
STATUTORY INSTRUMENTS

1996 No. 1299

The Proceeds of Crime (Northern Ireland) Order 1996

PART II

CONFISCATION ORDERS

Restraint orders and charging orders

Cases in which restraint orders and charging orders may be made

30.—(1) The powers conferred on the High Court by Articles 31(1) and 32(1) are exercisable where—

- (a) proceedings have been instituted in Northern Ireland against the defendant for an offence to which this Order applies or an application has been made by the prosecution in respect of the defendant under Article 17, 18, 19, 21 or 24;
 - (b) the proceedings have not, or the application has not, been concluded; and
 - (c) the court is satisfied that there is reasonable cause to believe—
 - (i) in the case of an application under Article 19 or 21, that the court will be satisfied as mentioned in Article 19(2) or, as the case may be, Article 21(2); or
 - (ii) in any other case,
 - (aa) in proceedings for an offence of a relevant description, that the proceedings may result or have resulted in, or that the application is made by reference to, a conviction of the defendant for an offence of a relevant description from which he may be, or has been, shown to have benefited;
 - (ab) in proceedings for a drug trafficking offence, that the defendant has benefited from drug trafficking.
- (2) The Court shall not exercise those powers under paragraph (1) if it is satisfied.
- (a) that there has been undue delay in continuing the proceedings or application in question; or
 - (b) that the prosecution does not intend to proceed.
- (3) The powers mentioned in paragraph (1) are also exercisable where—
- (a) the Court is satisfied that, whether by the making of a complaint or otherwise, a person is to be charged with an offence to which this Order applies or that an application of a kind mentioned in paragraph (1)(a) is to be made; and
 - (b) the Court is also satisfied—
 - (i) in the case of proceedings for an offence of a relevant description, that the making or variation of a confiscation order may result from proceedings for that offence or, as the case may be, from the application;
 - (ii) in the case of proceedings for a drug trafficking offence, as mentioned in paragraph (1)(c)(i) and (ii)(ab).

(4) For the purposes of Articles 31 and 32 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 paragraph (3)(a);
- (b) references to the prosecution shall be construed as references to the person who the High Court is satisfied is to have the conduct of the proposed proceedings; and references to realisable property shall be construed as if, immediately before that time, proceedings had been instituted against the person referred to in paragraph (3)(a) for an offence to which this Order applies.

(5) Where the High Court has made an order under Article 31(1) or 32(1) by virtue of paragraph (3), the Court shall discharge the order if—

- (a) proceedings in respect of the offence are not instituted, whether by the making of a complaint or otherwise, or (as the case may be) if the application is not made, within such time as the Court considers reasonable; or
- (b) the Court is satisfied that the case has become a case in which, in pursuance of paragraph (2), it would be unable to exercise the powers conferred under paragraph (1).

Restraint orders

31.—(1) The High Court may by order (a restraint order) prohibit any person from dealing with any realisable property, subject to such conditions and exceptions as may be specified in the order.

(2) Without prejudice to the generality of paragraph (1), a restraint order may make such provision as the High Court thinks fit for living expenses or legal expenses.

(3) A restraint order may apply—

- (a) 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 Article shall not have effect in relation to any property for the time being subject to a charge under Article 32 or under Article 14 of the Criminal Justice (Confiscation) (Northern Ireland) Order 1990.

(5) A restraint order—

- (a) may be made only on an application by 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 on the conclusion of the proceedings or of the application in question.

(7) An application for the discharge or variation of a restraint order may be made by any person affected by it.

(8) Where the High Court has made a restraint order, the Court may at any time appoint a receiver—

- (a) to take possession of any realisable property; and
- (b) in accordance with the Court's directions, to manage or otherwise deal with any property in respect of which he is appointed;

subject to such exceptions and conditions as may be specified by the Court; and may require any person having possession of property in respect of which a receiver is appointed under this Article to give possession of it to the receiver.

(9) For the purposes of this Article, dealing with property held by any person includes (without prejudice to the generality of the expression)—

- (a) where a debt is owed to that person, making a payment to any person in reduction of the amount of the debt; and
- (b) removing the property from Northern Ireland.

(10) Where the High Court has made a restraint order, a constable may for the purpose of preventing any realisable property being removed from Northern Ireland, seize the property.

(11) Property seized under paragraph (10) shall be dealt with in accordance with the directions of the High Court.

(12) The prosecution shall be treated for the purposes of section 66 of the Land Registration Act (Northern Ireland) 1970 (cautions) as a person interested in relation to any registered land to which a restraint order or an application for such an order relates.

(13) Upon being served with a copy of a restraint order, the Registrar shall, in respect of any registered land to which a restraint order or an application for such an order relates, make an entry inhibiting any dealing with the land without the consent of the High court.

(14) Subsections (2) and (4) of section 67 of the Land Registration Act (Northern Ireland) 1970 (inhibitions) shall apply to an entry made under sub-paragraph (13) as they apply to an entry made on the application of any person interested in the registered land under subsection (1) of that section 67.

(15) Where a restraint order has been protected by an entry registered under the Land Registration Act (Northern Ireland) 1970 or the Registration of Deeds Acts, an order under paragraph (6) discharging the restraint order may direct that the entry be vacated.

(16) In this Article “Registrar” and “entry” have the same meanings as in the Land Registration Act (Northern Ireland) 1970.

Charging orders in respect of land, securities, etc.

32.—(1) The High Court may make a charging order on realisable property for securing the payment to the Crown—

- (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 only on an application by 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
- (d) may be made subject to such conditions as the Court thinks fit and, without prejudice to the generality of this sub-paragraph, such conditions as it thinks fit as to the time when the charge is to become effective.

(3) Subject to paragraph (5), a charge may be imposed by a charging order only on—

- (a) any interest in realisable property, which is an interest held beneficially by the defendant or by a person to whom the defendant has directly or indirectly made a gift caught by this Order and is an interest—

- (i) in any asset of a kind mentioned in paragraph (4); or
 - (ii) under any trust; or
 - (b) any interest in realisable property held by a person as trustee of a trust if the interest is in such an asset or is an interest under another trust and a charge may by virtue of subparagraph (a) be imposed by a charging order on the whole beneficial interest under the first-mentioned trust.
- (4) The assets referred to in paragraph (3) are—
- (a) land in Northern Ireland; or
 - (b) securities of any of the following kinds—
 - (i) government funds or stock;
 - (ii) stock of any body incorporated within Northern Ireland (other than a building society);
 - (iii) stock of any body incorporated outside Northern Ireland (other than a building society incorporated in Great Britain) or of any country or territory outside the United Kingdom, being stock registered in a register kept at any place within Northern Ireland;
 - (iv) units of any unit trust in respect of which a register of the unit holders is kept at any place within Northern Ireland.
- (5) In any case where a charge is imposed by a charging order on any interest in an asset of a kind mentioned in paragraph (4)(b), the High Court may provide for the charge to extend to any interest or dividend payable in respect of the asset.
- (6) In relation to a charging order, the Court—
- (a) may make an order discharging or varying it; and
 - (b) shall make an order discharging it—
 - (i) on the conclusion of the proceedings or of the application in question; or
 - (ii) on payment into court of the amount payment of which is secured by the charge.
- (7) An application for the discharge or variation of a charging order may be made by any person affected by it.

Charging orders: supplementary provisions

33.—(1) Subject to any provision made under Article 34 or by rules of court, a charge imposed by a charging order shall have the like effect and shall be enforceable in the same courts and in the same manner as an equitable charge created by the person or persons who are entitled to make such charges over the realisable property.

(2) Where a charging order has been protected by an entry registered under the Land Registration Act (Northern Ireland) 1970 or the Registration of Deeds Acts an order under Article 32(6) discharging the charging order may direct that the entry be vacated.

(3) The Secretary of State may by order amend Article 32 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) An order under paragraph (3) shall be subject to annulment in pursuance of a resolution of either House of Parliament in like manner as a statutory instrument and section 5 of the Statutory Instruments Act 1946 shall apply accordingly.

(5) In this Article and Article 32—

“building society” has the same meaning as in the 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 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 of having the effect, of providing, for persons having funds available for investment, facilities for the participation by them, as beneficiaries under the trust, in any profits or income arising from the acquisition, holding, management or disposal of any property whatsoever.