



Criminal Justice Act 1993

1993 CHAPTER 36

PART IV

FINANCING ETC. OF TERRORISM

Amendments of the 1991 Act

36 Confiscation orders

- (1) In section 47(7) of the Northern Ireland (Emergency Provisions) Act 1991 (confiscation orders), for “the amount that might then be so realised” there shall be substituted “—
 - (a) the amount that might then be so realised, or
 - (b) a nominal amount, where it appears to the court (on the information available to it at the time) that the amount that might then be so realised is nil”.
- (2) In section 47 of the Act of 1991, the following subsection shall be added at the end—
 - “(9) The standard of proof required to determine any question arising under this Part of this Act as to—
 - (a) whether a person has benefited from terrorist-related activities engaged in by him or another;
 - (b) the value of his proceeds of those activities;
 - (c) any matter of which the court must be satisfied under subsection (5) above; or
 - (d) the amount to be required to be paid under a confiscation order made in his case,shall be that applicable in civil proceedings.”.
- (3) Section 48 of that Act (postponed confiscation orders etc.) shall be amended as follows.

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(4) In subsection (2), for “a period not exceeding six months after the date of conviction” there shall be substituted “such period as it may specify”.

(5) After subsection (2) there shall be inserted—

“(2A) More than one postponement may be made under subsection (2) above in relation to the same case.

(2B) Unless it is satisfied that there are exceptional circumstances, the court shall not specify a period under subsection (2) above which—

(a) by itself, or

(b) where there have been one or more previous postponements under subsection (2) above or (3) below, when taken together with the earlier specified period or periods,

exceeds six months beginning with the date on which the defendant was convicted.”.

(6) In subsection (3) the words “during the period of postponement” shall cease to have effect and for the words from “on the application of the prosecution” to the end there shall be substituted—

“on that account—

(a) postpone making the confiscation order for such period as it may specify, or

(b) where it has already exercised its powers under this section to postpone, extend the specified period;

but, without prejudice to Article 11 of the Treatment of Offenders (Northern Ireland) Order 1989, the court may notwithstanding any postponement under this section proceed to sentence or otherwise deal with the defendant in respect of the conviction.”.

(7) After subsection (3) there shall be inserted—

“(3A) A postponement or extension under subsection (2) or (3) above may be made—

(a) on application by the defendant or the prosecution, or

(b) by the court of its own motion.

(3B) Unless the court is satisfied that there are exceptional circumstances, any postponement or extension under subsection (3) above shall not exceed the period ending three months after the date of determination of the appeal.”.

37 Revised assessments

The following sections shall be inserted in the Northern Ireland (Emergency Provisions) Act 1991, after section 48—

“48A Re-assessment of whether defendant has benefited

(1) This section applies where—

(a) a court proceeding under section 47(1) above decided not to make a confiscation order (“the decision”); and

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- (b) the statement made by the court under section 48(8) above was to the effect that the reason, or one of the reasons, for the decision was that the court was not satisfied that the defendant had benefited.
- (2) If the prosecution has evidence—
 - (a) which was not considered by the court, but
 - (b) which the prosecution believes would have led the court to decide that the defendant had benefited,the prosecution may apply to the Crown Court for it to consider that evidence.
- (3) If, having considered the evidence, the court considers that it would have been satisfied that the defendant had benefited if that evidence had been available to it, section 47 shall apply as if the court were convicting the defendant.
- (4) The court may take into account any money or other property obtained by the defendant on or after the date of the decision, but only if the prosecution shows that it was obtained by him as a direct or indirect result of terrorist-related activities carried on by the defendant or another on or before that date.
- (5) In considering any evidence under this section which relates to any money or other property to which subsection (4) above applies, the court shall not make the assumptions which would otherwise be required by section 51 below.
- (6) No application shall be entertained by the court under this section if it is made after the end of the period of six years beginning with the date on which the defendant was convicted.
- (7) Subsections (1) to (7) of section 48 above shall not apply where the court is proceeding under section 47 above by virtue of this section.
- (8) Where the court—
 - (a) has, in dealing with the defendant in respect of the conviction or any of the convictions concerned, made an order for the payment of compensation under Article 3 of the Order of 1980, and
 - (b) makes a confiscation order by virtue of this section,it shall, if it is of the opinion that the defendant will not have sufficient means to satisfy both orders in full, direct that so much of the compensation as will not in its opinion be recoverable because of the insufficiency of his means is to be paid out of any sums recovered under the confiscation order.
- (9) Where the prosecution makes an application to the court under this section it shall, on making the application, give the court a statement under section 52 below.
- (10) Where the High Court—
 - (a) has been asked to proceed under section 52B below in relation to a defendant who has absconded, but
 - (b) has decided not to make a confiscation order against him,this section shall not apply at any time while he remains an absconder.
- (11) In this section “benefited” means benefited from terrorist-related activities as mentioned in section 47(1) above.

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48B Revised assessments

- (1) This section applies where the court has made a confiscation order by reference to an amount assessed under section 47(1) above (“the current assessment”).
- (2) Where the prosecution is of the opinion that the real value of the defendant’s proceeds of terrorist-related activities was greater than their assessed value, the prosecution may apply to the Crown Court for the evidence on which it has formed that opinion to be considered by the court.
- (3) In subsection (2) above—
 - “assessed value” means the value of the defendant’s proceeds of terrorist-related activities as assessed by the court under section 47(1) above; and
 - “real value” means the value of the defendant’s proceeds of terrorist-related activities which took place—
 - (a) in the period by reference to which the current assessment was made; or
 - (b) in any earlier period.
- (4) If, having considered the evidence, the court is satisfied that the real value of the defendant’s proceeds of terrorist-related activities is greater than their assessed value (whether because the real value was higher at the time of the current assessment than was thought or because the value of the proceeds in question has subsequently increased), the court shall make a fresh determination of the amount to be required to be paid under section 47 above.
- (5) In relation to any determination by virtue of this section, section 47(7) above shall have effect as it has effect in relation to the making of a confiscation order.
- (6) For any determination by virtue of this section, section 47(8) above shall not apply in relation to any of the defendant’s proceeds of terrorist-related activities taken into account in respect of the current assessment.
- (7) Sections 50(4) and 52(4)(a) and (7) below shall have effect in relation to any such determination as if for “confiscation order” there were substituted “determination” and section 50(3) below shall so have effect as if for “a confiscation order is made” there were substituted “of the determination”.
- (8) The court may take into account any money or other property obtained by the defendant on or after the date of the current assessment, but only if the prosecution shows that it was obtained by him as a direct or indirect result of terrorist-related activities carried on by the defendant or another on or before that date.
- (9) In considering any evidence under this section which relates to any money or other property to which subsection (8) above applies, the court shall not make the assumptions which would otherwise be required by section 51 below.
- (10) If, as a result of making the determination required by subsection (4) above, the amount to be required to be paid exceeds the amount set in accordance with the current assessment, the court may substitute for the amount required to be paid under the confiscation order such greater amount as it thinks just in all the circumstances of the case.

- (11) Where the court varies a confiscation order under subsection (10) above it shall substitute for the term of imprisonment or of detention fixed under section 35(1) (c) of the Criminal Justice Act (Northern Ireland) 1945 in respect of the amount required to be paid under the order a longer term determined in accordance with that section (as it has effect by virtue of paragraph 2 of Schedule 4 to this Act) in respect of the greater amount substituted under subsection (10) above.
- (12) Subsection (11) above shall apply only if the effect of the substitution is to increase the maximum period applicable in relation to the order under paragraph 2(1)(b) of Schedule 4 to this Act.
- (13) Where the prosecution makes an application to the court under this section—
 - (a) it shall, on making the application, give the court a statement under section 52 below; and
 - (b) section 52A shall apply.
- (14) Where a confiscation order has been made in relation to any defendant by virtue of section 52B below, this section shall not apply at any time while he is an absconder.
- (15) No application shall be entertained by the court under this section if it is made after the end of the period of six years beginning with the date on which the defendant was convicted.”.

38 Statements, etc. relevant to making confiscation orders

- (1) Section 52 of the Northern Ireland (Emergency Provisions) Act 1991 shall be amended as follows.
- (2) The following subsections shall be substituted for subsection (1)—
 - “(1) In this section, except in subsection (4) below, “a statement” means a statement in the case of a defendant as to any matters relevant—
 - (a) to determining whether he has benefited from terrorist-related activities,
 - (b) to assessing the value of his proceeds of those activities, or
 - (c) to determining whether the requirements of section 47(5) above are satisfied.
 - (1A) Where section 47(1) above applies—
 - (a) the court may require the prosecution to give it a statement within such period as it may direct; and
 - (b) the prosecution may at any time give a statement to the court.
 - (1B) Where the prosecution has given the court a statement—
 - (a) it may at any time give the court a further statement; and
 - (b) the court may at any time require it to give the court a further statement, within such period as the court may direct.
 - (1C) Where—
 - (a) a statement has been given to the court under this section, and
 - (b) the defendant accepts to any extent any allegation in the statement,

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the court may treat his acceptance as conclusive of the matters to which it relates.”.

- (3) In subsection (2)—
 - (a) for “is tendered under subsection (1)(a) above” there shall be substituted “is given under this section”; and
 - (b) after first “indicate” there shall be inserted “within such period as the court may direct”.
- (4) The following subsection shall be inserted after subsection (2)—

“(2A) Where the court has given a direction under this section it may at any time vary it by giving a further direction.”.
- (5) In subsection (4), for “tendered” there shall be substituted “given”.
- (6) In subsection (5), for the words from “either” to the end there shall be substituted “in such manner as may be prescribed by rules of court or as the court may direct”.

39 Provision of information

The following section shall be inserted in the Northern Ireland (Emergency Provisions) Act 1991, after section 52—

“52A Provision of information by defendant

- (1) This section applies where the Crown Court is proceeding under section 47(1) above.
- (2) For the purpose of obtaining information to assist it in carrying out its functions, the court may at any time order the defendant to give it such information as may be specified in the order.
- (3) An order under subsection (2) above may require all, or any specified part, of the required information to be given to the court in such manner, and before such date, as may be specified in the order.
- (4) Rules of court may make provision as to the maximum or minimum period that may be allowed under subsection (3) above.
- (5) If the defendant fails, without reasonable excuse, to comply with any order under this section, the court may draw such inference from that failure as it considers appropriate.
- (6) Where the prosecution accepts to any extent any allegation made by the defendant in giving to the court information required by an order under this section, the court may treat that acceptance as conclusive of the matters to which it relates.
- (7) For the purposes of this section, an allegation may be accepted in such manner as may be prescribed by rules of court or as the court may direct.”.

40 Variation of confiscation orders

- (1) Paragraph 15 (variation of confiscation orders) of Schedule 4 to the Northern Ireland (Emergency Provisions) Act 1991 shall be amended as follows.
- (2) In sub-paragraph (1), after “defendant” there shall be inserted “or a receiver appointed under this Schedule, or in pursuance of a charging order, made”.
- (3) In sub-paragraph (3), for “defendant” there shall be substituted “person who applied for it”.
- (4) The following shall be added at the end—
 - “(5) Rules of court may make provision—
 - (a) for the giving of notice of any application under this paragraph; and
 - (b) for any person appearing to the court to be likely to be affected by any exercise of its powers under this paragraph to be given an opportunity to make representations to the court.”.

41 Availability of powers and satisfaction of orders

- (1) Schedule 4 to the Northern Ireland (Emergency Provisions) Act 1991 (supplementary provisions about confiscation orders) shall be amended as follows.
- (2) In paragraph 2 (application of procedure for enforcing fines), the following shall be added at the end—
 - “(6) Where the defendant serves a term of imprisonment or detention in default of paying any amount due under a confiscation order, his serving that term does not prevent the confiscation order from continuing to have effect, so far as any other method of enforcement is concerned.”.
- (3) In paragraph 4 (cases in which restraint orders and charging orders may be made), the following sub-paragraphs shall be substituted for sub-paragraphs (1) and (2)—
 - “(1) The powers conferred on the High Court by paragraphs 5(1) and 6(1) below are exercisable where—
 - (a) proceedings have been instituted in Northern Ireland against the defendant for a relevant offence or an application has been made by the prosecution in respect of the defendant under section 48A, 48B or 52B of this Act or paragraph 11 below,
 - (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 section 48B of this Act or paragraph 11 below, that the court will be satisfied as mentioned in section 48B(4) of this Act or, as the case may be, paragraph 11(1)(b) below, or
 - (ii) in any other case, that the defendant has benefited from terrorist-related activities.
 - (2) Those powers are also exercisable where—
 - (a) the High Court is satisfied that, whether by the making of a complaint or otherwise, a person is to be charged with a relevant offence or that an application of a kind mentioned in sub-

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paragraph (1)(a) above is to be made in respect of the defendant, and

- (b) it appears to the court that there is reasonable cause to believe—
 - (i) in the case of a proposed application under section 48B of this Act or paragraph 11 below, that the court will be satisfied as mentioned in section 48B(4) of this Act or, as the case may be, paragraph 11(1)(b) below, or
 - (ii) in any other case, that the defendant has benefited from terrorist-related activities.”.

(4) The following sub-paragraphs shall be added at the end of paragraph 4—

“(5) Where the court has made an order under paragraph 5(1) or 6(1) below in relation to a proposed application, by virtue of sub-paragraph (2) above, the court shall discharge the order if the application is not made within such time as the court considers reasonable.

(6) The court shall not exercise powers under paragraph 5(1) or 6(1) below, by virtue of sub-paragraph (1) above, if it is satisfied that—

- (a) there has been undue delay in continuing the proceedings or application in question; or
- (b) the prosecution does not intend to proceed.”.

(5) In paragraph 5 (restraint orders), the following sub-paragraph shall be substituted for sub-paragraph (6)—

“(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.”.

(6) In paragraph 6 (charging orders), the following sub-paragraph shall be substituted for sub-paragraph (6)—

“(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) In paragraph 10 (realisation of property), the following sub-paragraph shall be substituted for sub-paragraph (1)—

“(1) Where a confiscation order—

- (a) has been made under this Act,
- (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 sub-paragraphs (2) to (6) below.”.

(8) In paragraph 16 (bankruptcy of defendant), the following shall be substituted for paragraphs (a) and (b) of sub-paragraph (6)—

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- “(a) no order shall be made under Article 312 or 367 of the said Order of 1989 (avoidance of certain transactions) in respect of the making of the gift at any time when—
- (i) proceedings for a relevant offence have been instituted against him and have not been concluded;
 - (ii) an application has been made in respect of the defendant under section 48A, 48B or 52B of this Act or paragraph 11 below and has not been concluded; or
 - (iii) property of the person to whom the gift was made is subject to a restraint order or charging order; and
- (b) any order made under either of those Articles after the conclusion of the proceedings or of the application shall take into account any realisation under this Schedule of property held by the person to whom the gift was made.”.
- (9) In paragraph 1 (interpretation), the following sub-paragraphs shall be substituted for sub-paragraph (3)—
- “(3) Proceedings for a relevant offence are concluded—
- (a) when the defendant is acquitted;
 - (b) if he is convicted, but the court decides not to make a confiscation order against him, when it makes that decision; or
 - (c) if a confiscation order is made against him in those proceedings, when the order is satisfied.
- (3A) An application under section 48A or 52B of this Act is concluded—
- (a) if the court decides not to make a confiscation order against the defendant, when it makes that decision; or
 - (b) if a confiscation order is made against him as a result of that application, when the order is satisfied.
- (3B) An application under section 48B of this Act or paragraph 11 below is concluded—
- (a) if the court decides not to vary the confiscation order in question, when it makes that decision; or
 - (b) if the court varies the confiscation order as a result of the application, when the order is satisfied.
- (3C) For the purposes of this Schedule, a confiscation order is satisfied when no amount is due under it.
- (3D) For the purposes of paragraph 16 below, a confiscation order is also satisfied when the defendant in respect of whom it was made has served a term of imprisonment or detention in default of payment of the amount due under the order.”.

42 Defendant who has died or absconded

The following section shall be inserted in the Northern Ireland (Emergency Provisions) Act 1991, after section 52A—

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“52B Powers of High Court where defendant has died or absconded

- (1) Subsection (2) below applies where a person has been convicted of a relevant offence.
- (2) If the prosecution asks it to proceed under this section, the High Court may exercise the powers of the Crown Court under this Act to make a confiscation order against the defendant if satisfied that the defendant has died or absconded.
- (3) Subsection (4) below applies where proceedings have been instituted against the defendant for one or more relevant offences but have not been concluded.
- (4) If the prosecution asks it to proceed under this section, the High Court, if satisfied that the defendant has absconded, may exercise the powers of the Crown Court under this Act to make a confiscation order against the defendant as if the defendant had been convicted of the relevant offence or each of the relevant offences for which the proceedings had been instituted.
- (5) The power conferred by subsection (4) above may not be exercised at any time before the end of the period of two years beginning with the date which is, in the opinion of the court, the date on which the defendant absconded.
- (6) Where the prosecution makes an application to the court under this section it shall, on making the application, give the court a statement under section 52 above.
- (7) In any proceedings on an application under this section—
 - (a) sections 51, 52(1C), (2) and (3) and 52A above shall not apply,
 - (b) the court shall not make a confiscation order against a person who has absconded unless it is satisfied that the prosecution has taken reasonable steps to contact him, and
 - (c) any person appearing to the court to be likely to be affected by the making of a confiscation order by the court shall be entitled to appear before the court and make representations.
- (8) Where the High Court has made a confiscation order by virtue of this section, in a case where the defendant has been or is subsequently convicted of one or more of the offences concerned, sections 47 and 48(1) to (5) and (7) above shall not apply in respect of his conviction of that offence or those offences; but any court dealing with him in respect of that conviction or any of those convictions—
 - (a) shall take account of the order before—
 - (i) imposing any fine on him; or
 - (ii) 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
 - (iii) 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; and
 - (b) if it makes an order for the payment of compensation under Article 3 of the Order of 1980, and is of the opinion that the defendant will not

have sufficient means to satisfy both that order and the confiscation order in full, shall direct that so much of the compensation as will not in its opinion be recoverable because of the insufficiency of his means is to be paid out of any sums recovered under the confiscation order.”.

43 Compensation

In Schedule 4 to the Northern Ireland (Emergency Provisions) Act 1991, the following paragraphs shall be inserted after paragraph 20—

“Compensation etc. where absconder is acquitted

- 20A (1) This paragraph applies where—
- (a) the High Court has made a confiscation order by virtue of section 52B(4) of this Act, and
 - (b) the defendant is subsequently tried for the offence or offences concerned and acquitted on all counts.
- (2) The court by which the defendant is acquitted shall cancel the confiscation order.
- (3) The High Court may, on the application of a person who held property which was realisable property, order compensation to be paid to the applicant if it is satisfied that the applicant has suffered loss as a result of the making of the confiscation order.
- (4) The amount of compensation to be paid under this paragraph shall be such as the court considers just in all the circumstances of the case.
- (5) Rules of court may make provision—
- (a) for the giving of notice of any application under this paragraph; and
 - (b) for any person appearing to the court to be likely to be affected by any exercise of its powers under this paragraph to be given an opportunity to make representations to the court.
- (6) Any payment of compensation under this paragraph shall be made by the Lord Chancellor out of money provided by Parliament.
- (7) Where the court cancels a confiscation order under this paragraph it may make such consequential or incidental order as it considers appropriate in connection with the cancellation.

*Power to discharge confiscation order and
order compensation where absconder returns*

- 20B (1) This paragraph applies where—
- (a) the High Court has made a confiscation order by virtue of section 52B(4) of this Act in relation to an absconder,
 - (b) the defendant has ceased to be an absconder, and
 - (c) paragraph 20A above does not apply.
- (2) The High Court may, on the application of the defendant, cancel the confiscation order if it is satisfied that—

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- (a) there has been undue delay in continuing the proceedings in respect of which the power under section 52B(4) above was exercised; or
 - (b) the prosecution does not intend to proceed.
- (3) Where the High Court cancels a confiscation order under this paragraph it may, on the application of a person who held property which was realisable property, order compensation to be paid to the applicant if it is satisfied that the applicant has suffered loss as a result of the making of the confiscation order.
- (4) The amount of compensation to be paid under this paragraph shall be such as the court considers just in all the circumstances of the case.
- (5) Rules of court may make provision—
- (a) for the giving of notice of any application under this paragraph; and
 - (b) for any person appearing to the court to be likely to be affected by any exercise of its powers under this paragraph to be given an opportunity to make representations to the court.
- (6) Any payment of compensation under this paragraph shall be made by the Lord Chancellor out of money provided by Parliament.
- (7) Where the court cancels a confiscation order under this paragraph it may make such consequential or incidental order as it considers appropriate in connection with the cancellation.

Variation of confiscation orders made by virtue of section 52B

- 20C (1) This paragraph applies where—
- (a) the High Court has made a confiscation order by virtue of section 52B(4) of this Act, and
 - (b) the defendant has ceased to be an absconder.
- (2) If the defendant alleges that—
- (a) the value of his proceeds of terrorist-related activities in the period by reference to which the assessment in question was made (the “original value”), or
 - (b) the amount that might have been realised at the time the confiscation order was made,
- was less than the amount required to be paid under the confiscation order, he may apply to the High Court for it to consider his evidence.
- (3) If, having considered that evidence, the court is satisfied that the defendant’s allegation is correct it—
- (a) shall proceed under section 47(1) of this Act to make a fresh assessment of the value of his proceeds of terrorist-related activities, and
 - (b) may, if it considers it just in all the circumstances, vary the amount required to be paid under the confiscation order.
- (4) For any assessment under section 47 of this Act by virtue of this paragraph, section 47(8) shall not apply in relation to any of the defendant’s proceeds of terrorist-related activities taken into account in assessing the original value.

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- (5) Where the court varies a confiscation order under this paragraph—
- (a) it shall substitute for the term of imprisonment or detention fixed in respect of the order under subsection (1)(c) of section 35 of the Criminal Justice Act (Northern Ireland) 1945 (imprisonment in default of payment) a shorter term if the effect of the substitution under sub-paragraph (3) above is to reduce the maximum period applicable in relation to the order under subsection (2) of that section as it has effect by virtue of paragraph 2(1)(b) above; and
 - (b) on the application of a person who held property which was realisable property, it may order compensation to be paid to the applicant if—
 - (i) it is satisfied that the applicant has suffered loss as a result of the making of the confiscation order; and
 - (ii) having regard to all the circumstances of the case, the court considers it to be appropriate.
- (6) The amount of compensation to be paid under this paragraph shall be such as the court considers just in all the circumstances of the case.
- (7) Rules of court may make provision—
- (a) for the giving of notice of any application under this paragraph; and
 - (b) for any person appearing to the court to be likely to be affected by any exercise of its powers under this paragraph to be given an opportunity to make representations to the court.
- (8) Any payment of compensation under this paragraph shall be made by the Lord Chancellor out of money provided by Parliament.
- (9) No application shall be entertained by the court under this paragraph if it is made after the end of the period of six years beginning with the date on which the confiscation order was made.”.

44 Realisable property

In section 50 of the Northern Ireland (Emergency Provisions) Act 1991 (realisable property, value and gifts), in subsection (2), the following paragraphs shall be inserted after paragraph (c)—

- “(d) section 43 of the Powers of Criminal Courts Act 1973; or
- (e) section 223 or 436 of the Criminal Procedure (Scotland) Act 1975.”.

45 Enforcement

- (1) Section 67 of the Northern Ireland (Emergency Provisions) Act 1991 (orders and regulations) shall be amended as follows.
- (2) In subsection (5), after the words “paragraph 7(3)” there shall be inserted “or 19(1)(a)”.
- (3) Subsection (6) shall cease to have effect.

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46 Enforcement of orders outside Northern Ireland

In paragraph 19 of Schedule 4 to the Northern Ireland (Emergency Provisions) Act 1991 (enforcement of orders outside Northern Ireland), the following sub-paragraphs shall be added at the end—

“(3) An Order under this paragraph may contain such incidental, consequential and transitional provisions as Her Majesty considers expedient.

(4) An Order under sub-paragraph (1)(a) above may, in particular, provide for section 18 of the Civil Jurisdiction and Judgments Act 1982 (enforcement of United Kingdom judgments in other parts of the United Kingdom) not to apply.”.

47 Offences relating to proceeds of terrorist-related activities

(1) In section 53 of the Northern Ireland (Emergency Provisions) Act 1991 (assisting another to retain proceeds of terrorist-related activities) the following subsection shall be inserted after subsection (3)—

“(3A) 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, the disclosure shall not be treated as a breach of any restriction upon the disclosure of information imposed by statute or otherwise.”.

(2) In section 53 of that Act the following subsection shall be inserted after subsection (4) —

“(4A) In the case of a person who was in employment at the relevant time, subsections (3), (3A) and (4)(c) above shall have effect in relation to disclosures, and intended disclosures, to the appropriate person in accordance with the procedure established by his employer for the making of such disclosures as they have effect in relation to disclosures, and intended disclosures, to a constable.”.

(3) In subsection (3) of section 54 of that Act (concealing or transferring proceeds of terrorist-related activities), for the words from “that property” to the end of that subsection, there shall be substituted “or uses that property or has possession of it”.

(4) In section 54 of that Act, the following subsection shall be inserted after subsection (3) —

“(3A) It is a defence to a charge of committing an offence under this section that the person charged acquired or used the property or had possession of it for adequate consideration.”.

(5) For section 54(5) of that Act there shall be substituted—

“(5) For the purposes of subsection (3A) above—

- (a) a person acquires property for inadequate consideration if the value of the consideration is significantly less than the value of the property;
- (b) a person uses or has possession of any property for inadequate consideration if the value of the consideration is significantly less than the value of his possession or use of the property; and

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- (c) the provision for any person of services or goods which are of assistance to him in terrorist-related activities shall not be treated as consideration.
- (5A) Where a person discloses to a constable a suspicion or belief that any property is, or in whole or in part directly or indirectly represents, another person's proceeds of terrorist-related activities or any matter on which such a suspicion or belief is based—
- (a) the disclosure shall not be treated as a breach of any restriction upon the disclosure of information imposed by statute or otherwise; and
 - (b) if he does any act in contravention of subsection (3) above, he does not commit an offence under that subsection if—
 - (i) the disclosure is made before he does the act concerned and that act is done with the consent of the constable; or
 - (ii) 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.
- (5B) For the purposes of this section, having possession of any property shall be taken to be doing an act in relation to it.
- (5C) In proceedings against a person for an offence under subsection (3) above, it is a defence to prove that—
- (a) he intended to disclose to a constable such a suspicion, belief or matter as is mentioned in subsection (5A) above; but
 - (b) there is reasonable excuse for his failure to make a disclosure in accordance with paragraph (b) of that subsection.
- (5D) In the case of a person who was in employment at the relevant time, subsections (5A) and (5C) above shall have effect in relation to disclosures, and intended disclosures, to the appropriate person in accordance with the procedure established by his employer for the making of such disclosures as they have effect in relation to disclosures, and intended disclosures, to a constable.
- (5E) No constable or other person shall be guilty of an offence under subsection (3) above in respect of anything done by him in the course of acting in connection with the enforcement, or intended enforcement, of any provision of this Act or of any other enactment relating to terrorism or the proceeds or resources of such terrorism.”.

48 Failure to disclose knowledge or suspicion relating to proceeds of terrorist-related activities

The following section shall be inserted in the Northern Ireland (Emergency Provisions) Act 1991, after section 54—

“54A Failure to disclose knowledge or suspicion of offences under sections 53 and 54

- (1) A person is guilty of an offence if—
- (a) he knows, or suspects, that another person is acting in the proscribed manner,

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- (b) the information, or other matter, on which that knowledge or suspicion is based came to his attention in the course of his trade, profession, business or employment, and
 - (c) he does not disclose the information or other matter to a constable as soon as is reasonably practicable after it comes to his attention.
- (2) Subsection (1) above does not make it an offence for a professional legal adviser to fail to disclose any information or other matter which has come to him in privileged circumstances.
- (3) It is a defence to a charge of committing an offence under this section that the person charged had a reasonable excuse for not disclosing the information or other matter in question.
- (4) Where a person discloses to a constable—
 - (a) his suspicion or belief that another person is acting in the proscribed manner, or
 - (b) any information or other matter on which that suspicion or belief is based,the disclosure shall not be treated as a breach of any restriction imposed by statute or otherwise.
- (5) Without prejudice to subsection (3) or (4) above, in the case of a person who was in employment at the relevant time, it is a defence to a charge of committing an offence under this section that he disclosed the information or other matter in question to the appropriate person in accordance with the procedure established by his employer for the making of such disclosures.
- (6) A disclosure to which subsection (5) above applies shall not be treated as a breach of any restriction imposed by statute or otherwise.
- (7) In this section “acting in the proscribed manner” means doing any act which constitutes an offence under section 53 or 54 above or, in the case of an act done otherwise than in the United Kingdom, which would constitute such an offence if done in the United Kingdom.
- (8) For the purposes of subsection (7) above, having possession of any property shall be taken to be doing an act in relation to it.
- (9) For the purposes of this section, any information or other matter comes to a professional legal adviser in privileged circumstances if it is communicated, or given, to him—
 - (a) by, or by a representative of, a client of his in connection with the giving by the adviser of legal advice to the client;
 - (b) by, or by a representative of, a person seeking legal advice from the adviser; or
 - (c) by any person—
 - (i) in contemplation of, or in connection with, legal proceedings; and
 - (ii) for the purpose of those proceedings.
- (10) No information or other matter shall be treated as coming to a professional legal adviser in privileged circumstances if it is communicated or given with a view to furthering any criminal purpose.

- (11) A person guilty of an offence under this section shall be liable—
- (a) on summary conviction, to imprisonment for a term not exceeding six months or a fine not exceeding the statutory maximum or to both, or
 - (b) on conviction on indictment, to imprisonment for a term not exceeding five years or a fine or to both.”.

Amendments of the 1989 Act

49 Financial assistance for terrorism

- (1) In section 9 of the Prevention of Terrorism (Temporary Provisions) Act 1989 (contributions towards acts of terrorism), the following shall be inserted at the end of subsection (1)(b)—

“or

- (c) uses or has possession of, whether for consideration or not, any money or other property.”.

- (2) In section 10 of that Act (contributions to the resources of proscribed organisations), in subsection (1)(b), after the words “or accepts” there shall be inserted “or uses or has possession of”.

- (3) In section 12 of that Act (disclosure of information about terrorist funds) for the word “contract”, in subsection (1), there shall be substituted “statute or otherwise”.

- (4) In section 12 of that Act, the following subsection shall be inserted after subsection (2)

—

“(2A) For the purposes of subsection (2) above a person who uses or has possession of money or other property shall be taken to be concerned in a transaction or arrangement.”.

- (5) In section 12(3) of that Act, after “section 9(1)(b)” there shall be inserted “or (c)”.

- (6) The following subsections shall be added at the end of section 12 of that Act—

“(4) In the case of a person who was in employment at the relevant time, subsections (1) to (3) above shall have effect in relation to disclosures, and intended disclosures, to the appropriate person in accordance with the procedure established by his employer for the making of such disclosures as they have effect in relation to disclosures, and intended disclosures, to a constable.

- (5) No constable or other person shall be guilty of an offence under section 9(1)(b) or (c) or (2) or 10(1)(b) or (c) above in respect of anything done by him in the course of acting in connection with the enforcement, or intended enforcement, of any provision of this Act or of any other enactment relating to terrorism or the proceeds or resources of terrorism.

- (6) For the purposes of subsection (5) above, having possession of any property shall be taken to be doing an act in relation to it.”.

Status: This is the original version (as it was originally enacted).

50 Investigation of terrorist activities

(1) Section 17 (investigation of terrorist activities) of the Prevention of Terrorism (Temporary Provisions) Act 1989 shall be amended as follows.

(2) In subsection (1)(a)(ii)—

- (a) for “or 11 above” there shall be substituted “11, 18 or 18A of this Act”; and
- (b) for “or 28” there shall be substituted “28, 53, 54 or 54A”.

(3) For subsection (2) there shall be substituted—

“(2) A person is guilty of an offence if, knowing or having reasonable cause to suspect that a constable is acting, or is proposing to act, in connection with a terrorist investigation which is being, or is about to be, conducted, he—

- (a) discloses to any other person information or any other matter which is likely to prejudice the investigation or proposed investigation, or
- (b) falsifies, conceals or destroys or otherwise disposes of, or causes or permits the falsification, concealment, destruction or disposal of, material which is or is likely to be relevant to the investigation, or proposed investigation.

(2A) A person is guilty of an offence if, knowing or having reasonable cause to suspect that a disclosure (“the disclosure”) has been made to a constable under section 12, 18 or 18A of this Act or section 53, 54 or 54A of the Northern Ireland (Emergency Provisions) Act 1991, he—

- (a) discloses to any other person information or any other matter which is likely to prejudice any investigation which might be conducted following the disclosure; or
- (b) falsifies, conceals or destroys or otherwise disposes of, or causes or permits the falsification, concealment, destruction or disposal of, material which is or is likely to be relevant to any such investigation.

(2B) A person is guilty of an offence if, knowing or having reasonable cause to suspect that a disclosure (“the disclosure”) of a kind mentioned in section 12(4) or 18A(5) of this Act or section 53(4A), 54(5D) or 54A(5) of the Act of 1991 has been made, he—

- (a) discloses to any person information or any other matter which is likely to prejudice any investigation which might be conducted following the disclosure; or
- (b) falsifies, conceals or destroys or otherwise disposes of, or causes or permits the falsification, concealment, destruction or disposal of, material which is or is likely to be relevant to any such investigation.

(2C) Nothing in subsections (2) to (2B) above makes it an offence for a professional legal adviser to disclose any information or other matter—

- (a) to, or to a representative of, a client of his in connection with the giving by the adviser of legal advice to the client; or
- (b) to any person—
 - (i) in contemplation of, or in connection with, legal proceedings; and
 - (ii) for the purpose of those proceedings.

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- (2D) Subsection (2C) above does not apply in relation to any information or other matter which is disclosed with a view to furthering any criminal purpose.
- (2E) No constable or other person shall be guilty of an offence under this section in respect of anything done by him in the course of acting in connection with the enforcement, or intended enforcement, of any provision of this Act or of any other enactment relating to terrorism or the proceeds or resources of terrorism.”.
- (4) In subsection (3) (defence in respect of disclosure), after “investigation” there shall be inserted “or proposed investigation”.
- (5) The following shall be inserted after subsection (3)—
- “(3A) In proceedings against a person for an offence under subsection (2A)(a) or (2B)(a) above it is a defence to prove—
- (a) that he did not know and had no reasonable cause to suspect that his disclosure was likely to prejudice the investigation in question; or
- (b) that he had lawful authority or reasonable excuse for making his disclosure.”.
- (6) In subsection (4) (defence in respect of falsifying material etc.), for the words from “the persons” to the end there shall be substituted “any person conducting, or likely to be conducting, the investigation or proposed investigation”.
- (7) The following shall be inserted after subsection (4)—
- “(4A) In proceedings against a person for an offence under subsection (2A)(b) or (2B)(b) above, it is a defence to prove that he had no intention of concealing any information contained in the material in question from any person who might carry out the investigation in question.”.
- (8) In subsection (5) (penalties) after “(2)” there shall be inserted “(2A) or (2B)”.
- (9) The following subsection shall be added at the end—
- “(6) For the purposes of subsection (1) above, as it applies in relation to any offence under section 18 or 18A below or section 54A of the Act of 1991, “act” includes omission.”.

51 Failure to disclose knowledge or suspicion of financial assistance for terrorism

The following section shall be inserted in the Prevention of Terrorism (Temporary Provisions) Act 1989, after section 18—

“18A Failure to disclose knowledge or suspicion of offences under sections 9 to 11

- (1) A person is guilty of an offence if—
- (a) he knows, or suspects, that another person is providing financial assistance for terrorism;
- (b) the information, or other matter, on which that knowledge or suspicion is based came to his attention in the course of his trade, profession, business or employment; and

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- (c) he does not disclose the information or other matter to a constable as soon as is reasonably practicable after it comes to his attention.
- (2) Subsection (1) above does not make it an offence for a professional legal adviser to fail to disclose any information or other matter which has come to him in privileged circumstances.
- (3) It is a defence to a charge of committing an offence under this section that the person charged had a reasonable excuse for not disclosing the information or other matter in question.
- (4) Where a person discloses to a constable—
 - (a) his suspicion or belief that another person is providing financial assistance for terrorism; or
 - (b) any information or other matter on which that suspicion or belief is based;the disclosure shall not be treated as a breach of any restriction imposed by statute or otherwise.
- (5) Without prejudice to subsection (3) or (4) above, in the case of a person who was in employment at the relevant time, it is a defence to a charge of committing an offence under this section that he disclosed the information or other matter in question to the appropriate person in accordance with the procedure established by his employer for the making of such disclosures.
- (6) A disclosure to which subsection (5) above applies shall not be treated as a breach of any restriction imposed by statute or otherwise.
- (7) In this section “providing financial assistance for terrorism” means doing any act which constitutes an offence under section 9, 10 or 11 above or, in the case of an act done otherwise than in the United Kingdom, which would constitute such an offence if done in the United Kingdom.
- (8) For the purposes of subsection (7) above, having possession of any property shall be taken to be doing an act in relation to it.
- (9) For the purposes of this section, any information or other matter comes to a professional legal adviser in privileged circumstances if it is communicated, or given, to him—
 - (a) by, or by a representative of, a client of his in connection with the giving by the adviser of legal advice to the client;
 - (b) by, or by a representative of, a person seeking legal advice from the adviser; or
 - (c) by any person—
 - (i) in contemplation of, or in connection with, legal proceedings; and
 - (ii) for the purpose of those proceedings.
- (10) No information or other matter shall be treated as coming to a professional legal adviser in privileged circumstances if it is communicated or given with a view to furthering any criminal purpose.
- (11) A person guilty of an offence under this section shall be liable—

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- (a) on summary conviction, to imprisonment for a term not exceeding six months or a fine not exceeding the statutory maximum or to both; or
- (b) on conviction on indictment, to imprisonment for a term not exceeding five years or a fine or to both.”.