
STATUTORY INSTRUMENTS

1996 No. 1299

The Proceeds of Crime (Northern Ireland) Order 1996

PART II

CONFISCATION ORDERS

Realisation of property

Realisation of property

34.—(1) Where a confiscation order—

- (a) has been made under this Order,
- (b) is not satisfied, and
- (c) is not subject to appeal,

the High Court may, on an application by the prosecution, exercise the powers conferred by paragraphs (2) to (6).

(2) The Court may appoint a receiver in respect of realisable property —

(3) The Court may empower a receiver appointed under paragraph (2), under Article 31 or in pursuance of a charging order—

- (a) to enforce any charge imposed under Article 32 on realisable property or on interest or dividends payable in respect of such property; and
- (b) in relation to any realisable property other than property for the time being subject to a charge under Article 32, to take possession of the property subject to such conditions or exceptions as may be specified by the Court.

(4) The Court may order any person having possession of malisable property to give possession of it to any such receiver.

(5) The Court may empower any such receiver to realise any realisable property in such manner (including the manner of conveyance or transfer of property which is land) as the Court may direct.

(6) The Court may—

- (a) order any person holding an interest in realisable property to make to the receiver such payment as the Court may direct in respect of any beneficial interest held by the defendant or, as the case may be, the recipient of a gift caught by this Order; and
- (b) on the payment being made, by order, transfer, grant or extinguish any interest in the property.

(7) Paragraphs (4) to (6) do not apply to property for the time q being subject to a charge under Article 32 or under Article 14 of the Criminal Justice (Confiscation) (Northern Ireland) Order 1990.

(8) The High Court shall not in respect of any property exercise the powers conferred by paragraph (3)(a), (5) or (6) unless a reasonable opportunity has been given for persons holding any interest in the property to make representations to the Court.

Application of proceeds of realisation and other sums

35.—(1) Subject to paragraph (2), the following sums in the hands of a receiver appointed under this Order or in pursuance of a charging order, that is—

- (a) the proceeds of the enforcement of any charge imposed under Article 32;
- (b) the proceeds of the realisation, other than by the enforcement of such a charge, of any property under Article 31 or 34; and
- (c) any other sums, being property held by the defendant;

shall be applied, subject to paragraph (2), on the defendant's behalf towards the satisfaction of the confiscation order.

(2) Before any such sums are so applied they shall be applied—

- (a) first in payment of such expenses incurred by a person acting as an insolvency practitioner as are payable under Article 39(3); and
- (b) second, in making such payments (if any) as the High Court may direct.

(3) 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 Order, and
- (b) in such proportions,

as the High Court may direct after giving reasonable opportunity for such persons to make representations to the Court.

(4) 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 specified in this Article and in the order so specified.

(5) The proper officer shall first pay any expenses incurred by a person acting as an insolvency practitioner and payable under Article 39(3) but not already paid under paragraph (2).

(6) If the money was paid to the proper officer by a receiver appointed under this Order or in pursuance of a charging order, the proper officer shall next pay the receiver's remuneration and expenses.

(7) After making—

- (a) any payment required by paragraph (5); and
- (b) in a case to which paragraph (6) applies, any payment required by that paragraph,

the proper officer shall reimburse any amount paid under Article 40(2).

(8) The proper officer shall finally pay any compensation directed to be paid out of any sums recovered under the confiscation order under Article 12(8).

(9) Any balance in the hands of the proper officer after he has made all payments required by the foregoing provisions of this Article shall be treated as a fine for the purposes of section 20 of the Administration of Justice (Northern Ireland) Act 1954 (application of fines).

(10) Where under paragraph (4) 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 under Article 12(8) 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 sub-paragraph (a);

- (c) notwithstanding the deduction under sub-paragraph (b), 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.
- (11) In this Article “the proper officer” means, where the confiscation order is made by a court of summary jurisdiction, the clerk of petty sessions and, where the confiscation order is made by the Crown Court, the appropriate officer of the Crown Court.