

2001 No. 1866 (N.I. 1)

NORTHERN IRELAND

The Financial Investigations (Northern Ireland) Order 2001

Made - - - - - 14th May 2001

*Coming into operation on days to be appointed under
Article 1(2)*

ARRANGEMENT OF ORDER

Article

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At the Court at Buckingham Palace, the 14th day of May 2001

Present,

The Queen's Most Excellent Majesty in Council

Whereas a draft of this Order has been approved by a resolution of each House of Parliament:

Now, therefore, Her Majesty, in exercise of the powers conferred by section 85 of the Northern Ireland Act 1998^(a) and of all other powers enabling Her in that behalf, is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:—

^(a) 1998 c.47.

Title and commencement

1.—(1) This Order may be cited as the Financial Investigations (Northern Ireland) Order 2001.

(2) This Order shall come into operation on such day or days as the Secretary of State may by order appoint.

Interpretation

2.—(1) The Interpretation Act (Northern Ireland) 1954^(a) shall apply to Article 1 and the following provisions of this Order as it applies to an Act of the Northern Ireland Assembly.

(2) In this Order “the 1996 Order” means the Proceeds of Crime (Northern Ireland) Order 1996.^(b)

Additional investigation powers

3.—(1) Article 49 of the 1996 Order (additional investigation powers) shall be amended as follows.

(2) In paragraph (1)—

(a) for the words “an officer of the Royal Ulster Constabulary not below the rank of superintendent” there shall be substituted the words “a senior officer of an enforcement authority”;

(b) in sub-paragraph (a)—

(i) for the words “Royal Ulster Constabulary” there shall be substituted the words “authority; and”

(ii) in head (ii), for the words “the proceeds of any such conduct” there shall be substituted the words “any relevant property”; and

(c) in sub-paragraph (b), after the words “a police officer” there shall be inserted the words “or customs officer”.

(3) After paragraph (1) there shall be inserted the following paragraph—

“(1A) If, on an application made by a senior officer of an enforcement authority by complaint on oath, a county court judge is satisfied—

(a) that an investigation by the authority into—

(i) whether any person has benefited from any conduct to which this Article applies; or

(ii) the extent or whereabouts of any relevant property;

is taking place; and

(b) that the investigation could be more effectively carried out if 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 paragraphs 3 and 3A of Schedule 2; and

(c) that, having regard to the particular investigation, that person is a fit and proper person to be appointed,

he may authorise that person to exercise, for the purposes of the investigation the powers conferred by paragraphs 3 and 3A of Schedule 2.”.

(4) In paragraphs (2) and (3), after the words “paragraph (1)” there shall be inserted the words “or (1A)”.

(5) For paragraph (5) there shall be substituted the following paragraph—

“(5) In this Article—

“customs officer” means an officer commissioned by the Commissioners of Customs and Excise;

(a) 1954 c.33 (N.I.).

(b) 1996 NI 9.

“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(a);

“relevant property” means—

- (a) the proceeds of any conduct to which this Article applies; or
- (b) property held by a person who has benefited from such conduct or transferred by or to him at any time since the beginning of the period of 6 years ending with the date on which the application is made under paragraph (1) or (1A);

“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.”.

(6) In the definition of “financial investigator” in Article 2(2) of that Order, for “49” there shall be substituted “49(1)”.

Order to make material available and authority for search

4.—(1) In Article 50 of the 1996 Order (order to make material available)—

- (a) in paragraph (1), for the words “the proceeds of any such conduct” there shall be substituted the words “any relevant property”;
- (b) in paragraph (2), after the word “constable” in both places where it occurs there shall be inserted the words “or a financial investigator”;
- (c) in paragraph (4)(a), at the end of head (ii) there shall be inserted—
 - “or
 - (iii) (in any case) has at any time held relevant property,”;
- (d) in paragraph (5), after the word “constable” in the second place where it occurs there shall be inserted the words “or a financial investigator”;
- (e) after paragraph (6) there shall be inserted the following paragraph—

“(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.”.

(2) In Article 51 of that Order (authority for search)—

- (a) in paragraph (1)(b), for the words “the proceeds of any such conduct” there shall be substituted the words “any relevant property”;
- (b) in paragraph (3)(a), at the end of head (ii) there shall be inserted—
 - “or
 - (iii) (in any case) has at any time held relevant property,”;
- (c) in paragraph (4)—
 - (i) in sub-paragraph (a), at the end of head (ii) there shall be inserted—
 - “or
 - (iii) (in any case) has at any time held relevant property,”;
 - (ii) in sub-paragraph (b)(ii), for the words “the proceeds of any such conduct” there shall be substituted the words “any relevant property”.

(3) In Article 52 of that Order (supplementary provisions)—

(a) 1989 NI 12.

- (a) in paragraph (1)(a)(ii), for the words “the proceeds of any such conduct” there shall be substituted the words “any relevant property”;
- (b) after paragraph (2) there shall be added the following paragraph—

“(3) In Articles 50 and 51 and in paragraph (1), “relevant property” has the same meaning as in Article 49 except that in paragraph (b) of the definition of “relevant property” in Article 49(5) the reference to paragraph (1) or (1A) of that Article shall be construed as a reference to Article 50 or 51.”.

Power to require specified information

5. In paragraph 3 of Schedule 2 to the 1996 Order (power to require person to furnish specified information)—

- (a) in sub-paragraph (1), for the words “the business of banking (“the bank”)” there shall be substituted the words “relevant financial business (“the respondent”)”;
- (b) in sub-paragraph (2), for the words from “the bank held” to the words “(d) in the name of” there shall be substituted the words “a business relationship existed between the respondent and the specified person or”;
- (c) for sub-paragraph (3) there shall be substituted the following sub-paragraph—

“(3) Where the respondent identifies a business relationship as mentioned in sub-paragraph (2), the respondent shall furnish to the investigator—

- (a) the full name of the specified person;
- (b) the most recent and all known previous addresses of the specified person;
- (c) the date of birth (if known) of the specified person;
- (d) any other evidence of identity of the specified person obtained in accordance with the Money Laundering Regulations 1993^(a);
- (e) the name of any company, firm or partnership in which it appears to the respondent that the specified person had an interest;
- (f) any date on which a business relationship between the respondent and the specified person commenced or ceased; and
- (g) all reference numbers or other means of identification allocated by the respondent to the specified person for the purposes of the business relationship.”;

- (d) for sub-paragraph (5) there shall be substituted the following sub-paragraph—

“(5) In this paragraph—

“any person carrying on relevant financial business” includes any person who has carried on such business at any time during the period of 6 years ending on the date of the notice under sub-paragraph (1);

“business relationship” and “relevant financial business” have the same meanings as in the Money Laundering Regulations 1993.”.

Investigation powers in relation to solicitors

6. After paragraph 3 of Schedule 2 to the 1996 Order, there shall be inserted the following paragraph—

“**3A.**—(1) Where it appears to a financial investigator that a specified person may have benefited from any conduct to which Article 49 applies the investigator may by notice in

(a) S.I. 1993/1933.

writing require any solicitor to furnish specified information to the investigator within a specified time and in a specified manner.

(2) The information which may be specified under sub-paragraph (1) is whether at any time during a specified period the specified person was a client of the solicitor in respect of—

- (a) any land or business;
- (b) a company, firm, partnership or trust;
- (c) a bank or other account; or
- (d) any assets in the nature of investments, being assets of the specified person.

(3) Where the specified person was a client as mentioned in sub-paragraph (2), the solicitor shall furnish to the investigator—

- (a) the full name of the client;
- (b) the most recent and all known previous addresses of the client;
- (c) the date of birth (if known) of the client;
- (d) other evidence of identity of the client obtained in accordance with the Money Laundering Regulations 1993; and
- (e) specified details of the nature of any transaction relating to any matter mentioned in that sub-paragraph.”.

Time limit for summary proceedings

7. At the end of paragraph 5 of Schedule 2 to the 1996 Order (offences) there shall be added the following sub-paragraph—

“(5) Notwithstanding anything in Article 19(1) of the Magistrates’ Courts (Northern Ireland) Order 1981, summary proceedings for an offence under sub-paragraph (1) or (2) may be brought at any time within the period of 3 months from the date on which evidence sufficient in the opinion of the complainant to justify prosecution for the offence came to his notice or within the period of 12 months from the commission of the offence, whichever period last expires.”.

Minor and consequential amendments

8. Schedule 2 to the 1996 Order shall be amended as follows—

(a) in paragraph 1, after sub-paragraph (2) there shall be added the following sub-paragraph—

“(3) In paragraphs 3 to 7, “financial investigator” includes a person authorised under Article 49(1A) to exercise the powers conferred by paragraph 3 or 3A.”;

(b) in paragraph 2(2), after the words “may allow” in the first place where they occur there shall be inserted the words “or on a specified date”;

(c) in paragraph 4(2), for “or 3” there shall be substituted “, 3 or 3A”;

(d) in paragraph 5(1), for “or 3” there shall be substituted “, 3 or 3A”;

(e) in paragraph 6(1), for “or 3” there shall be substituted “, 3 or 3A”;

(f) in paragraph 8(1), after the words “this Schedule” there shall be added the words “or Article 50”.

A.K. Galloway
Clerk of the Privy Council

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends Part IV of the Proceeds of Crime (Northern Ireland) Order 1996 (NI 9) (“the 1996 Order”).

Articles 3 and 4 extend Articles 49 to 52 of the 1996 Order (additional investigation powers) to cover investigations into the extent or whereabouts of property held or transferred within the previous 6 years by or to a person who has benefited from conduct to which Article 49 applies.

Article 3 also extends Article 49 of the 1996 Order to allow a senior customs officer to apply for a financial investigator to be appointed and to allow a senior police officer or a senior customs officer to apply for a police officer or customs officer to be authorised to exercise certain powers to require information under Schedule 2 to the 1996 Order from financial businesses and solicitors. Article 4 also extends Article 50 of the 1996 Order (order to make material available) to allow financial investigators rights of access to material under orders made under Article 50 but restricts paragraph (6) of Article 50 so as to require notice of an application for certain orders under that Article addressed to a solicitor in certain circumstances.

Articles 5 to 8 amend Schedule 2 to the 1996 Order (financial investigations).

Article 5 extends the power to require information under paragraph 3 of that Schedule to persons carrying on relevant financial business within the meaning of the Money Laundering Regulations 1993 (S.I. 1993/1933). Article 6 provides a power to require a solicitor to provide information as to whether a specified person was a client of his in respect of certain matters and about the nature of any transaction relating to them. Article 7 extends the time limit for bringing summary proceedings for offences under paragraph 5 of that Schedule and Article 8 makes certain minor and consequential amendments.

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