Northern Ireland (Emergency Provisions) Act 1991

1991 CHAPTER 24

An Act to re-enact, with amendments, the Northern Ireland (Emergency Provisions) Act 1978, the Northern Ireland (Emergency Provisions) Act 1987 and Part VI of the Prevention of Terrorism (Temporary Provisions) Act 1989; and to make further provision for the preservation of the peace and the maintenance of order in Northern Ireland. [27th June 1991]

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

Extent Information

E1 Act extends to Northern Ireland only except certain specified provisions see s. 71(2).

Modifications etc. (not altering text)

C1 The temporary provisions of the Act except s. 34 and Sch. 3 shall continue in force for a period of 12 months beginning with 16.6.1992 by S.I. 1992/1413, **art. 3**
The temporary provisions of the Act except s. 34 and Sch. 3 shall continue in force for a period of 12 months beginning with 16.6.1993 by S.I. 1993/1522, **art. 3**
The temporary provisions of the Act except s. 34 and Sch. 3 shall continue in force for a period of 12 months beginning with 16.6.1994 by S.I. 1994/1569, **art. 3**
The temporary provisions of the Act except s. 34 and Sch. 3 shall continue in force for a period of 12 months beginning with 16.6.1995 by S.I. 1995/1566, **art 3**
The temporary provisions of the Act except s. 34 and Sch. 3 shall continue in force for a period of 12 months beginnning with 16.6.1996 and ending with 26.8.1996 by S.I. 1996/1572, **art. 3**

Commencement Information

I1 Act partly in force at 27.8.1991 see s. 69(1); Part VII in force at 1.6.1992 by S.I. 1992/1181, **art. 2**; by s. 69(2) certain provisions are to expire on 15.6.1992 unless continued; by s. 69(4) s. 34 and Sch. 3

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cease to be in force immediately after coming into force; by s. 69(9) Act repealed as from the end of the period of five years beginning with the date on which it came into force

PART I

SCHEDULED OFFENCES

The scheduled offences

1 The scheduled offences.

(1) In this Act "scheduled offence" means an offence specified in Part I, III or IV of Schedule 1 to this Act but subject to any relevant note in Part I of that Schedule.

(2) Part II of that Schedule shall have effect with respect to offences related to those specified in Part I of that Schedule.

(3) The Secretary of State may by order amend Parts I and II of that Schedule whether by adding an offence to, or removing an offence from, either of those Parts or otherwise.

Preliminary inquiries, bail and young persons in custody

2 Preliminary inquiry into scheduled offences.

(1) Where in any proceedings before a magistrates' court for a scheduled offence (not being an extra-territorial offence as defined in section 1(3) of the [M1]Criminal Jurisdiction Act 1975) the prosecutor requests the court to conduct a preliminary inquiry into the offence under the [M2]Magistrates' Courts (Northern Ireland) Order 1981, the court shall, notwithstanding anything in Article 31 of that Order, conduct a preliminary inquiry into the offence unless the court is of opinion that in the interests of justice a preliminary investigation should be conducted into the offence under that Order.

(2) Where in any proceedings a person charged with a scheduled offence is also charged with another offence which is not a scheduled offence, that other offence shall be treated as a scheduled offence for the purposes of this section.

Marginal Citations

M1 1975 c. 59.

M2 S.I. 1981/1675 (N.I. 26).

3 Limitation of power to grant bail in case of scheduled offences.

(1) This section applies to any person who has attained the age of fourteen and is charged with a scheduled offence which is neither being tried summarily nor certified by the Director of Public Prosecutions for Northern Ireland as in his opinion suitable to be so tried.

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(2) Subject to subsection (7) below, a person to whom this section applies shall not be admitted to bail except—
  (a) by a judge of the High Court or the Court of Appeal; or
  (b) by the judge of the court of trial on adjourning the trial of a person charged with a scheduled offence.

(3) A judge may, in his discretion, admit to bail in pursuance of subsection (2) above a person to whom this section applies except where he is satisfied that there are substantial grounds for believing that that person, if released on bail (whether subject to conditions or not), would—
  (a) fail to surrender to custody, or
  (b) commit an offence while on bail, or
  (c) interfere with any witness, or
  (d) otherwise obstruct or attempt to obstruct the course of justice, whether in relation to himself or in relation to any other person,

  or, if released subject to conditions, would fail to comply with all or any of those conditions.

(4) In exercising his discretion in accordance with subsection (3) above in relation to a person, a judge shall have regard to such of the following considerations as appear to him to be relevant, namely—
  (a) the nature and seriousness of the offence with which the person is charged,
  (b) the character, antecedents, associations and community ties of the person,
  (c) the time which the person has already spent in custody and the time which he is likely to spend in custody if he is not admitted to bail, and
  (d) the strength of the evidence of his having committed the offence,

  as well as to any others which appear to be relevant.

(5) Without prejudice to any other power to impose conditions on admission to bail, a judge may impose such conditions on admitting a person to bail under this section as appear to him to be likely to result in that person's appearance at the time and place required, or to be necessary in the interests of justice or for the prevention of crime.

(6) Where a person to whom this section applies is a serving member of—
  (a) any of Her Majesty's forces; or
  (b) the Royal Ulster Constabulary or the Royal Ulster Constabulary Reserve,

  he may be admitted to bail on condition that he is held in military or (as the case may be) police custody if the judge is satisfied that suitable arrangements have been made for holding him in such custody; and where a person is admitted to bail on such a condition it shall be lawful for him to be held in such custody in accordance with the conditions of his bail.

(7) The power to admit a person to bail in accordance with subsection (6) above shall, notwithstanding subsection (2) above, be exercisable by a resident magistrate as well as by a judge.

4 Legal aid to applicants for bail in case of scheduled offences.

(1) Where it appears to a judge of the High Court or the Court of Appeal—
  (a) that a person charged with a scheduled offence intends to apply to be admitted to bail; and

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(b) that it is desirable in the interests of justice that that person should have legal aid but that he has not sufficient means to enable him to obtain that aid,

the judge may assign to him a solicitor and counsel, or counsel only, in the application for bail.

(2) If, on a question of granting a person free legal aid under this section, there is a doubt whether his means are sufficient to enable him to obtain legal aid or whether it is desirable in the interests of justice that he should have free legal aid, the doubt shall be resolved in favour of granting him free legal aid.

(3) Articles 32, 36 and 40 of the [M3]Legal Aid, Advice and Assistance (Northern Ireland) Order 1981 (statements, payments, rules and stamp duty) shall apply in relation to legal aid under this section as they apply in relation to legal aid under Part III of that Order as if any legal aid under this section were given in pursuance of a criminal aid certificate under Article 29 of that Order.

Marginal Citations

M3 S.I. 1981/228 (N.I. 8).

5 Maximum period of remand in custody in case of scheduled offences.

Notwithstanding Article 47(2) and (3) of the [M4]Magistrates' Courts (Northern Ireland) Order 1981, the period for which a person charged with a scheduled offence (or with a scheduled offence and another offence which is not a scheduled offence) may be remanded in custody by a magistrates' court shall be a period of not more than twenty-eight days beginning with the day following that on which he is so remanded.

Marginal Citations

M4 S.I. 1981/1675 (N.I. 26).

6 Holding in custody of young persons charged with scheduled offences.

(1) Where a young person charged with a scheduled offence has been remanded or committed for trial as respects that offence and is not released on bail, he may—

(a) notwithstanding the provisions of any enactment, and

(b) whether or not he was remanded or committed for trial at a time when this section was not in force,

be held in custody in such prison or other place as may be specified in a direction given by the Secretary of State under this section.

(2) The Secretary of State may give a direction in respect of a person to whom this section applies if he considers that it is necessary, in order to prevent his escape or to ensure his safety or the safety of others, to make special arrangements as to the place at which that person is to be held in custody while on remand or while committed for trial.

(3) A direction may be given by the Secretary of State at any time after the young person to whom it relates has been charged with a scheduled offence, and may be varied or revoked by a further direction.

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(4) In this section "young person" means a person who has attained the age of fourteen and is under the age of seventeen.

7 Directions under s. 6.

(1) A direction under section 6 above shall, if it has not previously ceased to have effect, cease to have effect at the expiration of such period as may be specified in the direction (being a period not exceeding two months beginning with the date of the direction) unless continued in force by a further direction.

(2) Where, by virtue of a direction, a young person is held in custody in a prison or other place and the direction ceases to have effect (whether or not by reason of the expiry or cesser of section 6 above) it shall be lawful for him to continue to be held in custody in that prison or place until arrangements can be made for him to be held in custody in accordance with the law then applicable to his case.

(3) Nothing in subsection (2) above shall be taken to make lawful the holding in custody of any person who would, disregarding that subsection, be entitled to be released from custody.

Time limits on preliminary proceedings

8 Power of Secretary of State to set time limits in relation to preliminary proceedings for scheduled offences.

(1) The Secretary of State may by regulations make provision, with respect to any specified preliminary stage of proceedings for a scheduled offence, as to the maximum period—

(a) to be allowed to the prosecution to complete that stage;

(b) during which the accused may, while awaiting completion of that stage, be—

(i) in the custody of a magistrates' court; or

(ii) in the custody of the Crown Court,

in relation to that offence.

(2) The regulations may, in particular—

(a) provide for—

(i) the [M5]Magistrates' Courts (Northern Ireland) Order 1981,

(ii) section 3 above, or

(iii) any other enactment, or any rule of law, relating to bail,

to apply in relation to cases to which custody or overall time limits apply subject to such modifications as may be specified (being modifications which the Secretary of State considers necessary in consequence of any provision made by the regulations);

(b) provide for time limits imposed by the regulations to cease to have effect in cases where, after the institution of proceedings for a scheduled offence, the Attorney General for Northern Ireland has certified that the offence in question is not to be treated as a scheduled offence;

(c) make such provision with respect to the procedure to be followed in criminal proceedings as the Secretary of State considers appropriate in consequence of any other provision of the regulations; and

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(d) make such transitional provision in relation to proceedings instituted before the commencement of any provision of the regulations as the Secretary of State considers appropriate.

(3) Where separate counts of an indictment allege a scheduled offence and an offence which is not a scheduled offence, then (subject to, and in accordance with, the provisions of the regulations) the regulations shall have effect in relation to the latter offence as if it were a scheduled offence.

(4) The Crown Court may, at any time before the expiry of a time limit imposed by the regulations, extend, or further extend, that limit if it is satisfied—

(a) that there is good and sufficient cause for doing so; and

(b) that the prosecution has acted with all due expedition.

(5) Where, in relation to any proceedings for a relevant offence, an overall time limit has expired before the completion of the stage of the proceedings to which the limit applies, the accused shall be treated, for all purposes, as having been acquitted of that offence.

(6) Where—

(a) a person escapes from the custody of a magistrates' court or of the Crown Court before the expiry of a custody time limit which applies in his case; or

(b) a person who has been released on bail in consequence of the expiry of a custody time limit—

(i) fails to surrender himself into the custody of the court at the appointed time; or

(ii) is arrested by a constable in connection with any breach, or apprehended breach, of any condition of his bail,

the regulations shall, so far as they provide for any custody time limit in relation to the preliminary stage in question, be disregarded.

(7) Where—

(a) a person escapes from the custody of a magistrates' court or of the Crown Court; or

(b) a person who has been released on bail fails to surrender himself into the custody of the court at the appointed time,

the overall time limit which applies in his case in relation to the stage which the proceedings have reached at the time of the escape or, as the case may be, at the appointed time shall, so far as the relevant offence in question is concerned, cease to have effect.

(8) Where a person is convicted of a relevant offence in any proceedings, the exercise, in relation to any preliminary stage of those proceedings, of the power conferred by subsection (4) above shall not be called into question on any appeal against that conviction.

(9) In this section—

"custody of the Crown Court" includes custody to which a person is committed in pursuance of—

(a) Article 37 or 40(4) of the [M6]Magistrates' Courts (Northern Ireland) Order 1981 (magistrates' court committing accused for trial); or

(b) section 51(8) of the [M7]Judicature (Northern Ireland) Act 1978 (magistrates' court dealing with a person brought before it following his arrest in pursuance of a warrant issued by the Crown Court);

"custody of a magistrates' court" means custody to which a person is committed in pursuance of Article 47 or 49 of the Magistrates' Courts (Northern Ireland) Order 1981 (remand);

"custody time limit" means a time limit imposed by the regulations in pursuance of subsection (1)(b) above or, where any such limit has been extended by the Crown Court under subsection (4) above, the limit as so extended;

"preliminary stage", in relation to any proceedings, does not include any stage of the proceedings after the accused has been arraigned in the Crown Court or, in the case of a summary trial, the magistrates' court has begun to hear evidence for the prosecution at the trial;

"overall time limit" means a time limit imposed by the regulations in pursuance of subsection (1)(a) above or, where any such limit has been extended by the Crown Court under subsection (4) above, the limit as so extended;

"relevant offence" means—

(a) a scheduled offence, or

(b) an offence in relation to which the regulations have effect in accordance with subsection (3) above; and

"specified" means specified in the regulations.

(10) For the purposes of the application of any custody time limit in relation to a person who is in the custody of a magistrates' court or of the Crown Court—

(a) all periods during which he is in the custody of a magistrates' court in respect of the same offence shall be aggregated and treated as a single continuous period; and

(b) all periods during which he is in the custody of the Crown Court in respect of the same offence shall be aggregated and treated similarly.

Marginal Citations

M5 S.I. 1981/1675 (N.I. 26).

M6 S.I. 1981/1675 (N.I. 26).

M7 1978 c. 23.

Court and mode of trial

9 Court for trial of scheduled offences.

(1) A trial on indictment of a scheduled offence shall be held only at the Crown Court sitting in Belfast, unless the Lord Chancellor after consultation with the Lord Chief Justice of Northern Ireland directs in any particular case that such a trial shall be held at the Crown Court sitting elsewhere.

(2) A person committed for trial for a scheduled offence, or for two or more offences at least one of which is a scheduled offence, shall be committed—

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(a) to the Crown Court sitting in Belfast, or

(b) where the Lord Chancellor has given a direction under subsection (1) above with respect to the trial, to the Crown Court sitting at the place specified in the direction;

and section 48 of the [M8]Judicature (Northern Ireland) Act 1978 (committal for trial on indictment) shall have effect accordingly.

(3) Where—

(a) in accordance with subsection (2) above any person is committed for trial to the Crown Court sitting in Belfast, and

(b) a direction is subsequently given by the Lord Chancellor under subsection (1) above altering the place of trial,

that person shall be treated as having been committed for trial to the Crown Court sitting at the place specified in the direction.

Marginal Citations

M8 1978 c. 23.

10 Mode of trial on indictment of scheduled offences.

(1) A trial on indictment of a scheduled offence shall be conducted by the court without a jury.

(2) The court trying a scheduled offence on indictment under this section shall have all the powers, authorities and jurisdiction which the court would have had if it had been sitting with a jury, including power to determine any question and to make any finding which would, apart from this section, be required to be determined or made by a jury, and references in any enactment to a jury or the verdict or finding of a jury shall be construed accordingly in relation to a trial under this section.

(3) Where separate counts of an indictment allege a scheduled offence and an offence which is not a scheduled offence, the trial on indictment shall, without prejudice to section 5 of the [M9]Indictments Act (Northern Ireland) 1945 (orders for amendment of indictment, separate trial and postponement of trial), be conducted as if all the offences alleged in the indictment were scheduled offences.

(4) Without prejudice to subsection (2) above, where the court trying a scheduled offence on indictment—

(a) is not satisfied that the accused is guilty of that offence, but

(b) is satisfied that he is guilty of some other offence which is not a scheduled offence, but of which a jury could have found him guilty on a trial for the scheduled offence,

the court may convict him of that other offence.

(5) Where the court trying a scheduled offence convicts the accused of that or some other offence, then, without prejudice to its power apart from this subsection to give a judgment, it shall, at the time of conviction or as soon as practicable thereafter, give a judgment stating the reasons for the conviction.

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(6) A person convicted of any offence on a trial under this section without a jury may, notwithstanding anything in sections 1 and 10(1) of the [M10]Criminal Appeal (Northern Ireland) Act 1980, appeal to the Court of Appeal under Part I of that Act—

(a) against his conviction, on any ground, without the leave of the Court of Appeal or a certificate of the judge of the court of trial; and

(b) against sentence passed on conviction, without that leave, unless the sentence is one fixed by law.

(7) Where a person is so convicted, the time for giving notice of appeal under subsection (1) of section 16 of that Act of 1980 shall run from the date of judgment if later than the date from which it would run under that subsection.

Marginal Citations

M9 1945 c. 16 (N.I.).

M10 1980 c. 47.

Evidence and onus of proof

11 Admissions by persons charged with scheduled offences.

(1) In any criminal proceedings for a scheduled offence, or for two or more offences at least one of which is a scheduled offence, a statement made by the accused may be given in evidence by the prosecution in so far as—

(a) it is relevant to any matter in issue in the proceedings, and

(b) it is not excluded by the court in pursuance of subsection (2) below or in the exercise of its discretion referred to in subsection (3) below (and has not been rendered inadmissible by virtue of such a direction as is mentioned in subsection (2)(iii) below).

(2) Where in any such proceedings—

(a) the prosecution proposes to give, or (as the case may be) has given, in evidence a statement made by the accused, and

(b) prima facie evidence is adduced that the accused was subjected to torture, to inhuman or degrading treatment, or to any violence or threat of violence (whether or not amounting to torture), in order to induce him to make the statement,

then, unless the prosecution satisfies the court that the statement was not obtained by so subjecting the accused in the manner indicated by that evidence, the court shall do one of the following things, namely—

(i) in the case of a statement proposed to be given in evidence, exclude the statement;

(ii) in the case of a statement already received in evidence, continue the trial disregarding the statement; or

(iii) in either case, direct that the trial shall be restarted before a differently constituted court (before which the statement in question shall be inadmissible).

(3) It is hereby declared that, in the case of any statement made by the accused and not obtained by so subjecting him as mentioned in subsection (2)(b) above, the court in

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any such proceedings as are mentioned in subsection (1) above has a discretion to do one of the things mentioned in subsection (2)(i) to (iii) above if it appears to the court that it is appropriate to do so in order to avoid unfairness to the accused or otherwise in the interests of justice.

(4) This section does not apply to a summary trial.

12 Onus of proof in relation to offences of possession.

(1) Where a person is charged with possessing a proscribed article in such circumstances as to constitute an offence to which this section applies and it is proved that at the time of the alleged offence—
   (a) he and that article were both present in any premises; or
   (b) the article was in premises of which he was the occupier or which he habitually used otherwise than as a member of the public,

   the court may accept the fact proved as sufficient evidence of his possessing (and, if relevant, knowingly possessing) that article at that time unless it is further proved that he did not at that time know of its presence in the premises in question, or, if he did know, that he had no control over it.

(2) This section applies to vessels, aircraft and vehicles as it applies to premises.

(3) In this section "proscribed article" means an explosive, firearm, ammunition, substance or other thing (being a thing possession of which is an offence under one of the enactments mentioned in subsection (4) below).

(4) This section applies to scheduled offences under the following enactments, that is to say—

The [M11]Explosive Substances Act 1883

Section 3, so far as relating to subsection (1)(b) thereof (possessing explosive with intent to endanger life or cause serious damage to property).

Section 4 (possessing explosive in suspicious circumstances).

The [M12]Protection of the Person and Property Act(Northern Ireland) 1969

Section 2 (possessing petrol bomb, etc., in suspicious circumstances).

The [M13]Firearms (Northern Ireland) Order 1981

Article 3 (possessing firearm or ammunition without, or otherwise than as authorised by, a firearm certificate).

Article 6 (possessing machine gun, or weapon discharging, or ammunition containing, noxious substance).

Article 17 (possessing firearm or ammunition with intent to endanger life or cause serious damage to property).

Article 18(2) (possessing firearm or imitation firearm at time of committing, or being arrested for, a specified offence).

Article 22(1), (2) or (4) (possession of a firearm or ammunition by a person who has been sentenced to imprisonment, etc.).

Article 23 (possessing firearm or ammunition in suspicious circumstances).

(5) This section does not apply to a summary trial.

Marginal Citations

M11 1883 c. 3.

M12 1969 c. 29 (N.I.).

M13 S.I. 1981/155 (N.I.2).

Treatment of offenders

13 Treatment of young persons convicted of scheduled offences.

(1) Section 73(2) of the [M14]Children and Young Persons Act (Northern Ireland) 1968 (under which a court may sentence a child or young person convicted on indictment of an offence punishable in the case of an adult with imprisonment for fourteen years or more to detention for a period specified in the sentence) shall have effect in relation to a young person convicted of a scheduled offence committed while this subsection is in force with the substitution of the word " five " for the word "fourteen".

(2) Subsection (3) of section 74 of that Act (under which the maximum length of the term or the aggregate of the terms for which a person may be committed in custody to a remand home under section 74(1)(e) is one month) shall have effect in relation to a young person found guilty of a scheduled offence committed while this subsection is in force with the substitution of the words " six months " for the words "one month".

Marginal Citations

M14 1968 c. 34 (N.I.).

14 Restricted remission for persons sentenced for scheduled offences.

(1) The remission granted under prison rules in respect of a sentence of imprisonment passed in Northern Ireland for a scheduled offence shall not, where it is for a term of five years or more, exceed one-third of that term.

(2) Where a person is sentenced on the same occasion for two or more such offences to terms which are consecutive subsection (1) above shall apply as if those terms were a single term.

(3) Where a person is serving two or more terms which are consecutive but not all subject to subsection (1) above, the maximum remission granted under prison rules in respect of those terms taken together shall be arrived at by calculating the maximum remission for each term separately and aggregating the result.

(4) In this section "prison rules" means rules made under section 13 of the [M15]Prison Act (Northern Ireland) 1953.

(5) The Secretary of State may by order substitute a different length of sentence and a different maximum period of remission for those mentioned in subsection (1) above.

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(6) This section applies where the scheduled offence is committed while this section is in force or where that offence (being a scheduled offence within the meaning of the [M16]Northern Ireland (Emergency Provisions) Act 1978) was committed while section 22 of the [M17]Prevention of Terrorism (Temporary Provisions) Act 1989 was in force.

Marginal Citations

M15 1953 c. 18 (N.I.).
M16 1978 c. 5.
M17 1989 c. 4.

15 Conviction of scheduled offence during period of remission.

(1) This section applies where a person who has been sentenced to imprisonment or a term of detention in a young offenders centre for a period exceeding one year—
  (a) is discharged from prison or the centre in pursuance of prison rules; and
  (b) before that sentence or term of detention would (but for that discharge) have expired he commits, and is convicted on indictment of, a scheduled offence.

(2) If the court before which he is convicted of the scheduled offence sentences him to imprisonment or a term of detention it shall in addition order him to be returned to prison or, where appropriate, to a young offenders centre for the period between the date of the order and the date on which the sentence of imprisonment or term of detention mentioned in subsection (1) above would have expired but for his discharge.

(3) No order shall be made under subsection (2) above if the sentence imposed by the court is a suspended sentence or a sentence of life imprisonment or of detention during the Secretary of State's pleasure under section 73(1) of the [M18]Children and Young Persons Act (Northern Ireland) 1968; and any order made by a court under that subsection shall cease to have effect if an appeal results in the acquittal of the person concerned or in the substitution of a sentence other than one in respect of which the duty imposed by that subsection applies.

(4) The period for which a person is ordered under this section to be returned to prison or a young offenders centre—
  (a) shall be taken to be a sentence of imprisonment or term of detention for the purposes of the [M19]Prison Act (Northern Ireland) 1953 and for the purposes of the [M20]Treatment of Offenders Act (Northern Ireland) 1968 other than section 26(2) (reduction for time spent in custody);
  (b) shall not be subject to any provision of prison rules for discharge before expiry; and
  (c) shall be served before, and be followed by, the sentence or term imposed for the scheduled offence and be disregarded in determining the appropriate length of that sentence or term.

(5) For the purposes of this section a certificate purporting to be signed by the governor or deputy governor of a prison or young offenders centre which specifies—
  (a) the date on which a person was discharged from prison or a young offenders centre;

(b) the sentence or term which the person was serving at the time of his discharge, the offence in respect of which the sentence or term was imposed and the date on which he was convicted of that offence;

(c) the date on which the person would, but for his discharge in pursuance of prison rules, have been discharged from prison or a young offenders centre,

shall be evidence of the matters so specified.

(6) In this section—

"prison rules" means rules made under section 13 of the Prison Act (Northern Ireland) 1953;

"sentence of imprisonment" does not include a committal in default of payment of any sum of money or for want of sufficient distress to satisfy any sum of money or for failure to do or abstain from doing anything required to be done or left undone;

"young offenders centre" has the meaning assigned to it by section 2(a) of the Treatment of Offenders Act (Northern Ireland) 1968.

(7) For the purposes of subsection (1) above consecutive terms of imprisonment or of detention in a young offenders centre shall be treated as a single term and a sentence of imprisonment or detention in a young offenders centre includes—

(a) a sentence or term passed by a court in the United Kingdom, the Channel Islands or the Isle of Man;

(b) in the case of imprisonment, a sentence passed by a court-martial on a person found guilty of a civil offence within the meaning of the [M21]Army Act 1955, the [M22]Air Force Act 1955 and the [M23]Naval Discipline Act 1957.

(8) The Secretary of State may by order substitute a different period for the period of one year mentioned in subsection (1) above.

(9) This section applies irrespective of when the discharge from prison or a young offenders centre took place but only if the scheduled offence is committed while this section is in force or if that offence (being a scheduled offence within the meaning of the [M24]Northern Ireland (Emergency Provisions) Act 1978) was committed while section 23 of the [M25]Prevention of Terrorism (Temporary Provisions) Act 1989 was in force.

Modifications etc. (not altering text)

C2 S. 15 applied (N.I.) (17.11.1995) by 1995 c. 47, **s. 1(6)**; S.I. 1995/2945, **art. 2**

Marginal Citations

M18 1968 c. 34 (N.I.).
M19 1953 c. 18 (N.I.).
M20 1968 c. 29 (N.I.).
M21 1955 c. 18.
M22 1955 c. 19.
M23 1957 c. 53.
M24 1978 c. 5.
M25 1989 c. 4.

Status: *Point in time view as at 09/01/1995. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *There are currently no known outstanding effects for the Northern Ireland (Emergency Provisions) Act 1991 (repealed 25.8.1996). (See end of Document for details)*

PART II

POWERS OF ARREST, SEARCH AND SEIZURE, ETC.

16 Entry and search of premises for purpose of arresting terrorists.

For the purpose of arresting a person under section 14(1)(b) of the Prevention of Terrorism (Temporary Provisions) Act 1989 (arrest of persons suspected of being concerned in acts of terrorism) a constable may enter and search any premises or other place where that person is or where the constable has reasonable grounds for suspecting him to be.

17 Constables' general power of arrest and seizure.

(1) Any constable may arrest without warrant any person who he has reasonable grounds to suspect is committing, has committed or is about to commit a scheduled offence or an offence under this Act which is not a scheduled offence.

(2) For the purpose of arresting a person under this section a constable may enter and search any premises or other place where that person is or where the constable has reasonable grounds for suspecting him to be.

(3) A constable may seize anything which he has reasonable grounds to suspect is being, has been or is intended to be used in the commission of a scheduled offence or an offence under this Act which is not a scheduled offence.

18 Powers of arrest and seizure by members of Her Majesty's forces.

(1) Any member of Her Majesty's forces on duty may arrest without warrant, and detain for not more than four hours, a person who he has reasonable grounds to suspect is committing, has committed or is about to commit any offence.

(2) A person effecting an arrest under this section complies with any rule of law requiring him to state the ground of arrest if he states that he is effecting the arrest as a member of Her Majesty's forces.

(3) For the purpose of arresting a person under this section a member of Her Majesty's forces may enter and search any premises or other place—
   (a) where that person is, or
   (b) if there are reasonable grounds for suspecting that that person is a terrorist or has committed an offence involving the use or possession of an explosive substance or firearm, where there are reasonable grounds for suspecting him to be.

(4) Any member of Her Majesty's forces may seize, and detain for not more than four hours, anything which he has reasonable grounds to suspect is being, has been or is intended to be used in the commission of an offence under section 24 or 25 below.

19 Power to search for munitions, radio transmitters and scanning receivers.

(1) Any member of Her Majesty's forces on duty or any constable may enter any premises or other place other than a dwelling-house for the purpose of ascertaining—
   (a) whether there are any munitions unlawfully at that place; or

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(b) whether there is a transmitter at that place;

and may search the place for any munitions or transmitter with a view to exercising the powers conferred by subsection (7) below.

(2) Any member of Her Majesty's forces on duty authorised by a commissioned officer of those forces or any constable authorised by an officer of the Royal Ulster Constabulary not below the rank of chief inspector may enter any dwelling-house in which there are reasonable grounds for suspecting that there are unlawfully any munitions or that there is a transmitter and may search it for any munitions or transmitter with a view to exercising the said powers.

(3) If it is necessary for the purpose of effectively carrying out a search—

(a) a member of Her Majesty's forces or constable exercising the powers conferred by subsection (1) above may be accompanied by other persons; and

(b) any authority given under subsection (2) above may authorise other persons to accompany the member of Her Majesty's forces or constable to whom the authority is given.

(4) If the member of Her Majesty's forces or constable carrying out a search under subsection (1) or (2) above reasonably believes that it is necessary to do so for the purpose of effectively carrying out the search or of preventing the frustration of its object he may—

(a) require any person who when the search begins is on, or during the search enters, the premises or other place where the search is carried out ("the place of search") to remain in, or in a specified part of, that place, to refrain from entering a specified part of it or to go from one specified part of it to another specified part;

(b) require any person who is not resident in the place of search to refrain from entering it; and

(c) use reasonable force to secure compliance with any such requirement.

(5) No requirement imposed under subsection (4) above shall have effect after the conclusion of the search in relation to which it was imposed; and no such requirement shall be imposed or have effect after the end of the period of four hours beginning with the time when that or any other requirement was first imposed under that subsection in relation to the search in question but an officer of the Royal Ulster Constabulary not below the rank of superintendent may extend that period by a further period of four hours if he reasonably believes that it is necessary to do so for the purpose mentioned in that subsection.

(6) Any member of Her Majesty's forces on duty or any constable may—

(a) stop any person in any public place and, with a view to exercising the powers conferred by subsection (7) below, search him for the purpose of ascertaining whether he has any munitions unlawfully with him or any transmitter with him; and

(b) with a view to exercising the said powers—

(i) search any person not in a public place who he has reasonable grounds to suspect has any munitions unlawfully with him or any transmitter with him; and

(ii) search any person entering or found in a dwelling-house entered under subsection (2) above.

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(7) Where a member of Her Majesty's forces or a constable is empowered by virtue of any provision of this Act to search any premises or other place or any person—

(a) he may seize any munitions found in the course of the search (unless it appears to him that the munitions are being, have been and will be used only lawfully) and may retain and, if necessary, destroy them; and

(b) he may seize any transmitter found in the course of the search (unless it appears to him that the transmitter has been, is being and is likely to be used only lawfully) and may retain it.

(8) Where a member of Her Majesty's forces or a constable carries out a search under subsection (1) or (2) above he shall, unless it is not practicable to do so, make a written record of the search which shall specify—

(a) the address of the premises, or a description of the place, which is searched;

(b) the date and time of the search;

(c) any damage caused in the course of the search; and

(d) anything seized in the course of the search.

(9) Such a record shall also include the name (if known) of any person appearing to the person making the record to be the occupier of the premises or other place searched; but—

(a) a person may not be detained to find out his name; and

(b) if the person making the record does not know the name of a person appearing to him to be the occupier of the premises or other place searched, he shall include in the record a note otherwise describing him.

(10) Such a record shall identify the person by whom the search is carried out—

(a) in the case of a constable, by reference to his police number; and

(b) in the case of a member of Her Majesty's forces, by reference to his service number, rank and regiment.

(11) Where a record of a search is made under this section a copy of the record shall be supplied at once or, where that is not practicable, as soon as is practicable to any person appearing to the person making the record to be the occupier of the premises or other place searched.

(12) A person who wilfully fails to comply with a requirement imposed under subsection (4) above or wilfully obstructs, or seeks to frustrate the object of, a search in relation to which such a requirement has been or could be imposed is guilty of an offence and liable—

(a) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine or both;

(b) on summary conviction, to imprisonment for a term not exceeding six months or a fine not exceeding the statutory maximum or both.

(13) The preceding provisions of this section shall have effect in relation to scanning receivers as they have effect in relation to transmitters.

(14) In this section—

"munitions" means—

(a) explosives, explosive substances, firearms and ammunition; and

(b) anything used or capable of being used in the manufacture of any explosive, explosive substance, firearm or ammunition;

"scanning receiver" means—

(a) any apparatus for wireless telegraphy designed or adapted for the purpose of automatically monitoring selected frequencies, or automatically scanning a selected range of frequencies, so as to enable transmissions on any of those frequencies to be detected or intercepted; or

(b) part of any such apparatus;

"transmitter" means any apparatus for wireless telegraphy designed or adapted for emission, as opposed to reception, or part of any such apparatus;

"wireless telegraphy" has the same meaning as in section 19(1) of the [M26]Wireless Telegraphy Act 1949.

Marginal Citations

M26 1949 c. 54.

20 Powers of explosives inspectors.

(1) An inspector appointed under section 53 of the [M27]Explosives Act 1875 may, for the purpose of ascertaining whether there is unlawfully in any premises or other place other than a dwelling-house any explosive or explosive substance, enter that place and search it with a view to exercising the powers conferred by subsection (3) below.

(2) Any such inspector may, with a view to exercising those powers, stop any person in a public place and search him for the purpose of ascertaining whether he has any explosive or explosive substance unlawfully with him.

(3) Any such inspector may seize any explosive or explosive substance found in the course of a search under this section unless it appears to him that it is being, has been and will be used only for a lawful purpose and may retain and, if necessary, destroy it.

Marginal Citations

M27 1875 c. 17.

21 Entry to search for persons unlawfully detained.

(1) Where any person is believed to be unlawfully detained in such circumstances that his life is in danger, any member of Her Majesty's forces on duty or any constable may, subject to subsection (2) below, enter any premises or other place for the purpose of ascertaining whether that person is so detained there.

(2) A dwelling-house may be entered in pursuance of subsection (1) above—

(a) by a member of Her Majesty's forces, only when authorised to do so by a commissioned officer of those forces; and

(b) by a constable, only when authorised to do so by an officer of the Royal Ulster Constabulary not below the rank of chief inspector.

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22 Examination of documents.

(1) Where a member of Her Majesty's forces or a constable is empowered by virtue of any provision of this Act to search any premises or other place or any person he may examine any document or record found in the course of the search so far as reasonably required for ascertaining whether it contains any such information as is mentioned in section 31(1)(a) or (b) below.

(2) A document or record which cannot be conveniently or thoroughly examined at the place where it is found may be removed for examination to another place and retained there until the examination has been completed.

(3) This section shall not be taken to authorise the examination, removal or retention of a document or record by a person at a time when he has reasonable cause for believing it to be an item subject to legal privilege (within the meaning of the [M28]Police and Criminal Evidence (Northern Ireland) Order 1989).

(4) Where a document or record is examined under this section it shall not be photographed or copied.

(5) Where a document or record is examined under this section the person who examines it shall make a written record of the examination at once or, where it is not practicable to make one at once, as soon as is practicable.

(6) A record of an examination of a document or record which is made under this section shall specify—
   (a) a description of the document or record;
   (b) the object of the examination;
   (c) the address of the premises, or a description of the place, where the document or record was found;
   (d) where the document or record was found in the course of a search of a person, the name of that person;
   (e) where the document or record was found in the course of a search of any premises or other place, the name of any person appearing to the person making the record to be the occupier of the premises or other place or to have had custody or control of the document or record when it was found;
   (f) where the document or record was removed for examination from the place where it was found, the date and time when it was removed from that place; and
   (g) where the document or record was examined at the place where it was found, the date and time when it was examined.

(7) Such a record shall identify the person by whom the examination was carried out—
   (a) in the case of a constable, by reference to his police number; and
   (b) in the case of a member of Her Majesty's forces, by reference to his service number, rank and regiment.

(8) Where a record of an examination of a document or record is made under this section a copy of the record shall be supplied at once or, if that is not practicable, as soon as is practicable—
   (a) in a case where the document or record was found in the course of a search of a person, to that person; and
   (b) in a case where the document or record was found in the course of a search of any premises or other place, to any person appearing to the person making the

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record to be the occupier of the premises or other place or to have had custody or control of the document or record when it was found.

(9) Subject to subsection (10) below, a document or record may not be retained by virtue of subsection (2) above for more than forty-eight hours.

(10) An officer of the Royal Ulster Constabulary not below the rank of chief inspector may authorise the retention of a document or record by a constable for a further period or periods; but no such authorisation shall permit the retention of a document or record beyond the end of the period of ninety-six hours from the time when it was removed for examination from the place where it was found.

(11) Any person who wilfully obstructs a member of Her Majesty's forces or a constable in the exercise of the powers conferred by this section is guilty of an offence and liable—

(a) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine or both;

(b) on summary conviction, to imprisonment for a term not exceeding six months or a fine not exceeding the statutory maximum or both.

Marginal Citations

M28 S.I. 1989/1341 (N.I. 12).

23 Power to stop and question.

(1) Any member of Her Majesty's forces on duty or any constable may stop any person for so long as is necessary in order to question him for the purpose of ascertaining—

(a) that person's identity and movements;

(b) what he knows concerning any recent explosion or any other recent incident endangering life or concerning any person killed or injured in any such explosion or incident; or

(c) any one or more of the matters referred to in paragraphs (a) and (b) above.

(2) Any person who—

(a) fails to stop when required to do so under this section, or

(b) refuses to answer, or fails to answer to the best of his knowledge and ability, any question addressed to him under this section,

is guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

24 General powers of entry and interference with rights of property and with highways.

(1) Any member of Her Majesty's forces on duty or any constable may enter any premises or other place—

(a) if he considers it necessary to do so in the course of operations for the preservation of the peace or the maintenance of order; or

(b) if authorised to do so by or on behalf of the Secretary of State.

(2) Any member of Her Majesty's forces on duty, any constable or any person specifically authorised to do so by or on behalf of the Secretary of State may, if authorised to do so by or on behalf of the Secretary of State—

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(a) take possession of any land or other property;
(b) take steps to place buildings or other structures in a state of defence;
(c) detain any property or cause it to be destroyed or moved;
(d) do any other act interfering with any public right or with any private rights of property, including carrying out any works on any land of which possession has been taken under this subsection.

(3) Any member of Her Majesty's forces on duty, any constable or any person specifically authorised to do so by or on behalf of the Secretary of State may, so far as he considers it immediately necessary for the preservation of the peace or the maintenance of order—
(a) wholly or partly close a highway or divert or otherwise interfere with a highway or the use of a highway; or
(b) prohibit or restrict the exercise of any right of way or the use of any waterway.

(4) Any person who, without lawful authority or reasonable excuse (the proof of which lies on him), interferes with works executed, or any apparatus, equipment or any other thing used, in or in connection with the exercise of powers conferred by this section is guilty of an offence and liable on summary conviction to imprisonment for a term not exceeding six months or a fine not exceeding level 5 on the standard scale or both.

(5) Any authorisation to exercise any powers under any provision of this section may authorise the exercise of all those powers, or powers of any class or a particular power specified, either by all persons by whom they are capable of being exercised or by persons of any class or a particular person specified.

25 Power of Secretary of State to direct the closure, etc. of roads.

(1) If the Secretary of State considers it necessary to do so for the preservation of the peace or the maintenance of order he may by order direct—
(a) that any highway specified in the order shall either be wholly closed or be closed to such extent, or diverted in such manner, as may be so specified;
(b) that any highway specified in the order, being a highway which has already been wholly or partly closed or diverted—
(i) under this section; or
(ii) in the exercise or purported exercise of any power conferred by or under a relevant enactment,
shall continue to be so closed or diverted by virtue of the order.

(2) A person is guilty of an offence if, without lawful authority or reasonable excuse (the proof of which lies on him), he interferes with—
(a) works executed in connection with the closure or diversion of any highway specified in an order under this section (whether executed in pursuance of any such order or in pursuance of the exercise or purported exercise of any such power as is mentioned in subsection (1)(b)(ii) above); or
(b) apparatus, equipment or any other thing used in pursuance of any such order in connection with the closure or diversion of any such highway.

(3) A person is guilty of an offence if—
(a) within 200 yards of any road closure works—
(i) he executes any bypass works; or

(ii) without lawful authority or reasonable excuse (the proof of which lies on him) he has in his possession or under his control any materials or equipment suitable for executing bypass works; or

(b) he knowingly permits on land occupied by him the doing or occurrence of anything which is an offence under paragraph (a) above.

(4) A person guilty of an offence under this section is liable on summary conviction to imprisonment for a term not exceeding six months or a fine not exceeding level 5 on the standard scale or both.

(5) In this section—

"bypass works" means works that would facilitate the bypassing by vehicles of the road closure works in question;

"relevant enactment" means section 24(2) or (3) above, section 17(2) or (3) of the [M29]Northern Ireland (Emergency Provisions) Act 1973, section 19(2) or (3) of the [M30]Northern Ireland (Emergency Provisions) Act 1978 or the [M31]Civil Authorities (Special Powers) Act (Northern Ireland) 1922;

"road closure works" means works which have been executed in connection with the closure of a highway specified in an order under this section or with the closure of a highway in pursuance of the exercise or purported exercise of any power conferred by or under a relevant enactment.

(6) Nothing in this section prejudices the operation of section 24(2) or (3) above.

Marginal Citations

M29 1973 c. 53.
M30 1978 c. 5.
M31 1922 c. 5 (N.I.).

26 Supplementary provisions.

(1) Any power conferred by this Part of this Act—

(a) to enter any premises or other place includes power to enter any vessel, aircraft or vehicle;

(b) to search any premises or other place includes power to stop and search any vehicle or vessel or any aircraft which is not airborne and search any container;

and in this Part of this Act references to any premises or place shall be construed accordingly.

(2) Where a document or record examined under section 22 above was found in the course of a search of a vehicle, vessel or aircraft—

(a) the reference in subsection (6) of that section to the address of the premises, or a description of the place, where the document or record was found shall be construed as a reference to the location of the vehicle, vessel or aircraft where it was found together (in the case of a vehicle) with its registration number; and

(b) the references in that section to the occupier of the premises or place where it was found shall be construed as references to the person in charge of the vehicle, vessel or aircraft.

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(3) In this Part of this Act references to a dwelling-house include references to a vessel or vehicle which is habitually stationary and used as a dwelling.

(4) Any power conferred by this Part of this Act to enter any place, vessel, aircraft or vehicle shall be exercisable, if need be, by force.

(5) Any power conferred by virtue of this section to search a vehicle or vessel shall, in the case of a vehicle or vessel which cannot be conveniently or thoroughly searched at the place where it is, include power to take it or cause it to be taken to any place for the purpose of carrying out the search.

(6) Where by virtue of this section a search under section 19(1) or (2) above is carried out in relation to a vessel, aircraft or vehicle, the person carrying out the search may, if he reasonably believes that it is necessary to do so for the purpose mentioned in subsection (4) of that section—

(a) require any person in or on the vessel, aircraft or vehicle to remain with it or, in the case of a vessel or vehicle which by virtue of subsection (5) above is removed for the purpose of the search, to go to and remain at the place to which it is removed; and

(b) use reasonable force to secure compliance with any such requirement;

and subsections (5) and (12) of section 19 above shall apply to a requirement imposed under this subsection as they apply to a requirement imposed under subsection (4) of that section.

(7) The requirement to make a record of a search under subsection (1) or (2) of section 19 above shall apply in the case of a vehicle, vessel or aircraft (other than one which is habitually stationary) searched by virtue of this section only where the search takes place after the vehicle, vessel or aircraft is removed for the purpose of the search by virtue of subsection (5) above; and in the case of such a search—

(a) the reference in subsection (8) of that section to the address of the premises, or a description of the place, which is searched shall be construed as a reference to the location where the vehicle, vessel or aircraft is searched together (in the case of a vehicle) with its registration number; and

(b) the references in that section to the occupier of the premises or place searched shall be construed as references to the person in charge of the vehicle, vessel or aircraft.

(8) Any power conferred by virtue of this section to search any vessel, aircraft, vehicle or container includes power to examine it.

(9) Any power conferred by this Part of this Act to stop any person includes power to stop a vessel or vehicle or an aircraft which is not airborne.

(10) Any person who, when required by virtue of this section to stop a vessel or vehicle or any aircraft which is not airborne, fails to do so is guilty of an offence and liable on summary conviction to imprisonment for a term not exceeding six months or a fine not exceeding level 5 on the standard scale or both.

(11) A member of Her Majesty's forces exercising any power conferred by this Part of this Act when he is not in uniform shall, if so requested by any person at or about the time of exercising that power, produce to that person documentary evidence that he is such a member.

(12) The [M32]Documentary Evidence Act 1868 shall apply to any authorisation given in writing under this Part of this Act by or on behalf of the Secretary of State as it applies to any order made by him.

Marginal Citations

M32 1868 c. 37.

PART III

OFFENCES AGAINST PUBLIC SECURITY AND PUBLIC ORDER

27 Directing terrorist organisation.

Any person who directs, at any level, the activities of an organisation which is concerned in the commission of acts of terrorism is guilty of an offence and liable on conviction on indictment to imprisonment for life.

28 Proscribed organisations.

(1) Subject to subsection (6) below, any person who—

(a) belongs or professes to belong to a proscribed organisation; or

(b) solicits or invites support for a proscribed organisation other than support with money or other property; or

(c) solicits or invites any person to become a member of a proscribed organisation or to carry out on behalf of a proscribed organisation orders or directions given, or requests made, by a member of that organisation; or

(d) arranges or assists in the arrangement or management of, or addresses, any meeting of three or more persons (whether or not it is a meeting to which the public are admitted) knowing that the meeting—

(i) is to support a proscribed organisation;

(ii) is to further the activities of such an organisation; or

(iii) is to be addressed by a person belonging or professing to belong to such an organisation,

is guilty of an offence and liable on conviction on indictment to imprisonment for a term not exceeding ten years or a fine or both and on summary conviction to imprisonment for a term not exceeding six months or a fine not exceeding the statutory maximum or both.

(2) The organisations specified in Schedule 2 to this Act are proscribed organisations for the purposes of this Act; and any organisation which passes under a name mentioned in that Schedule shall be treated as proscribed, whatever relationship (if any) it has to any other organisation of the same name.

(3) The Secretary of State may by order add to Schedule 2 to this Act any organisation that appears to him to be concerned in terrorism or in promoting or encouraging it.

(4) The Secretary of State may also by order remove an organisation from Schedule 2 to this Act.

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(5) The possession by a person of a document—

(a) addressed to him as a member of a proscribed organisation; or

(b) relating or purporting to relate to the affairs of a proscribed organisation; or

(c) emanating or purporting to emanate from a proscribed organisation or officer of a proscribed organisation,

shall be evidence of that person belonging to the organisation at the time when he had the document in his possession.

(6) A person belonging to a proscribed organisation shall—

(a) if the organisation is a proscribed organisation by virtue of an order under subsection (3) above; or

(b) if this section has ceased to be in force but has been subsequently brought into force by an order under section 69(3) below,

not be guilty of an offence under this section by reason of belonging to the organisation if he has not after the coming into force of the order under subsection (3) above or the coming into force again of this section, as the case may be, taken part in any activities of the organisation.

(7) Subsection (6) above shall apply in relation to a person belonging to the Red Hand Commando, the Ulster Freedom Fighters, the Ulster Volunteer Force, the Irish National Liberation Army or the Irish People's Liberation Organisation as if the organisation were proscribed by virtue of an order under subsection (3) above with the substitution in subsection (6) for the reference to the coming into force of such an order of a reference—

(a) as respects a person belonging to the Red Hand Commando or the Ulster Freedom Fighters, to 12th November 1973;

(b) as respects a person belonging to the Ulster Volunteer Force, to 4th October 1975;

(c) as respects a person belonging to the Irish National Liberation Army, to 3rd July 1979;

(d) as respects a person belonging to the Irish People's Liberation Organisation, to 29th March 1990.

29 Display of support in public for a proscribed organisation.

Any person who in a public place—

(a) wears any item of dress; or

(b) wears, carries or displays any article,

in such a way or in such circumstances as to arouse reasonable apprehension that he is a member or supporter of a proscribed organisation is guilty of an offence and liable—

(i) on conviction on indictment, to imprisonment for a term not exceeding one year or a fine or both;

(ii) on summary conviction, to imprisonment for a term not exceeding six months or a fine not exceeding the statutory maximum or both.

30 Possession of items intended for terrorist purposes.

(1) A person is guilty of an offence if he has any article in his possession in circumstances giving rise to a reasonable suspicion that the item is in his possession for a purpose

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connected with the commission, preparation or instigation of acts of terrorism connected with the affairs of Northern Ireland.

(2) It is a defence for a person charged with an offence under this section to prove that at the time of the alleged offence the article in question was not in his possession for such a purpose as is mentioned in subsection (1) above.

(3) A person guilty of an offence under this section is liable—
- (a) on conviction on indictment, to imprisonment for a term not exceeding ten years or a fine or both;
- (b) on summary conviction, to imprisonment for a term not exceeding six months or a fine not exceeding the statutory maximum or both.

(4) Subsections (1), (2) and (5) of section 12 above shall apply where a person is charged with possessing an article in such circumstances as to constitute an offence under this section as they apply where a person is charged with possessing a proscribed article in such circumstances as are there mentioned.

31 Unlawful collection, etc. of information.

(1) No person shall, without lawful authority or reasonable excuse (the proof of which lies on him)—
- (a) collect, record, publish, communicate or attempt to elicit any information with respect to any person to whom this paragraph applies which is of such a nature as is likely to be useful to terrorists;
- (b) collect or record any information which is of such a nature as is likely to be useful to terrorists in planning or carrying out any act of violence; or
- (c) have in his possession any record or document containing any such information as is mentioned in paragraph (a) or (b) above.

(2) Subsection (1)(a) above applies to any of the following persons, that is to say—
- (a) any constable or member of Her Majesty's forces;
- (b) any person holding judicial office;
- (c) any officer of any court;
- (d) any person employed for the whole of his time in the prison service in Northern Ireland; and
- (e) any person who has at any time been a person falling within any of the preceding paragraphs.

(3) In subsection (1) above any reference to recording information includes a reference to recording it by means of photography or by any other means.

(4) Any person who contravenes this section is guilty of an offence and liable—
- (a) on conviction on indictment, to imprisonment for a term not exceeding ten years or a fine or both;
- (b) on summary conviction, to imprisonment for a term not exceeding six months or a fine not exceeding the statutory maximum or both.

(5) The court by or before which a person is convicted of an offence under this section may order the forfeiture of any record or document mentioned in subsection (1) above which is found in his possession.

Status: *Point in time view as at 09/01/1995. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *There are currently no known outstanding effects for the Northern Ireland (Emergency Provisions) Act 1991 (repealed 25.8.1996). (See end of Document for details)*

(6) Without prejudice to section 18 of the [M33]Interpretation Act 1978 (offences under two or more laws), nothing in this section shall derogate from the operation of the Official Secrets Acts 1911 to 1989.

Marginal Citations
M33 1978 c. 30.

32 Training in making or use of firearms, explosives or explosive substances.

(1) Subject to subsection (2) below, any person who instructs or trains another or receives instruction or training in the making or use of firearms, explosives or explosive substances is guilty of an offence and liable—
   (a) on conviction on indictment, to imprisonment for a term not exceeding ten years or a fine or both;
   (b) on summary conviction, to imprisonment for a term not exceeding six months or a fine not exceeding the statutory maximum or both.

(2) In any prosecution for an offence under this section it shall be a defence for the person charged to prove that the instruction or training was given or received with lawful authority or for industrial, agricultural or sporting purposes only or otherwise with good reason.

(3) The court by or before which a person is convicted of an offence under this section may order the forfeiture of any thing which appears to the court to have been in his possession for purposes connected with the offence.

(4) Without prejudice to section 18 of the Interpretation Act 1978 (offences under two or more laws), nothing in this section shall derogate from the operation of the [M34]Unlawful Drilling Act 1819.

Marginal Citations
M34 1819 c. 1.

33 Wearing of hoods, etc. in public places.

Any person who, without lawful authority or reasonable excuse (the proof of which lies on him), wears in a public place or in the curtilage of a dwelling-house (other than one in which he is residing) any hood, mask or other article whatsoever made, adapted or used for concealing the identity or features is guilty of an offence and liable—
   (a) on conviction on indictment, to imprisonment for a term not exceeding one year or a fine or both;
   (b) on summary conviction, to imprisonment for a term not exceeding six months or a fine not exceeding the statutory maximum or both.

PART IV

DETENTION ORDERS

34 Detention orders.

Schedule 3 to this Act shall have effect with respect to the detention of terrorists and persons suspected of being terrorists.

Modifications etc. (not altering text)

C3 Sch. 3 revived immediately before the end of 15.6.1992 and continuing as from the beginning of 16.6.1992 until immediately after the beginning of 16.6.1992, by S.I. 1992/1390, **art. 2**

Commencement Information

I2 S. 34 in force at 27.8.1991 and ceasing to be in force immediately after coming into force see s. 69(1)-(4)

PART V

REGULATION OF THE PROVISION OF PRIVATE SECURITY SERVICES

35 Prohibition on provision of security services without a certificate.

(1) A person shall not provide, or offer to provide, security services for reward, unless he is, or is acting on behalf of, the holder of a certificate in force under this Part of this Act.

(2) A person shall not publish, or cause to be published, any advertisement for the provision of such services by a person who is not the holder of such a certificate.

(3) Any person who contravenes subsection (1) or (2) above is guilty of an offence and liable—

(a) on conviction on indictment, to imprisonment for a term not exceeding five years or a fine or both;

(b) on summary conviction, to imprisonment for a term not exceeding six months or a fine not exceeding the statutory maximum or both.

(4) Where a person is charged with an offence under this section in respect of an advertisement it shall be a defence for him to prove—

(a) that he is a person whose business it is to publish or arrange for the publication of advertisements; and

(b) that he received the advertisement for publication in the ordinary course of business; and

(c) that he had reasonable grounds for believing that the person advertised as the provider of the security services in question was the holder of a certificate in force under this Part of this Act.

(5) In this Part of this Act "security services" means the services of one or more individuals as security guards (whether with or without any other services relating to the protection of property or persons).

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Changes to legislation: *There are currently no known outstanding effects for the Northern Ireland (Emergency Provisions) Act 1991 (repealed 25.8.1996). (See end of Document for details)*

36 Applications for certificates.

(1) An application for a certificate under this Part of this Act—

(a) shall be made to the Secretary of State in such manner and form as he may specify, and

(b) shall be accompanied by such information as he may specify concerning—

(i) the applicant;

(ii) any business carried on or proposed to be carried on by the applicant and involving the provision of security services for reward;

(iii) any persons whom the applicant employs, or proposes to employ, as security guards;

(iv) any partners or proposed partners of the applicant or (if the applicant is a partnership) the members, and any proposed members, of the partnership; and

(v) if the applicant is a body corporate, the officers, and any proposed officers, of that body.

(2) Any person who, in connection with any such application, knowingly or recklessly furnishes the Secretary of State with information which is false or misleading in a material respect is guilty of an offence and liable—

(a) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine or both;

(b) on summary conviction, to imprisonment for a term not exceeding six months or a fine not exceeding the statutory maximum or both.

(3) In this section—

(a) "officer" includes a director, manager or secretary; and

(b) any reference to the employment or proposed employment of any person or persons by an applicant for a certificate under this Part of this Act shall, in relation to an applicant who is, or is a member of, a partnership, be construed as a reference to the employment or proposed employment of any person or persons by the partnership or any of the partners.

(4) For the purposes of this section a person in accordance with whose directions or instructions the directors of a body corporate are accustomed to act shall be treated as an officer of that body, except that a person shall not be so treated by reason only that the directors act on advice given by him in a professional capacity.

37 Issue, duration and revocation of certificates.

(1) Where an application for a certificate under this Part of this Act has been made to the Secretary of State in accordance with section 36 above, the Secretary of State may only refuse to issue such a certificate to the applicant in a case where he is satisfied that an organisation falling within subsection (8) below would be likely to benefit from the issue of the certificate or that the applicant has persistently failed to comply with the requirements of this Part of this Act; and if the Secretary of State refuses to issue a certificate he shall notify the applicant of the refusal.

(2) A certificate under this Part of this Act shall come into force at the beginning of the day on which it is issued and, subject to subsection (3) below, shall expire at the end of the period of twelve months beginning with that day.

(3) Where the certificate is issued to a person who already holds a certificate in force under this Part of this Act, the new certificate shall expire at the end of the period of twelve months beginning with the day following that on which that person's current certificate expires.

(4) The Secretary of State may from time to time by order substitute for the period specified in each of subsections (2) and (3) above such period exceeding twelve months as is specified in the order.

(5) Subject to subsection (6) below, the Secretary of State may revoke a certificate in force under this Part of this Act if he is satisfied that an organisation falling within subsection (8) below would be likely to benefit from the certificate remaining in force or that the holder of the certificate has persistently failed to comply with the requirements of this Part of this Act.

(6) The Secretary of State shall not revoke a certificate under subsection (5) above unless the holder of the certificate—
   (a) has been notified of the Secretary of State's intention to revoke it, and
   (b) has been given a reasonable opportunity of making representations to the Secretary of State.

(7) If the Secretary of State revokes a certificate under subsection (5) above, he shall forthwith notify the holder of the certificate of its revocation.

(8) An organisation falls within this subsection if—
   (a) it is for the time being a proscribed organisation; or
   (b) it appears to the Secretary of State to be closely associated with an organisation which is for the time being a proscribed organisation.

(9) In this section "benefit" means benefit whether directly or indirectly and whether financially or in any other way.

38 Duty to notify Secretary of State of changes of personnel.

(1) Where—
   (a) an application has been made by any person under section 36 above, and
   (b) that person proposes to employ a person as a security guard as from a relevant time, and
   (c) information concerning the proposed employee was not furnished to the Secretary of State in pursuance of section 36(1)(b)(iii) at the time when the application was made,

   the person who made the application shall, not later than fourteen days before that relevant time, notify to the Secretary of State such information concerning the proposed employee as the Secretary of State may specify.

(2) Where an application has been made by any person under section 36 above, that person shall notify to the Secretary of State such information concerning any change to which this subsection applies as the Secretary of State may specify, and shall so notify any such information—
   (a) not later than fourteen days before the change occurs; or
   (b) if that is not reasonably practicable, as soon as is reasonably practicable.

(3) Subsection (2) above applies—

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(a) in relation to an application made by a partnership or by a member of a partnership, to any change occurring at a relevant time in the members of the partnership, and

(b) in relation to an application made by a body corporate, to any change occurring at a relevant time in the officers of that body,

unless the change involves a person becoming a partner or officer and information relating to that change was furnished to the Secretary of State in pursuance of section 36(1)(b)(iv) or (v) above at the time when the application was made.

(4) Any person who contravenes subsection (1) or (2) above is guilty of an offence and liable on summary conviction to imprisonment for a term not exceeding six months or a fine not exceeding level 5 on the standard scale or both.

(5) In this section "relevant time", in relation to an application made under section 36 above, means a time when—

(a) the application has been neither granted nor refused by the Secretary of State; or

(b) a certificate issued in pursuance of the application is in force under this Part of this Act;

and subsections (3) and (4) of that section apply also for the purposes of this section.

39 Records of employees.

(1) A constable may enter any premises where a business involving the provision of security services is carried on and require to be produced for his inspection any records kept there of persons employed as security guards.

(2) A constable exercising the powers conferred by subsection (1) above shall identify himself to the person appearing to be in charge of the premises in question and, if not in uniform, shall produce to that person documentary evidence that he is a constable.

(3) Any person who without reasonable excuse fails to produce for inspection any records required to be produced under subsection (1) above is guilty of an offence and liable on summary conviction to imprisonment for a term not exceeding six months or a fine not exceeding level 5 on the standard scale or both.

(4) Any person providing security services for reward who makes or keeps records of persons employed by him as security guards which he knows to be false or misleading in a material respect is guilty of an offence and liable—

(a) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine or both;

(b) on summary conviction, to imprisonment for a term not exceeding six months or a fine not exceeding the statutory maximum or both.

40 Payments in respect of the provision of security services.

(1) Any person who, in respect of the provision of security services, pays any sum of money to a person who is neither—

(a) the holder of a certificate in force under this Part of this Act, nor

(b) a person acting on behalf of the holder of such a certificate,

is guilty of an offence.

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(2) A person guilty of an offence under subsection (1) above is liable on summary conviction to imprisonment for a term not exceeding six months or a fine not exceeding level 5 on the standard scale or both.

(3) It shall be a defence for a person charged with an offence under subsection (1) above to prove that, at the time when he paid the money in question, he had reasonable grounds for believing that the person to whom he paid it was, or was acting on behalf of, the holder of a certificate in force under this Part of this Act.

41 Liability of directors, etc.

(1) Where an offence under this Part of this Act which has been committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate, or any person purporting to act in any such capacity, he as well as the body corporate shall be guilty of that offence and be liable to be proceeded against and punished accordingly.

(2) Where the affairs of a body corporate are managed by its members, subsection (1) above shall apply in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.

42 Notifications.

(1) Any notification given under this Part of this Act shall be in writing.

(2) Any notification required by this Part of this Act to be given by any person to the Secretary of State may be sent to him by post.

(3) Any notification required by this Part of this Act to be given by the Secretary of State to any person may—
   (a) if that person is an individual, be sent to him by post addressed to him at his usual or last-known place of residence or business;
   (b) if that person is a partnership, be sent to a partner, or to a person having the control or management of the partnership business, at the principal office of the partnership; or
   (c) if that person is a body corporate, be sent to the secretary or clerk of that body at its registered or principal office.

(4) This section is without prejudice to any other lawful method of giving a notification.

PART VI

PERSONS IN POLICE CUSTODY UNDER TERRORISM PROVISIONS

43 The terrorism provisions and police custody.

(1) In this Part of this Act "the terrorism provisions" means section 14 of the [M35]Prevention of Terrorism (Temporary Provisions) Act 1989 and any provision of Schedule 2 or 5 to that Act conferring a power of arrest or detention.

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(2) A person is held in police custody for the purposes of this Part of this Act if he is detained at a police station or is detained elsewhere in the charge of a constable except that a person who is at a court after being charged with an offence is not held in police custody for the purposes of section 44 below.

Marginal Citations
M35 1989 c. 4.

44 Right to have someone informed of detention under terrorism provisions.

(1) A person who is detained under the terrorism provisions and is being held in police custody shall be entitled, if he so requests, to have one friend or relative or other person who is known to him or is likely to take an interest in his welfare told that he is being detained under those provisions and where he is being held in police custody.

(2) A person shall be informed of the right conferred on him by subsection (1) above as soon as practicable after he has become a person to whom that subsection applies.

(3) A request made by a person under subsection (1) above, and the time at which it is made, shall be recorded in writing.

(4) If a person makes such a request, it must be complied with as soon as is practicable except to the extent that any delay is permitted by this section.

(5) Any delay in complying with such a request is only permitted if—
- (a) it is authorised by an officer of at least the rank of superintendent; and
- (b) it does not extend beyond the end of the period referred to in subsection (6) below.

(6) That period is—
- (a) except where paragraph (b) below applies, the period of forty-eight hours beginning with the time when the detained person was first detained under the terrorism provisions;
- (b) where the detained person was, prior to the time when he was first so detained, being examined in accordance with paragraph 2 of Schedule 5 to the [M36]Prevention of Terrorism (Temporary Provisions) Act 1989, the period of forty-eight hours beginning with the time when he was first so examined.

(7) An officer may give an authorisation under subsection (5) above orally or in writing but, if he gives it orally, he shall confirm it in writing as soon as is practicable.

(8) An officer may only authorise a delay in complying with a request under subsection (1) above where he has reasonable grounds for believing that telling the person named in the request of the detention of the detained person—
- (a) will lead to interference with or harm to evidence connected with a scheduled offence or interference with or physical injury to any person; or
- (b) will lead to the alerting of any person suspected of having committed such an offence but not yet arrested for it; or
- (c) will hinder the recovery of any property obtained as a result of such an offence; or

(d) will lead to interference with the gathering of information about the commission, preparation or instigation of acts of terrorism; or

(e) by alerting any person, will make it more difficult—

(i) to prevent an act of terrorism; or

(ii) to secure the apprehension, prosecution or conviction of any person in connection with the commission, preparation or instigation of an act of terrorism.

(9) If any delay is authorised, then, as soon as is practicable—

(a) the detained person shall be told the reason for authorising it; and

(b) the reason shall be recorded in writing.

(10) Any authorisation under subsection (5) above shall cease to have effect once the reason for giving it ceases to subsist.

(11) The right conferred by subsection (1) above may be exercised by a person to whom that subsection applies on each occasion when he is transferred from one place to another; and this section applies to each subsequent occasion on which that right is so exercised as it applies to the first such occasion.

(12) Subsection (11) above shall not be construed as prejudicing the operation of a request by a person to whom subsection (1) above applies which was made, but not complied with, before he was transferred.

Marginal Citations

M36 1989 c. 4.

45 Right of access to legal advice.

(1) A person who is detained under the terrorism provisions and is being held in police custody shall be entitled, if he so requests, to consult a solicitor privately.

(2) A person shall be informed of the right conferred on him by subsection (1) above as soon as practicable after he has become a person to whom that subsection applies.

(3) A request made by a person under subsection (1) above, and the time at which it is made, shall be recorded in writing unless it is made by him while at a court after being charged with an offence.

(4) If a person makes such a request, he must be permitted to consult a solicitor as soon as is practicable except to the extent that any delay is permitted by this section.

(5) Any delay in complying with a request under subsection (1) above is only permitted if—

(a) it is authorised by an officer of at least the rank of superintendent; and

(b) it does not extend beyond the relevant time.

(6) In subsection (5) above "the relevant time" means—

(a) where the request is the first request made by the detained person under subsection (1) above, the end of the period referred to in section 44(6) above; or

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(b) where the request follows an earlier request made by the detained person under that subsection in pursuance of which he has consulted a solicitor, the end of the period of forty-eight hours beginning with the time when that consultation began.

(7) An officer may give an authorisation under subsection (5) above orally or in writing but, if he gives it orally, he shall confirm it in writing as soon as is practicable.

(8) An officer may only authorise a delay in complying with a request under subsection (1) above where he has reasonable grounds for believing that the exercise of the right conferred by that subsection at the time when the detained person desires to exercise it—

(a) will lead to interference with or harm to evidence connected with a scheduled offence or interference with or physical injury to any person; or

(b) will lead to the alerting of any person suspected of having committed such an offence but not yet arrested for it; or

(c) will hinder the recovery of any property obtained as a result of such an offence; or

(d) will lead to interference with the gathering of information about the commission, preparation or instigation of acts of terrorism; or

(e) by alerting any person, will make it more difficult—

(i) to prevent an act of terrorism; or

(ii) to secure the apprehension, prosecution or conviction of any person in connection with the commission, preparation or instigation of an act of terrorism.

(9) If any delay is authorised, then, as soon as is practicable—

(a) the detained person shall be told the reason for authorising it; and

(b) the reason shall be recorded in writing.

(10) If an officer of at least the rank of Assistant Chief Constable has reasonable grounds for believing that, unless he gives a direction under subsection (11) below, the exercise by a person of the right conferred by subsection (1) above will have any of the consequences specified in subsection (8) above, he may give a direction under subsection (11) below.

(11) A direction under this subsection is a direction that a person desiring to exercise the right conferred by subsection (1) above may only consult a solicitor in the sight and hearing of a qualified officer of the uniformed branch of the Royal Ulster Constabulary.

(12) An officer is qualified for the purposes of subsection (11) above if—

(a) he is of at least the rank of inspector; and

(b) in the opinion of the officer giving the direction, he has no connection with the case.

(13) Any authorisation under subsection (5) above or direction under subsection (11) above shall cease to have effect once the reason for giving it ceases to subsist.

46 Fingerprinting.

Article 61(1) to (8) of the [M37]Police and Criminal Evidence (Northern Ireland) Order 1989 (fingerprinting) shall apply to the taking of a person's fingerprints by a constable

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under section 15(9) of the [M38]Prevention of Terrorism (Temporary Provisions) Act 1989 as if for Article 61(4) there were substituted—

"(4) An officer may only give an authorisation if he is satisfied that it is necessary to do so in order to assist in determining—

(a) whether that person is or has been concerned in the commission, preparation or instigation of acts of terrorism to which section 14 of the Prevention of Terrorism (Temporary Provisions) Act 1989 applies; or

(b) whether he is subject to an exclusion order under that Act;

or if the officer has reasonable grounds for suspecting that person's involvement in an offence under any of the provisions mentioned in subsection (1)(a) of that section and for believing that his fingerprints will tend to confirm or disprove his involvement."

Marginal Citations

M37 S.I.1989/1341 (N.I.12).

M38 1989 c. 4.

PART VII

CONFISCATION OF PROCEEDS OF TERRORIST-RELATED ACTIVITIES

47 Confiscation orders.

(1) Where a person is convicted in the Crown Court of a relevant offence the court shall, subject to the provisions of this section, make a confiscation order if it is satisfied that he has (whether before or after the coming into force of this Part of this Act) benefited from terrorist-related activities engaged in by him or another; and that order shall require him to pay an amount equal to what the court assesses to be the value of his proceeds of those activities.

(2) For the purposes of this Part of this Act—

(a) a person engages in terrorist-related activities if he engages in activities which consist of or involve the commission of one or more relevant offences;

(b) a person benefits from terrorist-related activities if he obtains money or other property as a direct or indirect result of those activities; and

(c) a person's proceeds of terrorist-related activities are the money or other property obtained by him as mentioned above.

(3) A court shall not on convicting a defendant of a relevant offence make a confiscation order against him unless—

(a) he is in the same proceedings convicted of another relevant offence committed on a separate occasion (whether before or after the coming into force of this Part of this Act) since the beginning of the period of six years ending when those proceedings were instituted; or

(b) he is shown to have committed another relevant offence as mentioned in paragraph (a) above.

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(4) In subsection (3)(a) above the reference to an offence of which a person is convicted includes a reference to an offence taken into consideration by the court in determining his sentence.

(5) A court shall not on convicting a defendant of a relevant offence make a confiscation order against him unless it is satisfied that, at some time since the commission of that offence, the realisable property held by him has exceeded £20,000 or such other amount as is for the time being prescribed for the purposes of this subsection by an order made by the Secretary of State.

(6) A court shall not make a confiscation order if the defendant satisfies the court that the circumstances in which the terrorist-related activities in question were engaged in would make it unfair or oppressive for such an order to be made.

(7) If when making a confiscation order the court is satisfied that the amount that might be realised in the case of the defendant at that time is less than the amount which the court assesses to be the value of his proceeds of terrorist-related activities, the order shall require him to pay the amount that might then be so realised.

(8) For the purpose of assessing the value of the defendant's proceeds of terrorist-related activities in a case where a confiscation order has previously been made against him, the court shall leave out of account any of his proceeds of such activities that are shown to the court to have been taken into account in determining the amount to be paid under that order.

48 Provisions supplementary to section 47.

(1) Subject to subsection (2) below, a confiscation order shall be made by the court before sentencing or otherwise dealing with the defendant for the offence or offences in respect of which he is before the court.

(2) If a court considers that it requires further information before making a confiscation order against a defendant, it may, subject to subsection (3) below, postpone making such an order for a period not exceeding six months after the date of conviction for the purpose of enabling that information to be obtained; but, without prejudice to Article 11 of the [M39]Treatment of Offenders (Northern Ireland) Order 1989, the court may notwithstanding such postponement proceed to sentence or otherwise deal with the defendant in respect of the conviction.

(3) If during the period of postponement notice of appeal or of application for leave to appeal is given under section 16(1) of the [M40]Criminal Appeal (Northern Ireland) Act 1980 the court may, on the application of the prosecution, extend that period to a date up to three months after the date of the determination of the appeal.

(4) A court shall not impose any fine or make an order such as is mentioned in subsection (5)(b) or (c) below before a confiscation order is made.

(5) Where a court makes a confiscation order against a defendant in any proceedings, the court shall, in respect of any offence of which he is convicted in those proceedings, take account of the order before—

(a) imposing any fine on him; or

(b) making any order involving any payment by him, other than an order under Article 3 of the [M41]Criminal Justice (Northern Ireland) Order 1980 (compensation orders); or

(c) making any order under Article 7 of that Order (deprivation orders),

but subject to that shall leave the order out of account in determining the appropriate sentence or other manner of dealing with him.

(6) No statutory provision restricting the power of a court dealing with an offender in a particular way from dealing with him also in any other way shall by reason only of the making of a confiscation order restrict the court from dealing with an offender in any way it considers appropriate in respect of a relevant offence.

(7) Where—

(a) a court makes both a confiscation order and an order for the payment of compensation under Article 3 of the [M42]Criminal Justice (Northern Ireland) Order 1980 against the same person in the same proceedings; and

(b) it appears to the court that he will not have sufficient means to satisfy both the orders in full,

it shall direct that so much of the compensation as will not in its opinion be recoverable because of the insufficiency of his means shall be paid out of any sums recovered under the confiscation order.

(8) Where a court decides not to make a confiscation order against a defendant convicted by it of a relevant offence the court shall state its reasons for that decision.

Marginal Citations

M39 S.I. 1989/1344 (N.I. 15).
M40 1980 c. 47.
M41 S.I. 1980/704 (N.I. 6).
M42 S.I. 1980/704 (N.I. 6).

VALID FROM 03/02/1995

[[F1]48A Re-assessment of whether defendant has benefited.

(1) This section applies where—

(a) a court proceeding under section 47(1) above decided not to make a confiscation order ("the decision"); and

(b) the statement made by the court under section 48(8) above was to the effect that the reason, or one of the reasons, for the decision was that the court was not satisfied that the defendant had benefited.

(2) If the prosecution has evidence—

(a) which was not considered by the court, but

(b) which the prosecution believes would have led the court to decide that the defendant had benefited,

the prosecution may apply to the Crown Court for it to consider that evidence.

(3) If, having considered the evidence, the court considers that it would have been satisfied that the defendant had benefited if that evidence had been available to it, section 47 shall apply as if the court were convicting the defendant.

Status: *Point in time view as at 09/01/1995. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *There are currently no known outstanding effects for the Northern Ireland (Emergency Provisions) Act 1991 (repealed 25.8.1996). (See end of Document for details)*

(4) The court may take into account any money or other property obtained by the defendant on or after the date of the decision, but only if the prosecution shows that it was obtained by him as a direct or indirect result of terrorist-related activities carried on by the defendant or another on or before that date.

(5) In considering any evidence under this section which relates to any money or other property to which subsection (4) above applies, the court shall not make the assumptions which would otherwise be required by section 51 below.

(6) No application shall be entertained by the court under this section if it is made after the end of the period of six years beginning with the date on which the defendant was convicted.

(7) Subsections (1) to (7) of section 48 above shall not apply where the court is proceeding under section 47 above by virtue of this section.

(8) Where the court—

(a) has, in dealing with the defendant in respect of the conviction or any of the convictions concerned, made an order for the payment of compensation under Article 3 of the Order of 1980, and

(b) makes a confiscation order by virtue of this section,

it shall, if it is of the opinion that the defendant will not have sufficient means to satisfy both orders in full, direct that so much of the compensation as will not in its opinion be recoverable because of the insufficiency of his means is to be paid out of any sums recovered under the confiscation order.

(9) Where the prosecution makes an application to the court under this section it shall, on making the application, give the court a statement under section 52 below.

(10) Where the High Court—

(a) has been asked to proceed under section 52B below in relation to a defendant who has absconded, but

(b) has decided not to make a confiscation order against him,

this section shall not apply at any time while he remains an absconder.

(11) In this section "benefited" means benefited from terrorist-related activities as mentioned in section 47(1) above.**]**

Textual Amendments

F1 Ss. 48A, 48B inserted (3.2.1995) by 1993 c. 36, **ss.37**, 78(3) (with s. 78(6)); S.I. 1995/43, arts. 2, 3, **Sch.**.

VALID FROM 03/02/1995

[F2]48B Revised assessments.

(1) This section applies where the court has made a confiscation order by reference to an amount assessed under section 47(1) above ("the current assessment").

Status: *Point in time view as at 09/01/1995. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *There are currently no known outstanding effects for the Northern Ireland (Emergency Provisions) Act 1991 (repealed 25.8.1996). (See end of Document for details)*

(2) Where the prosecution is of the opinion that the real value of the defendant's proceeds of terrorist-related activities was greater than their assessed value, the prosecution may apply to the Crown Court for the evidence on which it has formed that opinion to be considered by the court.

(3) In subsection (2) above—

"assessed value" means the value of the defendant's proceeds of terrorist-related activities as assessed by the court under section 47(1) above; and

"real value" means the value of the defendant's proceeds of terrorist-related activities which took place—

(a) in the period by reference to which the current assessment was made; or

(b) in any earlier period.

(4) If, having considered the evidence, the court is satisfied that the real value of the defendant's proceeds of terrorist-related activities is greater than their assessed value (whether because the real value was higher at the time of the current assessment than was thought or because the value of the proceeds in question has subsequently increased), the court shall make a fresh determination of the amount to be required to be paid under section 47 above.

(5) In relation to any determination by virtue of this section, section 47(7) above shall have effect as it has effect in relation to the making of a confiscation order.

(6) For any determination by virtue of this section, section 47(8) above shall not apply in relation to any of the defendant's proceeds of terrorist-related activities taken into account in respect of the current assessment.

(7) Sections 50(4) and 52(4)(a) and (7) below shall have effect in relation to any such determination as if for "confiscation order" there were substituted "determination" and section 50(3) below shall so have effect as if for "a confiscation order is made" there were substituted "of the determination".

(8) The court may take into account any money or other property obtained by the defendant on or after the date of the current assessment, but only if the prosecution shows that it was obtained by him as a direct or indirect result of terrorist-related activities carried on by the defendant or another on or before that date.

(9) In considering any evidence under this section which relates to any money or other property to which subsection (8) above applies, the court shall not make the assumptions which would otherwise be required by section 51 below.

(10) If, as a result of making the determination required by subsection (4) above, the amount to be required to be paid exceeds the amount set in accordance with the current assessment, the court may substitute for the amount required to be paid under the confiscation order such greater amount as it thinks just in all the circumstances of the case.

(11) Where the court varies a confiscation order under subsection (10) above it shall substitute for the term of imprisonment or of detention fixed under section 35(1)(c) of the [M43]Criminal Justice Act (Northern Ireland) 1945 in respect of the amount required to be paid under the order a longer term determined in accordance with that section (as it has effect by virtue of paragraph 2 of Schedule 4 to this Act) in respect of the greater amount substituted under subsection (10) above.

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(12) Subsection (11) above shall apply only if the effect of the substitution is to increase the maximum period applicable in relation to the order under paragraph 2(1)(b) of Schedule 4 to this Act.

(13) Where the prosecution makes an application to the court under this section—
- (a) it shall, on making the application, give the court a statement under section 52 below; and
- (b) section 52A shall apply.

(14) Where a confiscation order has been made in relation to any defendant by virtue of section 52B below, this section shall not apply at any time while he is an absconder.

(15) No application shall be entertained by the court under this section if it is made after the end of the period of six years beginning with the date on which the defendant was convicted.

Textual Amendments

F2 Ss. 48A, 48B inserted (3.2.1995) by 1993 c. 36, **ss.37**, 78(3) (with s. 78(6)); S.I. 1995/43, arts. 2, 3, **Sch.**

Marginal Citations

M43 1945 c. 15 (N.I.).

49 Relevant offences.

(1) In this Part of this Act "relevant offence" means—
- (a) a scheduled offence falling within paragraph 12(a), 20(b), (c) **[**[F3], (dd)**]** or (e) or 22(b), (i), (j), (k) **[**[F3], (kk)**]**, (m) or (n) of Part I of Schedule 1 to this Act;
- (b) an offence which by virtue of Part II of that Schedule is to be treated as if it were such an offence as is mentioned in paragraph (a) above; and
- (c) an offence falling within Part IV of that Schedule.

(2) In so far as this Part of this Act applies in relation to a relevant offence committed before the coming into force of this Act "relevant offence" also means—
- (a) a scheduled offence within the meaning of the [M44]Northern Ireland (Emergency Provisions) Act 1978 falling within paragraph 13(a) or 16(b) or (c) of Part I of Schedule 4 to that Act; and
- (b) an offence which by virtue of Part II of that Schedule was to be treated as if it were such an offence as is mentioned in paragraph (a) above.

(3) An order under section 1(3) above amending Schedule 1 to this Act may also amend subsection (1) above.

Textual Amendments

F3 Words in s. 49(1)(a) inserted (1.4.1994) by 1993 c. 36, ss. 78(3), 79(13), **Sch. 5 Pt. I para. 17(1)(a)(b)** (with s. 78(6)); S.I. 1994/700, art. 2, **Sch.**

Status: *Point in time view as at 09/01/1995. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *There are currently no known outstanding effects for the Northern Ireland (Emergency Provisions) Act 1991 (repealed 25.8.1996). (See end of Document for details)*

Marginal Citations
M44 1978 c. 5.

50 Realisable property, value and gifts.

(1) In this Part of this Act "realisable property" means, subject to subsection (2) below—
- (a) any property held by the defendant; and
- (b) any property held by a person to whom the defendant has directly or indirectly made a gift caught by this Part of this Act.

(2) Property is not realisable property if an order under—
- (a) Article 7 of the Criminal Justice (Northern Ireland) Order 1980 (deprivation orders);
- (b) section 27 of the [M45]Misuse of Drugs Act 1971 (forfeiture orders); [F4]. . .
- (c) section 13(2), (3) or (4) of the [M46]Prevention of Terrorism (Temporary Provisions) Act 1989 (forfeiture orders),
- **[**[F5](d) section 43 of the [M47]Powers of Criminal Courts Act 1973; or
- (e) section 223 or 436 of the [M48]Criminal Procedure (Scotland) Act 1975,**]**

is in force in respect of the property.

(3) For the purposes of this Part of this Act the amount that might be realised at the time a confiscation order is made is—
- (a) the total of the values at that time of all the realisable property held by the defendant, less
- (b) where there are obligations having priority at that time, the total amounts payable in pursuance of such obligations,

together with the total of the values at that time of all gifts caught by this Part of this Act.

(4) For the purposes of subsection (3) above, an obligation has priority at any time if it is an obligation of the defendant to—
- (a) pay an amount due in respect of a fine, or other order of a court, imposed or made on conviction of an offence, where the fine was imposed or order made before the confiscation order; or
- (b) pay any sum which would be included among the preferential debts (within the meaning given by Article 346 of the [M49]Insolvency (Northern Ireland) Order 1989) in the defendant's bankruptcy commencing on the date of the confiscation order or winding up under an order of the court made on that date.

(5) Subject to the following provisions of this section, for the purposes of this Part of this Act the value of property (other than cash) in relation to any person holding the property—
- (a) where any other person holds an interest in the property, is—
  - (i) the market value of the first-mentioned person's beneficial interest in the property, less
  - (ii) the amount required to discharge any incumbrance (other than a charging order) on that interest; and
- (b) in any other case, is its market value.

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(6) Subject to subsection (9) below, references in this Part of this Act to the value at any time (referred to in subsection (7) below as "the material time") of any proceeds or of a gift caught by this Part of this Act are references to—

(a) the value of the proceeds or gift to the recipient when he received it adjusted to take account of subsequent changes in the value of money; or

(b) where subsection (7) below applies, the value there mentioned,

whichever is the greater.

(7) Subject to subsection (9) below, if at the material time he holds—

(a) the property which he received (not being cash); or

(b) property which, in whole or in part, directly or indirectly represents in his hands the property which he received,

the value referred to in subsection (6) above is the value to him at the material time of the property mentioned in paragraph (a) above or, as the case may be, of the property mentioned in paragraph (b) above so far as it so represents the property which he received, but disregarding any charging order.

(8) A gift (including a gift made before the coming into force of this Part of this Act) is caught by this Part of this Act if—

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

(b) it was made by the defendant at any time and was a gift of property—

(i) obtained by the defendant as a direct or indirect result of terrorist-related activities engaged in by him or another; or

(ii) which in whole or in part directly or indirectly represented in the defendant's hands property received by him as proceeds of such activities.

(9) For the purposes of this Part of this Act—

(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 preceding provisions of this section 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 paragraph (a) above bears to the value of the consideration provided by the defendant.

Textual Amendments

F4 Word in s. 50(2) repealed (15.2.1994) by 1993 c. 36, ss. 78(3), 79(14), **Sch. 6 Pt.I**; S.I. 1994/71, arts. 2, 3, **Sch.** Appendix.

F5 S. 50(2)(d)(e) inserted (1.12.1993) by 1993 c. 36, **s. 44** (with s. 78(6)); S.I. 1993/2734, art. 2, **Sch.**

Marginal Citations

M45 1971 c. 38.

M46 1989 c. 4.

M47 1973 c. 62.

M48 1975 c. 21.

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M49 S.I. 1989/2405 (N.I. 19).

51 Assumptions as to benefit and value of proceeds.

(1) The Crown Court shall, for the purpose of determining whether the defendant has benefited from terrorist-related activities and, if he has, of assessing the value of his proceeds of those activities, make the following assumptions, except to the extent that any of the assumptions are shown to be incorrect in the defendant's case—

(a) that any property appearing to the court—

(i) to have been held by him at any time since his conviction; or

(ii) to have been transferred to him at any time since the beginning of the period of six years ending when the proceedings were instituted against him,

was obtained by him, at the earliest time at which he appears to the court to have held it, as a result of terrorist-related activities engaged in by him;

(b) that any expenditure of his since the beginning of that period was met out of the proceeds of such activities engaged in by him; and

(c) that, for the purpose of valuing any property obtained or assumed to have been obtained by him at any time as a result of such activities, he obtained the property free of any other interests in it.

(2) Where the court decides that any assumption mentioned in subsection (1) above is incorrect in the defendant's case it shall state its reasons for that decision.

(3) As respects property or expenditure in relation to which the foregoing assumptions do not fall to be made the standard of proof required of the prosecution on the question whether the defendant has benefited from terrorist-related activities and, if so, as to the value of his proceeds of those activities shall be that applicable in civil proceedings.

52 Statements, etc., relevant to making confiscation orders.

(1) Where—

(a) there is tendered to the court by the prosecution a statement as to any matters relevant in the case of a defendant who has been convicted of a relevant offence—

(i) to the determination whether the defendant has benefited from terrorist-related activities; or

(ii) to the assessment of the value of his proceeds of those activities; or

(iii) to the determination whether the requirements of section 47(5) above are satisfied; and

(b) the defendant accepts to any extent any allegation in the statement,

the court may, for the purposes of that determination and assessment, treat his acceptance as conclusive of the matters to which it relates.

(2) Where—

(a) a statement is tendered under subsection (1)(a) above; and

(b) the court is satisfied that a copy of that statement has been served on the defendant,

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the court may require the defendant to indicate to what extent he accepts each allegation in the statement and, so far as he does not accept any such allegation, to indicate any matters he proposes to rely on.

(3) If the defendant fails in any respect to comply with a requirement under subsection (2) above, he may be treated for the purposes of this section as accepting every allegation in the statement apart from any allegation in respect of which he has complied with the requirement.

(4) Where—
  (a) there is tendered to the court by the defendant a statement as to any matters relevant to determining the amount that might be realised at the time the confiscation order is made; and
  (b) the prosecution accepts to any extent any allegation in the statement,

the court may, for the purposes of that determination, treat the acceptance by the prosecution as conclusive of the matters to which it relates.

(5) An allegation may be accepted or a matter indicated for the purposes of this section either—
  (a) orally before the court; or
  (b) in writing in accordance with Crown Court rules.

(6) No acceptance by the defendant under this section that any property was obtained by him as a direct or indirect result of terrorist-related activities engaged in by him or another shall be admissible in evidence in any proceedings for an offence.

(7) If the court is satisfied as to any matter relevant for determining the amount that might be realised at the time the confiscation order is made (whether by an acceptance under this section or otherwise), the court may issue a certificate giving the court's opinion as to the matter concerned and shall do so if satisfied that the amount that might be realised at the time the confiscation order is made is less than the amount the court assesses to be the value of the defendant's proceeds of terrorist-related activities.

VALID FROM 03/02/1995

[F6 52A Provision of information by defendant.

(1) This section applies where the Crown Court is proceeding under section 47(1) above.

(2) For the purpose of obtaining information to assist it in carrying out its functions, the court may at any time order the defendant to give it such information as may be specified in the order.

(3) An order under subsection (2) above may require all, or any specified part, of the required information to be given to the court in such manner, and before such date, as may be specified in the order.

(4) Rules of court may make provision as to the maximum or minimum period that may be allowed under subsection (3) above.

(5) If the defendant fails, without reasonable excuse, to comply with any order under this section, the court may draw such inference from that failure as it considers appropriate.

(6) Where the prosecution accepts to any extent any allegation made by the defendant in giving to the court information required by an order under this section, the court may treat that acceptance as conclusive of the matters to which it relates.

(7) For the purposes of this section, an allegation may be accepted in such manner as may be prescribed by rules of court or as the court may direct.**]**

Textual Amendments

F6 S. 52A inserted (3.2.1995) by 1993 c. 36, **s.39** (with s. 78(6)); S.I. 1995/43, art. 2, 3, **Sch.**

VALID FROM 03/02/1995

[F7 52B Powers of High Court where defendant has died or absconded.

(1) Subsection (2) below applies where a person has been convicted of a relevant offence.

(2) If the prosecution asks it to proceed under this section, the High Court may exercise the powers of the Crown Court under this Act to make a confiscation order against the defendant if satisfied that the defendant has died or absconded.

(3) Subsection (4) below applies where proceedings have been instituted against the defendant for one or more relevant offences but have not been concluded.

(4) If the prosecution asks it to proceed under this section, the High Court, if satisfied that the defendant has absconded, may exercise the powers of the Crown Court under this Act to make a confiscation order against the defendant as if the defendant had been convicted of the relevant offence or each of the relevant offences for which the proceedings had been instituted.

(5) The power conferred by subsection (4) above may not be exercised at any time before the end of the period of two years beginning with the date which is, in the opinion of the court, the date on which the defendant absconded.

(6) Where the prosecution makes an application to the court under this section it shall, on making the application, give the court a statement under section 52 above.

(7) In any proceedings on an application under this section—

(a) sections 51, 52(1C), (2) and (3) and 52A above shall not apply,

(b) the court shall not make a confiscation order against a person who has absconded unless it is satisfied that the prosecution has taken reasonable steps to contact him, and

(c) any person appearing to the court to be likely to be affected by the making of a confiscation order by the court shall be entitled to appear before the court and make representations.

(8) Where the High Court has made a confiscation order by virtue of this section, in a case where the defendant has been or is subsequently convicted of one or more of the offences concerned, sections 47 and 48(1) to (5) and (7) above shall not apply in respect of his conviction of that offence or those offences; but any court dealing with him in respect of that conviction or any of those convictions—

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(a) shall take account of the order before—
(i) imposing any fine on him; or
(ii) making any order involving any payment by him, other than an order under Article 3 of the [M50]Criminal Justice (Northern Ireland) Order 1980 (compensation orders); or
(iii) making any order under Article 7 of that Order (deprivation orders),
but subject to that shall leave the order out of account in determining the appropriate sentence or other manner of dealing with him; and
(b) if it makes an order for the payment of compensation under Article 3 of the Order of 1980, and is of the opinion that the defendant will not have sufficient means to satisfy both that order and the confiscation order in full, shall direct that so much of the compensation as will not in its opinion be recoverable because of the insufficiency of his means is to be paid out of any sums recovered under the confiscation order.**]**

Textual Amendments
F7 S. 52B inserted (3.2.1995) by 1993 c. 36, **s.42** (with s. 78(6)); S.I. 1995/43, **art. 2**,Sch.

Modifications etc. (not altering text)
C4 S. 52B(3)(4) excluded (15.2.1994) by 1993 c. 36, **s. 78(8)**; S.I. 1994/71, art. 2, 3, **Sch.**.

Marginal Citations
M50 S. I. 1980/704 (N.I. 6).

53 Assisting another to retain proceeds of terrorist-related activities.

(1) Subject to subsection (3) below, if a person enters into or is otherwise concerned in an arrangement whereby—
(a) the retention or control by or on behalf of another (referred to hereafter as "A") of A's proceeds of terrorist-related activities is facilitated (whether by concealment, removal from the jurisdiction, transfer to nominees or otherwise); or
(b) A's proceeds of such activities—
(i) are used to secure that funds are placed at A's disposal; or
(ii) are used for A's benefit to acquire property by way of investment,
knowing or having reasonable cause to suspect that A is a person who engages in or has engaged in such activities or has benefited from such activities, he is guilty of an offence.

(2) In this section references to any person's proceeds of terrorist-related activities include a reference to any property which in whole or in part directly or indirectly represented in his hands his proceeds of such activities.

(3) Where a person discloses to a constable a suspicion or belief that any funds or investments are derived from or used in connection with terrorist-related activities or any matter on which such a suspicion or belief is based, then, if he does any act in contravention of subsection (1) above and the disclosure relates to the arrangement concerned, he does not commit an offence under this section if—

(a) the disclosure is made before he does the act concerned and that act is done with the consent of the constable; or

(b) the disclosure is made after he does the act but on his initiative and as soon as it is reasonable for him to make it.

[[F8](3A) Where a person discloses to a constable a suspicion or belief that any funds or investments are derived from or used in connection with terrorist-related activities or any matter on which such a suspicion or belief is based, the disclosure shall not be treated as a breach of any restriction upon the disclosure of information imposed by statute or otherwise.**]**

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

(a) that he did not know or suspect that the arrangement related to any person's proceeds of terrorist-related activities; or

(b) that he did not know or suspect that by the arrangement the retention or control by or on behalf of A of any property was facilitated or, as the case may be, that by the arrangement any property was used as mentioned in subsection (1) above; or

(c) that—

(i) he intended to disclose to a constable such a suspicion, belief or matter as is mentioned in subsection (3) above in relation to the arrangement, but

(ii) there is reasonable excuse for his failure to make disclosure in accordance with that subsection.

[[F9](4A) In the case of a person who was in employment at the relevant time, subsections (3), (3A) and (4)(c) above shall have effect in relation to disclosures, and intended disclosures, to the appropriate person in accordance with the procedure established by his employer for the making of such disclosures as they have effect in relation to disclosures, and intended disclosures, to a constable.**]**

(5) A person guilty of an offence under this section is liable—

(a) on conviction on indictment, to imprisonment for a term not exceeding fourteen years or a fine or both;

(b) on summary conviction, to imprisonment for a term not exceeding six months or a fine not exceeding the statutory maximum or both.

Textual Amendments

F8 S. 53(3A) inserted (15.2.1994) by 1993 c. 36, **s. 47(1)** (with s. 78(6)); S.I. 1994/71, art. 3, **Sch.**

F9 S. 53(4A) inserted (15.2.1994) by 1993 c. 36, **ss. 47(2)** (with s. 78(6)); S.I. 1994/71, art. 3, **Sch.**

Modifications etc. (not altering text)

C5 S. 53 applied (1.8.1994) by S.I. 1994/1760, **art. 3**

54 Concealing or transferring proceeds of terrorist-related activities.

(1) A person is guilty of an offence if he—

(a) conceals or disguises any property which is, or in whole or in part directly or indirectly represents, his proceeds of terrorist-related activities; or

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(b) converts or transfers that property or removes it from the jurisdiction,

for the purpose of avoiding prosecution for a relevant offence or the making or enforcement in his case of a confiscation order.

(2) A person is guilty of an offence if, knowing or having reasonable cause to suspect that any property is, or in whole or in part directly or indirectly represents, another person's proceeds of terrorist-related activities, he—

(a) conceals or disguises that property; or

(b) converts or transfers that property or removes it from the jurisdiction,

for the purpose of assisting any person to avoid prosecution for a relevant offence or the making or enforcement of a confiscation order.

(3) A person is guilty of an offence if, knowing or having reasonable cause to suspect that any property is, or in whole or in part directly or indirectly represents, another person's proceeds of terrorist-related activities, he acquires **[**[F10]or uses that property or has possession of it**]**.

[[F11](3A) It is a defence to a charge of committing an offence under this section that the person charged acquired or used the property or had possession of it for adequate consideration.**]**

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

[[F12](5) For the purposes of subsection (3A) above—

(a) a person acquires property for inadequate consideration if the value of the consideration is significantly less than the value of the property;

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

(c) the provision for any person of services or goods which are of assistance to him in terrorist-related activities shall not be treated as consideration.

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

(a) the disclosure shall not be treated as a breach of any restriction upon the disclosure of information imposed by statute or otherwise; and

(b) if he does any act in contravention of subsection (3) above, he does not commit an offence under that subsection if—

(i) the disclosure is made before he does the act concerned and that act is done with the consent of the constable; or

(ii) the disclosure is made after he does the act but on his initiative and as soon as it is reasonable for him to make it.

(5B) For the purposes of this section, having possession of any property shall be taken to be doing an act in relation to it.

(5C) In proceedings against a person for an offence under subsection (3) above, it is a defence to prove that—

(a) he intended to disclose to a constable such a suspicion, belief or matter as is mentioned in subsection (5A) above; but

(b) there is reasonable excuse for his failure to make a disclosure in accordance with paragraph (b) of that subsection.

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

(5E) No constable or other person shall be guilty of an offence under subsection (3) above in respect of anything done by him in the course of acting in connection with the enforcement, or intended enforcement, of any provision of this Act or of any other enactment relating to terrorism or the proceeds or resources of such terrorism.**]**

(6) A person guilty of an offence under this section is liable—

(a) on conviction on indictment, to imprisonment for a term not exceeding fourteen years or a fine or both;

(b) on summary conviction, to imprisonment for a term not exceeding six months or a fine not exceeding the statutory maximum or both.

Textual Amendments

F10 Words in s. 54(3) substituted (15.2.1994) by 1993 c. 36, **s. 47(3)** (with s. 78(6)); S.I. 1994/71, art. 3, **Sch.**

F11 S. 54(3A) inserted (15.2.1994) by 1993 c. 36, **s. 47(4)** (with s. 78(6)); S.I. 1994/71, art. 3, **Sch.**

F12 S. 54(5)(5A)-(5E) substituted for s. 54(5) (15.2.1994) by 1993 c. 36, **s. 47(5)** (with s. 78(6)); S.I. 1994/71, art. 3, **Sch.**.

Modifications etc. (not altering text)

C6 S. 54(2)-(6) applied (1.8.1994) by S.I. 1994/1760, **art. 3**

[[F13]54A Failure to disclose knowledge or suspicion of offences under sections 53 and 54.

(1) A person is guilty of an offence if—

(a) he knows, or suspects, that another person is acting in the proscribed manner,

(b) the information, or other matter, on which that knowledge or suspicion is based came to his attention in the course of his trade, profession, business or employment, and

(c) he does not disclose the information or other matter to a constable as soon as is reasonably practicable after it comes to his attention.

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

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

(4) Where a person discloses to a constable—

(a) his suspicion or belief that another person is acting in the proscribed manner, or

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(b) any information or other matter on which that suspicion or belief is based,

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

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

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

(7) In this section "acting in the proscribed manner" means doing any act which constitutes an offence under section 53 or 54 above or, in the case of an act done otherwise than in the United Kingdom, which would constitute such an offence if done in the United Kingdom.

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

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

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

(b) by, or by a representative of, a person seeking legal advice from the adviser; or

(c) by any person—

(i) in contemplation of, or in connection with, legal proceedings; and

(ii) for the purpose of those proceedings.

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

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

(a) on summary conviction, to imprisonment for a term not exceeding six months or a fine not exceeding the statutory maximum or to both, or

(b) on conviction on indictment, to imprisonment for a term not exceeding five years or a fine or to both.**]**

Textual Amendments

F13 S. 54A inserted (1.4.1994) by 1993 c. 36, **s.48** (with s. 78(6)); S.I. 1994/700, art. 3, **Sch.**.

Modifications etc. (not altering text)

C7 S. 54A applied (1.8.1994) by S.I. 1994/1760, **art.3**

C8 S. 54A excluded (1.8.1994) by S.I. 1994/1760, **art. 4**

Status: *Point in time view as at 09/01/1995. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *There are currently no known outstanding effects for the Northern Ireland (Emergency Provisions) Act 1991 (repealed 25.8.1996). (See end of Document for details)*

55 Enforcement and supplementary provisions.

Schedule 4 to this Act shall have effect with respect to the enforcement of confiscation orders and otherwise for supplementing the provisions of this Part of this Act.

[F14 55A Extension of certain offences to Crown servants and exemptions for regulators etc.

(1) The Secretary of State may by regulations provide that, in such circumstances as may be prescribed, **[**F15 sections 53, 54(2) to (6) and 54A above**]** shall apply to such persons in the public service of the Crown, or such categories of person in that service, as may be prescribed.

(2) Section **[**F16 54A**]** of this Act shall not apply to—

(a) any person designated by regulations made by the Secretary of State for the purpose of this paragraph; or

(b) in such circumstances as may be prescribed, any person who falls within such category of person as may be prescribed for the purpose of this paragraph.

(3) The Secretary of State may designate, for the purpose of paragraph (a) of subsection (2) above, any person appearing to him to be performing regulatory, supervisory, investigative or registration functions.

(4) The categories of person prescribed by the Secretary of State, for the purpose of paragraph (b) of subsection (2) above, shall be such categories of person connected with the performance by any designated person of regulatory, supervisory, investigative or registration functions as he considers it appropriate to prescribe.

(5) In this section—

"the Crown" includes the Crown in right of Her Majesty's Government in Northern Ireland; and

"prescribed" means prescribed by regulations made by the Secretary of State.

(6) The power to make regulations under this section shall be exercisable by statutory instrument.

(7) Any such instrument shall be subject to annulment in pursuance of a resolution of either House of Parliament.**]**

Textual Amendments

F14 S. 55A inserted (1.4.1994) by 1993 c. 36, s. 77, **Sch. 4 paras. 1**,6; S. I. 1994/700, arts. 2, 3, **Sch.**

F15 Words in s. 55A(1) substituted (1.4.1994) by 1993 c. 36, ss. 65(3), **Sch. 4 para. 6(a)**; S.I. 1994/700, arts. 2, 3, **Sch.**

F16 Word in s. 55A(2) substituted (1.4.1994) by 1993 c. 36, ss. 65(3), **Sch. 4 para. 6(b)**; S.I. 1994/700, arts. 2, 3, **Sch.**

56 Interpretation of confiscation provisions.

(1) In this Part of this Act—

"charging order" means an order made under paragraph 6 of Schedule 4 to this Act;

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"confiscation order" means an order made by a court under section 47 above;

"defendant" means a person against whom proceedings have been instituted for a relevant offence (whether or not he has been convicted);

"gift caught by this Part of this Act" has the meaning given in section 50(8) above;

"interest", in relation to property, includes right;

"proceeds of terrorist-related activity" has the meaning given in section 47(2) above;

"property" includes, in addition to money, all other property, real or personal, heritable or moveable, including things in action and other intangible or incorporeal property;

"realisable property" has the meaning given in section 50(1) and (2) above;

"relevant offence" has the meaning given in section 49 above;

"statutory provision" has the meaning given in section 1(f) of the [M51]Interpretation Act (Northern Ireland) 1954;

"terrorist-related activities" has the meaning given in section 47(2) above.

(2) This Part of this Act applies to property wherever situated.

(3) References in this Part of this Act to offences include references to offences committed before the coming into force of this Part of this Act but nothing in this Part of this Act imposes any duty or confers any power on any court in or in connection with proceedings against a person for an offence if the proceedings were instituted before the coming into force of this Part of this Act.

(4) References in this Part of this Act to property obtained as a direct or indirect result of terrorist-related activities include references to property obtained partly in that manner.

(5) The following provisions also have effect for the interpretation of this Part of this Act.

(6) Property is held by any person if he holds any interest in it.

(7) References to property held by a person include a reference to property vested in his trustee in bankruptcy or liquidator; and 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.

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

(9) Proceedings for an offence are instituted—

(a) when a summons or warrant is issued under Article 20 of the [M52]Magistrates' Courts (Northern Ireland) Order 1981 in respect of that offence;

(b) when a person is charged with the offence after being taken into custody without a warrant;

(c) when an indictment is presented under section 2(2)(c), (e) or (f) of the [M53]Grand Jury (Abolition) Act (Northern Ireland) 1969;

and where the application of this subsection 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.

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Changes to legislation: *There are currently no known outstanding effects for the Northern Ireland (Emergency Provisions) Act 1991 (repealed 25.8.1996). (See end of Document for details)*

Marginal Citations

M51 1954 c. 33 (N.I.).
M52 S.I. 1981/1675 (N.I. 26).
M53 1969 c. 15 (N.I.).

PART VIII

MISCELLANEOUS

57 Additional investigation powers.

(1) If, on an application made in writing by an officer of the Royal Ulster Constabulary not below the rank of superintendent, it appears to the Secretary of State—

(a) that an investigation to which this section applies is taking place; and

(b) that the investigation could be more effectively carried out with the participation of a person who is not a constable and who is named in the application,

the Secretary of State may authorise that person to exercise for the purposes of the investigation the powers conferred by Schedule 5 to this Act.

(2) Those powers shall be exercisable in Great Britain as well as in Northern Ireland and accordingly this section and that Schedule shall extend to the whole of the United Kingdom.

(3) Where a person who has been authorised under subsection (1) above to exercise the powers there mentioned considers that any material may be relevant to the investigation in relation to which the authority was given, Schedule 7 to the [M54]Prevention of Terrorism (Temporary Provisions) Act 1989 (terrorist investigations) shall have effect in relation to the material as if—

(a) the references to a constable in paragraphs 2(1), 3(1) and (2)(b), 5(1) and (3), 6(1), 12(2)(b), 14(3) and 15(1);

(b) the first of the references to a constable in paragraph 3(6); and

(c) the references to a procurator fiscal in paragraphs 12(1) and (6), 13(2), 14(1) and 15(1),

included references to that person; and where (by virtue of this subsection) such a person has made an application for an order under paragraph 3 of that Schedule, the reference in paragraph 4(2)(b) to the constable on whose application the order was made or any constable serving in the same police station shall be construed as referring to that person.

(4) This section applies to any investigation by the Royal Ulster Constabulary into the existence of—

(a) the resources of a proscribed organisation;

(b) funds which may be applied or used for the commission of, or in furtherance of or in connection with, acts of terrorism connected with the affairs of Northern Ireland; or

(c) the proceeds of the commission of such acts of terrorism or of activities engaged in in furtherance of or in connection with such acts.

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(5) Paragraph (a) of subsection (4) above includes any money or property which is or is to be applied or made available for the benefit of a proscribed organisation; and paragraph (c) of that subsection includes any property which in whole or in part directly or indirectly represents such proceeds as are there mentioned.

Modifications etc. (not altering text)

C9 S. 57(1)(3)-(5) extended with modifications (15.4.1994) to the Bailiwick of Guernsey by S.I. 1994/764, art. 2, **Sch.**

Marginal Citations

M54 1989 c. 4.

58 Supplementary regulations for preserving the peace, etc.

(1) The Secretary of State may by regulations make provision additional to the foregoing provisions of this Act for promoting the preservation of the peace and the maintenance of order.

(2) Regulations under this section may authorise the Secretary of State to make orders for such purposes as may be specified in the regulations.

(3) Any person contravening or failing to comply with the provisions of any regulations under this section or any instrument or directions under any such regulations is guilty of an offence and liable on summary conviction to imprisonment for a term not exceeding six months or a fine not exceeding level 5 on the standard scale or both.

59 Explosives factories, magazines and stores.

(1) The grounds on which the Secretary of State may reject an application for a licence under section 6 of the [M55]Explosives Act 1875 (new explosives factories and magazines) shall include the ground that the establishment of the factory or magazine in question is undesirable in the interests of safeguarding national security or protecting public safety; and a licence granted under that section may be withdrawn by him on that ground at any time before it comes into force.

(2) The Secretary of State may also refuse a licence under section 15 or registration under section 21 of that Act (explosives stores and other premises for keeping explosives) on the ground that the establishment of the store or, as the case may be, the keeping of explosives on the premises in question is undesirable in the interests of safeguarding national security or protecting public safety.

Marginal Citations

M55 1875 c. 17.

60 Independent Assessor of Military Complaints Procedures in Northern Ireland.

(1) The Secretary of State shall appoint a person to be known as the Independent Assessor of Military Complaints Procedures in Northern Ireland (in this Act referred to as “the Independent Assessor”).

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(2) A person shall not be eligible for appointment as the Independent Assessor if he is, or at any time during the period of twenty years ending with the date of the appointment has been, a serving member of Her Majesty's forces.

(3) Schedule 6 to this Act shall have effect with respect to the Independent Assessor.

(4) The Independent Assessor—

(a) shall keep under review the procedures adopted by the General Officer Commanding Northern Ireland ("the GOC") for receiving, investigating and responding to relevant complaints;

(b) shall receive and investigate any representations concerning those procedures;

(c) may investigate the operation of those procedures in relation to any particular complaint or group of complaints;

(d) may require the GOC to review any particular case or group of cases in which the Independent Assessor considers any of those procedures to have operated inadequately; and

(e) may make to the GOC recommendations concerning any inadequacies in those procedures, including inadequacies in the way in which they operate in relation to any particular complaint, group of complaints or description of complaints.

(5) In this section "relevant complaint" means a complaint relating to the behaviour of any member of Her Majesty's forces under the command of the GOC, other than—

(a) any complaint which has been referred by the GOC to the Royal Ulster Constabulary and not remitted by the Royal Ulster Constabulary to the GOC to be dealt with by him; and

(b) any complaint relating to a matter in respect of which a claim for compensation has been made under section 63 below or which is the subject of proceedings involving a claim for compensation which have been instituted in any court.

(6) The GOC shall—

(a) furnish such information;

(b) disclose such documents; and

(c) provide such assistance,

as the Independent Assessor may reasonably require for the purpose of the performance of his functions.

61 Codes of practice: police powers.

(1) The Secretary of State shall make codes of practice in connection with the detention, treatment, questioning and identification of persons detained under the [M56]Prevention of Terrorism (Temporary Provisions) Act 1989 and may make codes of practice in connection with—

(a) the exercise by police officers of any power conferred by Part II of this Act or by that Act; and

(b) the seizure and retention of property found by police officers when exercising powers of search conferred by any provision of this Act or that Act.

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(2) When the Secretary of State proposes to issue a code of practice under this section he shall prepare and publish a draft of the code, shall consider any representations made to him about the draft and may modify the draft accordingly.

(3) The Secretary of State shall lay before both Houses of Parliament a draft of any code of practice prepared by him under this section; and when he has laid the draft of the code before both Houses he may bring the code into operation by an order made by him.

(4) An order bringing a code of practice into operation may contain such transitional provisions or savings as appear to the Secretary of State to be necessary or expedient in connection with the code which the order brings into operation.

(5) The Secretary of State may from time to time revise the whole or any part of a code of practice issued by him under this section and issue the code as revised; and the foregoing provisions of this section shall apply (with appropriate modifications) to such a revised code as they apply to the first issue of a code.

(6) A police officer shall be liable to disciplinary proceedings for failure to comply with any provision of such a code unless such proceedings are precluded by Article 22 of the [M57]Police (Northern Ireland) Order 1987.

(7) A failure on the part of a police officer to comply with any provision of such a code shall not of itself render him liable to any criminal or civil proceedings.

(8) In all criminal and civil proceedings any such 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 relevant to any question arising in the proceedings it shall be taken into account in determining that question.

(9) In this section—

"criminal proceedings" includes proceedings in Northern Ireland before a court-martial constituted under the Army Act 1955, the Air Force Act 1955 or the Naval Discipline Act 1957 or a disciplinary court constituted under section 50 of the said Act of 1957 and proceedings in Northern Ireland before the Courts-Martial Appeal Court;

"police officer" means a member of the Royal Ulster Constabulary or the Royal Ulster Constabulary Reserve.

Marginal Citations

M56 1989 c. 4.

M57 S.I.1987/938 (N.I.10).

62 Codes of practice: members of Her Majesty's forces.

(1) The Secretary of State may make codes of practice in connection with the exercise by members of Her Majesty's forces of any of their powers under Part II of this Act.

(2) Subsections (2) to (5) and (8) of section 61 above shall apply to a code under this section as they apply to a code under that section.

(3) A failure on the part of a member of Her Majesty's forces to comply with any provision of a code under this section shall not of itself render him liable to any criminal or civil proceedings other than—

(a) proceedings under any provision of the Army Act 1955 or the Air Force Act 1955 other than section 70; and

(b) proceedings under any provision of the Naval Discipline Act 1957 other than section 42.

(4) In this section "criminal proceedings" has the same meaning as in section 61 above.

63 Right to compensation.

(1) Where under this Act any real or personal property is taken, occupied, destroyed or damaged, or any other act is done interfering with private rights of property, compensation shall, subject to the provisions of this section, be payable by the Secretary of State to any person who—

(a) has an estate or interest in that property or (as the case may be) is entitled to those rights of property, and

(b) suffers loss or damage as a result of the act.

(2) No compensation shall be payable under this section in respect of any act falling within subsection (1) above unless an application for such compensation is made to the Secretary of State, in such manner as he may specify, within—

(a) the period of four months beginning with the date when the act was done, or

(b) such longer period beginning with that date and not exceeding twelve months as—

(i) the Secretary of State on a request being made to him in writing, or

(ii) the county court on an appeal under subsection (3) below,

may in a particular case allow.

(3) Where the Secretary of State refuses any request made to him for the purposes of subsection (2)(b) above, he shall serve a notice of his refusal on the person who made the request, and that person may, within the period of six weeks beginning with the date of service of the notice, appeal to the county court against that refusal.

(4) Where the Secretary of State has determined any application for compensation made in accordance with subsection (2) above, he shall serve on the applicant either—

(a) a notice stating that he has decided to award the applicant compensation in pursuance of his application and specifying the amount of the award, or

(b) a notice stating that he has decided to refuse the application;

and the applicant may within the period of six weeks beginning with the date of service of the notice appeal to the county court against the decision of the Secretary of State to pay the amount of compensation specified in the notice or (as the case may be) to refuse the application and unless he so appeals within that period that decision shall become in all respects final and binding.

(5) Any notice served under subsection (3) or (4) above shall contain particulars of the right of appeal under that subsection and, in the case of a notice served under subsection (4), of the consequences of a failure to exercise that right.

(6) Where—

(a) a person having a right to compensation under this section has made an application in accordance with subsection (2) above, and

(b) by virtue of any assignment or operation of law that right has passed to any other person,

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that other person (or, if he is subject to any legal disability, the person appearing to the Secretary of State to be entitled to act on his behalf) may be treated by the Secretary of State as the applicant for the purposes of any provision of this section.

(7) Where—

(a) a person has a right to compensation in respect of any act falling within subsection (1) above, and

(b) the act was done in connection with, or revealed evidence of the commission of—

(i) a scheduled offence, or

(ii) an offence under this Act other than a scheduled offence, and

(c) proceedings for that offence are brought against that person,

his right to such compensation shall not be enforceable at any time when any such proceedings have not been concluded or if he is convicted of the offence.

(8) Subsection (1) above does not apply to anything done under Part VII of this Act or Schedule 4 to this Act.

64 Compensation: notices.

Any notice required by section 63 above to be served on any person by the Secretary of State may—

(a) if that person is an individual, be served on him—

(i) by delivering it to him, or

(ii) by sending it by post addressed to him at his usual or last-known place of residence or business, or

(iii) by leaving it for him there;

(b) if that person is a partnership, be served on the partnership—

(i) by sending it by post to a partner, or to a person having the control or management of the partnership business, at the principal office of the partnership, or

(ii) by addressing it to a partner or any such person and leaving it at that office;

(c) if that person is a body corporate, be served on the body—

(i) by sending it by post to the secretary or clerk of the body at its registered or principal office, or

(ii) by addressing it to the secretary or clerk of the body and leaving it at that office; or

(d) in any case, be served on that person's solicitor by delivering it to the solicitor, or by sending it by post to him at his office, or by leaving it for him there.

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PART IX

SUPPLEMENTARY

Extent Information

E2 This Part extends to the United Kingdom so far as it relates to sections 53, 54 and 57, paragraph 19 of Schedule 4, Schedule 5 and paragraph 5(2),(3),(7) and (8) of Schedule 7, see s. 71(2).

65 Restriction of prosecutions.

A prosecution in respect of an offence under this Act shall not be instituted in Northern Ireland except by or with the consent of the Director of Public Prosecutions for Northern Ireland or in England and Wales except by or with the consent of the Director of Public Prosecutions.

66 General interpretation.

In this Act, except so far as the context otherwise requires—

"dwelling-house" means any building or part of a building used as a dwelling;

"explosive" means any article or substance manufactured for the purpose of producing a practical effect by explosion;

"explosive substance" means any substance for the time being specified in regulations made under section 3 of the [M58]Explosives Act (Northern Ireland) 1970;

"firearm" includes an air gun or air pistol;

"proscribed organisation" means an organisation for the time being specified in Schedule 2 to this Act, including an organisation which is to be treated as a proscribed organisation by virtue of section 28(2) above;

"public place" means a place to which for the time being members of the public have or are permitted to have access, whether on payment or otherwise;

"scheduled offence" has the meaning given by section 1 above;

"terrorism" means the use of violence for political ends and includes any use of violence for the purpose of putting the public or any section of the public in fear;

"terrorist" means a person who is or has been concerned in the commission or attempted commission of any act of terrorism or in directing, organising or training persons for the purpose of terrorism;

"vehicle" includes a hovercraft.

Marginal Citations

M58 1970 c. 10 (N.I.).

67 Orders and regulations.

(1) Subject to subsection (4) below, any power to make orders or regulations conferred by this Act shall be exercisable by statutory instrument.

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(2) No order under section 1 or 28 above or 69(3) below and no regulations under section 58 above shall be made unless—

(a) a draft of the order or regulations has been approved by resolution of each House of Parliament; or

(b) it is declared in the order or regulations that it appears to the Secretary of State that by reason of urgency it is necessary to make the order or regulations without a draft having been so approved.

(3) Orders and regulations under the provisions mentioned in subsection (2) above shall, if not so approved in draft, be laid before Parliament after being made and, if at the end of the period of forty days (computed in accordance with section 7(1) of the [M59]Statutory Instruments Act 1946) after the day on which the Secretary of State made such an order or regulations a resolution has not been passed by each House approving the order or regulations in question, the order or regulations shall then cease to have effect (but without prejudice to anything previously done or to the making of a new order or new regulations).

(4) Subsection (1) above does not apply to any order under section 25, Schedule 3 or paragraph 6(1)(d) of Schedule 5 or any order under regulations made by virtue of section 58.

(5) Any regulations under section 8 and any order under section 14(5), 15(8), 47(5), 61 or 62 above or under paragraph 7(3) **[**[F17]or 19(1)(a)**]** of Schedule 4 or paragraph 7 of Schedule 5 to this Act shall be subject to annulment in pursuance of a resolution of either House of Parliament.

[F18](6) . . . . . .

(7) Any order under section 37(4) above shall be laid before Parliament after being made.

Textual Amendments

F17 Words in s. 67(5) inserted (1.12.1993) by 1993 c. 36, **s. 45(2)** (with s. 78(6)); S.I. 1993/2734, **art. 2**,Sch.

F18 S. 67(6) ceased to have effect (1.12.1993) and repealed (15.2.1994) by 1993 c. 36, ss. 45(3), 79(14), **Sch. 6 Pt.I** (with s. 78(6)); S.I. 1993/2734, **art. 2**,Sch. and S.I. 1994/71, art. 2, **Sch.** Appendix.

Marginal Citations

M59 1946 c. 36.

68 Expenses.

Any expenses of the Secretary of State under this Act shall be defrayed out of money provided by Parliament.

69 Commencement, duration, expiry and revival of provisions of this Act.

(1) This Act except Part VII shall come into force at the end of the period of two months beginning with the day on which it is passed and that Part shall come into force on such date as the Secretary of State may by order appoint.

(2) The temporary provisions of this Act, that is to say, Parts I to VIII except—

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Changes to legislation: *There are currently no known outstanding effects for the Northern Ireland (Emergency Provisions) Act 1991 (repealed 25.8.1996). (See end of Document for details)*

(a) section 7, Part III of Schedule 1 and, so far as they relate to offences which are scheduled offences by virtue of that Part, sections 3, 9 and 10;
(b) sections 63 and 64; and
(c) paragraph 20 of Schedule 4,

shall expire with 15th June 1992 unless continued in force by an order under subsection (3) below.

(3) The Secretary of State may by order provide—
(a) that all or any of the temporary provisions of this Act which are for the time being in force (including any in force by virtue of an order under this section) shall continue in force for a period not exceeding twelve months from the coming into operation of the order;
(b) that all or any of those provisions which are for the time being in force shall cease to be in force; or
(c) that all or any of those provisions which are not for the time being in force shall come into force again and remain in force for a period not exceeding twelve months from the coming into operation of the order.

(4) The Secretary of State shall be deemed to have made an order under subsection (3)(b) above in respect of the provisions of section 34 and Schedule 3 with effect immediately after the coming into force of those provisions.

(5) The coming into force of any provision of sections 9 to 12 above by virtue of an order made under subsection (3)(c) above shall not affect any trial on indictment where the indictment has been presented, or any summary trial which has started, before the coming into force of that provision, and any such trial shall be conducted as if the provision had not come into force.

(6) Where before the coming into force of subsection (1) of section 9 above by virtue of such an order a person has been committed for trial for a scheduled offence and the indictment has not been presented, then, on the coming into force of that subsection, he shall, if he was committed to the Crown Court sitting elsewhere than in Belfast, be treated as having been committed to the Crown Court sitting in Belfast or (where the Lord Chancellor gives a direction under that subsection with respect to the trial) to the Crown Court sitting at the place specified in the direction.

(7) The expiry or cesser of any provision mentioned in subsection (5) above shall not affect the application of that provision to any trial on indictment where the indictment has been presented, or any summary trial which has started, before the expiry or cesser; and the expiry or cesser of section 14 or 15 above shall not affect the operation of that section in relation to an offence committed while it was in force.

(8) It is hereby declared that the expiry or cesser of any provision of section 9 above shall not affect—
(a) any committal of a person for trial in accordance with that provision to the Crown Court sitting either in Belfast or elsewhere, or
(b) any committal of a person for trial which, in accordance with that provision, has taken effect as a committal for trial to the Crown Court sitting elsewhere than in Belfast,

in a case where the indictment has not been presented.

(9) This Act shall, by virtue of this subsection, be repealed as from the end of the period of five years beginning with the date on which it came into force.

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Changes to legislation: *There are currently no known outstanding effects for the Northern Ireland (Emergency Provisions) Act 1991 (repealed 25.8.1996). (See end of Document for details)*

Subordinate Legislation Made

P1 S. 69(1) power partly exercised (14.5.1992): 1.6.1992 appointed for the provisions of the Act (except s. 34 and Sch. 3) so far as not already in force by S.I. 1992/1181, **art. 2**

P2 S. 69(3): power partly exercised by S.I. 1992/1413, **S.I.**1993/1522

70 Savings, amendments and repeals.

(1) Neither any rule of law nor any enactment other than this Act nor anything contained in a commission issued for the trial of any person shall be construed as limiting or otherwise affecting the operation of any provision of this Act for the time being in force, but—

(a) subject to the foregoing, any power conferred by this Act shall not derogate from Her Majesty's prerogative or any powers exercisable apart from this Act by virtue of any rule of law or enactment; and

(b) subject to the foregoing and to section 69(7) above, a provision of this Act shall not affect the operation of any rule of law or enactment at a time when the provision is not in force.

(2) Any rules in force at the coming into force of this Act under section 28A(1) of the [M60]Northern Ireland (Emergency Provisions) Act 1978 shall have effect as if they were county court rules made in relation to appeals under section 63 above.

(3) The enactments mentioned in Schedule 7 to this Act shall be amended in accordance with that Schedule.

(4) The enactments mentioned in Part I of Schedule 8 to this Act are hereby repealed, and the instruments mentioned in Part II of that Schedule are hereby revoked, to the extent there specified.

Marginal Citations

M60 1978 c. 5.

71 Short title and extent.

(1) This Act may be cited as the Northern Ireland (Emergency Provisions) Act 1991.

(2) Except for sections 53, **[**[F19]to 54A, 55A**]** and 57, paragraph 19 of Schedule 4, Schedule 5, this Part of this Act so far as relating to those provisions and paragraph 5(2), (3), (7) and (8) of Schedule 7, this Act extends to Northern Ireland only.

(3) Her Majesty may by Order in Council direct that any of the provisions of section 57 and Schedule 5 shall extend, with such modifications as appear to Her Majesty to be appropriate, to any of the Channel Islands or the Isle of Man.

Textual Amendments

F19 Words in s. 71(2) substituted (1.4.1994) by 1993 c. 36, s. 79(13), **Sch. 5 Pt. I para. 17(4)**; 1994/700, arts. 2, 3, Sch..

Status: *Point in time view as at 09/01/1995. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *There are currently no known outstanding effects for the Northern Ireland (Emergency Provisions) Act 1991 (repealed 25.8.1996). (See end of Document for details)*

SCHEDULES

SCHEDULE 1

Section 1.

THE SCHEDULED OFFENCES

PART I

SUBSTANTIVE OFFENCES

Common law offences

1 Murder subject to note 1 below.

2 Manslaughter subject to note 1 below.

3 The common law offence of riot.

4 Kidnapping subject to note 1 below.

5 False imprisonment subject to note 1 below.

6 Assault occasioning actual bodily harm subject to note 1 below.

[M61]Malicious Damage Act 1861

Marginal Citations
M61 1861 c. 97.

7 Offences under section 35 of the Malicious Damage Act 1861 (interference with railway) subject to note 1 below.

Status: *Point in time view as at 09/01/1995. This version of this Act contains provisions that are not valid for this point in time.*
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[M62]*Offences against the Person Act 1861*

Marginal Citations
M62 1861 c. 100.

8 Offences under the following provisions of the Offences against the Person Act 1861—

(a) section 4 (conspiracy, etc to murder) subject to note 1 below;
(b) section 16 (threats to kill) subject to note 1 below;
(c) section 18 (wounding with intent to cause grievous bodily harm) subject to note 1 below;
(d) section 20 (causing grievous bodily harm) subject to note 1 below;
(e) section 28 (causing grievous bodily harm by explosives);
(f) section 29 (causing explosion or sending explosive substance or throwing corrosive liquid with intent to cause grievous bodily harm);
(g) section 30 (placing explosive near building or ship with intent to do bodily injury).

[M63]*Explosive Substances Act 1883*

Marginal Citations
M63 1883 c. 3.

9 Offences under the following provisions of the Explosive Substances Act 1883—

(a) section 2 (causing explosion likely to endanger life or damage property);
(b) section 3 (attempting to cause any such explosion, and making or possessing explosive with intent to endanger life or cause serious damage to property);
(c) section 4 (making or possessing explosives in suspicious circumstances).

[M64]*Prison Act (Northern Ireland) 1953*

Marginal Citations
M64 1953 c. 18 (N.I.).

10 Offences under the following provisions of the Prison Act (Northern Ireland) 1953 subject to note 1 below—

(a) section 25 (being unlawfully at large while under sentence);
(b) section 26 (escaping from lawful custody and failing to surrender to bail);
(c) section 27 (attempting to break prison);
(d) section 28 (breaking prison by force or violence);

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Changes to legislation: *There are currently no known outstanding effects for the Northern Ireland (Emergency Provisions) Act 1991 (repealed 25.8.1996). (See end of Document for details)*

(e) section 29 (rescuing or assisting or permitting to escape from lawful custody persons under sentence of death or life imprisonment);
(f) section 30 (rescuing or assisting or permitting to escape from lawful custody persons other than persons under sentence of death or life imprisonment);
(g) section 32 (causing discharge of prisoner under pretended authority);
(h) section 33 (assisting prisoners to escape by conveying things into prisons).

[M65]Theft Act (Northern Ireland) 1969

Marginal Citations
M65 1969 c. 16 (N.I.).

11 Offences under the following provisions of the Theft Act (Northern Ireland) 1969—
(a) section 1 (theft) subject to note 2 below;
(b) section 8 (robbery) subject to note 3 below;
(c) section 9 (burglary) subject to note 2 below;
(d) section 10 (aggravated burglary) subject to note 3 below;
(e) section 15 (obtaining property by deception) subject to note 2 below;
(f) section 20 (blackmail) subject to notes 1 and 2 below.

Protection of the [M66]Person and Property Act (Northern Ireland) 1969

Marginal Citations
M66 1969 c. 29 (N.I.).

12 Offences under the following provisions of the Protection of the Person and Property Act (Northern Ireland) 1969—
(a) section 1 (intimidation) subject to note 1 below;
(b) section 2 (making or possessing petrol bomb, etc. in suspicious circumstances);
(c) section 3 (throwing or using petrol bomb, etc).

Hijacking

13 Offences under section 1 of the [M67]Aviation Security Act 1982 (aircraft).

Marginal Citations
M67 1982 c. 36.

Status: *Point in time view as at 09/01/1995. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *There are currently no known outstanding effects for the Northern Ireland (Emergency Provisions) Act 1991 (repealed 25.8.1996). (See end of Document for details)*

14 Offences in Northern Ireland under section 2 of the [M68]Criminal Jurisdiction Act 1975 (vehicles).

Marginal Citations
M68 1975 c. 59.

[M69]Criminal Damage (Northern Ireland) Order 1977

Marginal Citations
M69 S.I.1977/426 (N.I.4).

15 Offences under the following provisions of the Criminal Damage (Northern Ireland) Order 1977 subject to note 1 below—

(a) Article 3(1) and (3) or Article 3(2) and (3) (arson);
(b) Article 3(2) (destroying or damaging property with intent to endanger life);
(c) Article 4 (threats to destroy or damage property);
(d) Article 5 (possessing anything with intent to destroy or damage property).

[M70]Criminal Law (Amendment) (Northern Ireland) Order 1977

Marginal Citations
M70 S.I.1977/1249 (N.I.16).

16 Offences under Article 3 of the Criminal Law (Amendment) (Northern Ireland) Order 1977 (bomb hoaxes) subject to note 1 below.

[M71]Firearms (Northern Ireland) Order 1981

Marginal Citations
M71 S.I.1981/155 (N.I.2).

17 Offences under the following provisions of the Firearms (Northern Ireland) Order 1981—

(a) Article 3(1) (possessing, purchasing or acquiring firearm or ammunition without certificate) subject to note 1 below;
(b) Article 4(1), (2), (3) or (4) (manufacturing, dealing in, repairing, etc, firearm or ammunition without being registered) subject to note 1 below;
(c) Article 5 (shortening barrel of shot gun or converting imitation firearm into firearm) subject to note 1 below;

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Changes to legislation: *There are currently no known outstanding effects for the Northern Ireland (Emergency Provisions) Act 1991 (repealed 25.8.1996). (See end of Document for details)*

(d) Article 6(1) (manufacturing, dealing in or possessing machine gun, or weapon discharging, or ammunition containing, noxious substance) subject to note 1 below;

(e) Article 17 (possessing firearm or ammunition with intent to endanger life or cause serious damage to property);

(f) Article 18 (use or attempted use of firearm or imitation firearm to prevent arrest of self or another etc.);

(g) Article 19 (carrying firearm or imitation firearm with intent to commit indictable offence or prevent arrest of self or another);

(h) Article 20 (carrying firearm, etc., in public place) subject to notes 1 and 4 below;

(i) Article 22 (possession of firearm or ammunition by person who has been sentenced to imprisonment, etc., and sale of firearm or ammunition to such a person) subject to note 1 below;

(j) Article 23 (possessing firearm or ammunition in suspicious circumstances).

[M72] *Taking of Hostages Act 1982*

Marginal Citations
M72 1982 c. 28.

18 Offences under the Taking of Hostages Act 1982.

[M73] *Nuclear Material (Offences) Act 1983*

Marginal Citations
M73 1983 c. 18.

19 Offences under section 2 of the Nuclear Material (Offences) Act 1983 (offences involving nuclear material: preparatory acts and threats).

[M74] *Prevention of Terrorism (Temporary Provisions) Act 1989*

Marginal Citations
M74 1989 c. 4.

20 Offences under the following provisions of the Prevention of Terrorism (Temporary Provisions) Act 1989—

(a) section 8 (breach of exclusion order);

(b) sections 9, 10 and 11 (financial assistance for terrorism);

(c) section 17 and Schedule 7 (terrorist investigations);

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(d) section 18 (information about acts of terrorism);

[F20(dd) section 18A (failure to disclose knowledge or suspicion of financial assistance for terrorism);]

(e) paragraph 25B of Schedule 4 (contravention of restraint orders).

Textual Amendments

F20 Sch. 1 para. 20(dd) inserted (1.4.1994) by 1993 c. 36, ss. 78(3), 79(13), **Sch. 5 Pt. I para. 17(5)(a)**; S.I. 1994/700, art. 2, **Sch.**.

Aviation and Maritime Security Act 1990

21 Offences under the following provisions of the M75Aviation and Maritime Security Act 1990—

(a) section 1 (endangering safety at aerodromes);

(b) section 9 (hijacking of ships);

(c) section 10 (seizing or exercising control of fixed platforms).

Marginal Citations

M75 1990 c. 31.

Channel Tunnel (Security) Order 1994 No. 570

[F21 21A Offences under the following provisions of the Channel Tunnel (Security) Order 1994—

(a) Article 4 (hijacking of Channel Tunnel trains);

(b) Article 5 (seizing or exercising control of the tunnel system).]

Textual Amendments

F21 S. 21A added (5.3.1994) S.I. 1994/540, arts. 1, 38, **Sch. 3 para. 1**

This Act

22 Offences under the following provisions of this Act—

(a) section 19(12);

(b) section 27;

(c) section 28;

(d) section 29;

(e) section 30;

(f) section 31;

(g) section 32;

(h) section 33;

Status: *Point in time view as at 09/01/1995. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *There are currently no known outstanding effects for the Northern Ireland (Emergency Provisions) Act 1991 (repealed 25.8.1996). (See end of Document for details)*

(i) section 35;
(j) section 53;
(k) section 54;
[F22(kk) section 54A;]
(l) paragraph 13 of Schedule 3;
(m) paragraph 9 of Schedule 4;
(n) paragraph 4 of Schedule 5.

Textual Amendments

F22 Sch. 1 para.22(kk) inserted (1.4.1994) by 1993 c. 36, s. 79(13), **Sch. 5 Pt. I para. 17(5)(b)**; S.I. 1994/700, arts. 2, 3, **Sch.**.

NOTES

1 Any offence specified in this Part of this Schedule which is stated to be subject to this note is not a scheduled offence in any particular case in which the Attorney General for Northern Ireland certifies that it is not to be treated as a scheduled offence.

2 An offence specified in paragraph 11(a), (c) or (e) is a scheduled offence only where it is charged that the offence was committed in relation to or by means of nuclear material within the meaning of the M76Nuclear Material (Offences) Act 1983; and the Attorney General for Northern Ireland shall not certify that the offence specified in paragraph 11(f) is not to be treated as a scheduled offence in a case where it is charged that the offence was so committed.

3 An offence specified in paragraph 11(b) or (d) is a scheduled offence only where it is charged—
(a) that an explosive, firearm, imitation firearm or weapon of offence was used to commit the offence; or
(b) that the offence was committed in relation to or by means of nuclear material within the meaning of the Nuclear Material (Offences) Act 1983;

and expressions defined in section 10 of the M77Theft Act (Northern Ireland) 1969 have the same meaning when used in this note.

4 The offence specified in paragraph 17(h) is a scheduled offence only where it is charged that the offence relates to a weapon other than an air weapon.

PART II

INCHOATE AND RELATED OFFENCES

Each of the following offences, that is to say—

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(a) aiding, abetting, counselling, procuring or inciting the commission of an offence specified in Part I of this Schedule (hereafter in this paragraph referred to as a "substantive offence");
(b) attempting or conspiring to commit a substantive offence;
(c) an offence under section 4 of the [M78]Criminal Law Act (Northern Ireland) 1967 of doing any act with intent to impede the arrest or prosecution of a person who has committed a substantive offence;
(d) an offence under section 5(1) of the Criminal Law Act (Northern Ireland) 1967 of failing to give information to a constable which is likely to secure, or to be of material assistance in securing, the apprehension, prosecution or conviction of a person for a substantive offence,

shall be treated for the purposes of this Act as if it were the substantive offence.

Marginal Citations
M78 1967 c. 18 (N.I.).

PART III

EXTRA-TERRITORIAL OFFENCES

Any extra-territorial offence as defined in section 1(3) of the [M79]Criminal Jurisdiction Act 1975.

Marginal Citations
M79 1975 c. 59.

PART IV

OFFENCES CHARGED FOLLOWING TERRORIST FUNDS INVESTIGATIONS

Any offence, other than a summary offence, which an officer of the Royal Ulster Constabulary not below the rank of superintendent certifies is charged in consequence of a terrorist funds investigation, unless the Attorney General for Northern Ireland certifies that it is not to be treated as a scheduled offence; and in this Part of this Schedule—
(a) "summary offence" means an offence which, if committed by an adult, is punishable only on summary conviction; and
(b) "a terrorist funds investigation" means an investigation for the purposes of which a person has been authorised under section 57 of this Act to exercise the powers conferred by Schedule 5 to this Act.

SCHEDULE 2

Section 28.

PROSCRIBED ORGANISATIONS

The Irish Republican Army.

Cumann na mBan.

Fianna na hEireann.

The Red Hand Commando.

Saor Eire.

The Ulster Freedom Fighters.

The Ulster Volunteer Force.

The Irish National Liberation Army.

The Irish People's Liberation Organisation.

[[F23]The Ulster Defence Association.**]**

Textual Amendments

F23 Entry in Sch. 2 added (11.8.1992) by S.I. 1992/1958, **art. 2**

SCHEDULE 3

Section 34.

DETENTION OF TERRORISTS

Modifications etc. (not altering text)

C10 Sch. 3 revived immediately before the end of 15.6.1992 and continuing as from the beginning of 16.6.1992 until immediately after the beginning of 16.6.1992, by S.I. 1992/1390, **art. 2**

Commencement Information

I3 Sch. 3 in force at 27.8.1991 and ceasing to be in force immediately after coming into force see s. 69(1)-(4)

Advisers

1 The Secretary of State shall for the purposes of this Schedule appoint such number of Advisers as he may determine to advise him on matters concerning the detention and release of terrorists.

Modifications etc. (not altering text)

C11 Sch. 3 revived immediately before the end of 15.6.1992 and continuing as from the beginning of 16.6.1992 until immediately after the beginning of 16.6.1992, by S.I. 1992/1390, **art. 2**

Commencement Information

I4 Sch. 3 in force at 27.8.1991 and ceasing to be in force immediately after coming into force see s. 69(1)-(4)

2 An Adviser shall be a person who holds or has held judicial office in any part of the United Kingdom or who is—

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(a) a person who has a ten year general qualification within the meaning of section 71 of the [M80]Courts and Legal Services Act 1990; or
(b) an advocate or solicitor in Scotland of at least ten years' standing; or
(c) a member of the Bar of Northern Ireland or solicitor of the Supreme Court of Northern Ireland of at least ten years' standing.

Modifications etc. (not altering text)
C12 Sch. 3 revived immediately before the end of 15.6.1992 and continuing as from the beginning of 16.6.1992 until immediately after the beginning of 16.6.1992, by S.I. 1992/1390, **art. 2**

Commencement Information
I5 S. 34, Sch. 3 in force at 27.8.1991; and ceasing to be in force immediately after coming into force see s. 69(1)-(4)

Marginal Citations
M80 1990 c. 41.

3 (1) An Adviser shall hold and vacate his office in accordance with the terms of his appointment and shall, on ceasing to hold office, be eligible for reappointment.

(2) An Adviser may at any time by notice in writing to the Secretary of State resign his office.

(3) The Secretary of State may pay to the Advisers such remuneration and allowances as he may determine.

Modifications etc. (not altering text)
C13 Sch. 3 revived immediately before the end of 15.6.1992 and continuing as from the beginning of 16.6.1992 until immediately after the beginning of 16.6.1992, by S.I. 1992/1390, **art. 2**

Commencement Information
I6 S. 34, Sch. 3 in force at 27.8.1991; and ceasing to be in force immediately after coming into force see s. 69(1)-(4)

Interim custody orders

4 (1) Where it appears to the Secretary of State that there are grounds for suspecting that a person has been concerned—
(a) in the commission or attempted commission of any act of terrorism; or
(b) in directing, organising or training persons for the purpose of terrorism,
the Secretary of State may make an interim custody order for the temporary detention of that person.

(2) An interim custody order shall be signed by the Secretary of State or a Minister of State or Under Secretary of State.

Modifications etc. (not altering text)

C14 Sch. 3 revived immediately before the end of 15.6.1992 and continuing as from the beginning of 16.6.1992 until immediately after the beginning of 16.6.1992, by S.I. 1992/1390, **art. 2**

Commencement Information

I7 S. 34, Sch. 3 in force at 27.8.1991; and ceasing to be in force immediately after coming into force see s. 69(1)-(4)

5 (1) The Secretary of State may, at any time before the expiration of the period of fourteen days following the date of an interim custody order, refer the case to an Adviser and, unless the case is so referred, the order shall cease to have effect at the expiration of that period.

(2) A reference to an Adviser under this paragraph shall be by notice in writing signed on behalf of the Secretary of State and a copy of the notice shall be sent to the person detained.

Modifications etc. (not altering text)

C15 Sch. 3 revived immediately before the end of 15.6.1992 and continuing as from the beginning of 16.6.1992 until immediately after the beginning of 16.6.1992, by S.I. 1992/1390, **art. 2**

Commencement Information

I8 S. 34, Sch. 3 in force at 27.8.1991; and ceasing to be in force immediately after coming into force see s. 69(1)-(4)

Reference to an Adviser

6 (1) As soon as possible after a case is referred to an Adviser under paragraph 5 above, the person detained shall be served with a statement in writing as to the nature of the terrorist activities of which he is suspected.

(2) A person detained may, within seven days following the date on which he receives any such statement as is mentioned in sub-paragraph (1) above, send to the Secretary of State—

(a) written representations concerning his case; and

(b) a written request that he be seen personally by an Adviser;

and the Secretary of State shall send a copy of such representations or request to the Adviser concerned.

(3) The Secretary of State may pay any reasonable costs or expenses incurred by a person detained in obtaining legal advice or legal assistance in connection with the preparation of any representations he may make concerning his case.

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Modifications etc. (not altering text)

C16 Sch. 3 revived immediately before the end of 15.6.1992 and continuing as from the beginning of 16.6.1992 until immediately after the beginning of 16.6.1992, by S.I. 1992/1390, **art. 2**

Commencement Information

I9 S. 34, Sch. 3 in force at 27.8.1991; and ceasing to be in force immediately after coming into force see s. 69(1)-(4)

7 (1) Where the case of a person detained under an interim custody order is referred to an Adviser, he shall consider it and report to the Secretary of State whether or not in his opinion—

(a) the person detained has been concerned in terrorist activities; and

(b) the detention of that person is necessary for the protection of the public.

(2) In considering any case referred to him an Adviser shall have regard to any information (whether oral or in writing) which is made available to, or obtained by, him and to any representations (whether oral or in writing) made by the person detained.

(3) No person shall be present during the consideration by an Adviser of the case of any person referred to him, except—

(a) any person who for the time being is being seen by the Adviser;

(b) any assistant to the Adviser; and

(c) any person who is present in the interests of security.

(4) The Secretary of State may, at the request of an Adviser, pay any reasonable expenses incurred by any person in connection with a reference to the Adviser.

Modifications etc. (not altering text)

C17 Sch. 3 revived immediately before the end of 15.6.1992 and continuing as from the beginning of 16.6.1992 until immediately after the beginning of 16.6.1992, by S.I. 1992/1390, **art. 2**

Commencement Information

I10 S. 34, Sch. 3 in force at 27.8.1991; and ceasing to be in force immediately after coming into force see s. 69(1)-(4)

Detention orders

8 (1) After receiving a report made by an Adviser under paragraph 7(1) above, the Secretary of State shall consider the case of the person to whom it relates and, if he is satisfied—

(a) that the person has been concerned in the commission or attempted commission of any act of terrorism, or in directing, organising or training persons for the purpose of terrorism, and

(b) that the detention of that person is necessary for the protection of the public,

the Secretary of State may make a detention order for the detention of that person.

(2) If, on considering any case under sub-paragraph (1) above, the Secretary of State is not satisfied as mentioned in that sub-paragraph, he shall direct the release of the person concerned.

(3) Subject to sub-paragraphs (4) and (5) below, where—

(a) a person is detained under an interim custody order; and

(b) a detention order is not made in respect of that person within the period of seven weeks following the date of the interim custody order,

the interim custody order shall cease to have effect.

(4) The Secretary of State may, where a person is required to be detained under an interim custody order, give a direction in writing extending the period of seven weeks mentioned in sub-paragraph (3) above (or that period as extended under this sub-paragraph) for a further period of one week if it is stated in the direction that the report of the Adviser in relation to that person's case has not been received before the sixth day immediately preceding the day on which the interim custody order would, but for the direction, cease to have effect.

(5) Not more than three directions under sub-paragraph (4) above shall be given in respect of any one interim custody order.

(6) A detention order shall be signed by the Secretary of State, and a direction under sub-paragraph (4) above shall be signed by the Secretary of State or a Minister of State or Under Secretary of State.

Modifications etc. (not altering text)

C18 Sch. 3 revived immediately before the end of 15.6.1992 and continuing as from the beginning of 16.6.1992 until immediately after the beginning of 16.6.1992, by S.I. 1992/1390, **art. 2**

Commencement Information

I11 S. 34, Sch. 3 in force at 27.8.1991; and ceasing to be in force immediately after coming into force see s. 69(1)-(4)

Supplemental

9 (1) The Secretary of State may at any time refer the case of a person detained under a detention order to an Adviser and, if so requested in writing in accordance with sub-paragraph (2) below by a person so detained, shall do so within fourteen days beginning with the receipt of the request.

(2) A person detained under a detention order shall not be entitled to make a request for the purposes of sub-paragraph (1) above—

(a) before the expiration of the period of one year beginning with the date of the detention order; or

(b) within a period of six months from the date of the last notification under sub-paragraph (5) below.

(3) On any reference under this paragraph, an Adviser shall consider the case and report to the Secretary of State whether or not the person's continued detention is necessary for the protection of the public.

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Changes to legislation: *There are currently no known outstanding effects for the Northern Ireland (Emergency Provisions) Act 1991 (repealed 25.8.1996). (See end of Document for details)*

(4) Paragraphs 6(3) and 7(2) to (4) above shall apply for the purposes of a reference under this paragraph as they apply for the purposes of a reference under paragraph 5 above.

(5) Where a case is referred to an Adviser in consequence of a request made in accordance with this paragraph, the Secretary of State shall, after receiving the report of the Adviser, reconsider the case of the person to whom it relates and, if he decides not to release that person, shall notify him of his decision.

(6) A notification under sub-paragraph (5) above shall be by notice in writing and signed by the Secretary of State.

Modifications etc. (not altering text)

C19 Sch. 3 revived immediately before the end of 15.6.1992 and continuing as from the beginning of 16.6.1992 until immediately after the beginning of 16.6.1992, by S.I. 1992/1390, **art. 2**

Commencement Information

I12 S. 34, Sch. 3 in force at 27.8.1991; and ceasing to be in force immediately after coming into force see s. 69(1)-(4)

10 (1) The Secretary of State may, as respects a person detained under an interim custody order—

(a) direct his discharge unconditionally; or

(b) direct his release (whether or not subject to conditions) for a specified period.

(2) The Secretary of State may, as respects a person detained under a detention order—

(a) direct his discharge unconditionally; or

(b) direct his release subject to conditions or for a specified period, or both.

(3) The Secretary of State may recall to detention a person released under sub-paragraph (1)(b) or (2)(b) above and a person so recalled may be detained under the original interim custody or detention order, as the case may be.

(4) Where a person is released under sub-paragraph (1)(b) above, any period during which he is not in detention shall be left out of account for the purposes of paragraphs 5(1), 6(2) and 8(3) above.

Modifications etc. (not altering text)

C20 Sch. 3 revived immediately before the end of 15.6.1992 and continuing as from the beginning of 16.6.1992 until immediately after the beginning of 16.6.1992, by S.I. 1992/1390, **art. 2**

Commencement Information

I13 S. 34, Sch. 3 in force at 27.8.1991; and ceasing to be in force immediately after coming into force see s. 69(1)-(4)

11 (1) A person required to be detained under an interim custody order or a detention order may be detained in a prison or in some other place approved for the purposes of this paragraph by the Secretary of State.

(2) A person for the time being having custody of a person required to be detained as aforesaid shall have all the powers, authorities, protection and privileges of a constable.

(3) Subject to any directions of the Secretary of State, a person required to be detained as aforesaid shall be treated as nearly as may be as if he were a prisoner detained in a prison on remand and any power of temporary removal for judicial, medical or other purposes shall apply accordingly.

(4) A person required to be detained as aforesaid who is unlawfully at large may be arrested without warrant by any constable or any member of Her Majesty's forces on duty.

Modifications etc. (not altering text)

C21 Sch. 3 revived immediately before the end of 15.6.1992 and continuing as from the beginning of 16.6.1992 until immediately after the beginning of 16.6.1992, by S.I. 1992/1390, **art. 2**

Commencement Information

I14 S. 34, Sch. 3 in force at 27.8.1991; and ceasing to be in force immediately after coming into force see s. 69(1)-(4)

12 Where a person required to be detained under an interim custody order is unlawfully at large, the interim custody order shall not cease to have effect under paragraph 5 or 8 above while he remains at large; and, upon his being taken again into custody, those paragraphs shall have effect as if the date of the interim custody order were that of his being taken again into custody.

Modifications etc. (not altering text)

C22 Sch. 3 revived immediately before the end of 15.6.1992 and continuing as from the beginning of 16.6.1992 until immediately after the beginning of 16.6.1992, by S.I. 1992/1390, **art. 2**

Commencement Information

I15 S. 34, Sch. 3 in force at 27.8.1991; and ceasing to be in force immediately after coming into force see s. 69(1)-(4)

13 Any person who—

(a) being detained under an interim custody order or detention order, escapes;

(b) rescues any person detained as aforesaid, or assists a person so detained in escaping or attempting to escape;

(c) fails to return to detention at the expiration of a period for which he was released under paragraph 10(1)(b) or (2)(b) above; or

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(d) knowingly harbours any person required to be detained under an interim custody order or detention order, or gives him any assistance with intent to prevent, hinder or interfere with his being taken into custody,

is guilty of an offence and liable on conviction on indictment to imprisonment for a term not exceeding five years or a fine or both.

Modifications etc. (not altering text)

C23 Sch. 3 revived immediately before the end of 15.6.1992 and continuing as from the beginning of 16.6.1992 until immediately after the beginning of 16.6.1992, by S.I. 1992/1390, **art. 2**

Commencement Information

I16 S. 34, Sch. 3 in force at 27.8.1991; and ceasing to be in force immediately after coming into force see s. 69(1)-(4)

14 (1) Any document purporting to be an order, notice or direction made or given by the Secretary of State for the purposes of this Schedule and to be signed in accordance with this Schedule shall be received in evidence and shall, until the contrary is proved, be deemed to be duly made or given and signed.

(2) Prima facie evidence of any such order, notice or direction may, in any legal proceedings, be given by the production of a document bearing a certificate purporting to be signed by or on behalf of the Secretary of State stating that the document is a true copy of the order, notice or direction; and the certificate shall be received in evidence, and shall, until the contrary is proved, be deemed to be duly made and signed.

Modifications etc. (not altering text)

C24 Sch. 3 revived immediately before the end of 15.6.1992 and continuing as from the beginning of 16.6.1992 until immediately after the beginning of 16.6.1992, by S.I. 1992/1390, **art. 2**

Commencement Information

I17 S. 34, Sch. 3 in force at 27.8.1991; and ceasing to be in force immediately after coming into force see s. 69(1)-(4)

15 The Secretary of State may make such payments to persons released or about to be released from detention under this Schedule as he may, with the consent of the Treasury, determine.

Modifications etc. (not altering text)

C25 Sch. 3 revived immediately before the end of 15.6.1992 and continuing as from the beginning of 16.6.1992 until immediately after the beginning of 16.6.1992, by S.I. 1992/1390, **art. 2**

Commencement Information

I18 S. 34, Sch. 3 in force at 27.8.1991; and ceasing to be in force immediately after coming into force see s. 69(1)-(4)

Status: *Point in time view as at 09/01/1995. This version of this Act contains provisions that are not valid for this point in time.*
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SCHEDULE 4

Section 55.

CONFISCATION ORDERS: SUPPLEMENTARY PROVISIONS

Interpretation

1 (1) Section 56 of this Act also has effect for the purposes of this Schedule.

(2) The following provisions have effect, in addition to those of that section, for the interpretation of this Schedule.

(3) Proceedings for an offence are concluded—

(a) when (disregarding any power of a court to grant leave to appeal out of time) there is no further possibility of a confiscation order being made in the proceedings;

(b) on the satisfaction of a confiscation order made in the proceedings (whether by payment of the amount due under the order or by the defendant serving imprisonment in default).

(4) 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.

(5) References to "acting as an insolvency practitioner" shall be construed in accordance with Article 3 of the [M81]Insolvency (Northern Ireland) Order 1989 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.

(6) References to the Registration of Deeds Acts are to the [M82]Registration of Deeds Act (Northern Ireland) 1970 and every statutory provision for the time being in force amending that Act or otherwise relating to the registry of deeds, or to the registration of deeds, orders or other instruments or documents in such registry.

Marginal Citations

M81 S.I. 1989/2405 (N.I. 19).

M82 1970 c. 25 (N.I.).

Application of procedure for enforcing fines

2 (1) Where the Crown Court makes a confiscation order against a defendant, section 35(1), (2) and (4) of the [M83]Criminal Justice Act (Northern Ireland) 1945 (powers of Crown Court in relation to fines) shall have effect as if—

(a) the amount which the order requires him to pay were a fine imposed on him by the Crown Court; and

[F24](b) . . . . . .

(2) Where—

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(a) a warrant of commitment is issued for a default in payment of an amount ordered to be paid by a confiscation order in respect of an offence; and

(b) at the time the warrant is issued, the defendant is liable to serve a term of custody in respect of the offence,

the term of imprisonment or of detention under section 5 of the [M84]Treatment of Offenders Act (Northern Ireland) 1968 (detention of persons aged sixteen to twenty-one for default) to be served in default of payment of the amount shall not begin to run until after the term mentioned in paragraph (b) above.

(3) The reference in sub-paragraph (2) above to the term of custody which the defendant is liable to serve in respect of the offence is a reference to the term of imprisonment or of detention under section 5 of the said Act of 1968 which he is liable to serve in respect of the offence; and for the purposes of this sub-paragraph—

(a) consecutive terms and terms which are wholly or partly concurrent shall be treated as a single term; and

(b) there shall be disregarded—

(i) any sentence of imprisonment or order for detention suspended under section 18 of that Act which has not taken effect at the time when the warrant is issued; and

(ii) any term of imprisonment or detention fixed under section 35(1)(c) of the [M85]Criminal Justice Act (Northern Ireland) 1945 for which a warrant of commitment has not been issued at that time.

(4) An amount payable under a confiscation order is not a fine, costs, damages or compensation for the purposes of section 76 of the [M86]Children and Young Persons Act (Northern Ireland) 1968 (enforcement of fines imposed on young offenders).

(5) This paragraph applies in relation to confiscation orders made by the Court of Appeal, or by the House of Lords on appeal from the Court of Appeal, as it applies in relation to confiscation orders made by the Crown Court, and the reference in sub-paragraph (1)(a) above to the Crown Court shall be construed accordingly.

Textual Amendments

F24 Sch. 4 para. 2(1)(b) repealed (9.1.1995) by S.I. 1994/2795(N.I. 15), art. 26(2), Sch. 3; S.R. 1994/446, **art. 2**

Marginal Citations

M83 1945 c. 15 (N.I.).
M84 1968 c. 29 (N.I.).
M85 1945 c. 15 (N.I.).
M86 1968 c. 34 (N.I.).

Interest on sums unpaid under confiscation orders

3 (1) If any sum required to be paid by a person under a confiscation order is not paid when it is required to be paid (whether forthwith on the making of the order or at a time specified under section 35(1) of the Criminal Justice Act (Northern Ireland) 1945), that person shall be liable to pay interest on that sum for the period for which it remains unpaid and the amount of the interest shall for the purposes of enforcement

be treated as part of the amount to be recovered from him under the confiscation order.

(2) The Crown Court may, on the application of the prosecution, increase the term of imprisonment or detention fixed in respect of the confiscation order under subsection (1)(c) of section 35 of the said Act of 1945 (imprisonment in default of payment) if the effect of sub-paragraph (1) above is to increase the maximum period applicable in relation to the order under subsection (2) of that section as it has effect by virtue of paragraph 2(1)(b) above.

(3) The rate of interest under sub-paragraph (1) above shall be that for the time being applying to a money judgment of the High Court.

Cases in which restraint orders and charging orders may be made

4 (1) The powers conferred on the High Court by paragraphs 5(1) and 6(1) below are exercisable where—

(a) proceedings have been instituted in Northern Ireland against the defendant for a relevant offence;

(b) the proceedings have not been concluded; and

(c) the court is satisfied that there is reasonable cause to believe that the defendant has benefited from terrorist-related activities.

(2) Those powers are also exercisable where—

(a) the High Court is satisfied that, whether by the making of a complaint or otherwise, a person is to be charged with a relevant offence; and

(b) it appears to the court that there is reasonable cause to believe that he has benefited from terrorist-related activities.

(3) For the purposes of paragraphs 5 and 6 below at any time when those powers are exercisable before proceedings have been instituted—

(a) references to the defendant shall be construed as references to the person referred to in sub-paragraph (2)(a) above; and

(b) references to realisable property shall be construed as if, immediately before that time, proceedings had been instituted against the person referred to in sub-paragraph (2)(a) above for a relevant offence.

(4) Where the High Court has made an order under paragraph 5(1) or 6(1) below by virtue of sub-paragraph (2) above, the court shall discharge the order if proceedings in respect of the offence are not instituted (whether by the making of a complaint or otherwise) within such time as the court considers reasonable.

Modifications etc. (not altering text)

C26 Sch. 4 para. 4 continued (15.6.1992) to 15.6.1993 by S.I. 1992/1413, **art.3**
Sch. 4 para. 4 continued (16.6.1993) to 16.6.1994 by S.I. 1993/1522, **art.3**.

Commencement Information

I19 Part VII (ss. 47-56) wholly in force at 1.6.1992; the temporary provisions of the Act (Parts I to VIII with exceptions) expire with 16.6.1994 unless continued in force by order see s. 69(1)-(3) and S.I. 1992/1181, **art. 2**

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Restraint orders

5 (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 sub-paragraph (1) above, 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) to all realisable property held by a specified person, whether the property is described in the order or not; and
- (b) to realisable property held by a specified person, being property transferred to him after the making of the order.

(4) This paragraph shall not have effect in relation to any property for the time being subject to a charge under paragraph 6 below.

(5) A restraint order—
- (a) may be made—
  - (i) where it is applied for before the defendant is convicted of the offence, only on the application of an officer of the Royal Ulster Constabulary not below the rank of superintendent; and
  - (ii) otherwise, only on the application of the prosecution;
- (b) may be made on an ex parte application to a judge in chambers; and
- (c) shall provide for notice to be given to persons affected by the order.

(6) A restraint order—
- (a) may be discharged or varied in relation to any property; and
- (b) shall be discharged when proceedings for the offence 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 the court may require any person having possession of property in respect of which a receiver is appointed under this section to give possession of it to the receiver.

(9) For the purposes of this paragraph, 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 sub-paragraph (10) above shall be dealt with in accordance with the directions of the High Court.

(12) The person by whom an application for a restraint order is made shall be treated for the purposes of section 66 of the [M87]Land Registration Act (Northern Ireland) 1970 (cautions) as a person interested in relation to any registered land to which the order or the application for an order relates.

(13) On the application of the person by whom an application for a restraint order is made the Registrar shall, in respect of any registered land to which the order or the application for 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 said Act of 1970 (inhibitions) shall apply to an entry made on an application under sub-paragraph (13) above as they apply to an entry made on the application of any person interested in the registered land under subsection (1) of that section.

(15) Where a restraint order has been protected by an entry registered under the said Act of 1970 or the Registration of Deeds Acts, an order under sub-paragraph (6) above discharging the restraint order may direct that the entry be vacated.

(16) In this paragraph "Registrar" and "entry" have the same meanings as in the said Act of 1970 and "registered land" means land the title to which is registered under Part III of that Act.

Marginal Citations

M87 1970 c. 18 (N.I.).

Charging orders in respect of land, securities, etc.

6 (1) The High Court may make a charging order on realisable property for securing the payment to the Crown—

(a) where a confiscation order has not been made, of an amount equal to the value from time to time of the property charged; and

(b) in any other case, of an amount not exceeding the amount payable under the confiscation order.

(2) A charging order—

(a) may be made—

(i) where it is applied for before the defendant is convicted of the offence, only on the application of an officer of the Royal Ulster Constabulary not below the rank of superintendent; and

(ii) otherwise, only on the application of the prosecution;

(b) may be made on an ex parte application to a judge in chambers;

(c) shall provide for notice to be given to persons affected by the order; and

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(d) may be made subject to such conditions as the court thinks fit and, without prejudice to the generality of this paragraph, such conditions as it thinks fit as to the time when the charge is to become effective.

(3) Subject to sub-paragraph (5) below, a charge may be imposed by a charging order only on—

(a) any interest in realisable property, being an interest held beneficially by the defendant or by a person to whom the defendant has directly or indirectly made a gift caught by Part VII of this Act—

(i) in any asset of a kind mentioned in sub-paragraph (4) below; 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 paragraph (a) above be imposed by a charging order on the whole beneficial interest under the first-mentioned trust.

(4) The assets referred to in sub-paragraph (3) above 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 sub-paragraph (4)(b) above, the High Court may provide for the charge to extend to any interest or dividend payable in respect of the asset.

(6) The High Court may make an order discharging or varying the charging order and shall make an order discharging the charging order if the proceedings for the offence are concluded or the amount payment of which is secured by the charge is paid into court.

(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

7 (1) Subject to any provision made under paragraph 10 below 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 [M88]Land Registration Act (Northern Ireland) 1970 or the Registration of Deeds Acts, an order

under paragraph 6(6) above discharging the charging order may direct that the entry be vacated.

(3) The Secretary of State may by order amend paragraph 6 above by adding to or removing from the kinds of asset for the time being referred to there any asset of a kind which in his opinion ought to be so added or removed.

(4) In this paragraph and paragraph 6 above—

"building society" has the same meaning as in the [M89]Building Societies Act 1986;

"dividend" includes any distribution in respect of any unit of a unit trust;

"government funds or stocks" has the same meaning as in the [M90]Judgments Enforcement (Northern Ireland) Order 1981;

"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, or 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.

Marginal Citations

M88 1970 c. 18 (N.I.).
M89 1986 c. 53.
M90 S.I. 1981/226 (N.I.6).

Restraint and charging orders made by the Secretary of State

8 (1) The power to make a restraint order or charging order under the provisions of paragraphs 5 and 6 above shall be exercisable by the Secretary of State in any case in which it appears to him that the information which it would be necessary to provide in support of an application to the High Court or a judge under those provisions would, if disclosed, be likely to place any person in danger or prejudice the capability of members of the Royal Ulster Constabulary or a person authorised under section 57 of this Act to investigate a relevant offence.

(2) In their application by virtue of sub-paragraph (1) above paragraphs 4 to 6 above shall have effect with the necessary modifications and as if references to the High Court were references to the Secretary of State.

(3) An order made by the Secretary of State by virtue of this paragraph may be varied or discharged under those provisions by the High Court; and the High Court may under paragraph 5(8) above appoint a receiver where a restraint order has been made by the Secretary of State.

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Contravention of restraint order

9 (1) A person who, without lawful authority or reasonable excuse (the proof of which lies on him), contravenes a restraint order is guilty of an offence and liable—

(a) on conviction on indictment, to imprisonment for a term not exceeding fourteen years or a fine or both;

(b) on summary conviction, to imprisonment for a term not exceeding six months or a fine not exceeding the statutory maximum or both.

(2) Nothing in sub-paragraph (1) above shall be taken to prejudice any power of the High Court to deal with the contravention of a restraint order as a contempt of court.

Realisation of property

10 (1) Where—

(a) a confiscation order is made;

(b) the order is not subject to appeal; and

(c) the proceedings in which it was made have not been concluded,

the High Court may, on an application by the prosecution, exercise the powers conferred by sub-paragraphs (2) to (6) below.

(2) The court may appoint a receiver in respect of realisable property.

(3) The court may empower a receiver appointed under sub-paragraph (2) above, under paragraph 5 above or in pursuance of a charging order—

(a) to enforce any charge imposed under paragraph 6 above 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 that paragraph, 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 order any person holding an interest in realisable property to make such payment to the receiver in respect of any beneficial interest held by the defendant or, as the case may be, the recipient of a gift caught by Part VII of this Act as the court may direct and the court may, on the payment being made, by order transfer, grant or extinguish any interest in the property.

(7) Sub-paragraphs (4) to (6) above do not apply to property for the time being subject to a charge under paragraph 6 above.

(8) The High Court shall not in respect of any property exercise the powers conferred by sub-paragraph (3)(a), (5) or (6) above unless a reasonable opportunity has been given for persons holding any interest in the property to make representations to the court.

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Increase in realisable property

11 (1) Where—

(a) by virtue of section 47(7) of this Act the amount which a person is ordered to pay by a confiscation order is less than the amount assessed to be the value of his proceeds of terrorist-related activities; and

(b) the High Court is satisfied, on an application made in accordance with sub-paragraph (2) below, that the amount that might be realised in the case of that person is greater than the amount taken into account in making the confiscation order (whether it is greater than was thought when the order was made or has subsequently increased),

the court shall issue a certificate to that effect, giving the court's reasons.

(2) An application under sub-paragraph (1) above may be made either by the prosecution or by a receiver appointed under this Schedule in relation to the realisable property of the person mentioned in that sub-paragraph.

(3) Where a certificate has been issued under sub-paragraph (1) above the prosecution may apply to the Crown Court for the amount to be paid under the confiscation order to be increased.

(4) The Crown Court may on an application under sub-paragraph (3) above—

(a) substitute for the amount to be paid under the order such amount (not exceeding the amount assessed as the value of the proceeds of terrorist-related activities) as appears to the court to be appropriate having regard to the amount now shown to be realisable; and

(b) increase the term of imprisonment or detention fixed in respect of the order under subsection (1)(c) of section 35 of the [M91]Criminal Justice Act (Northern Ireland) 1945 (imprisonment in default of payment) if the effect of the substitution under paragraph (a) above is to increase the maximum period applicable in relation to the order under subsection (2) of that section as it has effect by virtue of paragraph 2(1)(b) above.

Marginal Citations

M91 1945 c. 15 (N.I.).

Application of proceeds of realisation and other sums

12 (1) Subject to sub-paragraph (2) below, the following sums in the hands of a receiver appointed under this Part or in pursuance of a charging order, that is—

(a) the proceeds of the enforcement of any charge imposed under paragraph 6 above;

(b) the proceeds of the realisation, other than by the enforcement of such a charge, of any property under paragraph 5 or 10 above; and

(c) any other sums, being property held by the defendant,

shall first be applied in payment of such expenses incurred by a person acting as an insolvency practitioner as are payable under paragraph 18(2) below and then shall, after such payments (if any) as the High Court may direct have been made out of those

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proceeds and sums, be applied on the defendant's behalf towards the satisfaction of the confiscation order.

(2) If, after the amount payable under the confiscation order 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 Schedule; and
   (b) in such proportions,

   as the High Court may direct after giving a reasonable opportunity for such persons to make representations to the court.

(3) The receipt of any sum by the proper officer on account of an amount payable under a confiscation order shall reduce the amount so payable, but the proper officer shall apply the money received for the purposes, and in the order, specified in this paragraph.

(4) The proper officer shall first pay any expenses incurred by a person acting as an insolvency practitioner and payable under paragraph 18(2) below but not already paid under sub-paragraph (1) above.

(5) If the money was paid to the proper officer by a receiver appointed under this Schedule or in pursuance of a charging order, the proper officer shall next pay the receiver's remuneration and expenses.

(6) After making—
   (a) any payment required by sub-paragraph (4) above; and
   (b) in a case to which sub-paragraph (5) above applies, any payment required by that sub-paragraph,

   the proper officer shall reimburse any amount paid under paragraph 14(2) below.

(7) The proper officer shall finally pay any compensation directed to be paid out of any sums recovered under the confiscation order under section 48(7) of this Act.

(8) Any balance in the hands of the proper officer after he has made all payments required by the foregoing provisions of this paragraph shall be treated as a fine for the purposes of section 20 of the [M92]Administration of Justice Act (Northern Ireland) 1954 (application of fines).

(9) Where under sub-paragraph (3) above a sum falls to be applied in payment both of compensation and of other outgoings—
   (a) the person entitled to the compensation shall be liable to pay into the Consolidated Fund of the United Kingdom such an amount as bears to the remuneration or expenses the same proportion as the amount payable in accordance with the direction mentioned in sub-paragraph (7) above bears to the total amount payable under the confiscation order;
   (b) the proper officer shall deduct from the amount falling to be applied in payment of the compensation an amount equal to the amount of any liability arising by virtue of paragraph (a) above;
   (c) notwithstanding the deduction under paragraph (b) above, the person entitled to compensation shall be treated as having received the whole of the amount which falls to be applied in payment of it; and
   (d) the amount deducted shall be treated as a fine for the purposes of section 20 of the Administration of Justice Act (Northern Ireland) 1954.

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(10) In this paragraph "the proper officer" means the appropriate officer of the Crown Court.

Marginal Citations

M92 1954 c. 9 (N.I.).

Exercise of powers by High Court, Secretary of State or receiver

13 (1) This paragraph applies to the powers conferred on the High Court and the Secretary of State by paragraphs 5 to 10 and 12 above, or on a receiver appointed under this Schedule or in pursuance of a charging order.

(2) Subject to the following provisions of this paragraph, the powers shall be exercised with a view to making available for satisfying the confiscation order or, as the case may be, any confiscation order that may be made in the defendant's case the value for the time being of realisable property held by any person by the realisation of such property.

(3) In the case of realisable property held by a person to whom the defendant has directly or indirectly made a gift caught by Part VII of this Act 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).

(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 obligation to satisfy the confiscation order.

Receivers: supplementary provisions

14 (1) Where a receiver appointed under this Schedule or in pursuance of a charging order takes any action—

(a) in relation to any property which is not realisable property, being action which he would be entitled to take if it were such property;

(b) believing, and having 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 paragraph 12(5) above, be paid by the prosecution or, in a case where proceedings for a relevant offence are not instituted, by the person on whose application the receiver was appointed.

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Variation of confiscation orders

15 (1) If, on an application by the defendant in respect of a confiscation order, the High Court is satisfied that the realisable property is inadequate for the payment of any amount remaining to be paid under the order the court shall issue a certificate to that effect, giving the court's reasons.

(2) For the purposes of sub-paragraph (1) above—

(a) in the case of realisable property held by a person who has been adjudged bankrupt the court shall take into account the extent to which any property held by him may be distributed among creditors; and

(b) the court may disregard any inadequacy in the realisable property which appears to the court to be attributable wholly or partly to anything done by the defendant for the purpose of preserving any property held by a person to whom the defendant had directly or indirectly made a gift caught by Part VII of this Act from any risk of realisation under this Schedule.

(3) Where a certificate has been issued under sub-paragraph (1) above, the defendant may apply to the Crown Court for the amount to be paid under the confiscation order to be reduced.

(4) The Crown Court shall, on an application under sub-paragraph (3) above—

(a) substitute for the amount to be paid under the order such lesser amount as the court thinks just in all the circumstances of the case; and

(b) substitute for the term of imprisonment or detention fixed in respect of the order under subsection (1)(c) of section 35 of the [M93]Criminal Justice Act (Northern Ireland) 1945 (imprisonment in default of payment) a shorter term if the effect of the substitution under paragraph (a) above is to reduce the maximum period applicable in relation to the order under subsection (2) of that section as it has effect by virtue of paragraph 2(1)(b) above.

Marginal Citations

M93 1945 c. 15 (N.I.).

Bankruptcy of defendant

16 (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 paragraph 5(8) or 10(5) or (6) above for the time being in the hands of a receiver appointed under paragraph 5 or 10 above,

is excluded from the bankrupt's estate for the purposes of Part IX of the [M94]Insolvency (Northern Ireland) Order 1989.

(2) Where a person has been adjudged bankrupt, the powers conferred on the High Court and the Secretary of State by paragraphs 5 to 10 and 12 above or on a receiver so appointed shall not be exercised in relation to—

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(a) property for the time being comprised in the bankrupt's estate for the purposes of that Part of the said 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 (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.

(3) Nothing in that Order shall be taken as restricting, or enabling the restriction of, the exercise of those powers.

(4) Sub-paragraph (2) above 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 the said 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 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 Part VII of this Act—

(a) no order shall be made under Article 312 or 367 of the said Order of 1989 (avoidance of certain transactions) in respect of the making of the gift at any time when proceedings for a relevant offence have been instituted against him and have not been concluded or when 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 either of those Articles after the conclusion of the proceedings shall take into account any realisation under this Schedule of property held by the person to whom the gift was made.

Marginal Citations

M94 S.I. 1989/2405 (N.I.19).

Winding up of company holding realisable property

17 (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 paragraph 5(8) or 10(5) or (6) above for the time being in the hands of a receiver appointed under paragraph 5 or 10 above.

(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 and the Secretary of State by

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paragraphs 5 to 10 and 12 above 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 [M95]Insolvency (Northern Ireland) Order 1989 shall be taken as restricting, or enabling the restriction of, the exercise of those powers.

(4) Sub-paragraph (2) above 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 paragraph—

"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 and, before the presentation of the petition for the winding up of the company by the High Court, such a resolution had 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.

Marginal Citations

M95 S.I. 1989/2405 (N.I.19).

Insolvency practitioners dealing with property subject to restraint order

18 (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,

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; and a person so acting shall 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.

(2) Any person who, acting as an insolvency practitioner, incurs expenses—

(a) in respect of such property as is mentioned in paragraph (a) of sub-paragraph (1) above 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,

shall be entitled (whether or not he has seized or disposed of that property so as to have a lien under that paragraph) to payment of those expenses under paragraph 12(1) or (4) above.

Enforcement of orders outside Northern Ireland

19 (1) Her Majesty may by Order in Council make provision for the enforcement of confiscation orders and restraint orders—

(a) in England, Wales and Scotland; and

(b) in any of the Channel Islands or the Isle of Man.

(2) An Order under this paragraph may apply or modify any of the provisions of this Schedule so far as appears to Her Majesty to be appropriate for the purposes of the Order.

[[F25](3) An Order under this paragraph may contain such incidental, consequential and transitional provisions as Her Majesty considers expedient.

(4) An Order under sub-paragraph (1)(a) above may, in particular, provide for section 18 of the [M96]Civil Jurisdiction and Judgments Act 1982 (enforcement of United Kingdom judgments in other parts of the United Kingdom) not to apply.**]**

Textual Amendments

F25 Sch. 4 para. 19(3)(4) added (1.12.1993) by 1993 c. 36, **ss.46** (with s. 78(6)); S.I. 1993/2734, **art. 2**,Sch.

Marginal Citations

M96 1982 c. 27.

Compensation

20 (1) If proceedings are instituted against a person for a relevant offence or relevant offences and either—

(a) the proceedings do not result in his conviction for any such offence; or

(b) where he is convicted of one or more such offences—

(i) the conviction or convictions concerned are quashed; or

(ii) he is pardoned by Her Majesty in respect of the conviction or convictions concerned,

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the High Court may, on an application by a person who held property which was realisable property, order compensation to be paid to the applicant if, having regard to all the circumstances, it considers it appropriate to make such an order.

(2) The High Court shall not order compensation to be paid in any case unless the court is satisfied—

(a) that there has been some serious default on the part of a person concerned in the investigation or prosecution of the offence concerned, being a person mentioned in sub-paragraph (5) below; and

(b) that the applicant has suffered loss in consequence of anything done in relation to the property by or in pursuance of an order under this Schedule or Part VII of this Act.

(3) The High Court shall not order compensation to be paid in any case where it appears to the court that the proceedings would have been instituted or continued even if the serious default had not occurred.

(4) The amount of compensation to be paid under this paragraph shall be such as the High Court thinks just in all the circumstances of the case.

(5) Compensation payable under this paragraph shall be paid—

(a) where the person in default was or was acting as a member of the Royal Ulster Constabulary or as a person authorised under section 57 of this Act, by the Police Authority for Northern Ireland;

(b) where the person in default was a member of the Office of the Director of Public Prosecutions for Northern Ireland, by the Director of Public Prosecutions for Northern Ireland.

VALID FROM 03/02/1995

[F26 Compensation etc. where absconder is acquitted]

Textual Amendments

F26 Sch. 4 paras. 20A-20C and crossheadings inserted (3.2.1995) by 1993 c. 36, **ss.43**, 78(3) (with s. 78(6)); S.I. 1995/43, arts. 2, 3, **Sch.**

F27 20A(1) This paragraph applies where—

(a) the High Court has made a confiscation order by virtue of section 52B(4) of this Act, and

(b) the defendant is subsequently tried for the offence or offences concerned and acquitted on all counts.

(2) The court by which the defendant is acquitted shall cancel the confiscation order.

(3) The High Court may, on the application of a person who held property which was realisable property, order compensation to be paid to the applicant if it is satisfied that the applicant has suffered loss as a result of the making of the confiscation order.

(4) The amount of compensation to be paid under this paragraph shall be such as the court considers just in all the circumstances of the case.

(5) Rules of court may make provision—

(a) for the giving of notice of any application under this paragraph; and

(b) for any person appearing to the court to be likely to be affected by any exercise of its powers under this paragraph to be given an opportunity to make representations to the court.

(6) Any payment of compensation under this paragraph shall be made by the Lord Chancellor out of money provided by Parliament.

(7) Where the court cancels a confiscation order under this paragraph it may make such consequential or incidental order as it considers appropriate in connection with the cancellation.

Textual Amendments

F27 Sch. 4 paras. 20A-20C inserted (3.2.1995) by 1993 c. 36, **ss.43**, 78(3) (with s. 78(6)); S.I. 1995/43, arts. 2, 3, **Sch.**.

VALID FROM 03/02/1995

Power to discharge confiscation order and order compensation where absconder returns

[F28]20B(1) This paragraph applies where—

(a) the High Court has made a confiscation order by virtue of section 52B(4) of this Act in relation to an absconder,

(b) the defendant has ceased to be an absconder, and

(c) paragraph 20A above does not apply.

(2) The High Court may, on the application of the defendant, cancel the confiscation order if it is satisfied that—

(a) there has been undue delay in continuing the proceedings in respect of which the power under section 52B(4) above was exercised; or

(b) the prosecution does not intend to proceed.

(3) Where the High Court cancels a confiscation order under this paragraph it may, on the application of a person who held property which was realisable property, order compensation to be paid to the applicant if it is satisfied that the applicant has suffered loss as a result of the making of the confiscation order.

(4) The amount of compensation to be paid under this paragraph shall be such as the court considers just in all the circumstances of the case.

(5) Rules of court may make provision—

(a) for the giving of notice of any application under this paragraph; and

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(b) for any person appearing to the court to be likely to be affected by any exercise of its powers under this paragraph to be given an opportunity to make representations to the court.

(6) Any payment of compensation under this paragraph shall be made by the Lord Chancellor out of money provided by Parliament.

(7) Where the court cancels a confiscation order under this paragraph it may make such consequential or incidental order as it considers appropriate in connection with the cancellation.

Textual Amendments

F28 Sch. 4 paras. 20A-20C inserted (3.2.1995) by 1993 c. 36, **ss.43**, 78(3) (with s. 78(6)); S.I. 1995/43, arts. 2, 3, **Sch.**

VALID FROM 03/02/1995

Variation of confiscation orders made by virtue of section 52B

F29 20C (1) This paragraph applies where—

(a) the High Court has made a confiscation order by virtue of section 52B(4) of this Act, and

(b) the defendant has ceased to be an absconder.

(2) If the defendant alleges that—

(a) the value of his proceeds of terrorist-related activities in the period by reference to which the assessment in question was made (the "original value"), or

(b) the amount that might have been realised at the time the confiscation order was made,

was less than the amount required to be paid under the confiscation order, he may apply to the High Court for it to consider his evidence.

(3) If, having considered that evidence, the court is satisfied that the defendant's allegation is correct it—

(a) shall proceed under section 47(1) of this Act to make a fresh assessment of the value of his proceeds of terrorist-related activities, and

(b) may, if it considers it just in all the circumstances, vary the amount required to be paid under the confiscation order.

(4) For any assessment under section 47 of this Act by virtue of this paragraph, section 47(8) shall not apply in relation to any of the defendant's proceeds of terrorist-related activities taken into account in assessing the original value.

(5) Where the court varies a confiscation order under this paragraph—

(a) it shall substitute for the term of imprisonment or detention fixed in respect of the order under subsection (1)(c) of section 35 of the M97 Criminal Justice Act (Northern Ireland) 1945 (imprisonment in default of payment) a shorter

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term if the effect of the substitution under sub-paragraph (3) above is to reduce the maximum period applicable in relation to the order under subsection (2) of that section as it has effect by virtue of paragraph 2(1)(b) above; and

(b) on the application of a person who held property which was realisable property, it may order compensation to be paid to the applicant if—

(i) it is satisfied that the applicant has suffered loss as a result of the making of the confiscation order; and

(ii) having regard to all the circumstances of the case, the court considers it to be appropriate.

(6) The amount of compensation to be paid under this paragraph shall be such as the court considers just in all the circumstances of the case.

(7) Rules of court may make provision—

(a) for the giving of notice of any application under this paragraph; and

(b) for any person appearing to the court to be likely to be affected by any exercise of its powers under this paragraph to be given an opportunity to make representations to the court.

(8) Any payment of compensation under this paragraph shall be made by the Lord Chancellor out of money provided by Parliament.

(9) No application shall be entertained by the court under this paragraph if it is made after the end of the period of six years beginning with the date on which the confiscation order was made.

Textual Amendments

F29 Sch. 4 paras. 20A-20C inserted (3.2.1995) by 1993 c. 36, **ss.43**, 78(3) (with s. 78(6)); S.I. 1995/43, arts. 2, 3, **Sch.**.

Marginal Citations

M97 1945 c. 15 (N.I.).

Transitional provisions

21 (1) In the case of a confiscation order made before the coming into operation of the [M98]Insolvency (Northern Ireland) Order 1989, section 50(4) of this Act shall have effect as if for paragraph (b) there were substituted—

"(b) pay any sum which, if the defendant had been adjudged bankrupt or was being wound up, would be among the preferential debts.";and in that paragraph "the preferential debts"—

(a) in relation to bankruptcy, means the debts to be paid in priority under Article 19 of the [M99]Bankruptcy Amendment (Northern Ireland) Order 1980 (assuming the date of the confiscation order to be the date of the order of adjudication); and

(b) in relation to winding up, means the preferential debts listed in Schedule 18 to the [M100]Companies (Northern Ireland) Order 1986 (assuming the date

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of the confiscation order to be the relevant date for the purpose of that Schedule).

(2) Until the coming into operation of the Insolvency (Northern Ireland) Order 1989, paragraphs 12(1) and (4) and 18 above shall have effect as if for references to an insolvency practitioner there were substituted references to an Official Assignee, trustee, liquidator, provisional liquidator or a receiver or manager appointed under section 68 of the [M101]Bankruptcy (Ireland) Amendment Act 1872.

(3) In any case in which a petition in bankruptcy was presented, or an adjudication in bankruptcy was made, before the coming into operation of the Insolvency (Northern Ireland) Order 1989, paragraph 16 above shall have effect with the following modifications—

(a) for references to the bankrupt's estate for the purposes of Part IX of that Order there shall be substituted references to the property of the bankrupt for the purposes of the Bankruptcy Acts (Northern Ireland) 1857 to 1980;

(b) sub-paragraph (2)(b) shall be omitted;

(c) for the reference in sub-paragraph (2)(c) to Article 254(2)(c) of that Order there shall be substituted a reference to Articles 28(4), (5)(c) and (11) and 30(6)(c) of the Bankruptcy Amendment (Northern Ireland) Order 1980;

(d) for the reference in sub-paragraph (3) to that Order there shall be substituted a reference to the Bankruptcy Acts (Northern Ireland) 1857 to 1980;

(e) for the reference in sub-paragraph (5) to an interim receiver appointed under Article 259 of that Order there shall be substituted a reference to a receiver or manager appointed under section 68 of the Bankruptcy (Ireland) Amendment Act 1872; and

(f) for the references in sub-paragraph (6) to Articles 312 and 367 of that Order there shall be respectively substituted references to section 12 of the [M102]Bankruptcy Amendment Act (Northern Ireland) 1929 and paragraph 16 of the Conveyancing Act (Ireland) 1634.

(4) In any case in which a winding up of a company has commenced, or is treated as having commenced, before the coming into operation of the [M103]Insolvency (Northern Ireland) Order 1989, paragraph 17 above shall have effect with the substitution for references to that Order of references to the [M104]Companies (Northern Ireland) Order 1986.

Marginal Citations

M98 S.I. 1989/2405 (N.I.19).
M99 S.I. 1980/561 (N.I.4).
M100 S.I. 1986/1032 (N.I.6).
M101 1872 c. 58.
M102 1929 c. 1(N.I.). 1634 c. 3.(Ir.).
M103 S.I. 1989/2405 (N.I.19).
M104 S.I. 1986/1032 (N.I.6).

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SCHEDULE 5

Section 57.

AUTHORISED INVESTIGATORS

Modifications etc. (not altering text)

C27 Sch. 5 extended (with modifications.) (15.4.1994) to the Bailiwick of Guernsey by S.I. 1994/764, art. 1, 2, **Sch.**

Preliminary

1 (1) In this Schedule—

"authorised investigator" means a person authorised under section 57 of this Act to exercise the powers conferred by this Schedule;

"the investigation", in relation to an authorised investigator, means the investigation for the purposes of which those powers 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.

(3) References in this Schedule to the Crown include references to the Crown in right of Her Majesty's Government in Northern Ireland.

Investigation powers

2 (1) An authorised investigator may by notice in writing require any person who he has reason to believe has information relevant to the investigation to attend before him at a specified place either forthwith or at a specified time and answer questions or otherwise furnish information with respect to any matter relevant to the investigation.

[[F30](1A) An authorised investigator may by notice in writing require any such person to furnish specified information relevant 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.**]**

(2) An authorised investigator may by notice in writing require any such person to produce at a specified place and either forthwith or at a specified time any specified documents which appear to the authorised investigator to relate to any matter relevant to the investigation or any documents of a specified class which appear to him to relate to any such matter.

(3) If any documents are produced pursuant to a notice under sub-paragraph (2) above the authorised investigator may—

(a) take copies of or abstracts from them;

(b) require the person producing them to provide an explanation of them;

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

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(4) If any documents are not produced pursuant to a notice under sub-paragraph (2) above the authorised investigator may require the person who was required to produce them to state, to the best of his knowledge and belief, where they are.

(5) A person shall not under this paragraph be required to disclose any information or produce any document—

(a) which he would be entitled to refuse to disclose or produce on grounds of legal professional privilege in proceedings in the High Court; or

(b) which in Scotland is an item subject to legal privilege as defined in section 40 of the [M105]Criminal Justice (Scotland) Act 1987;

except that a lawyer may be required to furnish the name and address of his client.

(6) A person shall not under this paragraph be required to disclose any information or produce any document—

(a) which is held by him on behalf of the Crown; or

(b) in respect of which he owes an obligation of confidence by virtue of the carrying on of a banking business.

(7) A person need not comply with any requirement imposed by an authorised investigator under this paragraph 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.

Textual Amendments

F30 Sch. 5 para. 2(1A) inserted (3.11.1994) by 1994 c. 33, **ss. 83(3)**, 172(4)

Marginal Citations

M105 1987 c. 41.

Search warrants

3 (1) A justice of the peace or, in Scotland, a sheriff may, on an application made by an authorised investigator, issue a warrant under this paragraph if he is satisfied, in relation to any documents, that there are reasonable grounds for believing—

(a) that—

(i) a person has failed to comply with an obligation under paragraph 2 above to produce them;

(ii) it is not practicable to serve a notice under that paragraph in relation to them; or

(iii) service of such a notice in relation to them might seriously prejudice the investigation; and

(b) that they are on premises specified in the application.

(2) A warrant under this paragraph shall authorise any constable (using such force as is reasonably necessary)—

(a) to enter and search the premises; and

(b) to take possession of any documents appearing to be documents of a description specified in the application or to take in relation to any

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documents so appearing any other steps which may appear to be necessary for preserving them and preventing interference with them.

(3) An application under this paragraph in Northern Ireland shall be made by a complaint on oath, in England and Wales by information on oath and in Scotland supported by evidence on oath.

(4) A warrant issued by a sheriff shall be authority for opening lockfast places and may authorise persons named in the warrant to accompany a constable who is executing it.

(5) The power exercisable by a justice of the peace under this paragraph in Northern Ireland may be exercised by the Secretary of State if, in addition to being satisfied as to the matters mentioned in sub-paragraph (1) above, it appears to him that the information which it would be necessary to provide in support of an application under that sub-paragraph would, if disclosed, be likely to place any person in danger or prejudice the capability of members of the Royal Ulster Constabulary to investigate acts of terrorism or the activities of a proscribed organisation.

Offences

4 (1) A person is guilty of an offence if without reasonable excuse he fails to comply with a requirement imposed on him under paragraph 2 above.

(2) A person is guilty of an offence if, in purported compliance with such a requirement, he makes a statement which he knows to be false or misleading in a material particular or recklessly makes a statement which is false or misleading in a material particular.

(3) A person who—

(a) knows or has reasonable cause to suspect that an investigation by an authorised investigator is being carried out or is likely to be carried out by virtue of 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,

is 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.

(4) A person guilty of an offence under sub-paragraph (1) or (2) above is liable—

(a) on conviction on indictment, to imprisonment for a term not exceeding five years or a fine or both;

(b) on summary conviction, to imprisonment for a term not exceeding six months or a fine not exceeding the statutory maximum or both.

(5) A person guilty of an offence under sub-paragraph (3) above is liable—

(a) on conviction on indictment, to imprisonment for a term not exceeding seven years or a fine or both;

(b) on summary conviction, to imprisonment for a term not exceeding six months or a fine not exceeding the statutory maximum or both.

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Admissibility of evidence

5 A statement made by a person in response to a requirement imposed by virtue of paragraph 2 above may not be used in evidence against him except—

(a) on a prosecution for an offence under paragraph 4(2) above;

(b) on a prosecution for some other offence where he or a witness called on his behalf has in giving evidence made a statement inconsistent with the first-mentioned statement; or

(c) on a prosecution for perjury.

Restriction on disclosure of information

6 (1) Information obtained by a person in his capacity as an authorised investigator may not be disclosed by him except to a constable or—

(a) for the purposes of any prosecution, whether in the United Kingdom or elsewhere;

(b) to any government department or Northern Ireland department or other authority or body discharging its functions on behalf of the Crown;

(c) to any competent authority; or

(d) for the purpose of assisting any public or other authority for the time being designated for the purposes of this paragraph by an order made by the Secretary of State to discharge any functions which are specified in the order.

(2) The following are competent authorities for the purposes of sub-paragraph (1)(c) above—

(a) an inspector appointed under Part XIV of the [M106]Companies Act 1985 or Part XV of the [M107]Companies (Northern Ireland) Order 1986;

(b) an Official Receiver;

(c) the Accountant in Bankruptcy;

(d) an Official Assignee;

(e) a person appointed to carry out an investigation under section 55 of the [M108]Building Societies Act 1986;

(f) a body administering a compensation scheme under section 54 of the [M109]Financial Services Act 1986;

(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 or any corresponding enactment having effect in Northern Ireland;

(j) a person appointed by the Bank of England under section 41 of the [M110]Banking Act 1987 to carry out an investigation and make a report;

(k) a person exercising powers by virtue of **[**[F31]section 43A or 44(2)**]** of the [M111]Insurance Companies Act 1982;

(l) any body having supervisory, regulatory or disciplinary functions in relation to any profession or any area of commercial activity; and

(m) 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 any of the foregoing paragraphs.

(3) An order under paragraph (d) of sub-paragraph (1) above may impose conditions subject to which, and otherwise restrict the circumstances in which, information may be disclosed under that paragraph.

Textual Amendments

F31 Words in Sch. 5 para. 6(2)(k) substituted (1.7.1994) by S.I. 1994/1696, regs. 68, **Sch. 8 Pt. I para. 21**

Marginal Citations

M106 1985 c. 6.
M107 S.I. 1986/1032 (N.I. 6).
M108 1986 c. 53.
M109 1986 c. 60.
M110 1987 c. 22.
M111 1982 c. 50.

Code of practice

7 (1) The Secretary of State shall make a code of practice in connection with the exercise by authorised investigators of the powers conferred by this Schedule.

(2) When the Secretary of State proposes to issue the code of practice under this paragraph he shall prepare and publish a draft of the code, shall consider any representations made to him about the draft and may modify the draft accordingly.

(3) The Secretary of State shall lay before both Houses of Parliament a draft of the code of practice prepared by him under this paragraph; and when he has laid the draft of the code before both Houses he may bring the code into operation by an order made by him.

(4) An order bringing the code of practice into operation may contain such transitional provisions or savings as appear to the Secretary of State to be necessary or expedient in connection with the code.

(5) The Secretary of State may from time to time revise the whole or any part of the code of practice issued by him under this paragraph and issue the code as revised; and the foregoing provisions of this paragraph shall apply (with appropriate modifications) to such a revised code as they apply to the first issue of the code.

(6) A failure on the part of an authorised investigator to comply with any provision of a code of practice issued under this paragraph 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 relevant to any question arising in the proceedings it shall be taken into account in determining that question.

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(8) In this paragraph "criminal proceedings" includes proceedings before a court-martial constituted under the [M112]Army Act 1955, the [M113]Air Force Act 1955 or the [M114]Naval Discipline Act 1957 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 paragraph (8) of Article 66 of the [M115]Police and Criminal Evidence (Northern Ireland) Order 1989 or subsection (9) of section 67 of the [M116]Police and Criminal Evidence Act 1984 shall require authorised investigators to have regard in exercising the powers conferred by this Schedule to any provision of a code under that Order or that Act.

Marginal Citations

M112 1955 c. 18.
M113 1955 c. 19.
M114 1957 c. 53.
M115 S.I. 1989/1341 (N.I. 12).
M116 1984 c. 60.

SCHEDULE 6

Section 60.

INDEPENDENT ASSESSOR OF MILITARY COMPLAINTS PROCEDURES IN NORTHERN IRELAND

Tenure of office

1 (1) Subject to the following provisions of this paragraph, the Independent Assessor shall hold and vacate office in accordance with the terms of his appointment.

(2) The Independent Assessor shall be appointed for a term not exceeding three years.

(3) The Independent Assessor may at any time resign his office by notice in writing addressed to the Secretary of State.

(4) The Secretary of State may remove the Independent Assessor from office—

(a) if he has without reasonable excuse failed to carry out his duties for a continuous period of six months or more;

(b) if he has been convicted of a criminal offence;

(c) if a bankruptcy order has been made against him, his estate has been sequestrated or he has made a composition or arrangement with, or granted a trust deed for, his creditors; or

(d) if the Secretary of State is satisfied that he is otherwise unable or unfit to perform his functions.

(5) At the end of a term of appointment the Independent Assessor shall be eligible for re-appointment.

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Changes to legislation: *There are currently no known outstanding effects for the Northern Ireland (Emergency Provisions) Act 1991 (repealed 25.8.1996). (See end of Document for details)*

Remuneration etc.

2 (1) There shall be paid to the Independent Assessor such remuneration and such travelling and other allowances as the Secretary of State may determine.

(2) In the case of any such holder of the office of Independent Assessor as may be determined by the Secretary of State, there shall be paid such pension, allowances or gratuities to or in respect of him, or such payments towards the provision of a pension to or in respect of him, as may be so determined.

(3) The approval of the Treasury shall be required for the making of a determination under this paragraph.

Staff

3 (1) The Independent Assessor may appoint such number of employees as he may determine.

(2) The remuneration and other terms and conditions of service of persons employed by the Independent Assessor shall be such as he may determine.

(3) The approval of the Secretary of State, given with the consent of the Treasury, shall be required for the making of a determination under this paragraph.

Reports

4 (1) The Independent Assessor shall prepare an annual report on the performance of his functions which he shall submit to the Secretary of State who shall cause it to be published and lay copies of it before each House of Parliament.

(2) The Independent Assessor may make a report to the Secretary of State about any matter which comes to his attention in the course of the performance of his functions.

Disqualification

5 In Part III of Schedule 1 to the [M117]Northern Ireland Assembly Disqualification Act 1975 (other disqualifying offices), the following entry shall be inserted at the appropriate place— " Independent Assessor of Military Complaints Procedures in Northern Ireland. "

Marginal Citations
M117 1975 c. 25.

Status: *Point in time view as at 09/01/1995. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *There are currently no known outstanding effects for the Northern Ireland (Emergency Provisions) Act 1991 (repealed 25.8.1996). (See end of Document for details)*

SCHEDULE 7

Section 70(3).

CONSEQUENTIAL AMENDMENTS

The Rehabilitation of Offenders (Northern Ireland) Order 1978

1 In Article 3(2)(a) of the [M118]Rehabilitation of Offenders (Northern Ireland) Order 1978 the reference to a fine or other sum adjudged to be paid by or imposed on a conviction does not include a reference to an amount payable under a confiscation order made under section 47 of this Act.

Marginal Citations
M118 S.I.1978/1908 (N.I.27).

The Bankruptcy Amendment (Northern Ireland) Order 1980

2 Article 31 of the [M119]Bankruptcy Amendment (Northern Ireland) Order 1980 shall have effect as if amounts payable under confiscation orders made under section 47 of this Act were debts excepted under paragraph (1)(a) of that Article.

Marginal Citations
M119 S.I.1980/561 (N.I.4).

The Fines and Penalties (Northern Ireland) Order 1984

. . . . . .

[F32]3

Textual Amendments
F32 Sch. 7 para. 3 repealed (9.1.1995) by S.I. 1994/2795 (N.I. 15), art. 26(2), **Sch. 3**; S.R. 1994/446, **art. 2**

The Elected Authorities (Northern Ireland) Act 1989

4 (1) The [M120]Elected Authorities (Northern Ireland) Act 1989 shall be amended as follows.

(2) In section 6(5), in the definition of "proscribed organisation" for the words "section 21 of the Northern Ireland (Emergency Provisions) Act 1978" there shall be substituted the words " section 28 of the Northern Ireland (Emergency Provisions) Act 1991 ".

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Changes to legislation: *There are currently no known outstanding effects for the Northern Ireland (Emergency Provisions) Act 1991 (repealed 25.8.1996). (See end of Document for details)*

(3) In Schedule 2 for the words "Schedule 2 to the Northern Ireland (Emergency Provisions) Act 1978" there shall be substituted the words " Schedule 2 to the Northern Ireland (Emergency Provisions) Act 1991 ".

Marginal Citations
M120 1989 c. 3.

The Prevention of Terrorism (Temporary Provisions) Act 1989

5 (1) The [M121]Prevention of Terrorism (Temporary Provisions) Act 1989 shall be amended as follows.

(2) In section 10(3) for the words "section 21 of the Northern Ireland (Emergency Provisions) Act 1978" there shall be substituted the words " section 28 of the Northern Ireland (Emergency Provisions) Act 1991 ".

(3) In section 17(1)(a)—

(a) for the words "section 21 of the Northern Ireland (Emergency Provisions) Act 1978" there shall be substituted the words " section 27 or 28 of the Northern Ireland (Emergency Provisions) Act 1991 ";

(b) for the words "section 21 of the said Act of 1978" there shall be substituted the words " section 28 of the said Act of 1991 ";

(c) for the words "section 21(4) of that Act" there shall be substituted the words " section 28(3) of that Act ".

(4) In section 27(10) for the words "section 21 of the Northern Ireland (Emergency Provisions) Act 1978" there shall be substituted the words " section 28 of the Northern Ireland (Emergency Provisions) Act 1991 ".

(5) For subsection (11) of section 27 there shall be substituted—

"(11) The provisions excluded by subsection (10) above from subsection (5) shall remain in force until 15th June 1992 and then expire but shall be—

(a) included in the provisions to which subsection (3) of section 69 of the said Act of 1991 applies (provisions that can be continued in force, repealed or revived by order); and

(b) treated as part of that Act for the purposes of subsection (9) of that section (repeal at end of five years)."

(6) In paragraph 7(4) of Schedule 3 for the words "sections 14 and 15 of the Northern Ireland (Emergency Provisions) Act 1987" there shall be substituted the words " sections 44 and 45 of the Northern Ireland (Emergency Provisions) Act 1991 ".

(7) In paragraph 8(1) of Schedule 4, in the definition of "a Northern Ireland order" after the words "paragraph 23" there shall be inserted the words " or 25A ".

(8) In paragraph 18(1) of Schedule 4, in the definition of "a Northern Ireland order" after the words "paragraph 23" there shall be inserted the words " or 25A ".

(9) After paragraph 25 of Schedule 4 there shall be inserted—

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"25A (1) The power to make a restraint order under the provisions of paragraphs 23 and 24 above shall be exercisable by the Secretary of State in any case in which it appears to him that the information which it would be necessary to provide in support of an application to the High Court or a judge under those provisions would, if disclosed, be likely to place any person in danger or prejudice the capability of members of the Royal Ulster Constabulary or a person authorised under section 57 of the Northern Ireland (Emergency Provisions) Act 1991 to investigate an offence under Part III of this Act.

(2) In their application by virtue of sub-paragraph (1) above paragraphs 23 to 25 above shall have effect with the necessary modifications and as if references to the High Court were references to the Secretary of State.

(3) An order made by the Secretary of State by virtue of this paragraph may be varied or discharged by the High Court under paragraph 23(5) or 24(2) above.

25B (1) A person who, without lawful authority or reasonable excuse (the proof of which lies on him), contravenes a restraint order is guilty of an offence and liable—

(a) on conviction on indictment, to imprisonment for a term not exceeding fourteen years or a fine or both;

(b) on summary conviction, to imprisonment for a term not exceeding six months or a fine not exceeding the statutory maximum or both.

(2) Nothing in sub-paragraph (1) above shall be taken to prejudice any power of the High Court to deal with the contravention of a restraint order as a contempt of court."

Extent Information

E3 Sch. 7 para. 5 except para. 5(2)(3)(7)(8) extends to Northern Ireland only

Marginal Citations

M121 1989 c. 4.

The Police and Criminal Evidence (Northern Ireland) Order 1989

6 (1) The [M122]Police and Criminal Evidence (Northern Ireland) Order 1989 shall be amended as follows.

(2) In Article 4(3), for paragraph (b) there shall be substituted—

"(b) section 19, section 20 (insofar as the powers under that section are exercisable by a constable) and section 26 of the Northern Ireland (Emergency Provisions) Act 1991, and".

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Changes to legislation: *There are currently no known outstanding effects for the Northern Ireland (Emergency Provisions) Act 1991 (repealed 25.8.1996). (See end of Document for details)*

(3) In Article 30(3) for the words "section 14(2) of the Northern Ireland (Emergency Provisions) Act 1978" there shall be substituted the words " section 18(2) of the Northern Ireland (Emergency Provisions) Act 1991 ".

(4) In Article 54(2) for the words "section 15(3)(b) of the Northern Ireland (Emergency Provisions) Act 1978" there shall be substituted the words " section 19(6)(b) of the Northern Ireland (Emergency Provisions) Act 1991 ".

(5) In Article 74(9) for the words "section 8 of the Northern Ireland (Emergency Provisions) Act 1978" there shall be substituted the words " section 11 of the Northern Ireland (Emergency Provisions) Act 1991 ".

(6) In Article 76(2)(b) for the words "subsection (1) of section 8 of the Northern Ireland (Emergency Provisions) Act 1978" there shall be substituted the words " subsection (1) of section 11 of the Northern Ireland (Emergency Provisions) Act 1991 ".

Marginal Citations
M122 S.I.1989/1341 (N.I.12).

The Insolvency (Northern Ireland) Order 1989

7 Article 255 of the [M123]Insolvency (Northern Ireland) Order 1989 shall have effect as if the reference to a fine included a reference to a confiscation order made under section 47 of this Act.

Marginal Citations
M123 S.I.1989/2405 (N.I.19).

The Criminal Justice (Confiscation) (Northern Ireland) Order 1990

8 In Article 2(4)(b) of the [M124]Criminal Justice (Confiscation) (Northern Ireland) Order 1990 after "1989" there shall be inserted the words " or a relevant offence within the meaning of Part VII of the Northern Ireland (Emergency Provisions) Act 1991 ".

Marginal Citations
M124 S.I.1990/2588 (N.I.17).

Status: *Point in time view as at 09/01/1995. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *There are currently no known outstanding effects for the Northern Ireland (Emergency Provisions) Act 1991 (repealed 25.8.1996). (See end of Document for details)*

SCHEDULE 8

Section 70(4).

REPEALS AND REVOCATIONS

PART I

ENACTMENTS

Chapter	Short title	Extent of repeal
1978 c. 5.	The Northern Ireland (Emergency Provisions) Act 1978.	The whole Act.
1978 c. 23.	The Judicature (Northern Ireland) Act 1978.	In Part II of Schedule 5 the entry relating to the Northern Ireland (Emergency Provisions) Act 1978.
1980 c. 47.	The Criminal Appeal (Northern Ireland) Act 1980.	In Schedule 4, paragraph 14.
1982 c. 28.	The Taking of Hostages Act 1982.	Section 2(3).
1982 c. 36.	The Aviation Security Act 1982.	In Schedule 2, paragraph 6.
1983 c. 18.	The Nuclear Material (Offences) Act 1983.	Section 4(3).
1987 c. 30.	The Northern Ireland (Emergency Provisions) Act 1987.	The whole Act.
1989 c. 4.	The Prevention of Terrorism (Temporary Provisions) Act 1989.	Sections 21 to 24.Section 27(2) and (12).In section 28(2)(a) the words “sections 21 to 24”.In Schedule 8, paragraphs 3 and 8.
1989 c. 6.	The Official Secrets Act 1989.	In Schedule 1, paragraph 2.
1990 c. 31.	The Aviation and Maritime Security Act 1990.	In Schedule 3, paragraph 5.

PART II

ORDERS AND REGULATIONS

Number	Title	Extent of revocation
S.I.1979/ 746.	The Northern Ireland (Emergency Provisions) Act	The whole Order.

Status: *Point in time view as at 09/01/1995. This version of this Act contains provisions that are not valid for this point in time.*
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	1978 (Amendment) Order 1979.	
S.I.1981/ 155 (N.I.2).	The Firearms (Northern Ireland) Order 1981.	In Schedule 4, paragraphs 3 and 4.
S.I.1981/ 228 (N.I.8).	The Legal Aid, Advice and Assistance (Northern Ireland) Order 1981.	In Schedule 3 the entry relating to the Northern Ireland (Emergency Provisions) Act 1978.
S.I.1981/ 1675 (N.I.26).	The Magistrates' Courts (Northern Ireland) Order 1981.	In Schedule 6, paragraph 48.
S.I.1986/75.	The Northern Ireland (Emergency Provisions) Act 1978 (Amendment) Order 1986.	The whole Order.
S.I.1989/ 510.	The Northern Ireland (Emergency Provisions) (Amendment) Regulations 1989.	The whole Regulations.
S.I.1989/ 1341 (N.I.12).	The Police and Criminal Evidence (Northern Ireland) Order 1989.	In Schedule 2 the entry relating to the Northern Ireland (Emergency Provisions) Act 1978.
S.I.1989/ 1501.	The Northern Ireland (Emergency Provisions) Act 1978 (Amendment) Order 1989.	The whole Order.
S.I.1990/ 758.	The Northern Ireland (Emergency Provisions) Act 1978 (Amendment) Order 1990.	The whole Order.

Status:
Point in time view as at 09/01/1995. This version of this Act contains provisions that are not valid for this point in time.

Changes to legislation:
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