



# Northern Ireland (Emergency Provisions) Act 1991 (repealed 25.8.1996)

## 1991 CHAPTER 24

### 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 [<sup>F1</sup>—
- (a) the amount that might then be so realised, or
  - (b) a nominal amount, where it appears to the court (on the information available to it at the time) that the amount that might then be so realised is nil]
- (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.
- [<sup>F2</sup>(9) The standard of proof required to determine any question arising under this Part of this Act as to—
- (a) whether a person has benefited from terrorist-related activities engaged in by him or another;
  - (b) the value of his proceeds of those activities;
  - (c) any matter of which the court must be satisfied under subsection (5) above; or
  - (d) the amount to be required to be paid under a confiscation order made in his case,
- shall be that applicable in civil proceedings.]

#### Textual Amendments

**F1** S. 47(7)(a)(b) substituted for words in s. 47(7) (3.2.1995) by 1993 c. 36, **ss. 36(1), 78(3)** (with s. 78(6)); S.I. 1995/43, arts. 2, 3, **Sch.**.

**F2** S. 47(9) added (3.2.1995) by 1993 c. 36, **ss. 36(2), 78(3)** (with s. 78(6)); S.I. 1995/43, arts. 2, 3, **Sch.**.

#### 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

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such an order for [<sup>F3</sup>such period as it may specify] for the purpose of enabling that information to be obtained; but, without prejudice to Article 11 of the <sup>M1</sup>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.

[<sup>F4</sup>(2A) More than one postponement may be made under subsection (2) above in relation to the same case.

(2B) Unless it is satisfied that there are exceptional circumstances, the court shall not specify a period under subsection (2) above which—

- (a) by itself, or
- (b) where there have been one or more previous postponements under subsection (2) above or (3) below, when taken together with the earlier specified period or periods,

exceeds six months beginning with the date on which the defendant was convicted.]

(3) If<sup>F5</sup> . . . notice of appeal or of application for leave to appeal is given under section 16(1) of the <sup>M2</sup>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. [<sup>F6</sup>on that account—

- (a) postpone making the confiscation order for such period as it may specify, or
- (b) where it has already exercised its powers under this section to postpone, extend the specified period;

but, without prejudice to Article 11 of the <sup>M3</sup>Treatment of Offenders (Northern Ireland) Order 1989, the court may notwithstanding any postponement under this section proceed to sentence or otherwise deal with the defendant in respect of the conviction.]

[<sup>F7</sup>(3A) A postponement or extension under subsection (2) or (3) above may be made—

- (a) on application by the defendant or the prosecution, or
- (b) by the court of its own motion.

(3B) Unless the court is satisfied that there are exceptional circumstances, any postponement or extension under subsection (3) above shall not exceed the period ending three months after the date of determination of the appeal.]

[<sup>F8</sup>(3C) Where the court has sentenced the defendant under subsection (2) or (3) above during the specified period it may, after the end of that period, vary the sentence by imposing a fine or making any such order as is mentioned in subsection (5)(b) or (c) below so long as it does so within a period corresponding to that allowed by section 49(2) or (3) of the Judicature (Northern Ireland) Act 1978 (time allowed for varying a sentence) but beginning with the end of the specified period.]

(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 <sup>M4</sup>Criminal Justice (Northern Ireland) Order 1980 (compensation orders); or

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- (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 <sup>M5</sup>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.

#### Textual Amendments

- F3** Words in s. 48(2) substituted (3.2.1995) by 1993 c. 36, ss. 36(2), 78(3) (with s. 78(6)); S.I. 1995/43, art. 2, **Sch.**
- F4** S. 48(2A)(2B) inserted (3.2.1995) by 1993 c. 36, ss. 36(5), 78(3) (with s. 78(6)); S.I. 1995/43, art. 2, **Sch.**
- F5** Words in s. 48(3) repealed (3.2.1995) by 1993 c. 36, ss. 36(6), 78(3), 79(14), **Sch. 6 Pt.I** (with s. 78(6)); S.I. 1995/43, art. 2, **Sch.**
- F6** S. 48(3)(a)(b) and words substituted for words in s. 48(3) (3.2.1995) by 1993 c. 36, ss. 36(6), 78(3) (with s. 78(6)); S.I. 1995/43, art. 2, **Sch.**
- F7** S. 48(3A)(3B) inserted (3.2.1995) by 1993 c. 36, ss. 36(7), 78(3) (with s. 78(6)); S.I. 1995/43, art. 2, **Sch.**
- F8** S. 48(3C) inserted (3.2.1995) by 1994 c. 33, s. 168(1), **Sch. 9 para. 51(1)**; S.I. 1995/127, art. 2, **Sch. 1**  
Appendix A

#### Marginal Citations

- M1** S.I. 1989/1344 (N.I. 15).  
**M2** 1980 c. 47.  
**M3** S.I. 1989/1344 (N.I. 15).  
**M4** S.I. 1980/704 (N.I. 6).  
**M5** S.I. 1980/704 (N.I. 6).

#### [<sup>F9</sup>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

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- (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.
- (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.]

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### Textual Amendments

**F9** 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..

### <sup>F10</sup> **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”).
- (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

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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 <sup>M6</sup>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.
- (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

**F10** 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

**M6** 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) [<sup>F11</sup>, (dd)] or (e) or 22(b), (i), (j), (k) [<sup>F11</sup>, (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 <sup>M7</sup>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.

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#### **Textual Amendments**

**F11** 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.**

#### **Marginal Citations**

**M7** 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 <sup>M8</sup>Misuse of Drugs Act 1971 (forfeiture orders); <sup>F12</sup>. . .
  - (c) section 13(2), (3) or (4) of the <sup>M9</sup>Prevention of Terrorism (Temporary Provisions) Act 1989 (forfeiture orders),
  - [<sup>F13</sup>(d) section 43 of the <sup>M10</sup>Powers of Criminal Courts Act 1973; or
  - (e) section 223 or 436 of the <sup>M11</sup>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 <sup>M12</sup>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



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- (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.
- (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

- F12** 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.
- F13** 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

- M8** 1971 c. 38.

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- M9** 1989 c. 4.  
**M10** 1973 c. 62.  
**M11** 1975 c. 21.  
**M12** 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.

<sup>F14</sup>(3) .....

### Textual Amendments

**F14** S. 51(3) repealed (3.2.1995) by 1993 c. 36, ss. 78(3), 79(14), **Sch. 6 Pt.I.**; S.I. 1995/43, arts. 2, 3, **Sch.**

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

- <sup>F15</sup>(1) In this section, except in subsection (4) below, “a statement” means a statement in the case of a defendant as to any matters relevant—
- (a) to determining whether he has benefited from terrorist-related activities,
  - (b) to assessing the value of his proceeds of those activities, or
  - (c) to determining whether the requirements of section 47(5) above are satisfied.
- (1A) Where section 47(1) above applies—
- (a) the court may require the prosecution to give it a statement within such period as it may direct; and
  - (b) the prosecution may at any time give a statement to the court.
- (1B) Where the prosecution has given the court a statement—
- (a) it may at any time give the court a further statement; and
  - (b) the court may at any time require it to give the court a further statement, within such period as the court may direct.

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(1C) Where—

- (a) a statement has been given to the court under this section, and
  - (b) the defendant accepts to any extent any allegation in the statement,
- the court may treat his acceptance as conclusive of the matters to which it relates.]

(2) Where—

- (a) a statement [<sup>F16</sup>is given under this section]; and
- (b) the court is satisfied that a copy of that statement has been served on the defendant,

the court may require the defendant to indicate [<sup>F17</sup>within such period as the court may direct] 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.

[<sup>F18</sup>(2A) Where the court has given a direction under this section it may at any time vary it by giving a further direction.]

(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 [<sup>F19</sup>given] 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 [<sup>F20</sup>in such manner as may be prescribed by rules of court or as the court may direct]

(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.

#### Textual Amendments

**F15** S. 52(1)(1A)-(1C) substituted for s. 52(1) (3.2.1995) by 1993 c. 36, s. 38(2) (with s. 78(6)); S.I. 1995/43, arts. 2, 3, Sch.

**F16** Words in s. 52(2) substituted (3.2.1995) by 1993 c. 36, s. 38(3)(a) (with s. 78(6)); S.I. 1995/43, arts. 2, 3, Sch.

**F17** Words in s. 52(2) inserted (3.2.1995) by 1993 c. 36, s. 38(3)(b) (with s. 78(6)); S.I. 1995/43, arts. 2, 3, Sch.

**F18** S. 52(2A) inserted (3.2.1995) by 1993 c. 36, s. 38(4) (with s. 78(6)); S.I. 1995/43, arts. 2, 3, Sch.

*Status: Point in time view as at 03/02/1995.*

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

- F19** Word in s. 52(4)(a) substituted (3.2.1995) by 1993 c. 36, s. 38(5) (with s. 78(6)); S.I. 1995/43, arts. 2, 3, Sch.
- F20** Words in s. 52(5) substituted (3.2.1995) by 1993 c. 36, s. 38(6) (with s. 78(6)); S.I. 1995/43, arts. 2, 3, Sch..

**[<sup>F21</sup>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**

- F21** S. 52A inserted (3.2.1995) by 1993 c. 36, s.39 (with s. 78(6)); S.I. 1995/43, art. 2, 3, Sch.

**[<sup>F22</sup>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.

*Status: Point in time view as at 03/02/1995.*

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

- (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—
- (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 <sup>M13</sup>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

**F22** 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)

**C1** 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

**M13** 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

*Status: Point in time view as at 03/02/1995.*

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

- (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.
- [<sup>F23</sup>(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.
- [<sup>F24</sup>(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.

*Status: Point in time view as at 03/02/1995.*

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

#### Textual Amendments

**F23** 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.

**F24** 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)

**C2** 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
  - (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 [<sup>F25</sup>or uses that property or has possession of it].

[<sup>F26</sup>(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.

[<sup>F27</sup>(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

*Status: Point in time view as at 03/02/1995.*

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

- (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**

**F25** 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.

**F26** 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.

**F27** 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)**

**C3** S. 54(2)-(6) applied (1.8.1994) by S.I. 1994/1760, art. 3

### [<sup>F28</sup> **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



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- (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
  - (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.]

*Status: Point in time view as at 03/02/1995.*

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

#### Textual Amendments

**F28** 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)

**C4** S. 54A applied (1.8.1994) by S.I. 1994/1760, art.3

**C5** S. 54A excluded (1.8.1994) by S.I. 1994/1760, art. 4

## 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.

### [<sup>F29</sup>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, [<sup>F30</sup>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 [<sup>F31</sup>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

**F29** 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.

*Status: Point in time view as at 03/02/1995.*

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

- F30** 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.**
- F31** 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;

“confiscation order” means an order made by a court under section 47 above [<sup>F32</sup>and includes, in particular, an order under that section which is made by virtue of section 48A or 52B 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 <sup>M14</sup>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—

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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), Part VII. (See end of Document for details)*

- (a) when a summons or warrant is issued under Article 20 of the <sup>M15</sup>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 <sup>M16</sup>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.

#### Textual Amendments

**F32** Words in s. 56(1) added (3.2.1995) by 1993 c. 36, s. 79(13), Sch. 5 Pt. I para. 17(2); S.I. 1995/43, arts. 2, 3, Sch..

#### Marginal Citations

**M14** 1954 c. 33 (N.I.).

**M15** S.I. 1981/1675 (N.I. 26).

**M16** 1969 c. 15 (N.I.).

**Status:**

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**Changes to legislation:**

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