
STATUTORY INSTRUMENTS

1996 No. 1299

The Proceeds of Crime (Northern Ireland) Order 1996

PART IV

MISCELLANEOUS AND SUPPLEMENTAL

Additional investigation powers

49.—(1) If, on an application made by an officer of the Royal Ulster Constabulary not below the rank of superintendent, by complaint on oath, a county court judge is satisfied—

- (a) that an investigation by the Royal Ulster Constabulary into—
 - (i) whether any person has benefited from any conduct to which this Article applies; or
 - (ii) the extent or whereabouts of the proceeds of any such conduct; is taking place; and
- (b) that the investigation could be more effectively carried out with the participation of a person who is not a police officer and who is named in the application; and
- (c) that, having regard to the particular investigation, that person is a fit and proper person to be appointed,

he may authorise that person (“a financial investigator”) to exercise for the purposes of the investigation the powers conferred by Schedule 2.

(2) An application under paragraph (1) may be made *ex parte* to a judge in chambers.

(3) Crown Court rules may make provision as to the procedure for applications under paragraph (1).

(4) This Article applies to conduct which constitutes an offence which—

- (a) is listed in Schedule 1; or
- (b) if not so listed, is an offence punishable on conviction on indictment (whether punishable only on conviction on indictment or either on conviction on indictment or on summary conviction);

or which would constitute such an offence if it had occurred in Northern Ireland.

(5) In this Article “police officer” has the same meaning as in Article 2(2) of the Police and Criminal Evidence (Northern Ireland) Order 1989.

Order to make material available

50.—(1) A constable or a financial investigator may for the purposes of an investigation into—

- (a) whether any person has benefited from any conduct to which Article 49 applies; or
- (b) the extent or whereabouts of the proceeds of any such conduct;

apply to a county court judge for an order under paragraph (2) in relation to particular material or material of a particular description.

(2) Subject to Article 54(11), if on such an application the judge is satisfied that the conditions in paragraph (4) are fulfilled, he may make an order that the person who appears to him to be in possession of the material to which the application relates shall—

- (a) produce it to a constable for him to take away, or
- (b) give a constable access to it,

within such period as the order may specify.

(3) The period to be specified in an order under paragraph (2) shall be 7 days unless it appears to the judge that a longer or shorter period would be appropriate in the particular circumstances of the application.

(4) The conditions referred to in paragraph (2) are—

- (a) that there are reasonable grounds for suspecting that a specified person—
 - (i) in a case of conduct to which Article 49 applies other than drug trafficking, has benefited from any such conduct; or
 - (ii) in a case of drug trafficking, has carried on or has benefited from drug trafficking,
- (b) that there are reasonable grounds for suspecting that the material to which the application relates—
 - (i) is likely to be of substantial value (whether by itself or together with other material) to the investigation for the purpose of which the application is made, and
 - (ii) does not consist of or include items subject to legal privilege or excluded material, and
- (c) that there are reasonable grounds for believing that it is in the public interest, having regard—
 - (i) to the benefit likely to accrue to the investigation if the material is obtained, and
 - (ii) to the circumstances under which the person in possession of the material holds it, that the material should be produced or that access to it should be given.

(5) Where the judge makes an order under paragraph (2)(b) in relation to material on any premises he may, on the application of a constable or a financial investigator, order any person who appears to him to be entitled to grant entry to the premises to allow a constable to enter the premises to obtain access to the material.

(6) An application under paragraph (1) or (5) may be made *ex parte* to a judge in chambers.

(7) Provision may be made by Crown Court rules as to—

- (a) the discharge and variation of orders under this Article, and
- (b) proceedings relating to such orders.

(8) An order of a county court judge under this Article shall have effect as if it were an order of the Crown Court.

(9) Where the material to which an application under this Article relates consists of information contained in a computer—

- (a) an order under paragraph (2)(a) shall have effect as an order to produce the material in a form in which it can be taken away and in which it is visible and legible, and
- (b) an order under paragraph (2)(b) shall have effect as an order to give access to the material in a form in which it is visible and legible.

(10) An order under paragraph (2)—

- (a) shall not confer any right to production of, or access to, items subject to legal privilege or excluded material,

- (b) shall have effect notwithstanding any obligation as to secrecy or other restriction upon the disclosure of information imposed by statute or otherwise, and
- (c) may be made in relation to material in the possession of an authorised government department.

Authority for search

51.—(1) A constable or a financial investigator may for the purposes of an investigation into—

- (a) whether any person has benefited from any conduct to which Article 49 applies; or
- (b) the extent or whereabouts of the proceeds of any such conduct;

apply to a county court judge for a warrant under this Article in relation to specified premises.

(2) On such application the judge may issue a warrant authorising a constable to enter and search the premises if he is satisfied—

- (a) that an order made under Article 50 in relation to material on the premises has not been complied with, or
- (b) that the conditions in paragraph (3) are fulfilled, or
- (c) that the conditions in paragraph (4) are fulfilled.

(3) The conditions referred to in paragraph (2)(b) are—

- (a) that there are reasonable grounds for suspecting that a specified person—
 - (i) in a case of conduct to which Article 49 applies other than drug trafficking, has benefited from any such conduct; or
 - (ii) in a case of drug trafficking, has carried on or has
- (b) benefited from drug trafficking, that the conditions in Article 50(4)(b) and
- (c) are fulfilled in relation to any material on the premises, and that it would not be appropriate to make an order under that Article in relation to the material because—

- (i) it is not practicable to communicate with any person entitled to produce the material,
- (ii) it is not practicable to communicate with any person entitled to grant access to the material or entitled to grant entry to the premises on which the material is situated, or
- (iii) the investigation for the purpose of which the application is made might be seriously prejudiced unless a constable could secure immediate access to the material.

(4) The conditions referred to in paragraph (2)(c) are—

- (a) that there are reasonable grounds for suspecting that a specified person—
 - (i) in a case of conduct to which Article 49 applies other than drug trafficking, has benefited from any such conduct; or
 - (ii) in a case of drug trafficking, has carried on or has benefited from drug trafficking,
- (b) that there are reasonable grounds for suspecting that there is on the premises material relating—
 - (i) to the specified person, or
 - (ii) to the question whether that person has benefited from any conduct to which Article 49 applies or to any question as to the extent or whereabouts of the proceeds of any such conduct,

which is likely to be of substantial value (whether by itself or together with other material) to the investigation for the purpose of which the application is made, but that the material cannot at the time of the application be particularised, and

- (c) that—
 - (i) it is not practicable to communicate with any person entitled to grant entry to the premises; or
 - (ii) entry to the premises will not be granted unless a warrant is produced; or
 - (iii) the investigation for the purpose of which the application is made might be seriously prejudiced unless a constable arriving at the premises could secure immediate entry to them.

(5) Where a constable has entered premises in the execution of a warrant issued under this Article, he may seize and retain any material, other than items subject to legal privilege and excluded material, which is likely to be of substantial value (whether by itself or together with other material) to the investigation for the purpose of which the warrant was issued.

Articles 50 and 51: supplementary provisions

52.—(1) For the purposes of Articles 23 and 24 of the Police and Criminal Evidence (Northern Ireland) Order 1989 (access to, and copying and retention of, seized material)—

- (a) an investigation into—
 - (i) whether any person has benefited from any conduct to which Article 49 applies; or
 - (ii) the extent or whereabouts of the proceeds of any such conduct;
 shall be treated (so far as that would not otherwise be the case) as if it were an investigation of, or in connection with, an offence, and
 - (b) material produced in pursuance of an order under Article 50(2)(a) shall be treated as if it were material seized by a constable.
- (2) In Articles 50 and 51—
- (a) “excluded material”, “items subject to legal privilege” and “premises” have the same meanings as in that Order of 1989; and
 - (b) references to a person benefiting from any conduct to which Article 49 applies other than drug trafficking, in relation to conduct which is not an offence to which this Order applies but would be if it had occurred in Northern Ireland, shall be construed in accordance with Article 2(6) and (7) as if it had so occurred.

Offence of prejudicing investigation

53.—(1) Where, in relation to an investigation into drug trafficking—

- (a) an order under Article 50 has been made or has been applied for and has not been refused, or
- (b) a warrant under Article 51 has been issued,

a person shall be guilty of an offence if, knowing or suspecting that the investigation is taking place, he makes any disclosure which is likely to prejudice the investigation.

- (2) In proceedings against a person for an offence under this Article, it is a defence to prove—
 - (a) that he did not know or suspect that the disclosure was likely to prejudice the investigation, or
 - (b) that he had lawful authority or reasonable excuse for making the disclosure.

(3) Nothing in paragraph (1) 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.
- (4) Paragraph (3) does not apply in relation to any information or other matter which is disclosed with a view to furthering any criminal purpose.
- (5) A person guilty of an offence under this Article shall be liable—
 - (a) on conviction on indictment, to imprisonment for a term not exceeding 5 years or to a fine or to both;
 - (b) on summary conviction, to imprisonment for a term not exceeding 6 months or to a fine not exceeding the statutory maximum or to both.

Disclosure of information held by government departments

54.—(1) Subject to paragraph (4), the High Court may on an application by the prosecution order any material mentioned in paragraph (3) which is in the possession of an authorised government department to be produced to the Court within such period as the Court may specify.

- (2) The power to make an order under paragraph (1) is exercisable if—
 - (a) the powers conferred on the Court by Articles 31(1) and 32(1) are exercisable by virtue of paragraph (1) of Article 30, or
 - (b) those powers are exercisable by virtue of paragraph (3) of that Article and the Court has made a restraint or charging order which has not been discharged;

but where the power to make an order under paragraph (1) is exercisable by virtue only of sub-paragraph (b), Article 30(4) shall apply for the purposes of this Article as it applies for the purposes of Articles 31 and 32.

- (3) The material referred to in paragraph (1) is any material which—
 - (a) has been submitted to an officer of an authorised government department by the defendant or by a person who has at any time held property which was realisable property,
 - (b) has been made by an officer of an authorised government department in relation to the defendant or such a person, or
 - (c) is correspondence which passed between an officer of an authorised government department and the defendant or such a person,

and an order under that paragraph may require the production of all such material or of a particular description of such material, being material in the possession of the department concerned.

(4) An order under paragraph (1) shall not require the production of any material unless it appears to the High Court that the material is likely to contain information that would facilitate the exercise of the powers conferred either—

- (a) on the Court by Articles 31 to 34; or
- (b) on a receiver appointed under Article 31 or 34 or in pursuance of a charging order.

(5) The High Court may by order authorise the disclosure to such a receiver of any material produced under paragraph (1) or any part of such material; but the Court shall not make an order under this paragraph unless a reasonable opportunity has been given for an officer of the department to make representations to the Court.

(6) Material disclosed in pursuance of an order under paragraph (5) may, subject to any conditions contained in the order, be further disclosed for the purposes of the functions under this Order of the receiver, of the Crown Court or of any court of summary jurisdiction.

(7) The High Court may by order authorise the disclosure to a person mentioned in paragraph (8) of any material produced under paragraph (1) or any part of such material; but the Court shall not make an order under this paragraph unless—

- (a) a reasonable opportunity has been given for an officer of the department to make representations to the Court, and
- (b) it appears to the Court that the material is likely to be of substantial value in exercising functions relating to the investigation of crime.

(8) The persons referred to in paragraph (7) are—

- (a) any member of the Royal Ulster Constabulary,
- (b) the Director of Public Prosecutions for Northern Ireland or any person acting on his behalf, and
- (c) any officer within the meaning of the Customs and Excise Management Act 1979.

(9) Material disclosed in pursuance of an order under paragraph (7) may, subject to any conditions contained in the order, be further disclosed for the purposes of functions relating to the investigation of—

- (a) crime;
- (b) whether any person has benefited from any conduct to which Article 49 applies; or
- (c) the extent or whereabouts of the proceeds of any such conduct.

(10) Material may be produced or disclosed in pursuance of this Article notwithstanding any obligation as to secrecy or other restriction upon the disclosure of information imposed by statute or otherwise.

(11) An order under paragraph (1) and, in the case of material in the possession of an authorised government department, an order under Article 50(2) may require any officer of the department (whether named in the order or not) who may for the time being be in possession of the material concerned to comply with it, and such an order shall be served as if the proceedings were civil proceedings against the department.

(12) The person on whom such an order is served—

- (a) shall take all reasonable steps to bring it to the attention of the officer concerned, and
- (b) if the order is not brought to that officer's attention within the period referred to in paragraph (1), shall report the reasons for the failure to the High Court;

and any other officer of the department in receipt of the order shall take such steps as are mentioned in sub-paragraph (a).

(13) Article 52(2)(b) shall apply for the purposes of this Article as it applies for the purposes of Articles 50 and 51.

Prosecution of offences, etc.

Prosecution by order of the Commissioners of Customs and Excise

55.—(1) Proceedings for an offence to which this Article applies (“a specified offence”) may be instituted by order of the Commissioners.

(2) Any proceedings for a specified offence which are so instituted shall be commenced in the name of an officer.

(3) In the case of the death, removal, discharge or absence of the officer in whose name any proceedings for a specified offence were commenced, those proceedings may be continued by another officer.

(4) Where the Commissioners investigate, or propose to investigate, any matter with a view to determining—

- (a) whether there are grounds for believing that a specified offence has been committed, or
- (b) whether a person should be prosecuted for a specified offence,

that matter shall be treated as an assigned matter within the meaning of the Customs and Excise Management Act 1979.

(5) Nothing in this Article shall be taken—

- (a) to prevent any person (including any officer) who has power to arrest, detain or prosecute any person for a specified offence from doing so; or
- (b) to prevent a court from proceeding to deal with a person brought before it following his arrest by an officer for a specified offence, even though the proceedings have not been instituted by an order made under paragraph (1).

(6) In this Article—

“the Commissioners” means the Commissioners of Customs and Excise; —

“officer” means a person commissioned by the Commissioners; and

“specified offence” means—

- (a) an offence under Part III or Article 53;
- (b) attempting to commit, conspiracy to commit or incitement to commit, any such offence; or
- (c) any other offence of a kind prescribed in regulations made by the Secretary of State for the purposes of this Article.

(7) Regulations under this Article 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.

Extension of certain offences to Crown servants and exemptions for regulators etc.

56.—(1) The Secretary of State may by regulations provide that, in such circumstances as may be prescribed, Articles 44, 45, 46, 47(2), 48 and 53 shall apply to such persons in the public service of the Crown, or such categories of person in that service, as may be prescribed.

(2) Article 44 shall not apply—

- (a) to any person designated by regulations made by the Secretary of State for the purposes of this sub-paragraph; or
- (b) in such circumstances as may be prescribed, to any person who falls within such category of person as may be prescribed for the purposes of this sub-paragraph.

(3) The Secretary of State may designate, for the purposes of paragraph (2)(a), any person appearing to him to be performing regulatory, supervisory, investigative or registration functions.

(4) The categories of person prescribed by the Secretary of State, for the purposes of paragraph (2)(b), shall be such categories of person connected with the performance by any designated person of regulatory, supervisory, investigative or registration functions as he considers it appropriate to prescribe.

(5) In this Article—

“the Crown” includes the Crown in right of Her Majesty’s Government in the United Kingdom;
and

“prescribed” means prescribed by regulations made by the Secretary of State.

(6) Regulations under this Article 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.

Supplemental

Amendments, transitional provisions, savings and repeals

57.—(1) The statutory provisions specified in Schedule 3 shall have effect subject to the amendments specified in that Schedule, being amendments consequential upon the provisions of this Order.

(2) The transitional and saving provisions contained in Schedule 4 shall have effect.

(3) The statutory provisions set out in Schedule 5 are hereby repealed to the extent specified in column 3 of that Schedule.