Northern Ireland (Emergency Provisions) Act 1991

1991 CHAPTER 24

PART VII

CONFISCATION OF PROCEEDS OF TERRORIST-RELATED ACTIVITIES

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 Misuse of Drugs Act 1971 (forfeiture orders); or

(c) section 13(2), (3) or (4) of the Prevention of Terrorism (Temporary Provisions) Act 1989 (forfeiture orders),

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 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.

(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.