STATUTORY INSTRUMENTS

1993 No. 3146 (N.I. 13)

NORTHERN IRELAND

The Criminal Justice (Confiscation) (Northern Ireland) Order 1993

Made - - - - 16th December 1993

Laid before Parliament 13th January 1994
Coming into operation on days to be appointed under Article 1(2)

At the Court at Buckingham Palace, the 16th day of December 1993

Present,

The Queen's Most Excellent Majesty in Council

Whereas this Order is only made for purposes corresponding to the purposes of sections 16, 18 and 29 to 32 of the Criminal Justice Act 1993(**1**):

Now, therefore, Her Majesty, in exercise of the powers conferred by paragraph 1 of Schedule 1 to the Northern Ireland Act 1974(**2**) (as modified by section 79(12) of the said Act of 1993) and of all other powers enabling Her in that behalf, is pleased, by and with the advice of Her Privy Council, to order and it is hereby ordered as follows:—

Title and commencement

1.—(1) This Order may be cited as the Criminal Justice (Confiscation) (Northern Ireland) Order 1993.

(2) This Order shall come into operation on such day or days as the Secretary of State may by order appoint.

Interpretation

2.—(1) The Interpretation Act (Northern Ireland) 1954(**3**) shall apply to Article 1 and the following provisions of this Order as it applies to a Measure of the Northern Ireland Assembly.

(**1**) 1993 c. 36
(**2**) 1974 c. 28
(**3**) 1954 c. 33 (N.I.)

(2) In this Order "the principal Order" means the Criminal Justice (Confiscation) (Northern Ireland) Order 1990(**4**).

Money laundering

3. After Article 28 of the principal Order and the heading "Drug trafficking offences" there shall be inserted—

"**Failure to disclose knowledge or suspicion of money laundering proceeds of drug trafficking**

28A.—(1) A person is guilty of an offence if—

(a) he knows, or suspects, that another person is engaged in money laundering proceeds of drug trafficking;

(b) the information, or other matter, on which that knowledge or suspicion is based came to his attention in the course of his trade, profession, business or employment, and

(c) he does not disclose the information or other matter to a constable as soon as is reasonably practicable after it comes to his attention.

(2) Paragraph (1) does not make it an offence for a professional legal adviser to fail to disclose any information or other matter which has come to him in privileged circumstances.

(3) It is a defence to a charge of committing an offence under this Article that the person charged had a reasonable excuse for not disclosing the information or other matter in question.

(4) Where a person discloses to a constable—

(a) his suspicion or belief that another person is engaged in money laundering proceeds of drug trafficking, or

(b) any information or other matter on which that suspicion or belief is based,

the disclosure shall not be treated as a breach of any restriction imposed by statute or otherwise.

(5) Without prejudice to paragraph (3) or (4), in the case of a person who was in employment at the relevant time, it is a defence to a charge of committing an offence under this Article that he disclosed the information or other matter in question to the appropriate person in accordance with the procedure established by his employer for the making of such disclosures.

(6) A disclosure to which paragraph (5) applies shall not be treated as a breach of any restriction imposed by statute or otherwise.

(7) In this Article "money laundering" means doing any act which constitutes an offence under Article 28B, 29 or 30 or, in the case of an act done otherwise than in Northern Ireland, would constitute such an offence if done in Northern Ireland.

(8) For the purposes of paragraph (7), having possession of any property shall be taken to be doing an act in relation to it.

(9) For the purposes of this Article, any information or other matter comes to a professional legal adviser in privileged circumstances if it is communicated, or given, to him—

(**4**) 1990 NI 17

(a) by, or by a representative of, a client of his in connection with the giving by the adviser of legal advice to the client;

(b) by, or by a representative of, a person seeking legal advice from the adviser; or

(c) by any person—

(i) in contemplation of, or in connection with, legal proceedings; and

(ii) for the purpose of those proceedings.

(10) No information or other matter shall be treated as coming to a professional legal adviser in privileged circumstances if it is communicated or given with a view to furthering any criminal purpose.

(11) A person guilty of an offence under this 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; and

(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.

Other offences

Acquisition, possession or use of proceeds of criminal conduct

28B.—(1) A person is guilty of an offence if, knowing that any property is, or in whole or in part directly or indirectly represents, another person's proceeds of criminal conduct, he acquires or uses that property or has possession of it.

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

(3) For the purposes of paragraph (2)—

(a) a person acquires property for inadequate consideration if the value of the consideration is significantly less than the value of the property; and

(b) a person uses or has possession of property for inadequate consideration if the value of the consideration is significantly less than the value of his use or possession of the property.

(4) The provision for any person of services or goods which are of assistance to him in criminal conduct shall not be treated as consideration for the purposes of paragraph (2).

(5) Where a person discloses to a constable a suspicion or belief that any property is, or in whole or in part directly or indirectly represents, another person's proceeds of criminal conduct or discloses to a constable any matter on which such a suspicion or belief is based—

(a) the disclosure shall not be treated as a breach of any restriction upon the disclosure of information imposed by statute or otherwise; and

(b) if he does any act in relation to that property in contravention of paragraph (1), he does not commit an offence under this Article if—

(i) the disclosure is made before he does the act concerned and the act is done with the consent of the constable; or

(ii) the disclosure is made after he does the act, but on his initiative and as soon as it is reasonble for him to make it.

(6) For the purposes of this Article, having possession of any property shall be taken to be doing an act in relation to it.

(7) In proceedings against a person for an offence under this Article, it is a defence to prove that—

(a) he intended to disclose to a constable such a suspicion, belief or matter as is mentioned in paragraph (5); but

(b) there is reasonable excuse for his failure to make the disclosure in accordance with sub-paragraph (b) of that paragraph.

(8) In the case of a person who was in employment at the relevant time, paragraphs (5) and (7) shall have effect in relation to disclosures, and intended disclosures, to the appropriate person in accordance with the procedure established by his employer for the making of such disclosures as they have effect in relation to disclosures, and intended disclosures, to a constable.

(9) A person guilty of an offence under this Article is liable—

(a) on conviction on indictment, to imprisonment for a term not exceeding 14 years or to a fine or to both; and

(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.

(10) No constable or other person shall be guilty of an offence under this Article in respect of anything done by him in the course of acting in connection with the enforcement, or intended enforcement, of any provision of this Order or of any other statutory provision relating to criminal conduct or the proceeds of such conduct.".

Assisting another to retain the benefit of criminal conduct

4. In Article 29 of the principal Order (assisting another to retain the benefit of drug trafficking)—

(a) for "of drug trafficking" wherever it occurs there shall be substituted "of criminal conduct";

(b) in paragraph (1) for "who carries on or has carried on drug trafficking or has benefited from drug trafficking" there shall be substituted "who is or has been engaged in criminal conduct or has benefited from criminal conduct";

(c) for paragraph (3) there shall be substituted—

"(3) Where a person discloses to a constable a suspicion or belief that any funds or investments are derived from or used in connection with criminal conduct or discloses to a constable any matter on which such a suspicion or belief is based—

(a) the disclosure shall not be treated as a breach of any restriction upon the disclosure of information imposed by statute or otherwise; and

(b) if he does any act in contravention of paragraph (1) and the disclosure relates to the arrangement concerned, he does not commit an offence under this Article if—

(i) the disclosure is made before he does the act concerned and the act is done with the consent of the constable; or

(ii) the disclosure is made after he does the act, but is made on his initiative and as soon as it is reasonable for him to make it.";

(d) after paragraph (4) there shall be inserted—

"(4A) In the case of a person who was in employment at the relevant time, paragraphs (3) and (4) shall have effect in relation to disclosures, and intended disclosures, to the appropriate person in accordance with the procedure established