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STATUTORY INSTRUMENTS

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**1996 No. 1299**

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

**PART III**

**OFFENCES IN CONNECTION WITH PROCEEDS OF CRIMINAL CONDUCT**

**Failure to disclose knowledge or suspicion of money laundering proceeds of drug trafficking**

**44.**—(1) A person shall be guilty of an offence if—

- (a) he knows or suspects that another person is engaged in money laundering proceeds of drug trafficking;
- (b) the information, or other matter, on which that knowledge or suspicion is based came to his attention in the course of his trade, profession, business or employment; and
- (c) he does not disclose the information or other matter to a constable as soon as is reasonably practicable after it comes to his attention.

(2) Paragraph (1) does not make it an offence for a professional legal adviser to fail to disclose any information or other matter which has come to him in privileged circumstances.

(3) It is a defence to a charge of committing an offence under this Article that the person charged had a reasonable excuse for not disclosing the information or other matter in question.

(4) Where a person discloses to a constable—

- (a) his suspicion or belief that another person is engaged in money laundering proceeds of drug trafficking, or
- (b) any information or other matter on which that suspicion or belief is based,

the disclosure shall not be treated as a breach of any restriction imposed by statute or otherwise.

(5) Without prejudice to paragraph (3) or (4), in the case of a person who was in employment at the relevant time, it is a defence to a charge of committing an offence under this Article that he disclosed the information or other matter in question to the appropriate person in accordance with the procedure established by his employer for the making of such disclosures.

(6) A disclosure to which paragraph (5) applies shall not be treated as a breach of any restriction imposed by statute or otherwise.

(7) In this Article “money laundering” means doing any act which constitutes an offence under Article 45, 46 or 47 or, in the case of an act done otherwise than in Northern Ireland, would constitute such an offence if done in Northern Ireland.

(8) For the purposes of paragraph (7), having possession of any property shall be taken to be doing an act in relation to it.

(9) For the purposes of this Article, any information or other matter comes to a professional legal adviser in privileged circumstances if it is communicated, or given, to him—

- (a) by, or by a representative of, a client of his in connection with the giving by the adviser of legal advice to the client;

- (b) by, or by a representative of, a person seeking legal advice from the adviser; or
- (c) by any person—
  - (i) in contemplation of, or in connection with, legal proceedings; and
  - (ii) for the purpose of those proceedings.

(10) No information or other matter shall be treated as coming to a professional legal adviser in privileged circumstances communicated or given with a view to furthering any purpose.

(11) A person guilty of an offence under this Article shall be liable—

- (a) on conviction on indictment, to imprisonment for a term not exceeding 5 years or to a fine or to both;
- (b) on summary conviction, to imprisonment for a term not exceeding 6 months or to a fine not exceeding the statutory maximum or to both.

### **Acquisition, possession or use of proceeds of criminal conduct**

**45.**—(1) A person shall be guilty of an offence if, knowing that any property is, or in whole or in part directly or indirectly represents, another person's proceeds of criminal conduct, he acquires or uses that property or has possession of it.

(2) It is a defence to a charge of committing an offence under this Article that the person charged acquired or used the property or had possession of it for adequate consideration.

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

- (a) a person acquires property for inadequate consideration if the value of the consideration is significantly less than the value of the property; and
- (b) a person uses or has possession of property for inadequate consideration if the value of the consideration is significantly less than the value of his use or possession of the property.

(4) The provision for any person of services or goods which are of assistance to him in criminal conduct shall not be treated as consideration for the purposes of paragraph (2).

(5) Where a person discloses to a constable a suspicion or belief that any property is, or in whole or in part directly or indirectly represents, another person's proceeds of criminal conduct or discloses to a constable any matter on which such a suspicion or belief is based—

- (a) the disclosure shall not be treated as a breach of any restriction upon the disclosure of information imposed by statute or otherwise; and
- (b) if he does any act in relation to that property in contravention of paragraph (1), he does not commit an offence under this Article if—
  - (i) the disclosure is made before he does the act concerned and the act is done with the consent of the constable; or
  - (ii) the disclosure is made after he does the act, but on his initiative and as soon as it is reasonable for him to make it.

(6) For the purposes of this Article, having possession of any property shall be taken to be doing an act in relation to it.

(7) In proceedings against a person for an offence under this Article, it is a defence to prove that—

- (a) he intended to disclose to a constable such a suspicion, belief or matter as is, mentioned in paragraph (5); but
- (b) there is reasonable excuse for his failure to make the disclosure in accordance with subparagraph (b) of that paragraph.

(8) In the case of a person who was in employment at the relevant time, paragraphs (5) and (7) shall have effect in relation to disclosures, and intended disclosures, to the appropriate person in

accordance with the procedure established by his employer for the making of such disclosures as they have effect in relation to disclosures, and intended disclosures, to a constable.

- (9) A person guilty of an offence under this Article shall be liable—
- (a) on conviction on indictment, to imprisonment for a term not exceeding 14 years or to a fine or to both;
  - (b) on summary conviction, to imprisonment for a term not exceeding 6 months or to a fine not exceeding the statutory maximum or to both.

(10) No constable or other person shall be guilty of an offence under this Article in respect of anything done by him in the course of acting in connection with the enforcement, or intended enforcement, of any provision of this Order or of any other statutory provision relating to criminal conduct or the proceeds of such conduct.

### **Assisting another to retain the benefit of criminal conduct**

**46.**—(1) Subject to paragraph (3), if a person enters into or is otherwise concerned in an arrangement whereby—

- (a) the retention or control by or on behalf of another (call him “A”) of A’s proceeds of criminal conduct is facilitated (whether by concealment, removal from the jurisdiction, transfer to nominees or otherwise), or
- (b) A’s proceeds of criminal conduct—
  - (i) are used to secure that funds are placed at A’s disposal, or
  - (ii) are used for A’s benefit to acquire property by way of investment,knowing or suspecting that A is a person who is or has been engaged in criminal conduct or has benefited from criminal conduct, he shall be guilty of an offence.

(2) In this Article references to any person’s proceeds of criminal conduct include a reference to any property which in whole or in part directly or indirectly represented in his hands his proceeds of criminal conduct.

(3) Where a person discloses to a constable a suspicion or belief that any funds or investments are derived from or used in connection with criminal conduct or discloses to a constable any matter on which such a suspicion or belief is based—

- (a) the disclosure shall not be treated as a breach of any restriction upon the disclosure of information imposed by statute or otherwise; and
- (b) if he does any act in contravention of paragraph (1) and the disclosure relates to the arrangement concerned, he does not commit an offence under this Article if—
  - (i) the disclosure is made before he does the act concerned and the act is done with the consent of the constable, or
  - (ii) the disclosure is made after he does the act, but is made on his initiative and as soon as it is reasonable for him to make it.

(4) In proceedings against a person for an offence under this Article, it is a defence to prove—

- (a) that he did not know or suspect that the arrangement related to any person’s proceeds of criminal conduct, or
- (b) that he did not know or suspect that by the arrangement the retention or control by or on behalf of A of any property was facilitated or, as the case may be, that by the arrangement any property was used as mentioned in paragraph (1), or
- (c) that,—

- (i) he intended to disclose to a constable such a suspicion, belief or matter as is mentioned in paragraph (3) in relation to the arrangement, but
- (ii) there is reasonable excuse for his failure to make disclosure in accordance with paragraph (3).

(5) In the case of a person who was in employment at the relevant time, paragraphs (3) and (4) shall have effect in relation to disclosures, and intended disclosures, to the appropriate person in accordance with the procedure established by his employer for the making of such disclosures as they have effect in relation to disclosures, and intended disclosures, to a constable.

- (6) A person guilty of an offence under this Article shall be liable—
- (a) on conviction on indictment, to imprisonment for a term not exceeding 14 years or to a fine or to both;
  - (b) on summary conviction, to imprisonment for a term not exceeding 6 months or to a fine not exceeding the statutory maximum or to both.

### **Concealing or transferring proceeds of criminal conduct**

- 47.—(1) A person shall be guilty of an offence if he—
- (a) conceals or disguises any property which is, or in whole or in part directly or indirectly represents, his proceeds of criminal conduct; or
  - (b) converts or transfers that property or removes it from the jurisdiction,

for the purpose of avoiding prosecution for an offence to which this Order applies or the making or enforcement in his case of a confiscation order.

(2) A person shall be guilty of an offence if, knowing or having reasonable grounds to suspect that any property is, or in whole or in part directly or indirectly represents, another person's proceeds of criminal conduct, he—

- (a) conceals or disguises that property; or
- (b) converts or transfers that property or removes it from the jurisdiction,

for the purpose of assisting any person to avoid prosecution for an offence to which this Order applies or the making or enforcement of a confiscation order.

(3) In paragraphs (1)(a) and (2)(a) the references to concealing or disguising any property include references to concealing or disguising its nature, source, location, disposition, movement or ownership or any rights with respect to it.

- (4) A person guilty of an offence under this Article shall be liable—
- (a) on conviction on indictment, to imprisonment for a term not exceeding 14 years or to a fine or to both;
  - (b) on summary conviction, to imprisonment for a term not exceeding 6 months or to a fine not exceeding the statutory maximum or to both.

### **Tipping-off**

- 48.—(1) A person shall be guilty of an offence if—
- (a) he knows or suspects that a constable or a financial investigator is acting, or is proposing to act, in accordance with an investigation which is being, or is about to be, conducted into money laundering, and
  - (b) he discloses to any other person information or any other matter which is likely to prejudice that investigation, or proposed investigation.

- (2) A person shall be guilty of an offence if—
  - (a) he knows or suspects that a disclosure (“the disclosure”) has been made to a constable under Article 44,45 or 46, and
  - (b) he discloses to any other person information or any other matter which is likely to prejudice any investigation which might be conducted following the disclosure.
- (3) A person shall be guilty of an offence if—
  - (a) he knows or suspects that a disclosure of a kind mentioned in Article 44(5), 45(8) or 46(5) (“the disclosure”) has been made, and
  - (b) he discloses to any person information or any other matter which is likely to prejudice any investigation which might be conducted following the disclosure.
- (4) Nothing in paragraphs (1) to (3) makes it an offence for a professional legal adviser to disclose any information or other matter—
  - (a) to, or to a representative of, a client of his in connection with the giving by the adviser of legal advice to the client; or
  - (b) to any person—
    - (i) in contemplation of, or in connection with, legal proceedings; and
    - (ii) for the purpose of those proceedings.
- (5) Paragraph (4) does not apply in relation to any information or other matter which is disclosed with a view to furthering any criminal purpose.
- (6) In proceedings against a person for an offence under paragraph (1), (2) or (3), it is a defence to prove that he did not know or suspect that the disclosure was likely to be prejudicial in the way mentioned in that paragraph.
- (7) In this Article “money laundering” has the same meaning as in Article 44.
- (8) A person guilty of an offence under this Article shall be liable—
  - (a) on conviction on indictment, to imprisonment for a term not exceeding 5 years or to a fine or to both;
  - (b) on summary conviction, to imprisonment for a term not exceeding 6 months or to a fine not exceeding the statutory maximum or to both.
- (9) No constable or other person shall be guilty of an offence under this Article in respect of anything done by him in the course of acting in connection with the enforcement, or intended enforcement, of any provision of this Order or of any other statutory provision relating to an offence to which this Order applies.