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## STATUTORY INSTRUMENTS

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# 1996 No. 1299

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

### PART IV

#### MISCELLANEOUS AND SUPPLEMENTAL

##### **Additional investigation powers**

**49.**—(1) If, on an application made by<sup>[F1]</sup> a senior officer of an enforcement authority], by complaint on oath, a<sup>[F2]</sup> Crown Court] judge is satisfied—

- (a) that<sup>[F2]</sup> a confiscation investigation] is taking place; and
- (b) that the investigation could be more effectively carried out with the participation of a person who is not a police officer<sup>[F3]</sup> or customs officer] and who is<sup>[F4]</sup> an accredited financial investigator] named in the application;<sup>F5</sup> . . .

*Sub#para. (c) rep. by 2002 c. 29*

he may authorise that person ( “a financial investigator”) to exercise for the purposes of the investigation the powers conferred by Schedule 2.

<sup>[F3]</sup>(1A) If, on an application made by<sup>[F4]</sup><sup>[F6]</sup>a senior member of staff of the Serious Organised Crime Agency] or] a senior officer of an enforcement authority by complaint on oath, a<sup>[F2]</sup> Crown Court] judge is satisfied—

- (a) that<sup>[F2]</sup> a confiscation investigation] is taking place; and
- (b) that the investigation could be more effectively carried out if<sup>[F4]</sup><sup>[F7]</sup>a member of staff of the Agency] or] a person named in the application who is a police officer or customs officer were authorised to exercise for the purposes of the investigation the powers conferred by<sup>[F2]</sup> paragraph 3A] of Schedule 2;<sup>F5</sup> . . .

*Sub#para. (c) rep. by 2002 c. 29*

he may authorise<sup>[F4]</sup><sup>[F7]</sup>a member of staff of the Agency] or] that person to exercise, for the purposes of the investigation the powers conferred by<sup>[F2]</sup> paragraph 3A] of Schedule 2.]

<sup>[F8]</sup>(1B) If, on an application made by <sup>[F9]</sup>a member of staff of the Serious Organised Crime Agency or a relevant Director], a judge of the High Court is satisfied—

- (a) that a civil recovery investigation is taking place; and
- (b) that the investigation could be more effectively carried out if <sup>[F10]</sup>a member of staff of the Agency or] the Director were authorised to exercise for the purposes of the investigation the powers conferred by paragraph 3A of Schedule 2,

the judge may authorise <sup>[F10]</sup>a member of staff of the Agency or] the Director to exercise those powers for that purpose.]

- (2) An application under<sup>[F8]</sup> this Article] may be made ex parte to a judge in chambers.

**Status:** Point in time view as at 01/04/2008.

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(3) Crown Court rules may make provision as to the procedure for applications under paragraph (1)<sup>[F3]</sup> or (1A)<sup>[F8]</sup> and rules of court may make provision as to the procedure for applications under paragraph (1B)].

*Para. (4) rep. by 2002 c. 29*

<sup>[F1]</sup>(5) In this Article—

<sup>[F4]</sup>“accredited financial investigator” has the meaning given by section 3(5) of the Proceeds of Crime Act 2002;

“confiscation investigation” has the same meaning as it has for the purposes of Part 8 of that Act by virtue of section 341(1);]

<sup>[F8]</sup>“civil recovery investigation” has the same meaning as it has for the purposes of Part 8 of that Act by virtue of section 341(2) and (3);]

*Definition rep. by 2002 c. 29*

“enforcement authority” means—

- (a) the Royal Ulster Constabulary; or
- (b) the Commissioners of Customs and Excise;

“police officer” has the same meaning as in Article 2(2) of the Police and Criminal Evidence (Northern Ireland) Order 1989;

<sup>[F11]</sup>“relevant Director” means the Director of the Serious Fraud Office or the Director of Public Prosecutions for Northern Ireland;]

*Definition rep. by 2002 c. 29*

<sup>[F12]</sup>“senior member of staff of the Serious Organised Crime Agency” means—

- (a) the Director General of the Serious Organised Crime Agency; or
- (b) any member of staff of the Agency authorised by the Director General (whether generally or specifically) for the purpose of this Article;]

“senior officer of an enforcement authority” means—

- (a) a police officer of at least the rank of superintendent; or
- (b) a customs officer of at least such grade as is designated by the Commissioners of Customs and Excise as equivalent to that rank.]

**F1** 2001 NI 1

**F2** 2002 c. 29

**F3** 2001 NI 1

**F4** 2002 c. 29

**F5** 2002 c. 29

**F6** Words in art. 49(1A) substituted (1.4.2008) by [Serious Organised Crime and Police Act 2005 and Serious Crime Act 2007 \(Consequential and Supplementary Amendments to Secondary Legislation\) Order 2008 \(S.I. 2008/574\)](#), art. 2, **Sch. para. 5(2)(a)**

**F7** Words in art. 49(1A) substituted (1.4.2008) by [Serious Organised Crime and Police Act 2005 and Serious Crime Act 2007 \(Consequential and Supplementary Amendments to Secondary Legislation\) Order 2008 \(S.I. 2008/574\)](#), art. 2, **Sch. para. 5(2)(b)**

**F8** 2005 NI 15

**F9** Words in art. 49(1B) substituted (1.4.2008) by [Serious Organised Crime and Police Act 2005 and Serious Crime Act 2007 \(Consequential and Supplementary Amendments to Secondary Legislation\) Order 2008 \(S.I. 2008/574\)](#), art. 2, **Sch. para. 5(3)(a)**

- F10** Words in art. 49(1B) inserted (1.4.2008) by Serious Organised Crime and Police Act 2005 and Serious Crime Act 2007 (Consequential and Supplementary Amendments to Secondary Legislation) Order 2008 (S.I. 2008/574), art. 2, **Sch. para. 5(3)(b)**
- F11** Art. 49(5): definition inserted (1.4.2008) by Serious Organised Crime and Police Act 2005 and Serious Crime Act 2007 (Consequential and Supplementary Amendments to Secondary Legislation) Order 2008 (S.I. 2008/574), art. 2, **Sch. para. 5(4)**
- F12** Art. 49(5): definition inserted (1.4.2008) by Serious Organised Crime and Police Act 2005 and Serious Crime Act 2007 (Consequential and Supplementary Amendments to Secondary Legislation) Order 2008 (S.I. 2008/574), art. 2, **Sch. para. 5(4)**

### Order to make material available

**50.**—(1) A constable or a financial investigator may for the purposes of an investigation into<sup>F13</sup> drug trafficking] apply to a<sup>F13</sup> Crown Court] judge for an order under paragraph (2) in relation to particular material or material of a particular description.

(2) Subject to Article 54(11), if on such an application the judge is satisfied that the conditions in paragraph (4) are fulfilled, he may make an order that the person who appears to him to be in possession of the material to which the application relates shall—

- (a) produce it to a constable<sup>F14</sup> or a financial investigator] for him to take away, or
- (b) give a constable<sup>F14</sup> or a financial investigator] access to it,

within such period as the order may specify.

(3) The period to be specified in an order under paragraph (2) shall be 7 days unless it appears to the judge that a longer or shorter period would be appropriate in the particular circumstances of the application.

(4) The conditions referred to in paragraph (2) are—

- (a) that there are reasonable grounds for suspecting that a specified person<sup>F13</sup> has carried on drug trafficking]
- (b) that there are reasonable grounds for suspecting that the material to which the application relates—
  - (i) is likely to be of substantial value (whether by itself or together with other material) to the investigation for the purpose of which the application is made, and
  - (ii) does not consist of or include items subject to legal privilege or excluded material, and
- (c) that there are reasonable grounds for believing that it is in the public interest, having regard—
  - (i) to the benefit likely to accrue to the investigation if the material is obtained, and
  - (ii) to the circumstances under which the person in possession of the material holds it, that the material should be produced or that access to it should be given.

(5) Where the judge makes an order under paragraph (2)(b) in relation to material on any premises he may, on the application of a constable or a financial investigator, order any person who appears to him to be entitled to grant entry to the premises to allow a constable<sup>F14</sup> or a financial investigator] to enter the premises to obtain access to the material.

(6) An application under paragraph (1) or (5) may be made ex parte to a judge in chambers.

<sup>F14</sup>(6A) Paragraph (6) does not apply to an application made for an order addressed to a solicitor if for the purposes of the same investigation the solicitor has been required to furnish information under paragraph 3A of Schedule 2.]

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(7) Provision may be made by Crown Court rules as to—

- (a) the discharge and variation of orders under this Article, and
- (b) proceedings relating to such orders.

(8) An order of a<sup>F13</sup> Crown Court] judge under this Article shall have effect as if it were an order of the Crown Court.

(9) Where the material to which an application under this Article relates consists of information contained in a computer—

- (a) an order under paragraph (2)(a) shall have effect as an order to produce the material in a form in which it can be taken away and in which it is visible and legible, and
- (b) an order under paragraph (2)(b) shall have effect as an order to give access to the material in a form in which it is visible and legible.

(10) An order under paragraph (2)—

- (a) shall not confer any right to production of, or access to, items subject to legal privilege or excluded material,
- (b) shall have effect notwithstanding any obligation as to secrecy or other restriction upon the disclosure of information imposed by statute or otherwise, and
- (c) may be made in relation to material in the possession of an authorised government department.

**F13** 2002 c. 29

**F14** 2001 NI 1

### Authority for search

**51.**—(1) A constable or a financial investigator may for the purposes of an investigation into<sup>F15</sup> drug trafficking] apply to a<sup>F15</sup> Crown Court] judge for a warrant under this Article in relation to specified premises.

(2) On such application the judge may issue a warrant authorising a constable to enter and search the premises if he is satisfied—

- (a) that an order made under Article 50 in relation to material on the premises has not been complied with, or
- (b) that the conditions in paragraph (3) are fulfilled, or
- (c) that the conditions in paragraph (4) are fulfilled.

(3) The conditions referred to in paragraph (2)(b) are—

- (a) that there are reasonable grounds for suspecting that a specified person<sup>F15</sup> has carried on drug trafficking]
- (b) that the conditions in Article 50(4)(b) and (c) are fulfilled in relation to any material on the premises, and
- (c) that it would not be appropriate to make an order under that Article in relation to the material because—

- (i) it is not practicable to communicate with any person entitled to produce the material,
- (ii) it is not practicable to communicate with any person entitled to grant access to the material or entitled to grant entry to the premises on which the material is situated, or
- (iii) the investigation for the purpose of which the application is made might be seriously prejudiced unless a constable could secure immediate access to the material.

- (4) The conditions referred to in paragraph (2)(c) are—
- (a) that there are reasonable grounds for suspecting that a specified person<sup>F15</sup> has carried on drug trafficking]
  - (b) that there are reasonable grounds for suspecting that there is on the premises material relating—
    - (i) to the specified person, or
    - (ii) to<sup>F15</sup> drug trafficking]which is likely to be of substantial value (whether by itself or together with other material) to the investigation for the purpose of which the application is made, but that the material cannot at the time of the application be particularised, and
  - (c) that—
    - (i) it is not practicable to communicate with any person entitled to grant entry to the premises; or
    - (ii) entry to the premises will not be granted unless a warrant is produced; or
    - (iii) the investigation for the purpose of which the application is made might be seriously prejudiced unless a constable arriving at the premises could secure immediate entry to them.
- (5) Where a constable has entered premises in the execution of a warrant issued under this Article, he may seize and retain any material, other than items subject to legal privilege and excluded material, which is likely to be of substantial value (whether by itself or together with other material) to the investigation for the purpose of which the warrant was issued.

**F15** 2002 c. 29

#### Articles 50 and 51: supplementary provisions

**52.**—(1) For the purposes of Articles 23 and 24 of the Police and Criminal Evidence (Northern Ireland) Order 1989 (access to, and copying and retention of, seized material)—

- (a) an investigation into<sup>F16</sup> drug trafficking] shall be treated (so far as that would not otherwise be the case) as if it were an investigation of, or in connection with, an offence, and
  - (b) material produced in pursuance of an order under Article 50(2)(a) shall be treated as if it were material seized by a constable.
- (2) In Articles 50 and 51—
- (a) “excluded material”, “items subject to legal privilege” and “premises” have the same meanings as in that Order of 1989,<sup>F17</sup> . . .

*Sub#para. (b) rep. by 2002 c. 29*

*Para. (3) rep. by 2002 c. 29*

**F16** 2002 c. 29

**F17** 2002 c. 29

#### Offence of prejudicing investigation

- 53.**—(1) Where, in relation to an investigation into drug trafficking—
- (a) an order under Article 50 has been made or has been applied for and has not been refused, or

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- (b) a warrant under Article 51 has been issued,  
a person shall be guilty of an offence if, knowing or suspecting that the investigation is taking place, he makes any disclosure which is likely to prejudice the investigation.
- (2) 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 disclosure was likely to prejudice the investigation,  
or
- (b) that he had lawful authority or reasonable excuse for making the disclosure.
- (3) Nothing in paragraph (1) 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.
- (4) Paragraph (3) does not apply in relation to any information or other matter which is disclosed with a view to furthering any criminal purpose.
- (5) 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.

### **Disclosure of information held by government departments**

*Paras. (1)#(10) rep. by 2002 c. 29*

(11) <sup>F18</sup> . . . in the case of material in the possession of an authorised government department, an order under Article 50(2) may require any officer of the department (whether named in the order or not) who may for the time being be in possession of the material concerned to comply with it, and such an order shall be served as if the proceedings were civil proceedings against the department.

(12) The person on whom such an order is served—

- (a) shall take all reasonable steps to bring it to the attention of the officer concerned, and
- (b) if the order is not brought to that officer's attention within the period<sup>F19</sup> specified in an order under Article 50(2)], shall report the reasons for the failure to the High Court;

and any other officer of the department in receipt of the order shall take such steps as are mentioned in sub-paragraph (a).

*Para. (13) rep. by 2002 c. 29*

**F18** 2002 c. 29

**F19** 2002 c. 29

### **[<sup>F20</sup>Construction of Articles 49 to 54**

**54A.**—(1) This Article has effect for the purposes of Articles 49 to 54.

(2) A reference to a constable includes a reference to a customs officer.

(3) A customs officer is a person commissioned by the Commissioners of Customs and Excise under section 6(3) of the Customs and Excise Management Act 1979.

(4) Drug trafficking means doing or being concerned in any of the following (whether in Northern Ireland or elsewhere)—

- (a) producing or supplying a controlled drug where the production or supply contravenes section 4(1) of the Misuse of Drugs Act 1971 or a corresponding law;
- (b) transporting or storing a controlled drug where possession of the drug contravenes section 5(1) of that Act or a corresponding law;
- (c) importing or exporting a controlled drug where the importation or exportation is prohibited by section 3(1) of that Act or a corresponding law;
- (d) manufacturing or supplying a scheduled substance within the meaning of section 12 of the Criminal Justice (International Co-operation) Act 1990 where the manufacture or supply is an offence under that section or would be such an offence if it took place in Northern Ireland;
- (e) using any ship for illicit traffic in controlled drugs in circumstances which amount to the commission of an offence under section 19 of that Act.

(5) In this Article “corresponding law” has the same meaning as in the Misuse of Drugs Act 1971.]

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