

PROCEEDS OF CRIME ACT 2002

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 4: Confiscation: Northern Ireland

Interpretation

Section 223: Criminal lifestyle

277. This provision is crucial to the operation of the Act and ensures that offenders before the courts in Northern Ireland will be dealt with in exactly the same way in Northern Ireland as in England and Wales. The section replicates the provisions made in [section 75](#) and the details of the section are set out in the notes to that section. The provision is similar to that which currently exists in Article 9 of the Proceeds of Crime (Northern Ireland) Order 1996.

Section 224: Conduct and benefit

278. [Section 224](#) defines criminal conduct as any conduct constituting an offence in Northern Ireland or (if it took place elsewhere in the United Kingdom or abroad) would constitute an offence if it occurred in Northern Ireland. The restriction of the scope of confiscation under existing legislation to drug trafficking, other indictable offences and specified summary offences is thus abolished. Under the Act, the Crown Court, which makes a confiscation order, will need to consider conduct solely by reference to the law of Northern Ireland. [Section 224\(2\)](#) and [\(3\)](#) also defines “general criminal conduct” and “particular criminal conduct” (for which, see the note on [section 76](#)).
279. [Subsection \(4\)](#) also provides for Northern Ireland the same definition of “benefit from conduct” proposed at [section 76\(4\)](#). This will replace the similar definition of benefit provided by Article 2(6) of the Proceeds of Crime (Northern Ireland) Order 1996.

Sections 225 & 226: Tainted gifts; Gifts and their recipients

280. The existing legislation enables gifts by the defendant to other persons to be recovered in satisfaction of a confiscation order, and makes ancillary provision (for example, to enable assets of the recipient of a gift to be placed under restraint). Under the existing legislation in Northern Ireland, a tainted gift is described as a “gift caught by this Order”. [Section 225](#) aligns the different tainted gift schemes which currently apply depending on whether the offence was drug related or not. The new scheme provides that, where the court has decided that the defendant has a criminal lifestyle, any gift made by the defendant to any person in the period beginning six years before the commencement of proceedings will be caught, together with any gift at any time out of the proceeds of crime. This definition will be relevant both at the confiscation hearing and for the purposes of enforcement. However, if the court decides that the defendant does not have a criminal lifestyle, only gifts made since the beginning of the earliest of the offences committed are caught. Again, this will be relevant at the confiscation hearing and for

*These notes refer to the Proceeds of Crime Act 2002
(c.29) which received Royal Assent on 24 July 2002*

the purposes of enforcement. The provision is drafted so that it will apply in Northern Ireland as the similar provisions in Part 2 apply in England and Wales.

Sections 227-229: Value: the basic rule; Value of property obtained from conduct; Value of tainted gifts

281. *Sections 227-229* set out how the court is to work out the value of property held by a person, the value of property, and the value of a tainted gift. These sections, apart from referring to Northern Ireland legislation where appropriate, replicate the provisions proposed at *sections 79 to 81*.

Sections 230-235: Free property; Realisable property; Property: general provisions; Proceedings; Applications; Confiscation orders

282. These definitional sections essentially reproduce for Northern Ireland the same definitions as those contained at *sections 82 to 87* of this Act. The only differences in text are a result of references to the equivalent Northern Ireland legislation or comparable provisions of this Act.

Section 239: other interpretative provisions

283. This section essentially applies in Northern Ireland as the comparable section in Part 2 (*section 88*) applies in England and Wales. The textual differences reflect the numbering of the sections of this Part of the Act and the fact that the Powers of Criminal Courts (Sentencing) Act 2000 does not extend to Northern Ireland.