

SCHEDULE 2

Article 2(2)

Modifications of the Proceeds of Crime (Northern Ireland) Order 1996

1. Article 1 shall be omitted.
2. In Article 2—
 - (a) in paragraph (1) the words “Article 1 and” shall be omitted.
 - (b) in paragraph (2)—
 - (i) the definitions of “confiscation order”, “criminal conduct”, “drug trafficking offence”, “external confiscation order”, “modifications”, “proceeds of criminal conduct”, “relevant criminal conduct” and “statutory provision” shall be omitted;
 - (ii) in the definition of “the defendant” for the words from “proceedings” to the end there shall be substituted the words “an external confiscation order has been made, or a person against whom proceedings which may result in an external confiscation order being made have been, or are to be, instituted in a designated country”;
 - (iii) after the definition of “the defendant” there shall be inserted the following definition—

““designated country” means a country or territory specified in Schedule 1 to the 1997 Order”;
 - (iv) in the definition of “drug trafficking” after the words “Article 45” in sub-paragraph (e) and “Article 47” in sub-paragraph (f) there shall be inserted the words “of the 1996 Order.”;
 - (v) after the definition of “restraint order” there shall be added the following definitions—

““the 1996 Order” means the Proceeds of Crime (Northern Ireland) Order 1996 unmodified by Schedule 2 to the 1997 Order;

“the 1997 Order” means the Proceeds of Crime (Countries and Territories designated under the Drug Trafficking Act 1994) Order (Northern Ireland) 1997.”;
- (c) in paragraph (3) for the list of expressions and relevant provisions there shall be substituted—

“acting as an insolvency practitioner	Article 2(12)
authorised government department	Article 2(2)
charging order	Article 2(2)
conclusion of proceedings in a designated country	Article 4(3)
constable	Article 2(2)
corresponding law	Article 2(2)
dealing with property	Article 31(9)
defendant	Article 2(2)
designated country	Article 2(2)
drug trafficking	Article 2(2)
external confiscation order	Article 8(1)

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

gift caught by this Order	Article 7(1)
“held”, in relation to property	Article 3(5)
institution of proceedings in a designated country	Article 4(2)
“interest”, in relation to property	Article 3(2)
making a gift	Article 7(3)
property	Article 3(1)
realisable property	Article 5(1)
restraint order	Article 2(2)
“satisfied”, in relation to an external confiscation order	Article 4(6)
“subject to appeal”, in relation to an order	Article 4(8)
value of gift, payment or reward	Article 6(2)
value of property	Article 6(1)”;

(d) paragraphs (4) to (11) shall be omitted.

3. In Article 3 for paragraph (4) there shall be substituted the following paragraph—

“(4) References in this Order to property obtained, or to a pecuniary advantage derived, or to anything received, in connection with drug trafficking include a reference to property obtained, or to a pecuniary advantage derived, or to anything received both in that connection and in some other connection, and whether before or after the commencement of the 1997 Order.”.

4. For the Part heading “CONFISCATION ORDERS” there shall be substituted the heading “EXTERNAL CONFISCATION ORDERS”.

5. In Article 4—

(a) for paragraphs (2) and (3) there shall be substituted the following paragraphs—

“(2) Proceedings are instituted in a designated country when—

- (a) under the law of the designated country concerned one of the steps specified in relation to that country in column 2 of the Appendix has been taken there in respect of alleged drug trafficking by the defendant; or
- (b) where no steps have been specified in relation thereto as mentioned in subparagraph (a), when the defendant has been notified in writing in accordance with the laws of the designated country that the competent authorities of that country have begun proceedings against him in respect of alleged drug trafficking; or
- (c) an application has been made to a court in a designated country for an external confiscation order,

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 are concluded—

- (a) when (disregarding any power of a court to grant leave to appeal out of time) there is no further possibility of an external confiscation order being made in the proceedings;
 - (b) on the satisfaction of an external confiscation order made in the proceedings (whether by the recovery of all property liable to be recovered, or the payment of any amount due).”;
 - (b) paragraphs (4) and (5) shall be omitted;
 - (c) for paragraph (6) there shall be substituted the following paragraph—

“(6) For the purposes of this Order, an external confiscation order is satisfied when no property remains liable to be recovered under it, or no amount is due under it.”;
 - (d) paragraph (7) shall be omitted.
6. For Article 5 there shall be substituted the following Article—

“Meaning of realisable property

- 5.—(1) In this Order “realisable property” means, subject to paragraph (2)—
- (a) in relation to an external confiscation order in respect of specified property, the property which is specified in the order; and
 - (b) in any other case—
 - (i) any property held by the defendant; and
 - (ii) any property held by a person to whom the defendant has directly or indirectly made a gift caught by this Order.
- (2) 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⁽¹⁾ (deprivation orders);
 - (b) section 27 of the Misuse of Drugs Act 1971⁽²⁾ (forfeiture orders);
 - (c) section 13(2), (3) or (4) of the Prevention of Terrorism (Temporary Provisions) Act 1989⁽³⁾ (forfeiture orders); or
 - (d) Article 8 of the 1996 Order (confiscation orders).”.
7. In Article 6—
- (a) in paragraph (2)(a) for the words “the commission of an offence” there shall be substituted the words “drug trafficking”;
 - (b) paragraph (4) shall be omitted.
8. In Article 7—
- (a) there shall be substituted for paragraph (1) the following paragraph—

“(1) A gift (including a gift made before the commencement of the 1997 Order) is caught by this Order if—

 - (a) it was made by the defendant at any time since the beginning of the period of six years ending when the proceedings were instituted against him; or
 - (b) it was made by the defendant at any time and was a gift of property

(1) [S.I. 1994/2795 \(N.I. 15\)](#)

(2) [1971 c. 38](#)

(3) [1989 c. 4](#)

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

- (i) received by the defendant in connection with drug trafficking carried on by him or another person; or
 - (ii) which in whole or in part directly or indirectly represented in the defendant's hands property received by him in that connection.”;
 - (b) paragraph (2) shall be omitted.
9. For Article 8 there shall be substituted the following Article—

“External confiscation orders

- 8.—(1) An order made by a court of a designated country for the purpose—
- (a) of recovering, or recovering the value of, property obtained or other rewards received, as a result of or in connection with drug trafficking; or
 - (b) of depriving a person of a pecuniary advantage so obtained as mentioned in sub-paragraph (a),

is referred to in this Order as an “external confiscation order”.

(2) Article 43 shall have effect with respect to the registration of external confiscation orders.

(3) In paragraph (1) the reference to an order includes any order, decree, direction or judgment, or any part thereof however described.

(4) Where a person derives a pecuniary advantage as a result of or in connection with drug trafficking, he is to be treated for the purposes of this Order as if he had obtained as a result of or in connection with drug trafficking a sum of money equal to the value of the pecuniary advantage.”.

10. Articles 9 to 29 shall be omitted.
11. For Article 30 there shall be substituted the following Article—

“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 against the defendant in a designated country;
- (b) the proceedings have not been concluded; and
- (c) either an external confiscation order has been made in the proceedings or it appears to the High Court that there are reasonable grounds for thinking that such an order may be made in them.

(2) Those powers are also exercisable where it appears to the High Court that proceedings are to be instituted against the defendant in a designated country and that there are reasonable grounds for thinking that an external confiscation order may be made in them.

(3) Where the court has made an order under Article 31(1) or 32(1) by virtue of paragraph (2) the court shall discharge the order if the proposed proceedings are not instituted within such time as the court considers reasonable.”.

12. In Article 31—
- (a) for paragraph (3)(a) and (b) there shall be substituted the following sub-paragraphs—
 - “(a) where an application under paragraph (5) relates to an external confiscation order made in respect of specified property, to property which is specified in that order; and

- (b) in any other case—
 - (i) to all realisable property held by a specified person, whether the property is described in the restraint order or not; and
 - (ii) to realisable property held by a specified person, being property transferred to him after the making of the restraint order.”;
 - (b) in paragraph (5)—
 - (i) in sub-paragraph (a) for the words “the prosecution” there shall be substituted the words “or on behalf of the government of a designated country or, in a case where an external confiscation order has been registered under Article 43, by a receiver appointed under Article 34 or the Director of Public Prosecutions for Northern Ireland”;
 - (ii) for sub-paragraph (c) there shall be substituted the following sub-paragraph—
 - “(c) notwithstanding anything in Order 11 of the Rules of the Supreme Court (Northern Ireland) 1980(4) may provide for service on, or the provision of notice to, persons affected by the order in such manner as the High Court may direct.”;
 - (c) for paragraph (6)(b) there shall be substituted the following sub-paragraph—
 - “(b) shall be discharged when the proceedings in relation to which the order was made are concluded.”;
 - (d) in paragraph (12) for the words “The prosecution” there shall be substituted the words “A person applying for a restraint order under paragraph (5)(a)”.
13. in Article 32—
- (a) for paragraph (1)(a) and (b) there shall be substituted the following sub-paragraphs—
 - “(a) where a fixed amount is payable under an external confiscation order, of an amount not exceeding the amount so payable; and
 - (b) in any other case, of an amount equal to the value from time to time of the property charged.”;
 - (b) in paragraph (2)—
 - (i) in sub-paragraph (a) for the words “the prosecution” there shall be substituted the words “or on behalf of the government of a designated country or, in a case where an external confiscation order has been registered under Article 43, by a receiver appointed under Article 34 or the Director of Public Prosecutions for Northern Ireland”;
 - (ii) for sub-paragraph (c), there shall be substituted the following sub-paragraph—
 - “(c) notwithstanding anything in Order 11 of the Rules of the Supreme Court (Northern Ireland) 1980 shall provide for service on, or the provision of notice to, persons affected by the order in such manner as the High Court may direct”; and
 - (c) in paragraph (6)(b)(i) for the words “or of the application in question” there shall be substituted the words “against the defendant in the designated country”.
14. In Article 33 paragraphs (3) and (4) shall be omitted.
15. After Article 33 there shall be inserted the following Article—

(4) S.R. 1980 No. 346

“Applications for restraint and charging orders

33A. Notwithstanding anything in rule 21(2) of Order 116 of the Rules of the Supreme Court (Northern Ireland) 1980, an application under Article 31(5) or Article 32(2) shall be supported by an affidavit which shall—

- (a) state, where applicable, the grounds for believing that an external confiscation order may be made in the proceedings instituted or to be instituted in the designated country concerned;
- (b) to the best of the deponent’s ability, give particulars of the realisable property in respect of which the order is sought and specify the person or persons holding such property;
- (c) in a case to which Article 30(2) applies, indicate when it is intended that proceedings should be instituted in the designated country concerned,

and the affidavit may, unless the court otherwise directs, contain statements of information or belief with the sources and grounds thereof.”.

16. In Article 34, for paragraph (1) there shall be substituted the following paragraphs—

“(1) Where an external confiscation order has been registered in the High Court under Article 43, the High Court may, on the application of the Director of Public Prosecutions for Northern Ireland exercise the powers conferred by paragraphs (1A) to (6).

(1A) In respect of any sum of money payable under the external confiscation order the court may make a garnishee order as if the sum were due to the Crown in pursuance of a judgment or order of the High Court, but any such order shall direct that the sum payable be paid to the High Court.”.

17. In Article 35—

- (a) in paragraph (1) for the words from “applied” to the end there shall be substituted the words “paid to the High Court and applied for the purposes specified in paragraphs (5) to (7) and in the order so specified.”;
- (b) in paragraph (3) for the words “If, after the amount payable under the confiscation order”, there shall be substituted the words “Where a fixed amount is payable under the external confiscation order and, after that amount”;
- (c) paragraph (4) shall be omitted;
- (d) in paragraph (5) for the words “The proper officer shall first”, there shall be substituted the words “Any sums paid to the High Court under paragraph (1) or under an order made under Article 34(1A) or otherwise in satisfaction of an external confiscation order shall be first applied to”;
- (e) for paragraph (6) there shall be substituted the following paragraph—

“(6) If the money was paid to the High Court by a receiver appointed under this Order or in pursuance of a charging order the receiver’s remuneration and expenses shall next be paid.”;
- (f) in paragraph (7) for the words “After making” there shall be substituted the words “After there has been made”, and for the words “the proper officer shall reimburse any amount paid under Article 40(2)” there shall be substituted the words “any amount paid under Article 40(2) shall be reimbursed”;
- (g) paragraph (8) shall be omitted;
- (h) for paragraph (9) there shall be substituted the following paragraph—

“(9) Any sums remaining after all the payments required to be made under the foregoing provisions of this Article have been made shall be paid into the Consolidated Fund.”; and

- (i) paragraphs (10) and (11) shall be omitted.
- 18. In Article 36—
 - (a) in paragraph (2) for the words from “making available” to the end there shall be substituted the words “recovering property which is liable to be recovered under an external confiscation order registered in the High Court under Article 43 or, as the case may be, with a view to making available for recovery property which may become liable to be recovered under any external confiscation order which may be made in the defendant’s case”; and
 - (b) in paragraph (6), after the word “the” in the fourth place where it occurs, there shall be inserted the word “external”.
- 19. In Article 37—
 - (a) in paragraph (6)(a) heads (i) and (ii) shall be omitted;
 - (b) in paragraph (6)(b) for the words “conclusion of the proceedings or of the application” there shall be substituted the words “discharge of the restraint or charging order”.
- 20. In Article 40 in paragraph (2) the words “by the prosecution or, in a case where proceedings for an offence to which this Order applies are not instituted,” shall be omitted.
- 21. Articles 41 and 42 shall be omitted.
- 22. In Article 43—
 - (a) in paragraph (3) after the word “satisfied” there shall be inserted the words “by the recovery of all property liable to be recovered under it or”;
 - (b) paragraph (4) shall be omitted.
- 23. Part III (Articles 44 to 48) shall be omitted.
- 24. In Article 49—
 - (a) for paragraph (1)(a) there shall be substituted the following sub-paragraph—
 - “(a) that an investigation by the Royal Ulster Constabulary into the existence, extent or whereabouts of any realisable property is taking place”; and
 - (b) paragraph (4) shall be omitted.
- 25. In Article 50—
 - (a) for paragraph (1) there shall be substituted the following paragraph—
 - “(1) A constable or a financial investigator may for the purposes of an investigation into the existence, extent or whereabouts of any realisable property apply to a county court judge for an order under paragraph (2) in relation to particular material or material of a particular description.”;
 - (b) for paragraph (4)(a) there shall be substituted the following sub-paragraph—
 - “(a) that there are reasonable grounds for suspecting that a specified person has at any time held property which was realisable property.”;
- 26. In Article 51—
 - (a) for paragraph (1) there shall be substituted the following paragraph—
 - “(1) A constable or a financial investigator may for the purposes of an investigation into the existence, extent or whereabouts of any realisable property apply to a county court judge for a warrant under this Article in relation to specified premises.”;
 - (b) for paragraph (3)(a) there shall be substituted the following sub-paragraph—

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

- “(a) that there are reasonable grounds for suspecting that a specified person has at any time held property which was realisable property,”;
 - (c) in paragraph (4)—
 - (i) for sub-paragraph (a) there shall be substituted the following sub-paragraph—
 - “(a) that there are reasonable grounds for suspecting that a specified person has at any time held property which was realisable property,”;
 - (ii) for sub-paragraph (b)(ii) there shall be substituted the following head—
 - “(ii) to the question whether that person has at any time held property which was realisable property or to any question as to the extent or whereabouts of such property,”.
- 27. In Article 52—
 - (a) for paragraph (1)(a) there shall be substituted the following sub-paragraph—
 - “(a) an investigation into the existence, extent or whereabouts of any realisable property 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) paragraph (2)(b) shall be omitted.
- 28. Article 53 shall be omitted.
- 29. In Article 54—
 - (a) in paragraph (1) for the words “the prosecution” there shall be substituted the words “or on behalf of the government of a designated country or, in a case where an external confiscation order has been registered under Article 43, by a receiver appointed under Article 34 or the Director of Public Prosecutions for Northern Ireland”;
 - (b) in paragraph (2)(b) for the words “paragraph (3)” there shall be substituted the words “paragraph (2)”;
 - (c) in paragraph (2) the words from “but” to the end shall be omitted;
 - (d) in paragraph (9)(b) for the words “any conduct to which Article 49 applies” there shall be substituted the words “drug trafficking”;
 - (e) in paragraph (9)(c) for the words “any such conduct” there shall be substituted the words “such drug trafficking”;
 - (f) paragraph (13) shall be omitted.
- 30. Articles 55 and 56 shall be omitted.
- 31. For Article 57 there shall be substituted the following Article—
 - “**Amendment**
 - 57. The statutory provision specified in paragraph 14 of Schedule 3 shall have effect subject to the amendment specified in that paragraph being an amendment consequential upon the provisions of this Order.”.
- 32. After Article 57 there shall be inserted the following Appendix—

“APPENDIX

Article 4(2)

Institution of Proceedings

<i>Designated country</i>	<i>Point at which proceedings are instituted</i>
Anguilla	(a) when a summons or warrant is issued in respect of an offence; (b) when a person is charged with an offence after being taken into custody without a warrant; (c) when a bill of indictment is preferred.
Antigua and Barbuda	when a person has been charged with a scheduled offence.
Argentina	when a judge has ordered that a person detained for the purpose of testifying in connection with the commission of an offence.
Australia	(a) when an information has been laid before a justice of the peace; (b) when a person is charged with an offence after having been taken into custody without a warrant; (c) when a bill of indictment is preferred.
The Bahamas	(a) when an information has been laid before a justice of the peace; (b) when a person is charged with an offence after having been taken into custody without a warrant; (c) when a bill of indictment is preferred.
Bahrain	when a bill of indictment is lodged in court against any person for an offence.
Barbados	(a) when any information has been laid before a magistrate; (b) when a person is charged with an offence; (c) when a bill of indictment is preferred.
Bermuda	when any information is laid charging a person with an offence.
Bolivia	when a warrant is issued by a competent judge or an order to institute proceedings, containing the preventive annotation of property liable to registration or the bank deposit of the monies, assets and property of the accused.
British Virgin Islands	(a) when a summons or warrant is issued in respect of an offence;

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

<i>Designated country</i>	<i>Point at which proceedings are instituted</i>
	(b) when a person is charged with an offence after being taken into custody without a warrant;
	(c) when an indictment is preferred.
The Cayman Islands	(a) when a charge has been signed under subsection (3) or (4) of section 13 of the Criminal Procedure Code in respect of the offence;
	(b) when a person is charged with the offence after being arrested without a warrant under subsection (5) of that section.
Chile	when an application for a decision from the competent judicial authority is made.
Colombia	when a preliminary investigation or a formal process has begun and, in either case, a Resolution has been issued for a freezing or seizure order.
Ecuador	when a writ is issued by a judge initiating criminal proceedings.
Germany	when a person is notified that he is accused of an offence and will be brought before a court.
Gibraltar	when a person is charged with an offence, whether by the laying of an information or otherwise.
Grenada	(a) when an information has been laid before a justice of the peace;
	(b) when a person is charged with an offence;
	(c) when a bill of indictment is preferred.
Guernsey	when a person is charged with an offence.
Guyana	when a charge has been laid against a person for an offence
Hong Kong	(a) when a magistrate issued a warrant or summons;
	(b) when a person is charged with an offence;
	(c) when an indictment is preferred.
India	(a) when information relating to commission of any crime is received by any law enforcement agency empowered to investigate such crime under the law for the time being in force and laid before a court of law;

<i>Designated country</i>	<i>Point at which proceedings are instituted</i>
	<ul style="list-style-type: none"> (b) when any allegation is made orally or in writing to a court of law that a person has committed an offence; (c) when a person is charged with an offence; (d) when any investigation or inquiry into the commission of any offence is directed by a court of law.
Isle of Man	<ul style="list-style-type: none"> (a) where a justice of the peace issues a summons under section 4 of the Summary Jurisdiction Act 1989, when the complaint in relation to the offence is made to him; (b) where a justice of the peace issues a warrant for the arrest of any person under that section, when the complaint in relation to the offence is made to him; (c) where a person is charged with the offence after being taken into custody without a warrant, when he is taken into custody; (d) where an information is preferred by the Attorney General in a case where there have been no committal proceedings, when the information is lodged in the General Registry in accordance with section 4(1) of the Criminal Code Amendment Act 1917.
Italy	<ul style="list-style-type: none"> (a) when a person is notified, in accordance with Article 369 of the Italian Code of Criminal Procedure, that a prosecution against him is in progress; (b) when a proposal for the application of a preventative measure ("<i>misura di prevenzione</i>") is laid before a court.
Jersey	<ul style="list-style-type: none"> (a) when the Bailiff issues a warrant in respect of an offence for the arrest of a person who is out of the Island; (b) when a person is arrested and charged with an offence; (c) when a summons in respect of an offence is served on a person at the instance of the Attorney General; (d) when a summons in respect of the offence is served on a person in accordance with the provisions of Article 8 of the Police Court (Miscellaneous Provisions) (Jersey) Law, 1949.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

<i>Designated country</i>	<i>Point at which proceedings are instituted</i>
Malaysia	when a person is charged with an offence.
Montserrat	(a) when a judge issues a summons or warrant in respect of an offence; (b) when a person is charged with an offence after being taken into custody without a warrant.
Netherlands	(a) when a pre-trial financial investigation has been initiated; (b) when the provisional measure has been ordered by an investigating magistrate; (c) when a public prosecutor has requested a pre-trial criminal investigation by an investigating magistrate to be instituted; (d) when a public prosecutor has laid an indictment.
Panama	when a person has been charged with an offence.
Paraguay	when a judge has ordered the restraint of property and a preventative detention order has been made.
Romania	(a) when the start of a penal pursuit is ordered; (b) when penal proceedings start in respect of an offender.
Saudi Arabia	when an information has been laid before a judicial authority.
South Africa	(a) when a summons is issued in respect of an offence; (b) when a person is charged with an offence; (c) when a bill of indictment is preferred.
Spain	when by virtue of a judicial resolution it is decided to proceed against a person for an offence.
Sweden	when a public prosecutor has established that there are reasonable grounds to suspect that a person has committed an offence and accordingly is obliged under the Code of Judicial Procedure to notify the person of the suspicion.
Switzerland	when proceedings for an offence are brought before an examining magistrate.
Thailand	when a court or the Asset Examination Committee issues a restraint order.
Ukraine	when a criminal case is brought.

<i>Designated country</i>	<i>Point at which proceedings are instituted</i>
United Mexican States	when criminal proceedings are instituted by a judicial authority.
United States of America	when an indictment, information or complaint has been filed against a person in respect of an offence.
Uruguay	when criminal proceedings are instituted by a judicial authority.”

33. Schedule 1 shall be omitted.

34. In Schedule 2—

(a) in paragraph 3—

(i) in sub-paragraph (1) for the words “benefited from any conduct to which Article 49 applies” there shall be substituted the words “at any time held property which was realisable property”;

(ii) sub-paragraph (4) shall be omitted;

(b) paragraph 7(3) shall be omitted;

(c) in paragraph 8—

(i) for sub-paragraph (1) there shall be substituted the following sub-paragraph—

“(1) Any code of practice made by the Secretary of State under paragraph 8(1) of Schedule 2 to the 1996 Order shall, subject to any necessary adaptations, apply to the exercise by financial investigators of the powers conferred by this Schedule as it applies for the purposes of the 1996 Order.”;

(ii) sub-paragraphs (2) to (5) shall be omitted;

(iii) in sub-paragraph (6) for the words “a code of practice issued under this paragraph” there shall be substituted the words “the code of practice referred to in sub-paragraph (1)”;

(d) paragraph 9 shall be omitted.

35. In Schedule 3—

(a) for the heading “AMENDMENTS” there shall be substituted “AMENDMENT”;

(b) paragraphs 1 to 13 shall be omitted;

(c) in paragraph 14 for the words “a confiscation” there shall be substituted the words “an external confiscation”;

(d) paragraphs 15 to 19 shall be omitted.

36. Schedules 4 and 5 shall be omitted.