STATUTORY RULES OF NORTHERN IRELAND

# 1998 No. 88

# CRIMINAL PROCEDURE

## The Proceeds of Crime (Countries and Territories designated under the Criminal Justice Act 1988) Order (Northern Ireland) 1998

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| *Made - - - -* | *10th March 1998* |
| *To be laid before Parliament* | |
| *Coming into operation* | *27th April 1998* |

The Secretary of State, in pursuance of Article 42 of the Proceeds of Crime (Northern Ireland) Order 1996(**1**), hereby makes the following Order:—

**Citation, commencement and interpretation**

**1.**—(1) This Order may be cited as the Proceeds of Crime (Countries and Territories designated under the Criminal Justice Act 1988) Order (Northern Ireland) 1998 and shall come into operation on 27th April 1998.

(2) In this Order—

"the Order" means the Proceeds of Crime (Northern Ireland) Order 1996;

"designated country" means a country or territory designated by an Order in Council under section 96 of the Criminal Justice Act 1988(**2**) and specified in the first column of Schedule 1;

"appropriate authority of a designated country" means—

(a) the authority specified opposite that country in Schedule 1; or

(b) where no authority is so specified, the authority appearing to the court to be the appropriate authority of that country for the purposes of this Order;

"a court of a designated country" includes a court of any state or territory of a designated country.

(**1**) S.I. 1996/1299 (N.I. 9)
(**2**) 1988 c. 33; section 96 was amended by section 21 of the Criminal Justice Act 1993 (c. 36)

**Application of the Order to designated countries and territories**

**2.**—(1) The Order shall apply, subject to paragraph (2), to each of the countries and territories specified in Schedule 1, being countries and territories designated under section 96 of the Criminal Justice Act 1988.

(2) In relation to a designated country, the Order shall apply, subject to the modifications specified in Schedule 2, to external confiscation orders and to proceedings which have been or are to be instituted in the designated country and may result in an external confiscation order being made there, and accordingly in relation to such orders and such proceedings, the Order shall have effect as set out in Schedule 3.

**Proof of orders and judgments of court of a designated country**

**3.**—(1) For the purposes of Articles 42 and 43 of the Order and of the other provisions of the Order as applied under Article 2(2)—

(a) any order made or judgment given by a court of a designated country purporting to bear the seal of that court or to be signed by any person in his capacity as a judge, magistrate or officer of the court, shall be deemed without further proof to have been duly sealed or, as the case may be, to have been signed by that person; and

(b) a document, duly authenticated, which purports to be a copy of any order made or judgment given by a court of a designated country shall be deemed without further proof to be a true copy.

(2) A document purporting to be a copy of any order made or judgment given by a court of a designated country is duly authenticated for the purpose of paragraph (1)(*b*) if it purports to be certified by any person in his capacity as a judge, magistrate or officer of the court in question or by or on behalf of the appropriate authority of the designated country.

**Evidence in relation to proceedings and orders in a designated country**

**4.**—(1) For the purposes of Articles 42 and 43 of the Order, and of the other provisions of the Order as applied under Article 2(2), a certificate purporting to be issued by or on behalf of the appropriate authority of a designated country stating—

(a) that proceedings have been instituted and have not been concluded, or that proceedings are to be instituted, there;

(b) in a case to which sub-paragraph (*b*) of Article 4(2) of the Order, as modified by Schedule 2 to this Order, applies, that the defendant has been notified as specified in that sub-paragraph;

(c) that an external confiscation order is in force and is not subject to appeal;

(d) that all or a certain amount of the sum payable under an external confiscation order remains unpaid in the designated country, or that other property recoverable under an external confiscation order remains unrecovered there;

(e) that any person has been notified of any proceedings in accordance with the laws of the designated country; or

(f) that an order (however described) made or to be made by a court of the designated country has the purpose or, as the case may be, will have the purpose—

(i) of recovering property obtained as a result of or in connection with conduct corresponding to an offence to which the Order applies other than a drug trafficking offence or the value of property so obtained; or

(ii) of depriving a person of a pecuniary advantage so obtained,

shall, in any proceedings in the High Court, be admissible as evidence of the facts so stated.

(2) In any such proceedings a statement contained in a document, duly authenticated, which purports to have been received in evidence or to be a copy of a document so received, or to set out or summarise evidence given in proceedings in a court of a designated country, shall be admissible as evidence of any fact stated therein.

(3) A document is duly authenticated for the purposes of paragraph (2) if it purports to be certified by any person in his capacity as a judge, magistrate or officer of the court in the designated country, or by or on behalf of the appropriate authority of the designated country, to have been received in evidence or to be a copy of a document so received, or, as the case may be, to be the original document containing or summarising the evidence or a true copy of that document.

(4) Nothing in this Article shall prejudice the admission of any evidence, whether contained in any document or otherwise, which is admissible apart from this Article.

**Certificate as to appropriate authority of a designated country**

**5.** Where in relation to any designated country no authority is specified in Schedule 1, a certificate made by the Secretary of State to the effect that the authority specified therein is the appropriate authority for the purposes of this Order shall be sufficient evidence of that fact.

**Representation of government of a designated country**

**6.** A request for assistance sent to the Secretary of State by the appropriate authority of a designated country shall, unless the contrary is shown, be deemed to constitute the authority of the government of that country for the Director of Public Prosecutions for Northern Ireland to act on its behalf in any proceedings in the High Court under Article 43 of the Order or any other provision of the Order as applied by Article 2(2).

**Satisfaction of confiscation order in a designated country**

**7.**—(1) Where—

(a) a confiscation order has been made under Article 8 of the Order in respect of an offence to which the Order applies other than a drug trafficking offence; and

(b) a request has been sent by the Secretary of State to the appropriate authority of a designated country for assistance in enforcing that order; and

(c) in execution of that request property is recovered in that country,

the amount payable under the confiscation order shall be treated as reduced by the value of the property so recovered.

(2) For the purposes of this Article, and without prejudice to the admissibility of any evidence which may be admissible apart from this paragraph, a certificate purporting to be issued by or on behalf of the appropriate authority of a designated country stating that property has been recovered there in execution of a request by the Secretary of State, stating the value of the property so recovered and the date on which it was recovered shall, in any proceedings in a court in Northern Ireland, be admissible as evidence of the facts so stated.

**Currency conversion**

**8.**—(1) Where the value of property recovered as described in Article 7(1) is expressed in a currency other than that of the United Kingdom, the extent to which the amount payable under the confiscation order is to be reduced under that paragraph shall be calculated on the basis of the

exchange rate prevailing on the date on which the property was recovered in the designated country concerned.

(2) Where an amount of money payable or remaining to be paid under an external confiscation order registered in the High Court under Article 43 of the Order is expressed in a currency other than that of the United Kingdom, for the purpose of any action taken in relation to that order under the Order as applied under Article 2(2) the amount shall be converted into the currency of the United Kingdom on the basis of the exchange rate prevailing on the date of registration of the order.

(3) For the purposes of this Article a written certificate purporting to be signed by any person acting in his capacity as an officer of any bank in the United Kingdom and stating the exchange rate prevailing on a specified date shall be admissible as evidence of the facts so stated.

**Revocation**

**9.** The Criminal Justice (Confiscation) (Designated Countries and Territories) (Northern Ireland) Order 1992(**3**) is hereby revoked.

*Marjorie Mowlam*
One of Her Majesty's Principal Secretaries of State

Northern Ireland Office
10th March 1998

(**3**) S.R. 1992 No. 198 as amended by S.R. 1993 No. 359, S.R. 1994 No. 165 and S.R. 1994 No. 351

SCHEDULE 1 Article 2(1)

| *Designated country* | *Appropriate authority* |
|---|---|
| Antigua and Barbuda | The Attorney General |
| Bulgaria | |
| Canada | The Minister of Justice or officials designated by that Minister |
| Colombia | The Fiscalía General de la Nación and the Ministerio de Justicia del Derecho |
| Cyprus | |
| Czech Republic | |
| Denmark | |
| Finland | |
| France | |
| India | The Ministry of Home Affairs |
| Ireland | |
| Isle of Man | Her Majesty's Attorney General for the Isle of Man |
| Italy | The Ministry of Justice |
| Lithuania | |
| Netherlands | Afdeling Internationale Rechtshulp |
| Nigeria | The Attorney General of the Federation of the Republic of Nigeria |
| Norway | |
| Romania | The Ministry of the Interior and the Ministry of Justice |
| Sweden | The Ministry of Foreign Affairs |
| Switzerland | Office Fédéral de la Police |
| Thailand | The Attorney General or a person designated by him |
| Ukraine | The Office of the General Prosecutor and the Ministry of Justice |
| United Mexican States | The Office of the Attorney General of the Republic |
| United States of America | The Attorney General of the United States of America |