
STATUTORY RULES OF NORTHERN IRELAND

1998 No. 88

CRIMINAL PROCEDURE

The Proceeds of Crime (Countries and Territories designated under the Criminal Justice Act 1988) Order (Northern Ireland) 1998

Made - - - - *10th March 1998*
To be laid before Parliament
Coming into operation *27th April 1998*

The Secretary of State, in pursuance of Article 42 of the Proceeds of Crime (Northern Ireland) Order 1996(1), hereby makes the following Order:—

Citation, commencement and interpretation

1.—(1) This Order may be cited as the Proceeds of Crime (Countries and Territories designated under the Criminal Justice Act 1988) Order (Northern Ireland) 1998 and shall come into operation on 27th April 1998.

(2) In this Order—

“the Order” means the Proceeds of Crime (Northern Ireland) Order 1996;

“designated country” means a country or territory designated by an Order in Council under section 96 of the Criminal Justice Act 1988(2) and specified in the first column of Schedule 1;

“appropriate authority of a designated country” means—

(a) the authority specified opposite that country in Schedule 1; or

(b) where no authority is so specified, the authority appearing to the court to be the appropriate authority of that country for the purposes of this Order;

“a court of a designated country” includes a court of any state or territory of a designated country.

(1) S.I. 1996/1299 (N.I. 9)

(2) 1988 c. 33; section 96 was amended by section 21 of the Criminal Justice Act 1993 (c. 36)

Application of the Order to designated countries and territories

2.—(1) The Order shall apply, subject to paragraph (2), to each of the countries and territories specified in Schedule 1, being countries and territories designated under section 96 of the Criminal Justice Act 1988.

(2) In relation to a designated country, the Order shall apply, subject to the modifications specified in Schedule 2, 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, and accordingly in relation to such orders and such proceedings, the Order shall have effect as set out in Schedule 3.

Proof of orders and judgments of court of a designated country

3.—(1) For the purposes of Articles 42 and 43 of the Order and of the other provisions of the Order as applied under Article 2(2)—

- (a) any order made or judgment given by a court of a designated country purporting to bear the seal of that court or to be signed by any person in his capacity as a judge, magistrate or officer of the court, shall be deemed without further proof to have been duly sealed or, as the case may be, to have been signed by that person; and
- (b) a document, duly authenticated, which purports to be a copy of any order made or judgment given by a court of a designated country shall be deemed without further proof to be a true copy.

(2) A document purporting to be a copy of any order made or judgment given by a court of a designated country is duly authenticated for the purpose of paragraph (1)(b) if it purports to be certified by any person in his capacity as a judge, magistrate or officer of the court in question or by or on behalf of the appropriate authority of the designated country.

Evidence in relation to proceedings and orders in a designated country

4.—(1) For the purposes of Articles 42 and 43 of the Order, and of the other provisions of the Order as applied under Article 2(2), a certificate purporting to be issued by or on behalf of the appropriate authority of a designated country stating—

- (a) that proceedings have been instituted and have not been concluded, or that proceedings are to be instituted, there;
- (b) in a case to which sub-paragraph (b) of Article 4(2) of the Order, as modified by Schedule 2 to this Order, applies, that the defendant has been notified as specified in that sub-paragraph;
- (c) that an external confiscation order is in force and is not subject to appeal;
- (d) that all or a certain amount of the sum payable under an external confiscation order remains unpaid in the designated country, or that other property recoverable under an external confiscation order remains unrecovered there;
- (e) that any person has been notified of any proceedings in accordance with the laws of the designated country; or
- (f) that an order (however described) made or to be made by a court of the designated country has the purpose or, as the case may be, will have the purpose—
 - (i) of recovering property obtained as a result of or in connection with conduct corresponding to an offence to which the Order applies other than a drug trafficking offence or the value of property so obtained; or
 - (ii) of depriving a person of a pecuniary advantage so obtained,

shall, in any proceedings in the High Court, be admissible as evidence of the facts so stated.

(2) In any such proceedings a statement contained in a document, duly authenticated, which purports to have been received in evidence or to be a copy of a document so received, or to set out or summarise evidence given in proceedings in a court of a designated country, shall be admissible as evidence of any fact stated therein.

(3) A document is duly authenticated for the purposes of paragraph (2) if it purports to be certified by any person in his capacity as a judge, magistrate or officer of the court in the designated country, or by or on behalf of the appropriate authority of the designated country, to have been received in evidence or to be a copy of a document so received, or, as the case may be, to be the original document containing or summarising the evidence or a true copy of that document.

(4) Nothing in this Article shall prejudice the admission of any evidence, whether contained in any document or otherwise, which is admissible apart from this Article.

Certificate as to appropriate authority of a designated country

5. Where in relation to any designated country no authority is specified in Schedule 1, a certificate made by the Secretary of State to the effect that the authority specified therein is the appropriate authority for the purposes of this Order shall be sufficient evidence of that fact.

Representation of government of a designated country

6. A request for assistance sent to the Secretary of State by the appropriate authority of a designated country shall, unless the contrary is shown, be deemed to constitute the authority of the government of that country for the Director of Public Prosecutions for Northern Ireland to act on its behalf in any proceedings in the High Court under Article 43 of the Order or any other provision of the Order as applied by Article 2(2).

Satisfaction of confiscation order in a designated country

7.—(1) Where—

- (a) a confiscation order has been made under Article 8 of the Order in respect of an offence to which the Order applies other than a drug trafficking offence; and
- (b) a request has been sent by the Secretary of State to the appropriate authority of a designated country for assistance in enforcing that order; and
- (c) in execution of that request property is recovered in that country,

the amount payable under the confiscation order shall be treated as reduced by the value of the property so recovered.

(2) For the purposes of this Article, and without prejudice to the admissibility of any evidence which may be admissible apart from this paragraph, a certificate purporting to be issued by or on behalf of the appropriate authority of a designated country stating that property has been recovered there in execution of a request by the Secretary of State, stating the value of the property so recovered and the date on which it was recovered shall, in any proceedings in a court in Northern Ireland, be admissible as evidence of the facts so stated.

Currency conversion

8.—(1) Where the value of property recovered as described in Article 7(1) is expressed in a currency other than that of the United Kingdom, the extent to which the amount payable under the confiscation order is to be reduced under that paragraph shall be calculated on the basis of the

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exchange rate prevailing on the date on which the property was recovered in the designated country concerned.

(2) Where an amount of money payable or remaining to be paid under an external confiscation order registered in the High Court under Article 43 of the Order is expressed in a currency other than that of the United Kingdom, for the purpose of any action taken in relation to that order under the Order as applied under Article 2(2) the amount shall be converted into the currency of the United Kingdom on the basis of the exchange rate prevailing on the date of registration of the order.

(3) For the purposes of this Article a written certificate purporting to be signed by any person acting in his capacity as an officer of any bank in the United Kingdom and stating the exchange rate prevailing on a specified date shall be admissible as evidence of the facts so stated.

Revocation

9. The Criminal Justice (Confiscation) (Designated Countries and Territories) (Northern Ireland) Order 1992(3) is hereby revoked.

Northern Ireland Office
10th March 1998

Marjorie Mowlam
One of Her Majesty's Principal Secretaries of
State

SCHEDULE 1

Article 2(1)

<i>Designated country</i>	<i>Appropriate authority</i>
Antigua and Barbuda	The Attorney General
Bulgaria	
Canada	The Minister of Justice or officials designated by that Minister
Colombia	The Fiscalía General de la Nación and the Ministerio de Justicia del Derecho
Cyprus	
Czech Republic	
Denmark	
Finland	
France	
India	The Ministry of Home Affairs
Ireland	
Isle of Man	Her Majesty's Attorney General for the Isle of Man
Italy	The Ministry of Justice
Lithuania	
Netherlands	Afdeling Internationale Rechtshulp
Nigeria	The Attorney General of the Federation of the Republic of Nigeria
Norway	
Romania	The Ministry of the Interior and the Ministry of Justice
Sweden	The Ministry of Foreign Affairs
Switzerland	Office Fédéral de la Police
Thailand	The Attorney General or a person designated by him
Ukraine	The Office of the General Prosecutor and the Ministry of Justice
United Mexican States	The Office of the Attorney General of the Republic
United States of America	The Attorney General of the United States of America

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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”, “corresponding law”, “criminal conduct”, “drug trafficking”, “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 1998 Order”;
 - (iv) for the definition of “drug trafficking offence” there shall be substituted the following definition—

““drug trafficking offence” has the same meaning as in 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 1998 Order;

“the 1998 Order” means the Proceeds of Crime (Countries and Territories designated under the Criminal Justice Act 1988) Order (Northern Ireland) 1998.”;
 - (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)
conduct to which this Order applies	Article 2(4)
constable	Article 2(2)
dealing with property	Article 31(9)
defendant	Article 2(2)
designated country	Article 2(2)
drug trafficking offence	Article 2(2)

external confiscation order	Article 8(1)
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) in paragraph (4) for the words “an offence to which this Order applies are references” there shall be substituted the words “conduct to which this Order applies are references to conduct corresponding”, and in paragraph (4)(b) after the word “than” there shall be inserted the words “a drug trafficking offence or”;
- (e) paragraphs (5) 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 the commission of an offence 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 1998 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 conduct by the defendant to which this Order applies; 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 an offence; or
- (c) an application has been made to a court in a designated country for an external confiscation order,

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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, or otherwise).”;

(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 or otherwise.”;

(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⁽⁴⁾ (deprivation orders);

(b) section 27 of the Misuse of Drugs Act 1971⁽⁵⁾ (forfeiture orders);

(c) section 13(2), (3) or (4) of the Prevention of Terrorism (Temporary Provisions) Act 1989⁽⁶⁾ (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 “conduct to which this Order applies”;

(b) paragraph (4) shall be omitted.

8. In Article 7—

(a) there shall be substituted for paragraph (1) the following paragraph—

⁽⁴⁾ S.I. 1994/2795 (N.I. 15)

⁽⁵⁾ 1971 c. 38

⁽⁶⁾ 1989 c. 4

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“(1) A gift (including a gift made before the commencement of the 1998 Order) is caught by this Order if—

- (a) it was made by the defendant at any time after the conduct to which the external confiscation order relates; and
- (b) the court considers it appropriate in all the circumstances to take the gift into account.”;

(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—
 - (i) property obtained or other rewards received as a result of or in connection with conduct to which this Order applies; or
 - (ii) the value of property or other rewards so obtained or received; or
- (b) of depriving a person of a pecuniary advantage so obtained as mentioned in subparagraph (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 conduct to which this Order applies, he is to be treated for the purposes of this Order as if he had obtained as a result of or in connection with the conduct 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.”.

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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(7) 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—

“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

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- 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—

“(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 “Article 49” there shall be substituted the words “this Order”;

- (e) 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—

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“APPENDIX

Article 4(2)

Institution of Proceedings

<i>Designated country</i>	<i>Point at which proceedings are instituted</i>
Antigua and Barbuda	when a person has been charged with a scheduled offence.
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.
India	<p>(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;</p> <p>(b) when any allegation is made orally or in writing to a court of law that a person has committed an offence;</p> <p>(c) when a person is charged with an offence;</p> <p>(d) when any investigation or inquiry into the commission of any offence is directed by a court of law.</p>
Isle of Man	<p>(a) where a justice of the peace issues a summons under section 13 of the Petty Sessions and Summary Jurisdiction Act 1927, when the complaint in relation to the offence is made to him;</p> <p>(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;</p> <p>(c) where a person is charged with the offence after being taken into custody without a warrant, when he is taken into custody;</p> <p>(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.</p>

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<i>Designated country</i>	<i>Point at which proceedings are instituted</i>
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.
Netherlands	<ul style="list-style-type: none"> (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.
Romania	<ul style="list-style-type: none"> (a) when the start of a penal pursuit is ordered; (b) when penal proceedings start in respect of an offender.
Sweden	when a public prosecutor has established that there are reasonable grounds to suspect that a person has committed an offence and accordingly the prosecutor 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.
United Mexican States	when the Ministerio Público has established that there is probable cause to suspect that a person has committed an offence.
United States of America	when an indictment, information or complaint has been filed against a person in respect of an offence.”

33. For Schedule 1 there shall be substituted the following Schedule—

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“SCHEDULE 1

Article 2(4)

<i>Enactment</i>	<i>Description of Offence</i>
Video Recordings Act 1984 (c. 39)	
Section 9	Supplying video recording of unclassified work
Section 10	Possession of video recording of unclassified work for the purposes of supply.”

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.

SCHEDULE 3

Article 2(2)

The Proceeds of Crime (Northern Ireland) Order 1996 as modified

“Part I

INTRODUCTORY

Interpretation

2.—(1) The Interpretation Act (Northern Ireland) 1954⁽⁸⁾ shall apply to the following provisions of this Order as it applies to a measure of the Northern Ireland Assembly.

(2) In this Order—

“authorised government department” means a government department or a Northern Ireland department which is an authorised department for the purposes of the Crown Proceedings Act 1947⁽⁹⁾;

“charging order” means an order made under Article 32 imposing on such realisable property as may be specified in the order a charge for securing the payment of money to the Crown;

“constable” includes a person commissioned by the Commissioners of Customs and Excise under section 6(3) of the Customs and Excise Management Act 1979⁽¹⁰⁾;

“the defendant” means a person against whom 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;

“designated country” means a country or territory specified in Schedule 1 to the 1998 Order;

“drug trafficking offence” has the same meaning as in the 1996 Order;

“financial investigator” means a person authorised under Article 49 to exercise the powers conferred by Schedule 2;

“restraint order” means an order made by the High Court under Article 31;

“the 1996 Order” means the Proceeds of Crime (Northern Ireland) Order 1996⁽¹¹⁾ unmodified by Schedule 2 to the 1998 Order;

“the 1998 Order” means the Proceeds of Crime (Countries and Territories designated under the Criminal Justice Act 1988) Order (Northern Ireland) 1998.

(3) The expressions listed in the left hand column below are defined by, or otherwise fall to be construed in accordance with, the provisions of this Order listed in the right hand column in relation to those expressions—

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)

⁽⁸⁾ 1954 c. 33 (N.I.)

⁽⁹⁾ 1947 c. 44

⁽¹⁰⁾ 1979 c. 2

⁽¹¹⁾ S.I. 1996/1299 (N.I. 9)

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conduct to which this Order applies	Article 2(4)
constable	Article 2(2)
dealing with property	Article 31(9)
defendant	Article 2(2)
designated country	Article 2(2)
drug trafficking offence	Article 2(2)
external confiscation order	Article 8(1)
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).

(4) References to conduct to which this Order applies are references to conduct corresponding to an offence which—

- (a) is listed in Schedule 1; or
- (b) if not so listed, is an offence punishable on conviction on indictment (whether punishable only on conviction on indictment or either on conviction on indictment or on summary conviction) other than a drug trafficking offence or an offence under Part III of the Prevention of Terrorism (Temporary Provisions) Act 1989⁽¹²⁾.

(12) References in this Order to “acting as an insolvency practitioner” shall be construed in accordance with Article 3 of the Insolvency (Northern Ireland) Order 1989⁽¹³⁾ except that for the purposes of such construction paragraph (5) of that Article (which provides that nothing in the Article is to apply to anything done by the official receiver) shall be disregarded; and the expression shall include the official receiver acting as receiver or manager of the property.

Meaning of “property” and related expressions

3.—(1) In this Order “property” includes money and all other property, real or personal, heritable or movable, and including things in action and other intangible or incorporeal property.

⁽¹²⁾ 1989 c. 4

⁽¹³⁾ S.I. 1989/2405 (N.I. 19)

(2) In this Order “interest” in relation to property, includes right.

(3) This Order applies to property wherever situated.

(4) References in this Order to property obtained, or to a pecuniary advantage derived, or to anything received in connection with the commission of an offence 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 1998 Order.

(5) In this Order—

(a) references to property held by a person include a reference to property vested in his trustee in bankruptcy or liquidator;

(b) references to an interest held by a person beneficially in property include a reference to an interest which would be held by him beneficially if the property were not so vested.

(6) For the purposes of this Order—

(a) property is held by any person if he holds any interest in it; and

(b) property is transferred by one person to another if the first person transfers or grants to the other any interest in the property.

Part II

EXTERNAL CONFISCATION ORDERS

Interpretation of Part II

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

(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 conduct by the defendant to which this Order applies; 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 an offence; 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, or otherwise).

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(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 or otherwise.

(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 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⁽¹⁴⁾ (deprivation orders);
 - (b) section 27 of the Misuse of Drugs Act 1971⁽¹⁵⁾ (forfeiture orders);
 - (c) section 13(2), (3) or (4) of the Prevention of Terrorism (Temporary Provisions) Act 1989 (forfeiture orders); or
 - (d) Article 8 of the 1996 Order (confiscation orders).

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 conduct to which this Order applies;
- (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.

⁽¹⁴⁾ S.I. 1994/2795 (N.I. 15)

⁽¹⁵⁾ 1971 c. 38

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- (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.

Gifts caught by this Order

7.—(1) A gift (including a gift made before the commencement of the 1998 Order) is caught by this Order if—

- (a) it was made by the defendant at any time after the conduct to which the external confiscation order relates; and
 - (b) the court considers it appropriate in all the circumstances to take the gift into account.
- (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.

External confiscation orders

8.—(1) An order made by a court of a designated country for the purpose—

- (a) of recovering—
 - (i) property obtained or other rewards received as a result of or in connection with conduct to which this Order applies; or
 - (ii) the value of property or other rewards so obtained or received; or
- (b) of depriving a person of a pecuniary advantage so obtained, 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 conduct to which this Order applies, he is to be treated for the purposes of this Order as if he had obtained as a result of or in connection with the conduct a sum of money equal to the value of the pecuniary advantage.

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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 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.

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) 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.

(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⁽¹⁶⁾.

(5) A restraint order—

- (a) may be made only on an application by 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) may be made on an ex parte application to a judge in chambers; and
- (c) notwithstanding anything in Order 11 of the Rules of the Supreme Court (Northern Ireland) 1980⁽¹⁷⁾ 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.

⁽¹⁶⁾ S.I. 1990/2588 (N.I. 17)

⁽¹⁷⁾ S.R. 1980 No. 346

(6) A restraint order—

- (a) may be discharged or varied in relation to any property; and
- (b) shall be discharged when the proceedings in relation to which the order was made are concluded.

(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) A person applying for a restraint order under paragraph (5)(a) shall be treated for the purposes of section 66 of the Land Registration Act (Northern Ireland) 1970⁽¹⁸⁾ (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—

(18) 1970 c. 18 (N.I.)

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- (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.
- (2) A charging order—
- (a) may be made only on an application by 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) may be made on an ex parte application to a judge in chambers;
 - (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
 - (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 against the defendant in the designated country; 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.

(5) In this Article and Article 32—

“building society” has the same meaning as in the Building Societies Act 1986⁽¹⁹⁾;

“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⁽²⁰⁾;

“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.

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⁽²¹⁾, 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.

⁽¹⁹⁾ 1986 c. 53

⁽²⁰⁾ S.I. 1981/226 (N.I. 6)

⁽²¹⁾ S.R. 1980 No. 346; relevant amendments were made by S.R. 1996 No. 282

Realisation of property

Realisation of property

34.—(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.

(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 paid to the High Court and applied for the purposes specified in paragraphs (5) to (7) and in the order so specified.

- (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) Where a fixed amount is payable under the external confiscation order and, after that amount 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.
- (5) 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 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 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.
- (7) After there has been made—
- (a) any payment required by paragraph (5); and
 - (b) in a case to which paragraph (6) applies, any payment required by that paragraph,
- any amount paid under Article 40(2) shall be reimbursed.
- (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.

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 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.
- (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).

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(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 obligations to satisfy the external 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(22).

(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—
 - (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 discharge of the restraint or charging order 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,

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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 person on whose application the receiver was appointed.

Enforcement of orders made outside Northern Ireland

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 the recovery of all property liable to be recovered under it or by payment of the amount due under it.

Part IV

MISCELLANEOUS AND SUPPLEMENTAL

Additional investigation powers

49.—(1) If, on an application made by an officer of the Royal Ulster Constabulary not below the rank of superintendent, by complaint on oath, a county court judge is satisfied—

- (a) that an investigation by the Royal Ulster Constabulary into the existence, extent or whereabouts of any realisable property 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 and who is named in the application; 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 (“a financial investigator”) to exercise for the purposes of the investigation the powers conferred by Schedule 2.

(2) An application under paragraph (1) may be made *ex parte* to a judge in chambers.

(3) Crown Court rules may make provision as to the procedure for applications under paragraph (1).

(5) In this Article “police officer” has the same meaning as in Article 2(2) of the Police and Criminal Evidence (Northern Ireland) Order 1989(23).

Order to make material available

50.—(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.

(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 for him to take away, or
- (b) give a constable 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 has at any time held property which was realisable property,

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- (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 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.

(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 county 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.

Authority for search

51.—(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.

(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 has at any time held property which was realisable property,
 - (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 has at any time held property which was realisable property,
 - (b) that there are reasonable grounds for suspecting that there is on the premises material relating—
 - (i) to the specified person, or
 - (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,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.

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)—

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- (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) 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.

Disclosure of information held by government departments

54.—(1) Subject to paragraph (4), the High Court may on an application by 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 order any material mentioned in paragraph (3) which is in the possession of an authorised government department to be produced to the Court within such period as the Court may specify.

- (2) The power to make an order under paragraph (1) is exercisable if—
- (a) the powers conferred on the Court by Articles 31(1) and 32(1) are exercisable by virtue of paragraph (1) of Article 30, or
 - (b) those powers are exercisable by virtue of paragraph (2) of that Article and the Court has made a restraint or charging order which has not been discharged.
- (3) The material referred to in paragraph (1) is any material which—
- (a) has been submitted to an officer of an authorised government department by the defendant or by a person who has at any time held property which was realisable property,
 - (b) has been made by an officer of an authorised government department in relation to the defendant or such a person, or
 - (c) is correspondence which passed between an officer of an authorised government department and the defendant or such a person,

and an order under that paragraph may require the production of all such material or of a particular description of such material, being material in the possession of the department concerned.

(4) An order under paragraph (1) shall not require the production of any material unless it appears to the High Court that the material is likely to contain information that would facilitate the exercise of the powers conferred either—

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

(5) The High Court may by order authorise the disclosure to such a receiver of any material produced under paragraph (1) or any part of such material; but the Court shall not make an order under this paragraph unless a reasonable opportunity has been given for an officer of the department to make representations to the Court.

(6) Material disclosed in pursuance of an order under paragraph (5) may, subject to any conditions contained in the order, be further disclosed for the purposes of the functions under this Order of the receiver, of the Crown Court or of any court of summary jurisdiction.

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(7) The High Court may by order authorise the disclosure to a person mentioned in paragraph (8) of any material produced under paragraph (1) or any part of such material; but the Court shall not make an order under this paragraph unless—

- (a) a reasonable opportunity has been given for an officer of the department to make representations to the Court, and
- (b) it appears to the Court that the material is likely to be of substantial value in exercising functions relating to the investigation of crime.

(8) The persons referred to in paragraph (7) are—

- (a) any member of the Royal Ulster Constabulary,
- (b) the Director of Public Prosecutions for Northern Ireland or any person acting on his behalf, and
- (c) any officer within the meaning of the Customs and Excise Management Act 1979⁽²⁴⁾.

(9) Material disclosed in pursuance of an order under paragraph (7) may, subject to any conditions contained in the order, be further disclosed for the purposes of functions relating to the investigation of—

- (a) crime;
- (b) whether any person has benefited from any conduct to which this Order applies; or
- (c) the extent or whereabouts of the proceeds of any such conduct.

(10) Material may be produced or disclosed in pursuance of this Article notwithstanding any obligation as to secrecy or other restriction upon the disclosure of information imposed by statute or otherwise.

(11) An order under paragraph (1) and, 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 referred to in paragraph (1), 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).

Supplemental

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.

(24) 1979 c. 2

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APPENDIX

Article 4(2)

Institution of Proceedings

<i>Designated country</i>	<i>Point at which proceedings are instituted</i>
Antigua and Barbuda	when a person has been charged with a scheduled offence.
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.
India	<p>(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;</p> <p>(b) when any allegation is made orally or in writing to a court of law that a person has committed an offence;</p> <p>(c) when a person is charged with an offence;</p> <p>(d) when any investigation or inquiry into the commission of any offence is directed by a court of law.</p>
Isle of Man	<p>(a) where a justice of the peace issues a summons under section 13 of the Petty Sessions and Summary Jurisdiction Act 1927, when the complaint in relation to the offence is made to him;</p> <p>(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;</p> <p>(c) where a person is charged with the offence after being taken into custody without a warrant, when he is taken into custody;</p> <p>(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.</p>

<i>Designated country</i>	<i>Point at which proceedings are instituted</i>
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.
Netherlands	<ul style="list-style-type: none"> (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.
Romania	<ul style="list-style-type: none"> (a) when the start of a penal pursuit is ordered; (b) when penal proceedings start in respect of an offender.
Sweden	when a public prosecutor has established that there are reasonable grounds to suspect that a person has committed an offence and accordingly the prosecutor 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.
United Mexican States	when the Ministerio Público has established that there is probable cause to suspect that a person has committed an offence.
United States of America	when an indictment, information or complaint has been filed against a person in respect of an offence.

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SCHEDULE 1

Article 2(4)

<i>Enactment</i>	<i>Description of Offence</i>
Video Recordings Act 1984 (c. 39)	
Section 9	Supplying video recording of unclassified work
Section 10	Possession of video recording of unclassified work for the purposes of supply.

SCHEDULE 2

Article 49

Financial Investigations

Preliminary

1.—(1) In this Schedule “the investigation”, in relation to a financial investigator, means the investigation for the purposes of which the powers conferred by this Schedule are exercisable by him.

(2) References in this Schedule to documents include references to information recorded in any form and, in relation to information recorded otherwise than in legible form, references to its production include references to producing a copy of the information in legible form.

Investigation powers

2.—(1) A financial investigator may by notice in writing require any person who he has reason to believe has information which appears to the investigator to relate to any matter relevant to the investigation to attend before the investigator at a specified place either forthwith or at a specified time and answer questions or otherwise furnish information which appears to the investigator to relate to the investigation.

(2) A financial investigator may by notice in writing require any person who he has reason to believe has information which appears to the investigator to relate to any matter relevant to the investigation to furnish specified information which appears to the investigator to relate to the investigation within a specified time or such further time as the investigator may allow and in a specified manner or in such other manner as the investigator may allow.

(3) A financial investigator may by notice in writing require any person who he has reason to believe has information which appears to the investigator to relate to any matter relevant to the investigation to produce at a specified place and either forthwith or at a specified time any specified documents—

- (a) which are in his possession, custody or power; or
- (b) to which he has access; or
- (c) of which he may obtain a copy;

and which appear to the investigator to relate to the investigation or any documents of a specified class which appear to the investigator to relate to any such matter.

(4) If any documents are produced pursuant to a notice under sub-paragraph (3) the financial investigator may—

- (a) take copies of or abstracts from them; or
- (b) require the person producing them to provide an explanation of them; or

- (c) retain them if he has reasonable grounds for believing that they might otherwise be concealed, lost, damaged, altered or destroyed.

(5) If any documents are not produced pursuant to a notice under sub-paragraph (3) the financial investigator may require the person who was required to produce them to state, to the best of his knowledge and belief, where they are.

3.—(1) Where it appears to a financial investigator that a specified person may have at any time held property which was realisable property the investigator may by notice in writing require any person carrying on the business of banking (“the bank”) 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 during a specified period, the bank held any account or safe deposit box in Northern Ireland—

- (a) in the name of the specified person; or
- (b) in the joint names of the specified person and any other person; or
- (c) in any other name which it appears to the investigator that the specified person may have used; or
- (d) in the name of any company, firm or partnership in which it appears to the investigator that the specified person has or had an interest.

(3) Where the bank identifies an account or safe deposit box as mentioned in sub-paragraph (2), the bank shall furnish to the investigator—

- (a) the full name of the account or box holder;
- (b) the most recent and all known previous addresses of the account or box holder;
- (c) the number of the account or box;
- (d) the date on which the account was opened or box made available;
- (e) the date on which the account was closed or box facility ceased;
- (f) the date of birth (if known) of the account or box holder; and
- (g) other evidence of identify of the account or box holder obtained in accordance with the provisions of the Money Laundering Regulations 1993⁽²⁵⁾.

(5) In this paragraph—

“account” means a current, deposit, loan, mortgage or any other kind of account;

“safe deposit box” includes any procedure under which the bank provides a facility to hold items for safe keeping on behalf of another person;

“any person carrying on the business of banking” means—

- (a) an institution authorised under the Banking Act 1987⁽²⁶⁾ or a municipal bank within the meaning of that Act;
- (b) a building society within the meaning of the Building Societies Act 1986⁽²⁷⁾;
- (c) a society registered under the Credit Unions (Northern Ireland) Order 1985⁽²⁸⁾ as a credit union;
- (d) a society registered under the Industrial and Provident Societies Act (Northern Ireland) 1969⁽²⁹⁾;

⁽²⁵⁾ S.I. 1993/1933

⁽²⁶⁾ 1987 c. 22

⁽²⁷⁾ 1986 c. 53

⁽²⁸⁾ S.I. 1985/1205 (N.I. 12)

⁽²⁹⁾ 1969 c. 24 (N.I.)

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- (e) a friendly society within the meaning of the Friendly Societies Act 1992⁽³⁰⁾.

Restrictions

4.—(1) A person shall not under paragraph 2 or 3 be required to disclose any information or produce any document which he would be entitled to refuse to disclose or produce on grounds of legal professional privilege in proceedings in the High Court except that a lawyer may be required to furnish the name and address of his client.

(2) A person need not comply with any requirement imposed by a financial investigator under paragraph 2 or 3 unless the investigator has, if required to do so, produced evidence of his authority, and that evidence need not identify him by name if it contains other means of identification.

Offences

5.—(1) A person shall be guilty of an offence if without reasonable excuse he fails to comply with a requirement imposed on him under paragraph 2 or 3.

(2) A person who—

- (a) knows or has reasonable cause to suspect that an investigation is being carried out or is likely to be carried out under this Schedule; and
- (b) falsifies, conceals, destroys or otherwise disposes of, or causes or permits the falsification, concealment, destruction or disposal of, documents which he knows or has reasonable cause to suspect are or would be relevant to such an investigation,

shall be guilty of an offence unless he proves that he had no intention of concealing the facts disclosed by the document from any person carrying out such an investigation.

(3) A person guilty of an offence under sub-paragraph (1) shall be liable, on summary conviction, to imprisonment for a term not exceeding 6 months or a fine not exceeding level 5 on the standard scale or to both.

(4) A person guilty of an offence under sub-paragraph (2) 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.

Admissibility of evidence

6. Any answers given or information furnished by a person in response to a requirement imposed under paragraph 2 or 3 may not be used in evidence against him except—

- (a) on a prosecution for an offence under the Perjury (Northern Ireland) Order 1979⁽³¹⁾; or
- (b) on a prosecution for some other offence where evidence inconsistent with any such answers or information is relied on by the defence; or
- (c) on a prosecution for an offence under paragraph 5.

⁽³⁰⁾ 1992 c. 40

⁽³¹⁾ S.I. 1979/1714 (N.I. 19)

Restriction on disclosure of information

7.—(1) Information obtained by a person in his capacity as a financial investigator may not be disclosed by him except—

- (a) to a constable;
 - (b) to any Northern Ireland department or government department or other authority or body discharging its functions on behalf of the Crown (including the Crown in right of Her Majesty's Government in the United Kingdom);
 - (c) to any competent authority; or
 - (d) to any person or body having, under the law of any country or territory outside the United Kingdom, functions corresponding to any of the functions of any person or body mentioned in heads (a) to (c).
- (2) The following are competent authorities for the purposes of sub-paragraph (1)(c)—
- (a) an inspector appointed under Part XV of the Companies (Northern Ireland) Order 1986⁽³²⁾ or Part XIV of the Companies Act 1985⁽³³⁾;
 - (b) the Official Receiver for Northern Ireland;
 - (c) an Official Receiver;
 - (d) the Accountant in Bankruptcy;
 - (e) a person appointed to carry out an investigation under section 55 of the Building Societies Act 1986;
 - (f) a body administering a compensation scheme under section 54 of the Financial Services Act 1986⁽³⁴⁾;
 - (g) an inspector appointed under section 94 of that Act;
 - (h) a person exercising powers by virtue of section 106 of that Act;
 - (i) an inspector appointed under section 177 of that Act;
 - (j) a person appointed by the Bank of England under section 41 of the Banking Act 1987 to carry out an investigation and make a report;
 - (k) a person exercising powers by virtue of section 44(2) of the Insurance Companies Act 1982⁽³⁵⁾; and
 - (l) any body having supervisory, regulatory or disciplinary functions in relation to any profession or any area of commercial activity.

Code of practice

8.—(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.

(6) A failure on the part of a financial investigator to comply with any provision of the code of practice referred to in sub-paragraph (1) shall not of itself render him liable to any criminal or civil proceedings.

(7) In all criminal and civil proceedings such a code shall be admissible in evidence; and if any provision of such a code appears to the court or tribunal conducting the proceedings to be

⁽³²⁾ S.I. 1986/1032 (N.I. 6)

⁽³³⁾ 1985 c. 6

⁽³⁴⁾ 1986 c. 60

⁽³⁵⁾ 1982 c. 50

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relevant to any question arising in the proceedings it shall be taken into account in determining that question.

(8) In this paragraph “criminal proceedings” includes proceedings before a court-martial constituted under the Army Act 1955(36), the Air Force Act 1955(37) or the Naval Discipline Act 1957(38) or a disciplinary court constituted under section 50 of the said Act of 1957 and proceedings before the Courts-Martial Appeal Court.

(9) Nothing in Article 66(8) of the Police and Criminal Evidence (Northern Ireland) Order 1989 shall require financial investigators to have regard in exercising the powers conferred by this Schedule to any provision of a code under that Order.

SCHEDULE 3

Article 57

AMENDMENT

The Insolvency (Northern Ireland) Order 1989 (N.I. 19)

14. Article 255 (discharge of bankrupt not to release him from liabilities in respect of fines, etc.) shall have effect as if the reference to a fine included a reference to an external confiscation order.”

EXPLANATORY NOTE

(This note is not part of the Order.)

This Order provides that, subject to certain modifications, the Proceeds of Crime (Northern Ireland) Order 1996 (“the 1996 Order”) applies to an order made by a court in any of the countries or territories listed in Schedule 1 (being countries and territories designated under section 96 of the Criminal Justice Act 1988) for the purposes of recovering property obtained as a result of or in connection with conduct corresponding to certain offences, recovering the value of the property so obtained or of depriving a person of a pecuniary advantage so obtained. The 1996 Order as modified will also apply to proceedings which have been or are to be instituted in a designated country or territory and may result in such an order being made there. Offences to which the 1996 Order as modified applies are indictable offences (other than drug trafficking offences and offences under Part III of the Prevention of Terrorism (Temporary Provisions) Act 1989) and certain specified summary offences. The Order also provides in Article 7 that the value of any property recovered in a designated country or territory in response to a request by the government of the United Kingdom for assistance in the enforcement of an order is to be treated as reducing the amount payable in Northern Ireland under a confiscation order made by the Crown Court or a court of summary jurisdiction.

Article 2 designates the countries and territories listed in Schedule 1 for the purposes of enforcement of confiscation orders and applies the provisions of the 1996 Order, with modifications, to confiscation orders of courts in those countries and territories and proceedings which may lead to

(36) 1955 c. 18

(37) 1955 c. 19

(38) 1957 c. 53

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such an order being made. The modifications of the 1996 Order are set out in Schedule 2, and Schedule 3 sets out in full that Order as so modified.