed by a charging order shall have the like effect and shall be enforceable in the same courts and in the same manner as an equitable charge created by the person or persons who are entitled to make such charges over the realisable property.

(2) Where a charging order has been protected by an entry registered under the Land Registration Act (Northern Ireland) 1970 or the Registration of Deeds Acts an order under Article 32(6) discharging the charging order may direct that the entry be vacated.

(3) The Secretary of State may by order amend Article 32 by adding to or removing from the kinds of asset for the time being referred to there any asset of a kind which in his opinion ought to be so added or removed.

(4) An order under paragraph (3) shall be subject to annulment in pursuance of a resolution of either House of Parliament in like manner as a statutory instrument and section 5 of the Statutory Instruments Act 1946 shall apply accordingly.

(5) In this Article and Article 32—

“building society” has the same meaning as in the Building Societies Act 1986;

“dividend” includes any distribution in respect of any unit of a unit trust;

“government funds or stocks” has the same meaning as in the Judgments Enforcement (Northern Ireland) Order 1981;

“stock” includes shares, debentures and any securities of the body concerned, whether or not constituting a charge on the assets of that body;

“unit trust” means any trust established for the purpose of having the effect, of providing, for persons having funds available for investment, facilities for the participation by them, as

beneficiaries under the trust, in any profits or income arising from the acquisition, holding, management or disposal of any property whatsoever.

*Realisation of property*

**Realisation of property**

**34.**—(1) Where a confiscation order—

- (a) has been made under this Order,
- (b) is not satisfied, and
- (c) is not subject to appeal,

the High Court may, on an application by the prosecution, exercise the powers conferred by paragraphs (2) to (6).

(2) The Court may appoint a receiver in respect of realisable property —

(3) The Court may empower a receiver appointed under paragraph (2), under Article 31 or in pursuance of a charging order—

- (a) to enforce any charge imposed under Article 32 on realisable property or on interest or dividends payable in respect of such property; and
- (b) in relation to any realisable property other than property for the time being subject to a charge under Article 32, to take possession of the property subject to such conditions or exceptions as may be specified by the Court.

(4) The Court may order any person having possession of realisable property to give possession of it to any such receiver.

(5) The Court may empower any such receiver to realise any realisable property in such manner (including the manner of conveyance or transfer of property which is land) as the Court may direct.

(6) The Court may—

- (a) order any person holding an interest in realisable property to make to the receiver such payment as the Court may direct in respect of any beneficial interest held by the defendant or, as the case may be, the recipient of a gift caught by this Order; and
- (b) on the payment being made, by order, transfer, grant or extinguish any interest in the property.

(7) Paragraphs (4) to (6) do not apply to property for the time being subject to a charge under Article 32 or under Article 14 of the Criminal Justice (Confiscation) (Northern Ireland) Order 1990.

(8) The High Court shall not in respect of any property exercise the powers conferred by paragraph (3)(a), (5) or (6) unless a reasonable opportunity has been given for persons holding any interest in the property to make representations to the Court.

**Application of proceeds of realisation and other sums**

**35.**—(1) Subject to paragraph (2), the following sums in the hands of a receiver appointed under this Order or in pursuance of a charging order, that is—

- (a) the proceeds of the enforcement of any charge imposed under Article 32;
- (b) the proceeds of the realisation, other than by the enforcement of such a charge, of any property under Article 31 or 34; and
- (c) any other sums, being property held by the defendant;

shall be applied, subject to paragraph (2), on the defendant's behalf towards the satisfaction of the confiscation order.

(2) Before any such sums are so applied they shall be applied—

- (a) first in payment of such expenses incurred by a person acting as an insolvency practitioner as are payable under Article 39(3); and
- (b) second, in making such payments (if any) as the High Court may direct.

(3) If, after the amount payable under the confiscation order has been fully paid, any such sums remain in the hands of such a receiver, the receiver shall distribute them—

- (a) among such of those who held property which has been realised under this Order, and
- (b) in such proportions,

as the High Court may direct after giving reasonable opportunity for such persons to make representations to the Court.

(4) The receipt of any sum by the proper officer on account of an amount payable under a confiscation order shall reduce the amount so payable, but the proper officer shall apply the money received for the purposes specified in this Article and in the order so specified.

(5) The proper officer shall first pay any expenses incurred by a person acting as an insolvency practitioner and payable under Article 39(3) but not already paid under paragraph (2).

(6) If the money was paid to the proper officer by a receiver appointed under this Order or in pursuance of a charging order, the proper officer shall next pay the receiver's remuneration and expenses.

(7) After making—

- (a) any payment required by paragraph (5); and
- (b) in a case to which paragraph (6) applies, any payment required by that paragraph,

the proper officer shall reimburse any amount paid under Article 40(2).

(8) The proper officer shall finally pay any compensation directed to be paid out of any sums recovered under the confiscation order under Article 12(8).

(9) Any balance in the hands of the proper officer after he has made all payments required by the foregoing provisions of this Article shall be treated as a fine for the purposes of section 20 of the Administration of Justice (Northern Ireland) Act 1954 (application of fines).

(10) Where under paragraph (4) a sum falls to be applied in payment both of compensation and of other outgoings—

- (a) the person entitled to the compensation shall be liable to pay into the Consolidated Fund of the United Kingdom such an amount as bears to the remuneration or expenses the same proportion as the amount payable in accordance with the direction under Article 12(8) bears to the total amount payable under the confiscation order;
- (b) the proper officer, shall deduct from the amount falling to be applied in payment of the compensation an amount equal to the amount of any liability arising by virtue of sub-paragraph (a);
- (c) notwithstanding the deduction under sub-paragraph (b), the person entitled to compensation shall be treated as having received the whole of the amount which falls to be applied in payment of it; and
- (d) the amount deducted shall be treated as a fine for the purposes of section 20 of the Administration of Justice Act (Northern Ireland) 1954.

(11) In this Article “the proper officer” means, where the confiscation order is made by a court of summary jurisdiction, the clerk of petty sessions and, where the confiscation order is made by the Crown Court, the appropriate officer of the Crown Court.

*Exercise of powers for the realisation of property*

**Exercise of powers by High Court or receiver**

**36.**—(1) This Article applies to the powers conferred—

- (a) on the High Court by Articles 31 to 35; or
- (b) on a receiver appointed under Article 31 or 34 or in pursuance of a charging order.

(2) Subject to the following provisions of this Article, the powers shall be exercised with a view to making available for satisfying the confiscation order or, as the case may be, any confiscation order that may be made in the defendant’s case the value for the time being of realisable property held by any person by the realisation of such property.

(3) In the case of realisable property held by a person to whom the defendant has directly or indirectly made a gift caught by this Order the powers shall be exercised with a view to realising no more than the value for the time being of the gift.

(4) The powers shall be exercised with a view to allowing any person other than the defendant or the recipient of any such gift to retain or recover the value of any property held by him.

(5) An order may be made or other action taken in respect of a debt owed by the Crown (including the Crown in right of Her Majesty’s Government in Northern Ireland).

(6) In exercising those powers, no account shall be taken of any obligations of the defendant or of the recipient of any such gift which conflict with the obligation to satisfy the confiscation order.

*Insolvency of defendants, etc.*

**Bankruptcy of defendant, etc.**

**37.**—(1) Where a person who holds realisable property is adjudged bankrupt—

- (a) property for the time being subject to a restraint order made before the order adjudging him bankrupt, and
- (b) any proceeds of property realised by virtue of Article 31(8) or 34(5) or (6) for the time being in the hands of a receiver appointed under Article 31 or 34,

is excluded from the bankrupt’s estate for the purposes of Part IX of the Insolvency (Northern Ireland) Order 1989.

(2) Where a person has been adjudged bankrupt, the powers conferred on the High Court by Articles 31 to 35 or on a receiver so appointed shall not be exercised in relation to—

- (a) property for the time being comprised in the bankrupt’s estate for the purposes of that Part of the Order of 1989;
- (b) property in respect of which his trustee in bankruptcy may (without leave of the High Court) serve a notice under Article 280 or 281 of that Order of 1989 (after-acquired property and tools, clothes, etc. exceeding value of reasonable replacement); and
- (c) property which is to be applied for the benefit of creditors of the bankrupt by virtue of a condition imposed under Article 254(2)(c) of that Order of 1989.

(3) Nothing in that Order of 1989 shall be taken as restricting, or enabling the restriction of, the exercise of those powers.

- (4) Paragraph (2) does not affect the enforcement of a charging order—
- (a) made before the order adjudging the person bankrupt; or
  - (b) on property which was subject to a restraint order when the order adjudging him bankrupt was made.

(5) Where, in the case of a debtor, an interim receiver stands appointed under Article 259 of that Order of 1989 and any property of the debtor is subject to a restraint order, the powers conferred on the receiver by virtue of that Order of 1989 do not apply to property for the time being subject to the restraint order.

(6) Where a person is adjudged bankrupt and has directly or indirectly made a gift caught by this Order—

- (a) no order shall be made under Article 312 or 367 of that Order of 1989 (avoidance of certain transactions) in respect of the making of the gift at any time when—
  - (i) proceedings for an offence to which this Order applies have been instituted against him and have not been concluded; or
  - (ii) an application has been made under Article 17, 18, 19, 21 or 24 and has not been concluded; or
  - (iii) property of the person to whom the gift was made is subject to a restraint order or charging order; and
- (b) any order made under Article 312 or 367 of that Order of 1989 after the conclusion of the proceedings or of the application shall take into account any realisation under this Order of property held by the person to whom the gift was made.

### **Winding up of company holding realisable property**

**38.**—(1) Where realisable property is held by a company and an order for the winding up of the company has been made or a resolution has been passed by the company for the voluntary winding up, the functions of the liquidator (or any provisional liquidator) shall not be exercisable in relation to—

- (a) property for the time being subject to a restraint order made before the relevant time, and
- (b) any proceeds of property realised by virtue of Article 31(8) or 34(5) or (6) for the time in the hands of a receiver appointed under Article 31 or 34.

(2) Where, in the case of a company, such an order has been made or such a resolution has been passed, the powers conferred on the High Court by Articles 31 to 35 or on a receiver so appointed shall not be exercised in relation to any realisable property held by the company in relation to which the functions of the liquidator are exercisable—

- (a) so as to inhibit him from exercising those functions for the purpose of distributing any property held by the company to the company's creditors; or
- (b) so as to prevent the payment out of any property of expenses (including the remuneration of the liquidator or any provisional liquidator) properly incurred in the winding up in respect of the property.

(3) Nothing in the Insolvency (Northern Ireland) Order 1989 shall be taken as restricting, or enabling the restriction of, the exercise of those powers.

(4) Paragraph (2) does not affect the enforcement of a charging order made before the relevant time or on property which was subject to a restraint order at the relevant time.

(5) In this Article—

“company” means any company which may be wound up under the Insolvency (Northern Ireland) Order 1989; and

“the relevant time” means—

- (a) where no order for the winding up of the company has been made, the time of the passing of the resolution for voluntary winding up;
- (b) where such an order has been made but, before the presentation of the petition for the winding up of the company by the High Court, such a resolution has been passed by the company, the time of the passing of the resolution; and
- (c) in any other case where such an order has been made, the time of the making of the order.

*Protection for insolvency officers, etc.*

**Insolvency officers dealing with property subject to restraint order**

**39.**—(1) Without prejudice to the generality of the Insolvency (Northern Ireland) Order 1989 or any other statutory provision, where—

- (a) any person acting as an insolvency practitioner seizes or disposes of any property in relation to which his functions are not exercisable because it is for the time being subject to a restraint order; and
- (b) at the time of the seizure or disposal he believes, and has reasonable grounds for believing, that he is entitled (whether in pursuance of an order of the High Court or otherwise) to seize or dispose of that property,

he shall not be liable to any person in respect of any loss or damage resulting from the seizure or disposal except in so far as the loss or damage is caused by his negligence in so acting.

(2) A person acting as an insolvency practitioner shall, in the circumstances mentioned in paragraph (1)(a) and (b), have a lien on the property, or the proceeds of its sale, for such of his expenses as were incurred in connection with the liquidation, bankruptcy or other proceedings in relation to which the seizure or disposal purported to take place and for so much of his remuneration as may reasonably be assigned for his acting in connection with those proceedings.

(3) Where a person acting as an insolvency practitioner incurs expenses—

- (a) in respect of such property as is mentioned in sub-paragraph (a) of paragraph (1) and in so doing does not know and has no reasonable grounds to believe that the property is for the time being subject to a restraint order; or
- (b) other than in respect of such property as is so mentioned, being expenses which, but for the effect of a restraint order, might have been met by taking possession of and realising the property,

that person shall be entitled (whether or not he has seized or disposed of that property so as to have a lien under paragraph (2)) to payment of those expenses under Article 35(2) or (5).

**Receivers: supplementary provisions**

**40.**—(1) Where a receiver appointed under Article 31 or 34 or in pursuance of a charging order—

- (a) takes any action in relation to any property which is not realisable property, being action which he would be entitled to take if it were such property; and
- (b) believes, and has reasonable grounds for believing, that he is entitled to take that action in relation to that property,

he shall not be liable to any person in respect of any loss or damage resulting from his action except in so far as the loss or damage is caused by his negligence.

(2) Any amount due in respect of the remuneration and expenses of a receiver so appointed shall, if no sum is available to be applied in payment of it under Article 35(6), be paid by the prosecution

or, in a case where proceedings for an offence to which this Order applies are not instituted, by the person on whose application the receiver was appointed.

*Enforcement of orders made outside Northern Ireland*

**Enforcement of orders made in England and Wales or Scotland**

**41.**—(1) The Secretary of State may by order provide that for the purpose of the enforcement in Northern Ireland of orders made under the Drug Trafficking Act 1994, the Proceeds of Crime (Scotland) Act 1995 and Part VI of the Criminal Justice Act 1988, this Order (except Article 13) shall have effect as if—

- (a) references to confiscation orders included a reference to confiscation orders made under the 1994 Act, the 1995 Act and Part VI of the 1988 Act;
- (b) in relation to England and Wales—
  - (i) references to drug trafficking offences included a reference to drug trafficking offences within the meaning of the 1994 Act;
  - (ii) references to offences of a relevant description and to offences to which the Order applies included a reference to offences to which Part VI of the 1988 Act applies;
  - (iii) references to proceedings in Northern Ireland or to the institution or conclusion in Northern Ireland of proceedings included a reference to proceedings in England and Wales or to the institution or conclusion in England and Wales of proceedings, as the case may be; and
  - (iv) the references to the making of a complaint in Article 30(3) and (5) included references to laying an information under section 1 of the Magistrates' Courts Act 1980;
- (c) in relation to Scotland—
  - (i) references to drug trafficking offences included a reference to drug trafficking offences within the meaning of the 1995 Act;
  - (ii) references to offences of a relevant description and to offences to which the Order applies included a reference to offences to which Part I of the 1995 Act applies;
  - (iii) such other modifications were made as may be specified in the order, being modifications which appear to the Secretary of State to be requisite or desirable having regard to procedural differences which may for the time being exist between Northern Ireland and Scotland; and without prejudice to the generality of this head modifications may include provision as to the circumstances in which proceedings in Scotland are to be treated for the purpose of such enforcement in Northern Ireland as instituted or as concluded.

(2) An order under paragraph (1) may provide for the provisions of this Order to have effect in relation to anything done or to be done in England and Wales or, as the case may be, in Scotland subject to such further modifications as may be specified in the order.

(3) An order under paragraph (1) may contain such incidental, consequential and transitional provisions as the Secretary of State considers expedient.

(4) An order under paragraph (1) may, in particular, provide for section 18 of the Civil Jurisdiction and Judgments Act 1982 (enforcement of United Kingdom judgments in other parts of the United Kingdom) not to apply in relation to such orders as may be prescribed by the order under paragraph (1).

(5) An order under paragraph (1) shall be subject to annulment in pursuance of a resolution of either House of Parliament in like manner as a statutory instrument and section 5 of the Statutory Instruments Act 1946 shall apply accordingly.

#### **Enforcement of external confiscation orders**

**42.**—(1) The Secretary of State may by order—

- (a) direct in relation to a country or territory outside the United Kingdom designated by an Order in Council under section 39 of the Drug Trafficking Act 1994 or section 96 of the Criminal Justice Act 1988 (“a designated country”) that, subject to such modifications as may be specified, this Order shall apply to external confiscation orders and to proceedings which have been or are to be instituted in the designated country and may result in an external confiscation order being made there;
- (b) make—
  - (i) such provision in connection with the taking of action in the designated country with a view to satisfying a confiscation order;
  - (ii) such provision as to evidence or proof of any matter for the purposes of this Article and Article 43; and
  - (iii) such incidental, consequential and transitional provision, as appears to the Secretary of State to be expedient; and
- (c) without prejudice to the generality of this paragraph, direct that in such circumstances as may be specified proceeds which arise out of action taken in the designated country with a view to satisfying a confiscation order and which are retained there shall nevertheless be treated as reducing the amount payable under the order to such extent as may be specified.

(2) The power to make an order under this Article includes power to modify this Order in such a way as to confer power on a person to exercise a discretion.

(3) An order under paragraph (1) shall be subject to annulment in pursuance of a resolution of either House of Parliament in like manner as a statutory instrument and section 5 of the Statutory Instruments Act 1946 shall apply accordingly.

#### **Registration of external confiscation orders**

**43.**—(1) On an application made by or on behalf of the government of a designated country, the High Court may register an external confiscation order made there if—

- (a) it is satisfied that at the time of registration the order is in force and not subject to appeal;
- (b) it is satisfied, where the person against whom the order is made did not appear in the proceedings, that he received notice of the proceedings in sufficient time to enable him to defend them; and
- (c) it is of the opinion that enforcing the order in Northern Ireland would not be contrary to the interests of justice.

(2) In paragraph (1) “appeal” includes—

- (a) any proceedings by way of discharging or setting aside a judgment; and
- (b) an application for a new trial or a stay of execution.

(3) The High Court shall cancel the registration of an external confiscation order if it appears to the Court that the order has been satisfied by payment of the amount due under it.

(4) In this Article “designated country” has the same meaning as in Article 42.