

Status: Point in time view as at 03/02/1995.

Changes to legislation: There are currently no known outstanding effects for the Northern Ireland (Emergency Provisions) Act 1991 (repealed 25.8.1996), SCHEDULE 4. (See end of Document for details)

SCHEDULES

SCHEDULE 4

Section 55.

CONFISCATION ORDERS: SUPPLEMENTARY PROVISIONS

Interpretation

- 1 (1) Section 56 of this Act also has effect for the purposes of this Schedule.
- (2) The following provisions have effect, in addition to those of that section, for the interpretation of this Schedule.
- [^{F1}(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.]
- (4) An order is subject to appeal until (disregarding any power of a court to grant leave to appeal out of time) there is no further possibility of an appeal on which the order could be varied or set aside.
- (5) References to “acting as an insolvency practitioner” shall be construed in accordance with Article 3 of the ^{M1}Insolvency (Northern Ireland) Order 1989 except that for the purposes of such construction paragraph (5) of that Article (which provides that nothing in the Article is to apply to anything done by the official receiver) shall be

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Changes to legislation: There are currently no known outstanding effects for the Northern Ireland (Emergency Provisions) Act 1991 (repealed 25.8.1996), SCHEDULE 4. (See end of Document for details)

disregarded; and the expression shall include the official receiver acting as receiver or manager of the property.

- (6) References to the Registration of Deeds Acts are to the ^{M2}Registration of Deeds Act (Northern Ireland) 1970 and every statutory provision for the time being in force amending that Act or otherwise relating to the registry of deeds, or to the registration of deeds, orders or other instruments or documents in such registry.

Textual Amendments

F1 Sch. 4 para. 1(3)(3A)-(3D) substituted for para. 1(3) by 1993 c. 36, ss. 41(9), 78(3) (with s. 78(6)); S.I. 1995/43, arts. 2, 3, Sch.

Marginal Citations

M1 S.I. 1989/2405 (N.I. 19).
M2 1970 c. 25 (N.I.).

Application of procedure for enforcing fines

- 2 (1) Where the Crown Court makes a confiscation order against a defendant, section 35(1), (2) and (4) of the ^{M3}Criminal Justice Act (Northern Ireland) 1945 (powers of Crown Court in relation to fines) shall have effect as if—
- (a) the amount which the order requires him to pay were a fine imposed on him by the Crown Court; and
 - ^{F2}(b) . . .
- (2) Where—
- (a) a warrant of commitment is issued for a default in payment of an amount ordered to be paid by a confiscation order in respect of an offence; and
 - (b) at the time the warrant is issued, the defendant is liable to serve a term of custody in respect of the offence,
- the term of imprisonment or of detention under section 5 of the ^{M4}Treatment of Offenders Act (Northern Ireland) 1968 (detention of persons aged sixteen to twenty-one for default) to be served in default of payment of the amount shall not begin to run until after the term mentioned in paragraph (b) above.
- (3) The reference in sub-paragraph (2) above to the term of custody which the defendant is liable to serve in respect of the offence is a reference to the term of imprisonment or of detention under section 5 of the said Act of 1968 which he is liable to serve in respect of the offence; and for the purposes of this sub-paragraph—
- (a) consecutive terms and terms which are wholly or partly concurrent shall be treated as a single term; and
 - (b) there shall be disregarded—
 - (i) any sentence of imprisonment or order for detention suspended under section 18 of that Act which has not taken effect at the time when the warrant is issued; and
 - (ii) any term of imprisonment or detention fixed under section 35(1)(c) of the ^{M5}Criminal Justice Act (Northern Ireland) 1945 for which a warrant of commitment has not been issued at that time.

Status: Point in time view as at 03/02/1995.

Changes to legislation: There are currently no known outstanding effects for the Northern Ireland (Emergency Provisions) Act 1991 (repealed 25.8.1996), SCHEDULE 4. (See end of Document for details)

- (4) An amount payable under a confiscation order is not a fine, costs, damages or compensation for the purposes of section 76 of the ^{M6}Children and Young Persons Act (Northern Ireland) 1968 (enforcement of fines imposed on young offenders).
- (5) This paragraph applies in relation to confiscation orders made by [^{F3}the High Court, by virtue of section 52B of this Act, or by] the Court of Appeal, or by the House of Lords on appeal from the Court of Appeal, as it applies in relation to confiscation orders made by the Crown Court, and the reference in sub-paragraph (1)(a) above to the Crown Court shall be construed accordingly.
- [^{F4}(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.]
- [^{F5}(7) Where the High Court makes a confiscation order by virtue of section 52B of this Act in relation to a defendant who has died, sub-paragraph (1) above shall be read as referring only to sections 35(1)(a), (b) and (d) and 35(4)(a) and (b) of the Act of 1945.]

Textual Amendments

- F2** Sch. 4 para. 2(1)(b) repealed (9.1.1995) by S.I. 1994/2795 (N.I. 15), art. 26(2), **Sch. 3**; S.R. 1994/446, **art. 2**
- F3** Words in Sch. 4 para. 2(5) inserted (3.2.1995) by 1993 c. 36, ss. 78(3), 79(13), **Sch. 5 Pt. I para. 17(6)**; S.I. 1995/43, art. 2, 3, **Sch.**
- F4** Sch. 4 para. 2(6) added (3.2.1995) by 1993 c. 36, **ss. 41(2)**, 78(3) (with s. 78(6)); S.I. 1995/43, art. 2, 3, **Sch.**
- F5** Sch. 4 para. 2(7) added (3.2.1995) by 1993 c. 36, ss. 78(3), 79(13), **Sch. 5 Pt. I para. 17(7)**; S.I. 1995/43, art. 2, 3, **Sch.**

Marginal Citations

- M3** 1945 c. 15 (N.I.).
- M4** 1968 c. 29 (N.I.).
- M5** 1945 c. 15 (N.I.).
- M6** 1968 c. 34 (N.I.).

Interest on sums unpaid under confiscation orders

- 3 (1) If any sum required to be paid by a person under a confiscation order is not paid when it is required to be paid (whether forthwith on the making of the order or at a time specified under section 35(1) of the Criminal Justice Act (Northern Ireland) 1945), that person shall be liable to pay interest on that sum for the period for which it remains unpaid and the amount of the interest shall for the purposes of enforcement be treated as part of the amount to be recovered from him under the confiscation order.
- (2) The Crown Court may, on the application of the prosecution, increase the term of imprisonment or detention fixed in respect of the confiscation order under subsection (1)(c) of section 35 of the said Act of 1945 (imprisonment in default of payment) if the effect of sub-paragraph (1) above is to increase the maximum period

Status: Point in time view as at 03/02/1995.

Changes to legislation: There are currently no known outstanding effects for the Northern Ireland (Emergency Provisions) Act 1991 (repealed 25.8.1996), SCHEDULE 4. (See end of Document for details)

applicable in relation to the order under subsection (2) of that section as it has effect by virtue of paragraph 2(1)(b) above.

- (3) The rate of interest under sub-paragraph (1) above shall be that for the time being applying to a money judgment of the High Court.

Cases in which restraint orders and charging orders may be made

- 4 [F⁶(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.
- F⁶(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-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.]
- (3) For the purposes of paragraphs 5 and 6 below at any time when those powers are exercisable before proceedings have been instituted—
- (a) references to the defendant shall be construed as references to the person referred to in sub-paragraph (2)(a) above; and
 - (b) references to realisable property shall be construed as if, immediately before that time, proceedings had been instituted against the person referred to in sub-paragraph (2)(a) above for a relevant offence.
- (4) Where the High Court has made an order under paragraph 5(1) or 6(1) below by virtue of sub-paragraph (2) above, the court shall discharge the order if proceedings in respect of the offence are not instituted (whether by the making of a complaint or otherwise) within such time as the court considers reasonable.
- [F⁷(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

Status: Point in time view as at 03/02/1995.

Changes to legislation: There are currently no known outstanding effects for the Northern Ireland (Emergency Provisions) Act 1991 (repealed 25.8.1996), SCHEDULE 4. (See end of Document for details)

the order if the application is not made within such time as the court considers reasonable.

- ^{F7}(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.]

Textual Amendments

- F6** Sch. 4 para. 4(1)(2) substituted (3.2.1995) by 1993 c. 36, ss. 41(3), 78(3) (with s. 78(6)); S.I. 1995/43, arts. 2, 3, Sch..
- F7** Sch. 4 para. 4(5)(6) added (3.2.1995) by 1993 c. 36, ss. 41(4), 78(3) (with s. 78(6)); S.I. 1995/43, arts. 2, 3, Sch..

Restraint orders

- 5 (1) The High Court may by order (a restraint order) prohibit any person from dealing with any realisable property, subject to such conditions and exceptions as may be specified in the order.
- (2) Without prejudice to the generality of sub-paragraph (1) above, a restraint order may make such provision as the High Court thinks fit for living expenses or legal expenses.
- (3) A restraint order may apply—
- (a) to all realisable property held by a specified person, whether the property is described in the order or not; and
 - (b) to realisable property held by a specified person, being property transferred to him after the making of the order.
- (4) This paragraph shall not have effect in relation to any property for the time being subject to a charge under paragraph 6 below.
- (5) A restraint order—
- (a) may be made—
 - (i) where it is applied for before the defendant is convicted of the offence, only on the application of an officer of the Royal Ulster Constabulary not below the rank of superintendent; and
 - (ii) otherwise, only on the application of the prosecution;
 - (b) may be made on an ex parte application to a judge in chambers; and
 - (c) shall provide for notice to be given to persons affected by the order.
- ^{F8}(6) A restraint order—
- (a) may be discharged or varied in relation to any property, and
 - (b) shall be discharged on the conclusion of the proceedings or of the application in question.]
- (7) An application for the discharge or variation of a restraint order may be made by any person affected by it.

Status: Point in time view as at 03/02/1995.

Changes to legislation: There are currently no known outstanding effects for the Northern Ireland (Emergency Provisions) Act 1991 (repealed 25.8.1996), SCHEDULE 4. (See end of Document for details)

- (8) Where the High Court has made a restraint order, the court may at any time appoint a receiver—
- (a) to take possession of any realisable property; and
 - (b) in accordance with the court’s directions, to manage or otherwise deal with any property in respect of which he is appointed,
- subject to such exceptions and conditions as may be specified by the court; and the court may require any person having possession of property in respect of which a receiver is appointed under this section to give possession of it to the receiver.
- (9) For the purposes of this paragraph, dealing with property held by any person includes (without prejudice to the generality of the expression)—
- (a) where a debt is owed to that person, making a payment to any person in reduction of the amount of the debt; and
 - (b) removing the property from Northern Ireland.
- (10) Where the High Court has made a restraint order, a constable may, for the purpose of preventing any realisable property being removed from Northern Ireland, seize the property.
- (11) Property seized under sub-paragraph (10) above shall be dealt with in accordance with the directions of the High Court.
- (12) The person by whom an application for a restraint order is made shall be treated for the purposes of section 66 of the ^{M7}Land Registration Act (Northern Ireland) 1970 (cautions) as a person interested in relation to any registered land to which the order or the application for an order relates.
- (13) On the application of the person by whom an application for a restraint order is made the Registrar shall, in respect of any registered land to which the order or the application for an order relates, make an entry inhibiting any dealing with the land without the consent of the High Court.
- (14) Subsections (2) and (4) of section 67 of the said Act of 1970 (inhibitions) shall apply to an entry made on an application under sub-paragraph (13) above as they apply to an entry made on the application of any person interested in the registered land under subsection (1) of that section.
- (15) Where a restraint order has been protected by an entry registered under the said Act of 1970 or the Registration of Deeds Acts, an order under sub-paragraph (6) above discharging the restraint order may direct that the entry be vacated.
- (16) In this paragraph “Registrar” and “entry” have the same meanings as in the said Act of 1970 and “registered land” means land the title to which is registered under Part III of that Act.

Textual Amendments

F8 Sch. 4 para. 5(6) substituted (3.2.1995) by 1993 c. 36, ss. 41(5), 78(3) (with s. 78(6)); S.I. 1995/43, arts. 2, 3, Sch.

Marginal Citations

M7 1970 c. 18 (N.I.).

Status: Point in time view as at 03/02/1995.

Changes to legislation: There are currently no known outstanding effects for the Northern Ireland (Emergency Provisions) Act 1991 (repealed 25.8.1996), SCHEDULE 4. (See end of Document for details)

Charging orders in respect of land, securities, etc.

- 6 (1) The High Court may make a charging order on realisable property for securing the payment to the Crown—
- (a) where a confiscation order has not been made, of an amount equal to the value from time to time of the property charged; and
 - (b) in any other case, of an amount not exceeding the amount payable under the confiscation order.
- (2) A charging order—
- (a) may be made—
 - (i) where it is applied for before the defendant is convicted of the offence, only on the application of an officer of the Royal Ulster Constabulary not below the rank of superintendent; and
 - (ii) otherwise, only on the application of the prosecution;
 - (b) may be made on an ex parte application to a judge in chambers;
 - (c) shall provide for notice to be given to persons affected by the order; and
 - (d) may be made subject to such conditions as the court thinks fit and, without prejudice to the generality of this paragraph, such conditions as it thinks fit as to the time when the charge is to become effective.
- (3) Subject to sub-paragraph (5) below, a charge may be imposed by a charging order only on—
- (a) any interest in realisable property, being an interest held beneficially by the defendant or by a person to whom the defendant has directly or indirectly made a gift caught by Part VII of this Act—
 - (i) in any asset of a kind mentioned in sub-paragraph (4) below; or
 - (ii) under any trust; or
 - (b) any interest in realisable property held by a person as trustee of a trust if the interest is in such an asset or is an interest under another trust and a charge may by virtue of paragraph (a) above be imposed by a charging order on the whole beneficial interest under the first-mentioned trust.
- (4) The assets referred to in sub-paragraph (3) above are—
- (a) land in Northern Ireland; or
 - (b) securities of any of the following kinds—
 - (i) government funds or stock;
 - (ii) stock of any body incorporated within Northern Ireland (other than a building society);
 - (iii) stock of any body incorporated outside Northern Ireland (other than a building society incorporated in Great Britain) or of any country or territory outside the United Kingdom, being stock registered in a register kept at any place within Northern Ireland;
 - (iv) units of any unit trust in respect of which a register of the unit holders is kept at any place within Northern Ireland.
- (5) In any case where a charge is imposed by a charging order on any interest in an asset of a kind mentioned in sub-paragraph (4)(b) above, the High Court may provide for the charge to extend to any interest or dividend payable in respect of the asset.

Status: Point in time view as at 03/02/1995.

Changes to legislation: There are currently no known outstanding effects for the Northern Ireland (Emergency Provisions) Act 1991 (repealed 25.8.1996), SCHEDULE 4. (See end of Document for details)

- [^{F9}(6) In relation to a charging order the court—
- (a) may make an order discharging or varying it, and
 - (b) shall make an order discharging it—
 - (i) on the conclusion of the proceedings or of the application in question, or
 - (ii) on payment into court of the amount payment of which is secured by the charge.]
- (7) An application for the discharge or variation of a charging order may be made by any person affected by it.

Textual Amendments

F9 Sch. 4 para. 6(6) substituted (3.2.1995) by 1993 c. 36, ss. 41(6), 78(3) (with s. 78(6)); S.I. 1995/43, arts. 2, 3. Sch..

Charging orders: supplementary provisions

- 7 (1) Subject to any provision made under paragraph 10 below or by rules of court, a charge imposed by a charging order shall have the like effect and shall be enforceable in the same courts and in the same manner as an equitable charge created by the person or persons who are entitled to make such charges over the realisable property.
- (2) Where a charging order has been protected by an entry registered under the ^{M8}Land Registration Act (Northern Ireland) 1970 or the Registration of Deeds Acts, an order under paragraph 6(6) above discharging the charging order may direct that the entry be vacated.
- (3) The Secretary of State may by order amend paragraph 6 above by adding to or removing from the kinds of asset for the time being referred to there any asset of a kind which in his opinion ought to be so added or removed.
- (4) In this paragraph and paragraph 6 above—
- “building society” has the same meaning as in the ^{M9}Building Societies Act 1986;
 - “dividend” includes any distribution in respect of any unit of a unit trust;
 - “government funds or stocks” has the same meaning as in the ^{M10}Judgments Enforcement (Northern Ireland) Order 1981;
 - “stock” includes shares, debentures and any securities of the body concerned, whether or not constituting a charge on the assets of that body;
 - “unit trust” means any trust established for the purpose, or having the effect, of providing, for persons having funds available for investment, facilities for the participation by them, as beneficiaries under the trust, in any profits or income arising from the acquisition, holding, management or disposal of any property whatsoever.

Marginal Citations

M8 1970 c. 18 (N.I.).

Status: Point in time view as at 03/02/1995.

Changes to legislation: There are currently no known outstanding effects for the Northern Ireland (Emergency Provisions) Act 1991 (repealed 25.8.1996), SCHEDULE 4. (See end of Document for details)

M9 1986 c. 53.

M10 S.I. 1981/226 (N.I.6).

Restraint and charging orders made by the Secretary of State

- 8
- (1) The power to make a restraint order or charging order under the provisions of paragraphs 5 and 6 above shall be exercisable by the Secretary of State in any case in which it appears to him that the information which it would be necessary to provide in support of an application to the High Court or a judge under those provisions would, if disclosed, be likely to place any person in danger or prejudice the capability of members of the Royal Ulster Constabulary or a person authorised under section 57 of this Act to investigate a relevant offence.
 - (2) In their application by virtue of sub-paragraph (1) above paragraphs 4 to 6 above shall have effect with the necessary modifications and as if references to the High Court were references to the Secretary of State.
 - (3) An order made by the Secretary of State by virtue of this paragraph may be varied or discharged under those provisions by the High Court; and the High Court may under paragraph 5(8) above appoint a receiver where a restraint order has been made by the Secretary of State.

Contravention of restraint order

- 9
- (1) A person who, without lawful authority or reasonable excuse (the proof of which lies on him), contravenes a restraint order is guilty of an offence and 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.
 - (2) Nothing in sub-paragraph (1) above shall be taken to prejudice any power of the High Court to deal with the contravention of a restraint order as a contempt of court.

Realisation of property

- 10 [F10(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.]
- (2) The court may appoint a receiver in respect of realisable property.
 - (3) The court may empower a receiver appointed under sub-paragraph (2) above, under paragraph 5 above or in pursuance of a charging order—

Status: Point in time view as at 03/02/1995.

Changes to legislation: There are currently no known outstanding effects for the Northern Ireland (Emergency Provisions) Act 1991 (repealed 25.8.1996), SCHEDULE 4. (See end of Document for details)

- (a) to enforce any charge imposed under paragraph 6 above on realisable property or on interest or dividends payable in respect of such property; and
 - (b) in relation to any realisable property other than property for the time being subject to a charge under that paragraph, to take possession of the property subject to such conditions or exceptions as may be specified by the court.
- (4) The court may order any person having possession of realisable property to give possession of it to any such receiver.
- (5) The court may empower any such receiver to realise any realisable property in such manner (including the manner of conveyance or transfer of property which is land) as the court may direct.
- (6) The court may order any person holding an interest in realisable property to make such payment to the receiver in respect of any beneficial interest held by the defendant or, as the case may be, the recipient of a gift caught by Part VII of this Act as the court may direct and the court may, on the payment being made, by order transfer, grant or extinguish any interest in the property.
- (7) Sub-paragraphs (4) to (6) above do not apply to property for the time being subject to a charge under paragraph 6 above.
- (8) The High Court shall not in respect of any property exercise the powers conferred by sub-paragraph (3)(a), (5) or (6) above unless a reasonable opportunity has been given for persons holding any interest in the property to make representations to the court.

Textual Amendments

F10 Sch. 4 para. 10(1) substituted (3.2.1995) by 1993 c. 36, ss. 41(7), 78(3) (with s. 78(6)); S.I. 1995/43, arts. 2, 3, Sch..

Increase in realisable property

- 11 (1) Where—
- (a) by virtue of section 47(7) of this Act the amount which a person is ordered to pay by a confiscation order is less than the amount assessed to be the value of his proceeds of terrorist-related activities; and
 - (b) the High Court is satisfied, on an application made in accordance with sub-paragraph (2) below, that the amount that might be realised in the case of that person is greater than the amount taken into account in making the confiscation order (whether it is greater than was thought when the order was made or has subsequently increased),
- the court shall issue a certificate to that effect, giving the court's reasons.
- (2) An application under sub-paragraph (1) above may be made either by the prosecution or by a receiver appointed under this Schedule in relation to the realisable property of the person mentioned in that sub-paragraph.
- (3) Where a certificate has been issued under sub-paragraph (1) above the prosecution may apply to the Crown Court for the amount to be paid under the confiscation order to be increased.

Status: Point in time view as at 03/02/1995.

Changes to legislation: There are currently no known outstanding effects for the Northern Ireland (Emergency Provisions) Act 1991 (repealed 25.8.1996), SCHEDULE 4. (See end of Document for details)

- (4) The Crown Court may on an application under sub-paragraph (3) above—
- (a) substitute for the amount to be paid under the order such amount (not exceeding the amount assessed as the value of the proceeds of terrorist-related activities) as appears to the court to be appropriate having regard to the amount now shown to be realisable; and
 - (b) increase the term of imprisonment or detention fixed in respect of the order under subsection (1)(c) of section 35 of the ^{M11}Criminal Justice Act (Northern Ireland) 1945 (imprisonment in default of payment) if the effect of the substitution under paragraph (a) above is to increase 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.

Marginal Citations

M11 1945 c. 15 (N.I.).

Application of proceeds of realisation and other sums

- 12 (1) Subject to sub-paragraph (2) below, the following sums in the hands of a receiver appointed under this Part or in pursuance of a charging order, that is—
- (a) the proceeds of the enforcement of any charge imposed under paragraph 6 above;
 - (b) the proceeds of the realisation, other than by the enforcement of such a charge, of any property under paragraph 5 or 10 above; and
 - (c) any other sums, being property held by the defendant,
- shall first be applied in payment of such expenses incurred by a person acting as an insolvency practitioner as are payable under paragraph 18(2) below and then shall, after such payments (if any) as the High Court may direct have been made out of those proceeds and sums, be applied on the defendant's behalf towards the satisfaction of the confiscation order.
- (2) If, after the amount payable under the confiscation order has been fully paid, any such sums remain in the hands of such a receiver, the receiver shall distribute them—
- (a) among such of those who held property which has been realised under this Schedule; and
 - (b) in such proportions,
- as the High Court may direct after giving a reasonable opportunity for such persons to make representations to the court.
- (3) The receipt of any sum by the proper officer on account of an amount payable under a confiscation order shall reduce the amount so payable, but the proper officer shall apply the money received for the purposes, and in the order, specified in this paragraph.
- (4) The proper officer shall first pay any expenses incurred by a person acting as an insolvency practitioner and payable under paragraph 18(2) below but not already paid under sub-paragraph (1) above.

Status: Point in time view as at 03/02/1995.

Changes to legislation: There are currently no known outstanding effects for the Northern Ireland (Emergency Provisions) Act 1991 (repealed 25.8.1996), SCHEDULE 4. (See end of Document for details)

- (5) If the money was paid to the proper officer by a receiver appointed under this Schedule or in pursuance of a charging order, the proper officer shall next pay the receiver's remuneration and expenses.
- (6) After making—
- (a) any payment required by sub-paragraph (4) above; and
 - (b) in a case to which sub-paragraph (5) above applies, any payment required by that sub-paragraph,
- the proper officer shall reimburse any amount paid under paragraph 14(2) below.
- (7) The proper officer shall finally pay any compensation directed to be paid out of any sums recovered under the confiscation order under section 48(7) of this Act.
- (8) Any balance in the hands of the proper officer after he has made all payments required by the foregoing provisions of this paragraph shall be treated as a fine for the purposes of section 20 of the^{M12} Administration of Justice Act (Northern Ireland) 1954 (application of fines).
- (9) Where under sub-paragraph (3) above a sum falls to be applied in payment both of compensation and of other outgoings—
- (a) the person entitled to the compensation shall be liable to pay into the Consolidated Fund of the United Kingdom such an amount as bears to the remuneration or expenses the same proportion as the amount payable in accordance with the direction mentioned in sub-paragraph (7) above bears to the total amount payable under the confiscation order;
 - (b) the proper officer shall deduct from the amount falling to be applied in payment of the compensation an amount equal to the amount of any liability arising by virtue of paragraph (a) above;
 - (c) notwithstanding the deduction under paragraph (b) above, the person entitled to compensation shall be treated as having received the whole of the amount which falls to be applied in payment of it; and
 - (d) the amount deducted shall be treated as a fine for the purposes of section 20 of the Administration of Justice Act (Northern Ireland) 1954.
- (10) In this paragraph “the proper officer” means the appropriate officer of the Crown Court.

Marginal Citations

M12 1954 c. 9 (N.I.).

Exercise of powers by High Court, Secretary of State or receiver

- 13 (1) This paragraph applies to the powers conferred on the High Court and the Secretary of State by paragraphs 5 to 10 and 12 above, or on a receiver appointed under this Schedule or in pursuance of a charging order.
- (2) Subject to the following provisions of this paragraph, the powers shall be exercised with a view to making available for satisfying the confiscation order or, as the case may be, any confiscation order that may be made in the defendant's case the value

Status: Point in time view as at 03/02/1995.

Changes to legislation: There are currently no known outstanding effects for the Northern Ireland (Emergency Provisions) Act 1991 (repealed 25.8.1996), SCHEDULE 4. (See end of Document for details)

for the time being of realisable property held by any person by the realisation of such property.

- (3) In the case of realisable property held by a person to whom the defendant has directly or indirectly made a gift caught by Part VII of this Act the powers shall be exercised with a view to realising no more than the value for the time being of the gift.
- (4) The powers shall be exercised with a view to allowing any person other than the defendant or the recipient of any such gift to retain or recover the value of any property held by him.
- (5) An order may be made or other action taken in respect of a debt owed by the Crown (including the Crown in right of Her Majesty's Government in Northern Ireland).
- (6) In exercising those powers, no account shall be taken of any obligations of the defendant or of the recipient of any such gift which conflict with the obligation to satisfy the confiscation order.

Receivers: supplementary provisions

- 14 (1) Where a receiver appointed under this Schedule or in pursuance of a charging order takes any action—
 - (a) in relation to any property which is not realisable property, being action which he would be entitled to take if it were such property;
 - (b) believing, and having reasonable grounds for believing, that he is entitled to take that action in relation to that property,he shall not be liable to any person in respect of any loss or damage resulting from his action except in so far as the loss or damage is caused by his negligence.
- (2) Any amount due in respect of the remuneration and expenses of a receiver so appointed shall, if no sum is available to be applied in payment of it under paragraph 12(5) above, be paid by the prosecution or, in a case where proceedings for a relevant offence are not instituted, by the person on whose application the receiver was appointed.

Variation of confiscation orders

- 15 (1) If, on an application by the defendant [^{F11}or a receiver appointed under this Schedule, or in pursuance of a charging order, made] in respect of a confiscation order, the High Court is satisfied that the realisable property is inadequate for the payment of any amount remaining to be paid under the order the court shall issue a certificate to that effect, giving the court's reasons.
- (2) For the purposes of sub-paragraph (1) above—
 - (a) in the case of realisable property held by a person who has been adjudged bankrupt the court shall take into account the extent to which any property held by him may be distributed among creditors; and
 - (b) the court may disregard any inadequacy in the realisable property which appears to the court to be attributable wholly or partly to anything done by the defendant for the purpose of preserving any property held by a person

Status: Point in time view as at 03/02/1995.

Changes to legislation: There are currently no known outstanding effects for the Northern Ireland (Emergency Provisions) Act 1991 (repealed 25.8.1996), SCHEDULE 4. (See end of Document for details)

to whom the defendant had directly or indirectly made a gift caught by Part VII of this Act from any risk of realisation under this Schedule.

- (3) Where a certificate has been issued under sub-paragraph (1) above, the [^{F12}person who applied for it] may apply to the Crown Court for the amount to be paid under the confiscation order to be reduced.
- (4) The Crown Court shall, on an application under sub-paragraph (3) above—
- (a) substitute for the amount to be paid under the order such lesser amount as the court thinks just in all the circumstances of the case; and
 - (b) substitute for the term of imprisonment or detention fixed in respect of the order under subsection (1)(c) of section 35 of the ^{M13}Criminal Justice Act (Northern Ireland) 1945 (imprisonment in default of payment) a shorter term if the effect of the substitution under paragraph (a) 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.
- [^{F13}(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.]

Textual Amendments

- F11** Words in *Sch. 4 para. 15(1)* inserted (3.2.1995) by 1993 c. 36, **ss. 40(2), 78(3)** (with s. 78(6)); S.I. 1995/43, arts. 2, 3, **Sch.**
- F12** Words in *Sch. 4 para. 15(3)* substituted (3.2.1995) by 1993 c. 36, **ss. 40(3), 78(3)** (with s. 78(6)); S.I. 1995/43, arts. 2, 3, **Sch.**
- F13** *sch. 4 para. 15(5)* added (3.2.1995) by 1993 c. 36, **ss. 40(4), 78(3)** (with s. 78(6)); S.I. 1995/43, arts. 2, 3, **Sch.**

Marginal Citations

- M13** 1945 c. 15 (N.I.).

Bankruptcy of defendant

- 16 (1) Where a person who holds realisable property is adjudged bankrupt—
- (a) property for the time being subject to a restraint order made before the order adjudging him bankrupt; and
 - (b) any proceeds of property realised by virtue of paragraph 5(8) or 10(5) or (6) above for the time being in the hands of a receiver appointed under paragraph 5 or 10 above,
- is excluded from the bankrupt's estate for the purposes of Part IX of the ^{M14}Insolvency (Northern Ireland) Order 1989.
- (2) Where a person has been adjudged bankrupt, the powers conferred on the High Court and the Secretary of State by paragraphs 5 to 10 and 12 above or on a receiver so appointed shall not be exercised in relation to—

Status: Point in time view as at 03/02/1995.

Changes to legislation: There are currently no known outstanding effects for the Northern Ireland (Emergency Provisions) Act 1991 (repealed 25.8.1996), SCHEDULE 4. (See end of Document for details)

- (a) property for the time being comprised in the bankrupt's estate for the purposes of that Part of the said Order of 1989;
 - (b) property in respect of which his trustee in bankruptcy may (without leave of the High Court) serve a notice under Article 280 or 281 of that Order (after-acquired property and tools, clothes, etc. exceeding value of reasonable replacement); and
 - (c) property which is to be applied for the benefit of creditors of the bankrupt by virtue of a condition imposed under Article 254(2)(c) of that Order.
- (3) Nothing in that Order shall be taken as restricting, or enabling the restriction of, the exercise of those powers.
- (4) Sub-paragraph (2) above does not affect the enforcement of a charging order—
- (a) made before the order adjudging the person bankrupt; or
 - (b) on property which was subject to a restraint order when the order adjudging him bankrupt was made.
- (5) Where, in the case of a debtor, an interim receiver stands appointed under Article 259 of the said Order of 1989 and any property of the debtor is subject to a restraint order, the powers conferred on the receiver by virtue of that Order do not apply to property for the time being subject to the restraint order.
- (6) Where a person is adjudged bankrupt and has directly or indirectly made a gift caught by Part VII of this Act—
- [^{F14}(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.]

Textual Amendments

F14 Sch. 4 para. 16(6)(a)(b) substituted (3.2.1995) by 1993 c. 36, ss. 41(8), 78(3) (with s. 78(6)); S.I. 1995/43, arts. 2,3, Sch..

Marginal Citations

M14 S.I. 1989/2405 (N.I.19).

Winding up of company holding realisable property

- 17 (1) Where realisable property is held by a company and an order for the winding up of the company has been made or a resolution has been passed by the company for the

Status: Point in time view as at 03/02/1995.

Changes to legislation: There are currently no known outstanding effects for the Northern Ireland (Emergency Provisions) Act 1991 (repealed 25.8.1996), SCHEDULE 4. (See end of Document for details)

- voluntary winding up, the functions of the liquidator (or any provisional liquidator) shall not be exercisable in relation to—
- (a) property for the time being subject to a restraint order made before the relevant time; and
 - (b) any proceeds of property realised by virtue of paragraph 5(8) or 10(5) or (6) above for the time being in the hands of a receiver appointed under paragraph 5 or 10 above.
- (2) Where, in the case of a company, such an order has been made or such a resolution has been passed, the powers conferred on the High Court and the Secretary of State by paragraphs 5 to 10 and 12 above or on a receiver so appointed shall not be exercised in relation to any realisable property held by the company in relation to which the functions of the liquidator are exercisable—
- (a) so as to inhibit him from exercising those functions for the purpose of distributing any property held by the company to the company’s creditors; or
 - (b) so as to prevent the payment out of any property of expenses (including the remuneration of the liquidator or any provisional liquidator) properly incurred in the winding up in respect of the property.
- (3) Nothing in the ^{M15}Insolvency (Northern Ireland) Order 1989 shall be taken as restricting, or enabling the restriction of, the exercise of those powers.
- (4) Sub-paragraph (2) above does not affect the enforcement of a charging order made before the relevant time or on property which was subject to a restraint order at the relevant time.
- (5) In this paragraph—
- “company” means any company which may be wound up under the Insolvency (Northern Ireland) Order 1989; and
- “the relevant time” means—
- (a) where no order for the winding up of the company has been made, the time of the passing of the resolution for voluntary winding up;
 - (b) where such an order has been made and, before the presentation of the petition for the winding up of the company by the High Court, such a resolution had been passed by the company, the time of the passing of the resolution; and
 - (c) in any other case where such an order has been made, the time of the making of the order.

Marginal Citations

M15 S.I. 1989/2405 (N.I.19).

Insolvency practitioners dealing with property subject to restraint order

- 18 (1) Without prejudice to the generality of the Insolvency (Northern Ireland) Order 1989 or any other statutory provision, where—
- (a) any person acting as an insolvency practitioner seizes or disposes of any property in relation to which his functions are not exercisable because it is for the time being subject to a restraint order; and

Status: Point in time view as at 03/02/1995.

Changes to legislation: There are currently no known outstanding effects for the Northern Ireland (Emergency Provisions) Act 1991 (repealed 25.8.1996), SCHEDULE 4. (See end of Document for details)

- (b) at the time of the seizure or disposal he believes, and has reasonable grounds for believing, that he is entitled (whether in pursuance of an order of the High Court or otherwise) to seize or dispose of that property,

he shall not be liable to any person in respect of any loss or damage resulting from the seizure or disposal except in so far as the loss or damage is caused by his negligence in so acting; and a person so acting shall have a lien on the property, or the proceeds of its sale, for such of his expenses as were incurred in connection with the liquidation, bankruptcy or other proceedings in relation to which the seizure or disposal purported to take place and for so much of his remuneration as may reasonably be assigned for his acting in connection with those proceedings.

- (2) Any person who, acting as an insolvency practitioner, incurs expenses—
- (a) in respect of such property as is mentioned in paragraph (a) of sub-paragraph (1) above and in so doing does not know and has no reasonable grounds to believe that the property is for the time being subject to a restraint order; or
- (b) other than in respect of such property as is so mentioned, being expenses which, but for the effect of a restraint order, might have been met by taking possession of and realising the property,
- shall be entitled (whether or not he has seized or disposed of that property so as to have a lien under that paragraph) to payment of those expenses under paragraph 12(1) or (4) above.

Enforcement of orders outside Northern Ireland

- 19 (1) Her Majesty may by Order in Council make provision for the enforcement of confiscation orders and restraint orders—
- (a) in England, Wales and Scotland; and
- (b) in any of the Channel Islands or the Isle of Man.
- (2) An Order under this paragraph may apply or modify any of the provisions of this Schedule so far as appears to Her Majesty to be appropriate for the purposes of the Order.
- [^{F15}(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 ^{M16}Civil Jurisdiction and Judgments Act 1982 (enforcement of United Kingdom judgments in other parts of the United Kingdom) not to apply.]

Textual Amendments

F15 Sch. 4 para. 19(3)(4) added (1.12.1993) by 1993 c. 36, ss.46 (with s. 78(6)); S.I. 1993/2734, art. 2, Sch.

Marginal Citations

M16 1982 c. 27.

Status: Point in time view as at 03/02/1995.

Changes to legislation: There are currently no known outstanding effects for the Northern Ireland (Emergency Provisions) Act 1991 (repealed 25.8.1996), SCHEDULE 4. (See end of Document for details)

Compensation

- 20 (1) If proceedings are instituted against a person for a relevant offence or relevant offences and either—
- (a) the proceedings do not result in his conviction for any such offence; or
 - (b) where he is convicted of one or more such offences—
 - (i) the conviction or convictions concerned are quashed; or
 - (ii) he is pardoned by Her Majesty in respect of the conviction or convictions concerned,
- the High Court may, on an application by a person who held property which was realisable property, order compensation to be paid to the applicant if, having regard to all the circumstances, it considers it appropriate to make such an order.
- (2) The High Court shall not order compensation to be paid in any case unless the court is satisfied—
- (a) that there has been some serious default on the part of a person concerned in the investigation or prosecution of the offence concerned, being a person mentioned in sub-paragraph (5) below; and
 - (b) that the applicant has suffered loss in consequence of anything done in relation to the property by or in pursuance of an order under this Schedule or Part VII of this Act.
- (3) The High Court shall not order compensation to be paid in any case where it appears to the court that the proceedings would have been instituted or continued even if the serious default had not occurred.
- (4) The amount of compensation to be paid under this paragraph shall be such as the High Court thinks just in all the circumstances of the case.
- (5) Compensation payable under this paragraph shall be paid—
- (a) where the person in default was or was acting as a member of the Royal Ulster Constabulary or as a person authorised under section 57 of this Act, by the Police Authority for Northern Ireland;
 - (b) where the person in default was a member of the Office of the Director of Public Prosecutions for Northern Ireland, by the Director of Public Prosecutions for Northern Ireland.

[^{F16} Compensation etc. where absconder is acquitted]

Textual Amendments

F16 Sch. 4 paras. 20A-20C and crossheadings inserted (3.2.1995) by 1993 c. 36, ss.43, 78(3) (with s. 78(6)); S.I. 1995/43, arts. 2, 3, Sch.

^{F17}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.

Status: Point in time view as at 03/02/1995.

Changes to legislation: There are currently no known outstanding effects for the Northern Ireland (Emergency Provisions) Act 1991 (repealed 25.8.1996), SCHEDULE 4. (See end of Document for details)

- (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.

Textual Amendments

F17 Sch. 4 paras. 20A-20C inserted (3.2.1995) by 1993 c. 36, ss.43, 78(3) (with s. 78(6)); S.I. 1995/43, arts. 2, 3, Sch..

Power to discharge confiscation order and order compensation where absconder returns

- ^{F18}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—
 - (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

Status: Point in time view as at 03/02/1995.

Changes to legislation: There are currently no known outstanding effects for the Northern Ireland (Emergency Provisions) Act 1991 (repealed 25.8.1996), SCHEDULE 4. (See end of Document for details)

- (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.

Textual Amendments

F18 Sch. 4 paras. 20A-20C inserted (3.2.1995) by 1993 c. 36, ss.43, 78(3) (with s. 78(6)); S.I. 1995/43, arts. 2, 3, Sch.

Variation of confiscation orders made by virtue of section 52B

^{F19}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.
- (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 ^{M17}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

Status: Point in time view as at 03/02/1995.

Changes to legislation: There are currently no known outstanding effects for the Northern Ireland (Emergency Provisions) Act 1991 (repealed 25.8.1996), SCHEDULE 4. (See end of Document for details)

- (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.

Textual Amendments

F19 Sch. 4 paras. 20A-20C inserted (3.2.1995) by 1993 c. 36, ss.43, 78(3) (with s. 78(6)); S.I. 1995/43, arts. 2, 3, Sch..

Marginal Citations

M17 1945 c. 15 (N.I.).

Transitional provisions

- 21 (1) In the case of a confiscation order made before the coming into operation of the ^{M18}Insolvency (Northern Ireland) Order 1989, section 50(4) of this Act shall have effect as if for paragraph (b) there were substituted—
- “(b) pay any sum which, if the defendant had been adjudged bankrupt or was being wound up, would be among the preferential debts.”; and in that paragraph “the preferential debts”—
 - (a) in relation to bankruptcy, means the debts to be paid in priority under Article 19 of the ^{M19}Bankruptcy Amendment (Northern Ireland) Order 1980 (assuming the date of the confiscation order to be the date of the order of adjudication); and
 - (b) in relation to winding up, means the preferential debts listed in Schedule 18 to the ^{M20}Companies (Northern Ireland) Order 1986 (assuming the date of the confiscation order to be the relevant date for the purpose of that Schedule).
- (2) Until the coming into operation of the Insolvency (Northern Ireland) Order 1989, paragraphs 12(1) and (4) and 18 above shall have effect as if for references to an insolvency practitioner there were substituted references to an Official Assignee,

Status: Point in time view as at 03/02/1995.

Changes to legislation: There are currently no known outstanding effects for the Northern Ireland (Emergency Provisions) Act 1991 (repealed 25.8.1996), SCHEDULE 4. (See end of Document for details)

trustee, liquidator, provisional liquidator or a receiver or manager appointed under section 68 of the ^{M21}Bankruptcy (Ireland) Amendment Act 1872.

- (3) In any case in which a petition in bankruptcy was presented, or an adjudication in bankruptcy was made, before the coming into operation of the Insolvency (Northern Ireland) Order 1989, paragraph 16 above shall have effect with the following modifications—
- (a) for references to the bankrupt’s estate for the purposes of Part IX of that Order there shall be substituted references to the property of the bankrupt for the purposes of the Bankruptcy Acts (Northern Ireland) 1857 to 1980;
 - (b) sub-paragraph (2)(b) shall be omitted;
 - (c) for the reference in sub-paragraph (2)(c) to Article 254(2)(c) of that Order there shall be substituted a reference to Articles 28(4), (5)(c) and (11) and 30(6)(c) of the Bankruptcy Amendment (Northern Ireland) Order 1980;
 - (d) for the reference in sub-paragraph (3) to that Order there shall be substituted a reference to the Bankruptcy Acts (Northern Ireland) 1857 to 1980;
 - (e) for the reference in sub-paragraph (5) to an interim receiver appointed under Article 259 of that Order there shall be substituted a reference to a receiver or manager appointed under section 68 of the Bankruptcy (Ireland) Amendment Act 1872; and
 - (f) for the references in sub-paragraph (6) to Articles 312 and 367 of that Order there shall be respectively substituted references to section 12 of the ^{M22}Bankruptcy Amendment Act (Northern Ireland) 1929 and paragraph 16 of the Conveyancing Act (Ireland) 1634.
- (4) In any case in which a winding up of a company has commenced, or is treated as having commenced, before the coming into operation of the ^{M23}Insolvency (Northern Ireland) Order 1989, paragraph 17 above shall have effect with the substitution for references to that Order of references to the ^{M24}Companies (Northern Ireland) Order 1986.

Marginal Citations

- M18** S.I. 1989/2405 (N.I.19).
M19 S.I. 1980/561 (N.I.4).
M20 S.I. 1986/1032 (N.I.6).
M21 1872 c. 58.
M22 1929 c. 1(N.I.). 1634 c. 3.(Ir.).
M23 S.I. 1989/2405 (N.I.19).
M24 S.I. 1986/1032 (N.I.6).

Status:

Point in time view as at 03/02/1995.

Changes to legislation:

There are currently no known outstanding effects for the Northern Ireland (Emergency Provisions) Act 1991 (repealed 25.8.1996), SCHEDULE 4.