



# Northern Ireland (Emergency Provisions) Act 1991

## 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 the amount that might then be so realised.
- (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.

#### **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 such an order for a period not exceeding six months after the date of conviction for the purpose of enabling that information to be obtained; but, without prejudice to Article 11 of the 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.
- (3) If during the period of postponement notice of appeal or of application for leave to appeal is given under section 16(1) of the 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.
- (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 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 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.

#### **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) or (e) or 22(b), (i), (j), (k), (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 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.

#### **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);

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- (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.

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- (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.

## **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.
- (3) As respects property or expenditure in relation to which the foregoing assumptions do not fall to be made the standard of proof required of the prosecution on the question whether the defendant has benefited from terrorist-related activities and, if so, as to the value of his proceeds of those activities shall be that applicable in civil proceedings.

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

(1) Where—

(a) there is tendered to the court by the prosecution a statement as to any matters relevant in the case of a defendant who has been convicted of a relevant offence—

(i) to the determination whether the defendant has benefited from terrorist-related activities; or

(ii) to the assessment of the value of his proceeds of those activities; or

(iii) to the determination whether the requirements of section 47(5) above are satisfied; and

(b) the defendant accepts to any extent any allegation in the statement, the court may, for the purposes of that determination and assessment, treat his acceptance as conclusive of the matters to which it relates.

(2) Where—

(a) a statement is tendered under subsection (1)(a) above; 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 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.

(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 tendered 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 either—

(a) orally before the court; or

(b) in writing in accordance with Crown Court rules.

(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.

### **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
  - (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.
- (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.
- (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.

## **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 that property for no, or for inadequate, 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.
- (5) For the purposes of subsection (3) above consideration given for any property is inadequate if its value is significantly less than the value of that property, and there shall not be treated as consideration the provision for any person of services or goods which are of assistance to him in terrorist-related activities.
- (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.

## **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.

## **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;
  - “defendant” means a person against whom proceedings have been instituted for a relevant offence (whether or not he has been convicted);



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“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 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—
  - (a) when a summons or warrant is issued under Article 20 of the 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 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.