1991 No. 221

CRIMINAL PROCEDURE

The Criminal Justice (Confiscation) (Designated Countries and Territories) (Northern Ireland) Order 1991

Made	*23rd May 1991*
Coming into operation	*1st July 1991*
To be laid before Parliament	

The Secretary of State, in pursuance of Article 27 of the Criminal Justice (Confiscation) (Northern Ireland) Order 1990(**a**), hereby makes the following Order.

Citation, commencement and interpretation

1.—(1) This Order may be cited as the Criminal Justice (Confiscation) (Designated Countries and Territories) (Northern Ireland) Order 1991 and shall come into operation on 1st July 1991.

(2) In this Order—

"the Order" means the Criminal Justice (Confiscation) (Northern Ireland) Order 1990;

"designated country" means a country or territory designated by an Order in Council under section 26 of the Drug Trafficking Offences Act 1986(**b**) 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 Articles 27 and 28 of the Order, and of the other provisions of the Order as applied under Article 2(2);

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

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 26 of the Drug Trafficking Offences Act 1986.

(**a**) S.I. 1990/2588 (N.I. 17)
(**b**) 1986 c. 32

(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 judgment of court in a designated country

3.—(1) For the purposes of Articles 27 and 28 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 in 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 in 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 in 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 27 and 28 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*) that an external confiscation order is in force and is not subject to appeal;

(*c*) 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;

(*d*) that any person has been notified of any proceedings in accordance with the law of the designated country; or

(*e*) that an order (however described) made by a court of the designated country has the purpose of recovering payments or other rewards received in connection with drug trafficking or their value,

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 in 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.

Representation of government of a designated country

5. 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, the Crown Solicitor for Northern Ireland or the Commissioners of Customs and Excise to act on its behalf in any proceedings in the High Court under Article 27 of the Order or any other provision of the Order as applied by Article 2(2).

Certificate as to appropriate authority of a designated country

6. 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 Articles 27 and 28 of the Order and of the other provisions of the Order as applied by Article 2(2) shall be sufficient evidence of that fact.

Satisfaction of confiscation order in a designated country

7.—(1) Where—

(*a*) a confiscation order has been made under Article 5 of the Order; 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 28 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.

P. L. Brooke
One of Her Majesty's Principal Secretaries of State

Northern Ireland Office
23rd May 1991

Designated country	*Appropriate authority*
Anguilla	the Attorney General of Anguilla
Australia	the Attorney-General's Department
the Bahamas	the Attorney General of the Bahamas
Bahrain	the Ministry of the Interior
Bangladesh	
Barbados	the Attorney General
Bermuda	the Attorney General of Bermuda
Bhutan	
Bolivia	
Canada	the Minister of Justice or officials designated by that Minister
the Cayman Islands	the Attorney General of the Cayman Islands
Chile	
China	
Costa Rica	
Cyprus	
Ecuador	
Egypt	
France	
Ghana	
Gibraltar	the Attorney General of Gibraltar
Grenada	
Guatemala	
Guernsey	Her Majesty's Attorney General for the Bailiwick of Guernsey
Guinea	
Hong Kong	the Attorney General of Hong Kong
India	the Ministry of Home Affairs
Isle of Man	Her Majesty's Attorney General for the Isle of Man
Italy	the Ministry of Justice
Jersey	Her Majesty's Attorney General for the Bailiwick of Jersey
Jordan	
Madagascar	
Malaysia	the Inspector General of Police, Malaysia
Madagascar	
Montserrat	the Attorney General of Montserrat
Nicaragua	
Nigeria	the Attorney General of the Federation of the Republic of Nigeria
Oman	
Paraguay	
Qatar	
Saudi Arabia	the Ministry of the Interior
Senegal	
Spain	the Ministerio de Justicia, Madrid
Sweden	the Ministry for Foreign Affairs
Switzerland	the Eidgenössisches Justiz und Polizeidepartement

Togo	
Tunisia	
Uganda	
Union of Soviet Socialist Republics (including the Byelorussian Soviet Socialist Republic)	
United Arab Emirates	
United Mexican States	the Office of the Attorney General
United States of America	the Attorney General of the United States of America
Yugoslavia	

SCHEDULE 2 Article 2(2)

Modifications of the Criminal Justice (Confiscation) (Northern Ireland) Order 1990

1. Article 1 shall be omitted.

2. In Article 2—

(*a*) in paragraph (1) the words ''Article 1 and'' shall be omitted;

(*b*) in paragraph (2) the definitions of ''authorised government department'', ''confiscation order'', ''the defendant'', ''drug trafficking offence'' and ''external confiscation order'' shall be omitted;

(*c*) in paragraph (3) in the list of expressions and relevant provisions the entries for ''Benefited from drug trafficking'', ''Benefited from an offence'', ''Proceeds of drug trafficking'', ''Value of proceeds of drug trafficking'' shall be omitted. Below the words ''Dealing with property'' the following words shall be inserted—

''External confiscation order Article 5'';

(*d*) paragraphs (4) and (6) shall be omitted;

(*e*) for paragraph (7) there shall be substituted the following:

''(7) References in this Order to anything received in connection with drug trafficking include a reference to anything received both in that connection and in some other connection, and whether received before or after the commencement of the Criminal Justice (Confiscation) (Designated Countries and Territories) (Northern Ireland) Order 1991 and whether received in connection with drug trafficking carried on by the recipient or some other person.'';

(*f*) for paragraph (13), there shall be substituted the following:

''(13) Proceedings are instituted in a designated country when—

(*a*) under the law of the designated country concerned one of the steps specified in relation to that country in column 2 of the Appendix has been taken there in respect of alleged drug trafficking by the defendant; or

(*b*) an application has been made to a court in a designated country for an external confiscation order,

and where the application of this paragraph would result in there being more than one time for the institution of proceedings, they shall be taken to have been instituted at the earliest of those times.''; and

(*g*) in paragraph (14)(*b*) for the words from ''payment'' to the end there shall be substituted the words ''the recovery of all property liable to be recovered, or the payment of any amount due, or otherwise).''.

3. In Article 3—

(*a*) for paragraph (1) there shall be substituted the following paragraph—

''(1) In this Order, ''realisable property'' means, subject to paragraph (2)—

(*a*) in relation to an external confiscation order made in respect of specified property, the property which is specified in the order; and

(*b*) in any other case—

(i) any property held by the defendant; and

(ii) any property held by a person to whom the defendant has directly or indirectly made a gift caught by this Order.'';

(*b*) paragraphs (3), (5), (6) and (9) shall be omitted;

(*c*) in paragraph (10) for the words ''this Order'' where they first occur there shall be substituted the words ''the Criminal Justice (Confiscation) (Designated Countries and Territories) (Northern Ireland) Order 1991'';

(*d*) paragraph (10)(*a*) shall be omitted;

(*e*) in paragraph (10)(*b*) the words ''(*b*) in the case of a drug trafficking offence'' shall be omitted and the letters ''(*a*)'' and ''(*b*)'' shall be substituted for the letters ''(*aa*)'' and ''(*ab*)'' respectively;

(*f*) paragraph (11) shall be omitted.

4. Article 4 shall be omitted.

5. For Article 5 there shall be substituted the following Article:

''*External confiscation orders*

5.—(1) An order made by a court in a designated country for the purpose of recovering payments or other rewards received in connection with drug trafficking or their value is referred to in this Order as an ''external confiscation order''.

(2) In paragraph (1) the reference to an order includes any order, decree, direction or judgment, or any part thereof, however described.

(3) A person against whom an external confiscation order has been made, or a person against whom proceedings which may result in an external confiscation order being made have been, or are to be, instituted in a court in a designated country, is referred to in this Order as ''the defendant''.''.

6. Articles 6 to 11 shall be omitted.

7. In Article 12—

(*a*) for paragraph (1)(*a*) there shall be substituted:

''(*a*) proceedings have been instituted against the defendant in a designated country,'';

(*b*) for paragraph (1)(*c*) there shall be substituted:

''(*c*) either an external confiscation order has been made in the proceedings or it appears to the High Court that there are reasonable grounds for believing that such an order may be made in them.'';

(*c*) paragraph (1)(*d*) shall be omitted;

(*d*) for paragraph (2) there shall be substituted the following paragraph:

''(2) Those powers are also exercisable where it appears to the High Court that proceedings are to be instituted against the defendant in a designated country and that there are reasonable grounds for believing that an external confiscation order may be made in them.'';

(*e*) paragraph (3) shall be omitted;

(*f*) in paragraph (4) for the words from ''proceedings'' to ''otherwise)'', there shall be substituted the words ''the proposed proceedings are not instituted''.

8. In Article 13—

(*a*) for paragraph (3)(*a*) and (*b*) there shall be substituted—

"(*a*) where an application under paragraph (5) relates to an external confiscation order made in respect of specified property, to property which is specified in that order; and

(*b*) in any other case—

(i) to all realisable property held by a specified person, whether the property is described in the restraint order or not, and

(ii) to realisable property held by a specified person, being property transferred to him after the making of the restraint order.";

(*b*) in paragraph (5)(*a*) for the words "the prosecution" there shall be substituted the words "or on behalf of the government of a designated country or, in the case where an external confiscation order has been registered under Article 28, by a receiver appointed under Article 16, the Director of Public Prosecutions for Northern Ireland, the Crown Solicitor for Northern Ireland or a person authorised in that behalf by the Commissioners of Customs and Excise," and for paragraph (5)(*c*) there shall be substituted the following paragraph:

"(*c*) notwithstanding anything in Order 11 of the Rules of the Supreme Court (Northern Ireland) 1980(**a**) may provide for service on, or the provision of notice to, persons affected by the order in such manner as the High Court may direct.".

(*c*) for paragraph (6)(*b*) there shall be substituted—

"(*b*) shall be discharged when the proceedings in relation to which the order was made are concluded.";

(*d*) in paragraph (12) for the words "The prosecution" there shall be substituted the words "A person applying for a restraint order under paragraph (5)(*a*)";

(*e*) in paragraphs (13) and (14) for the words "the prosecution" there shall be substituted the words "a person applying for a restraint order".

9. In Article 14—

(*a*) for paragraph (1)(*a*) and (*b*) there shall be substituted the following:

"(*a*) where a fixed amount is payable under an external confiscation order, of an amount not exceeding the amount so payable, and

(*b*) in any other case, of an amount equal to the value from time to time of the property charged.";

(*b*) in paragraph (2)(*a*) for the words "the prosecution" there shall be substituted the words "or on behalf of the government of a designated country or, in a case where an external confiscation order has been registered under Article 28, by a receiver appointed under Article 16, the Director of Public Prosecutions for Northern Ireland, the Crown Solicitor for Northern Ireland, or a person authorised in that behalf by the Commissioners of Customs and Excise", and for paragraph (*c*), there shall be substituted the following paragraph:

"(*c*) notwithstanding anything in Order 11 of the Rules of the Supreme Court (Northern Ireland) 1980, shall provide for service on, or the provision of notice to, persons affected by the order in such manner as the High Court may direct;" and

(*c*) in paragraph (6) for the words "for the offence" there shall be substituted the words "against the defendant in the designated country".

(**a**) S.R. 1980 No. 346

10. In Article 15 paragraphs (3) and (4) shall be omitted.

11. After Article 15 there shall be inserted the following Article:

"*Applications for restraint and charging orders*

15A. An application under Article 13(5)(*a*) or Article 14(2)(*a*) shall be supported by an affidavit which shall—

(*a*) state, where applicable, the grounds for believing that an external confiscation order may be made in the proceedings instituted or to be instituted in the designated country concerned;

(*b*) to the best of the deponent's ability, give particulars of the realisable property in respect of which the order is sought and specify the person or persons holding such property;

(*c*) in a case to which Article 12(2) applies, indicate when it is intended that proceedings should be instituted in the designated country concerned,

and the affidavit may, unless the court otherwise directs, contain statements of information or belief with the sources and grounds thereof.".

12. In Article 16, for paragraph (1) there shall be substituted the following paragraphs:

"(1) Where an external confiscation order has been registered in the High Court under Article 28, the High Court may, on the application of the Director of Public Prosecutions for Northern Ireland, the Crown Solicitor for Northern Ireland, or a person authorised in that behalf by the Commissioners of Customs and Excise, exercise the powers conferred by paragraphs (1A) to (6).

(1A) In respect of any sum of money payable under the external confiscation order the court may make a garnishee order as if the sum were due to the Crown in pursuance of a judgment or order of the High Court, but any such order shall direct that the sum payable be paid to the High Court.".

13. Article 17 shall be omitted.

14. In Article 18—

(*a*) in paragraph (1), for the words from "applied", in the last place where it occurs, to the end of the paragraph, there shall be substituted the words "paid to the High Court and applied for the purposes specified in paragraphs (4) to (6) and in the order so specified.";

(*b*) in paragraph (2), for the words "If, after the amount payable under the confiscation order", there shall be substituted the words "Where a fixed amount is payable under the external confiscation order and, after that amount";

(*c*) paragraph (3) shall be omitted;

(*d*) in paragraph (4), for the words "The proper officer shall first", there shall be substituted the words "Any sums paid to the High Court under paragraph (1) or under an order made under Article 16(1A) or otherwise in satisfaction of an external confiscation order shall be first applied to";

(*e*) for paragraph (5) there shall be substituted the following paragraph—

"(5) If the money was paid to the High Court by a receiver appointed under this Order or in pursuance of a charging order the receiver's remuneration and expenses shall next be paid.";

(*f*) in paragraph (6), for the words "After making" there shall be substituted the words "After there has been made", and for the words "the proper officer

shall reimburse any amount paid under Article 24(2)'' there shall be substituted the words ''any amount paid under Article 24(2) shall be reimbursed'';

(*g*) paragraph (7) shall be omitted;

(*h*) for paragraph (8) there shall be substituted the following paragraph—

''(8) Any sums remaining after all the payments required to be made under the foregoing provisions of this Article have been made shall be paid into the Consolidated Fund.''; and

(*i*) paragraphs (9) and (10) shall be omitted.

15. In Article 19—

(*a*) in paragraph (2), for the words from ''making available'' to the end there shall be substituted the words ''recovering property which is liable to be recovered under an external confiscation order registered in the High Court under Article 28 or, as the case may be, with a view to making available for recovery property which may become liable to be recovered under any external confiscation order which may be made in the defendant's case''; and

(*b*) in paragraph (6), after the word ''the'' in the fourth place where it occurs, there shall be inserted the word ''external''.

16. Article 20 shall be omitted.

17. In Article 21—

(*a*) in paragraph (6)(*a*), the words ''proceedings for an offence to which this Order applies have been instituted against him and have not been concluded or when'' shall be omitted.

(*b*) in paragraph (6)(*b*) for the words ''conclusion of the proceedings'' there shall be substituted the words ''discharge of the restraint or charging order''.

18. In Article 24 in paragraph (2) the words ''by the prosecution or, in a case where proceedings for an offence to which this Order applies are not instituted,'' shall be omitted.

19. Articles 25 to 27 shall be omitted.

20. Articles 29 to 37 shall be omitted.

21. After Article 38 there shall be inserted the Appendix set out after that Article in Schedule 3 to this Order.

22. Schedule 1 shall be omitted.

23. In Schedule 2—

(*a*) paragraph 1 shall be omitted;

(*b*) in paragraph 2 before ''confiscation'' there shall be inserted the word ''external'';

(*c*) paragraphs 3 to 6 shall be omitted;

(*d*) in paragraph 7 for the words ''a confiscation'' there shall be substituted the words ''an external confiscation''.

(*e*) paragraphs 8 and 9 shall be omitted.

24. In Schedule 3 paragraph 1 shall be omitted.

The Criminal Justice (Confiscation) (Northern Ireland) Order 1990 as Modified

Interpretation

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

(2) In this Order—

"charging order" means an order made under Article 14 imposing on any such realisable property as may be specified in the order a charge for securing the payment of money to the Crown;

"constable" includes a person commissioned by the Commissioners of Customs and Excise;

"corresponding law" has the same meaning as in the Misuse of Drugs Act 1971(**b**);

"drug trafficking" means doing or being concerned in any of the following, whether in Northern Ireland or elsewhere—

(*a*) producing or supplying a controlled drug where the production or supply contravenes section 4(1) of the Misuse of Drugs Act 1971 or a corresponding law;

(*b*) transporting or storing a controlled drug where possession of the drug contravenes section 5(1) of that Act or a corresponding law;

(*c*) importing or exporting a controlled drug where the importation or exportation is prohibited by section 3(1) of that Act or a corresponding law;

(*d*) manufacturing or supplying a scheduled substance within the meaning of section 12 of the Criminal Justice (International Co-operation) Act 1990(**c**) where the manufacture or supply is an offence under that section;

and includes a person doing the following, whether in Northern Ireland or elsewhere, that is entering into or being otherwise concerned in an arrangement whereby—

(i) the retention or control by or on behalf of another person of the other person's proceeds of drug trafficking is facilitated, or

(ii) the proceeds of drug trafficking by another person are used to secure that funds are placed at the other person's disposal or are used for the other person's benefit to acquire property by way of investment;

"interest", in relation to property, includes right;

"modifications" includes additions, alterations and omissions;

"property" includes money and all other property, real or personal, heritable or moveable, including things in action and other intangible or incorporeal property;

"restraint order" means an order made by the High Court under Article 13;

"statutory provision" has the meaning assigned to it by section 1(*f*) of the Interpretation Act (Northern Ireland) 1954.

(**a**) 1954 c. 33 (N.I.)
(**b**) 1971 c. 38
(**c**) 1990 c. 5

(3) The expressions listed in the left hand column below fall to be construed in accordance with the provisions of this Order listed in the right hand column in relation to those expressions.

Expression	*Relevant provision*
Dealing with property	Article 13(9)
External confiscation order	Article 5
Gift caught by this Order	Article 3(10)
Making a gift	Article 3(12)
Realisable property	Article 3(1)
Value of gift, payment or reward	Article 3(7) and (8)
Value of property	Article 3(4) to (6)

(5) This Order applies to property wherever situated.

(7) References in this Order to anything received in connection with drug trafficking include a reference to anything received both in that connection and in some other connection, and whether received before or after the commencement of the Criminal Justice (Confiscation) (Designated Countries and Territories) (Northern Ireland) Order 1991 and whether received in connection with drug trafficking carried on by the recipient or some other person.

(8) The following provisions shall have effect for the interpretation of this Order.

(9) Property is held by any person if he holds any interest in it.

(10) References to property held by a person include a reference to property vested in his trustee in bankruptcy or liquidator.

(11) References to an interest held by a person beneficially in property include a reference to an interest which would be held by him beneficially if the property were not so vested.

(12) Property is transferred by one person to another if the first person transfers or grants to the other any interest in the property.

(13) Proceedings are instituted in a designated country when—

(*a*) under the law of the designated country concerned one of the steps specified in relation to that country in column 2 of the Appendix has been taken there in respect of alleged drug trafficking by the defendant; or

(*b*) an application has been made to a court in a designated country for an external confiscation order,

and where the application of this paragraph would result in there being more than one time for the institution of proceedings, they shall be taken to have been instituted at the earliest of those times.

(14) Proceedings for an offence are concluded—

(*a*) when (disregarding any power of a court to grant leave to appeal out of time) there is no further possibility of a confiscation order being made in the proceedings;

(*b*) on the satisfaction of a confiscation order made in the proceedings (whether by the recovery of all property liable to be recovered, or the payment of any amount due, or otherwise).

(15) 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.

(16) References in this Order to "acting as an insolvency practitioner" shall be construed in accordance with Article 3 of the Insolvency (Northern Ireland) Order 1989(**a**) 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 disregarded; and the expression shall include the official receiver acting as receiver or manager of the property.

Definition of principal terms used

3.—(1) In this Order, "realisable property" means, subject to paragraph (2)—

(*a*) in relation to an external confiscation order made in respect of specified property, the property which is specified in the order; and

(*b*) in any other case—

(i) any property held by the defendant; and

(ii) any property held by a person to whom the defendant has directly or indirectly made a gift caught by this Order.

(2) Property is not realisable property if—

(*a*) an order under Article 7 of the Criminal Justice (Northern Ireland) Order 1980(**b**) (deprivation orders);

(*b*) an order under section 27 of the Misuse of Drugs Act 1971 (forfeiture orders); or

(*c*) an order under section 13(2), (3) or (4) of the Prevention of Terrorism (Temporary Provisions) Act 1989(**c**) (forfeiture orders),

is in force in respect of the property.

(4) Subject to the following provisions of this Article, for the purposes of this Order the value of property (other than cash) in relation to any person holding the property—

(*a*) where any other person holds an interest in the property, is

(i) the market value of the first-mentioned person's beneficial interest in the property, less

(ii) the amount required to discharge any incumbrance (other than a charging order) on that interest; and

(*b*) in any other case is its market value.

(7) Subject to paragraph (12), references in this Order to the value at any time (referred to in paragraph (8) as "the material time") of a gift caught by this Order or of any payment or reward are references to—

(*a*) the value of the gift, payment or reward to the recipient when he received it adjusted to take account of subsequent changes in the value of money; or

(*b*) where paragraph (8) applies, the value there mentioned,

whichever is the greater.

(8) Subject to paragraph (12), if at the material time he holds—

(*a*) the property which he received (not being cash); or

(*b*) property which, in whole or in part, directly or indirectly represents in his hands the property which he received;

(**a**) 1989 (N.I. 19)
(**b**) 1980 (N.I. 6)
(**c**) 1989 c. 4

the value referred to in paragraph (7) is the value to him at the material time of the property mentioned in sub-paragraph (*a*) or, as the case may be, of the property mentioned in sub-paragraph (*b*) so far as it so represents the property which he received, but disregarding any charging order.

(10) A gift (including a gift made before the coming into operation of the Criminal Justice (Confiscation) (Designated Countries and Territories) (Northern Ireland) Order 1991) is caught by this Order if—

(i) it was made by the defendant at any time since the beginning of the period of 6 years ending when the proceedings were instituted against him, or

(ii) it was made by the defendant at any time and was a gift of property—

(*a*) received by the defendant in connection with drug trafficking carried on by him or another, or

(*b*) which in whole or in part directly or indirectly represented in the defendant's hands property received by him in that connection.

(12) For the purposes of this Order—

(*a*) the circumstances in which the defendant is to be treated as making a gift include those where he transfers property to another person directly or indirectly for a consideration the value of which is significantly less than the value of the consideration provided by the defendant; and

(*b*) in those circumstances, the preceding provisions of this Article shall apply as if the defendant had made a gift of such share in the property as bears to the whole property the same proportion as the difference between the values referred to in sub-paragraph (*a*) bears to the value of the consideration provided by the defendant.

External confiscation orders

5.—(1) An order made by a court in a designated country for the purpose of recovering payments or other rewards received in connection with drug trafficking or their value is referred to in this Order as an "external confiscation order".

(2) In paragraph (1) the reference to an order includes any order, decree, direction or judgment, or any part thereof, however described.

(3) A person against whom an external confiscation order has been made, or a person against whom proceedings which may result in an external confiscation order being made have been, or are to be, instituted in a court in a designated country, is referred to in this Order as "the defendant".

Cases in which restraint orders and charging orders may be made

12.—(1) The powers conferred on the High Court by Articles 13(1) and 14(1) are exercisable where—

(*a*) proceedings have been instituted against the defendant in a designated country,

(*b*) the proceedings have not been concluded; and

(*c*) either an external confiscation order has been made in the proceedings or it appears to the High Court that there are reasonable grounds for believing that such an order may be made in them.

(2) Those powers are also exercisable where it appears to the High Court that proceedings are to be instituted against the defendant in a designated country and that there are reasonable grounds for believing that an external confiscation order may be made in them.

(4) Where the High Court has made an order under Article 13(1) or 14(1) by virtue of paragraph (2), the Court shall discharge the order if the proposed proceedings are not instituted within such time as the Court considers reasonable.

Restraint orders

13.—(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 paragraph (1), 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*) where an application under paragraph (5) relates to an external confiscation order made in respect of specified property, to property which is specified in that order; and

(*b*) in any other case—

(i) to all realisable property held by a specified person, whether the property is described in the restraint order or not, and

(ii) to realisable property held by a specified person, being property transferred to him after the making of the restraint order.

(4) This Article shall not have effect in relation to any property for the time being subject to a charge under Article 14.

(5) A restraint order—

(*a*) may be made only on an application by or on behalf of the government of a designated country or, in a case where an external confiscation order has been registered under Article 28, by a receiver appointed under Article 16, the Director of Public Prosecutions for Northern Ireland, the Crown Solicitor for Northern Ireland, or a person authorised in that behalf by the Commissioners of Customs and Excise;

(*b*) may be made on an ex parte application to a judge in chambers, and

(*c*) notwithstanding anything in Order 11 of the Rules of the Supreme Court (Northern Ireland) 1980(**a**) may provide for service on, or the provision of notice to, persons affected by the order in such manner as the High Court may direct.

(6) A restraint order—

(*a*) may be discharged or varied in relation to any property; and

(*b*) shall be discharged when the proceedings in relation to which the order was made are concluded.

(7) An application for the discharge or variation of a restraint order may be made by any person affected by it.

(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,

---

(**a**) S.R. 1980 No. 346

subject to such exceptions and conditions as may be specified by the Court; and may require any person having possession of property in respect of which a receiver is appointed under this Article to give possession of it to the receiver.

(9) For the purposes of this Article, 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 paragraph (10) shall be dealt with in accordance with the directions of the High Court.

(12) A person applying for a restraint order under paragraph (5)(*a*) shall be treated for the purposes of section 66 of the Land Registration Act (Northern Ireland) 1970(**a**) (cautions) as a person interested in relation to any registered land to which a restraint order or an application for such an order relates.

(13) On the application of a person applying for a restraint order, the Registrar shall, in respect of any registered land to which a restraint order or an application for such 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 Land Registration Act (Northern Ireland) 1970 (inhibitions) shall apply to an entry made on the application of a person applying for a restraint order under paragraph (13) as they apply to an entry made on the application of any person interested in the registered land under subsection (1) of that section 67.

(15) Where a restraint order has been protected by an entry registered under the Land Registration Act (Northern Ireland) 1970 or the Registration of Deeds Acts, an order under paragraph (6) discharging the restraint order may direct that the entry be vacated.

(16) In this Article "Registrar" and "entry" have the same meanings as in the Land Registration Act (Northern Ireland) 1970.

Charging orders in respect of land, securities etc

14.—(1) The High Court may make a charging order on realisable property for securing the payment to the Crown—

(*a*) where a fixed amount is payable under an external confiscation order, of an amount not exceeding the amount so payable, and

(*b*) in any other case, of an amount equal to the value from time to time of the property charged.

(2) A charging order—

(*a*) may be made only on an application by or on behalf of the government of a designated country or, in a case where an external confiscation order has been registered under Article 28, by a receiver appointed under Article 16, the Director of Public Prosecutions for Northern Ireland, the Crown Solicitor for Northern Ireland, or a person authorised in that behalf by the Commissioners of Customs and Excise;

(*b*) may be made on an ex parte application to a judge in chambers;

(**a**) 1970 c. 18 (N.I.)

(*c*) notwithstanding anything in Order 11 of the Rules of the Supreme Court (Northern Ireland) 1980, shall provide for service on, or the provision of notice to, persons affected by the order in such manner as the High Court may direct; and

(*d*) may be made subject to such conditions as the Court thinks fit and, without prejudice to the generality of this sub-paragraph, such conditions as it thinks fit as to the time when the charge is to become effective.

(3) Subject to paragraph (5), 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 this Order—

(i) in any asset of a kind mentioned in paragraph (4); 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 sub-paragraph (*a*) be imposed by a charging order on the whole beneficial interest under the first-mentioned trust.

(4) The assets referred to in paragraph (3) 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 paragraph (4)(*b*), the High Court may provide for the charge to extend to any interest or dividend payable in respect of the asset.

(6) The High Court may make an order discharging or varying the charging order and shall make an order discharging the charging order if the proceedings against the defendant in the designated country are concluded or the amount payment of which is secured by the charge is paid into court.

(7) An application for the discharge or variation of a charging order may be made by any person affected by it.

Charging Orders: supplementary provisions

15.—(1) Subject to any provision made under Article 16 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 Land Registration Act (Northern Ireland) 1970 or the Registration of Deeds Acts, an order under Article 14(6) discharging the charging order may direct that the entry be vacated.

(5) In this Article and Article 14—

"building society" has the same meaning as in the Building Societies Act 1986(**a**);

"dividend" includes any distribution in respect of any unit of a unit trust;

"government funds or stocks" has the same meaning as in the Judgments Enforcement (Northern Ireland) Order 1981(**b**);

"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.

Applications for restraint and charging orders

15A. An application under Article 13(5)(*a*) or Article 14(2)(*a*) shall be supported by an affidavit which shall—

(*a*) state, where applicable, the grounds for believing that an external confiscation order may be made in the proceedings instituted or to be instituted in the designated country concerned;

(*b*) to the best of the deponent's ability, give particulars of the realisable property in respect of which the order is sought and specify the person or persons holding such property;

(*c*) in a case to which Article 12(2) applies, indicate when it is intended that proceedings should be instituted in the designated country concerned,

and the affidavit may, unless the court otherwise directs, contain statements of information or belief with the sources and grounds thereof.

Realisation of property

16.—(1) Where an external confiscation order has been registered in the High Court under Article 28, the High Court may, on the application of the Director of Public Prosecutions for Northern Ireland, the Crown Solicitor for Northern Ireland, or a person authorised in that behalf by the Commissioners of Customs and Excise, exercise the powers conferred by paragraphs (1A) to (6).

(1A) In respect of any sum of money payable under the external confiscation order the Court may make a garnishee order as if the sum were due to the Crown in pursuance of a judgment or order of the High Court, but any such order shall direct that the sum payable be paid to the High Court.

(2) The Court may appoint a receiver in respect of realisable property.

(3) The Court may empower a receiver appointed under paragraph (2), under Article 13 or in pursuance of a charging order—

(*a*) to enforce any charge imposed under Article 14 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 Article 14, 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.

(**a**) 1986 c. 33
(**b**) 1981 (N.I. 6)

(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 this Order 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) Paragraphs (4) to (6) do not apply to property for the time being subject to a charge under Article 14.

(8) The High Court shall not in respect of any property exercise the powers conferred by paragraph (3)(*a*), (5) or (6) unless a reasonable opportunity has been given for persons holding any interest in the property to make representations to the Court.

Application of proceeds of realisation and other sums

18.—(1) Subject to paragraph (2), the following sums in the hands of a receiver appointed under this Order or in pursuance of a charging order, that is—

(*a*) the proceeds of the enforcement of any charge imposed under Article 14;

(*b*) proceeds of the realisation, other than by the enforcement of such a charge, of any property under Article 13 or 16; 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 Article 23(2) and then shall, after such payments (if any) as the High Court may direct have been made out of those proceeds and sums, be paid to the High Court and applied for the purposes specified in paragraphs (4) to (6), and in the order so specified.

(2) Where a fixed amount is payable under the external confiscation order and, after that amount 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 Order, 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.

(4) Any sums paid to the High Court under paragraph (1) or under an order made under Article 16(1A) or otherwise in satisfaction of an external confiscation order shall be first applied to pay any expenses incurred by a person acting as an insolvency practitioner and payable under Article 23(2) but not already paid under paragraph (1).

(5) If the money was paid to the High Court by a receiver appointed under this Order, or in pursuance of a charging order the receiver's remuneration and expenses shall next be paid.

(6) After there has been made—

(*a*) any payment required by paragraph (4); and

(*b*) in a case to which paragraph (5) applies, any payment required by that paragraph,

any amount paid under Article 24(2) shall be reimbursed.

(8) Any sums remaining after all the payments required to be made under the foregoing provisions of this Article have been made shall be paid into the Consolidated Fund.

Exercise of powers by High Court or receiver

19.—(1) This Article applies to the powers conferred on the High Court by Articles 13 to 16 and 18, or on a receiver appointed under this Order or in pursuance of a charging order.

(2) Subject to the following provisions of this Article, the powers shall be exercised with a view to recovering property which is liable to be recovered under an external confiscation order registered in the High Court under Article 28 or, as the case may be, with a view to making available for recovery property which may become liable to be recovered under any external confiscation order which may be made in the defendant's case.

(3) In the case of realisable property held by a person to whom the defendant has directly or indirectly made a gift caught by this Order 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 external confiscation order.

Bankruptcy of defendant, etc

21.—(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 Article 13(8) or 16(5) or (6) for the time being in the hands of a receiver appointed under Article 13 or 16,

is excluded from the bankrupt's estate for the purposes of Part IX of the Insolvency (Northern Ireland) Order 1989(**a**).

(2) Where a person has been adjudged bankrupt, the powers conferred on the High Court by Articles 13 to 16 and 18 or on a receiver so appointed shall not be exercised in relation to—

(*a*) property for the time being comprised in the bankrupt's estate for the purposes of that Part of the 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 of 1989 (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 of 1989.

(3) Nothing in that Order of 1989 shall be taken as restricting, or enabling the restriction of, the exercise of those powers.

(4) Paragraph (2) 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.

(**a**) 1989 (N.I. 19)

(5) Where, in the case of a debtor, an interim receiver stands appointed under Article 259 of that 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 of 1989 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 this Order—

(*a*) no order shall be made under Article 312 or 367 of that Order of 1989 (avoidance of certain transactions) in respect of the making of the gift at any time when 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 discharge of the restraint or charging order shall take into account any realisation under this Order of property held by the person to whom the gift was made.

Winding up of company holding realisable property

22.—(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 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 Article 13(8) or 16(5) or (6) for the time being in the hands of a receiver appointed under Article 13 or 16.

(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 by Articles 13 to 16 and 18 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 Insolvency (Northern Ireland) Order 1989 shall be taken as restricting, or enabling the restriction of, the exercise of those powers.

(4) Paragraph (2) 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 Article—

"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.

Insolvency officers dealing with property subject to restraint order

23.—(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

(*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 sub-paragraph (*a*) of paragraph (1) 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 Article 18(1) or (4).

Receivers: supplementary provisions

24.—(1) Where a receiver appointed under this Order 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 Article 18(5), be paid by the person on whose application the receiver was appointed.

Registration of external confiscation orders

28.—(1) On an application made by or on behalf of the government of a designated country, the High Court may register an external confiscation order made there if—

(*a*) it is satisfied that at the time of registration the order is in force and not subject to appeal;

(*b*) it is satisfied, where the person against whom the order is made did not appear in the proceedings, that he received notice of the proceedings in sufficient time to enable him to defend them; and

(*c*) it is of the opinion that enforcing the order in Northern Ireland would not be contrary to the interests of justice.

(2) In paragraph (1) ''appeal'' includes—

(*a*) any proceedings by way of discharging or setting aside a judgment; and

(*b*) an application for a new trial or a stay of execution.

(3) The High Court shall cancel the registration of an external confiscation order if it appears to the Court that the order has been satisfied by payment of the amount due under it or by the person against whom it was made serving imprisonment in default of payment or by any other means.

Amendments, transitional provisions and savings

38.—(1) The statutory provisions specified in Schedule 2 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 3 shall have effect.

APPENDIX

Institution of Proceedings

Designated country	*Point at which proceedings are instituted*
Anguilla	(*a*) when a summons or warrant is issued in respect of an offence; (*b*) when a person is charged with an offence after being taken into custody without a warrant; (*c*) when a bill of indictment is preferred
Australia	(*a*) when an information has been laid before a justice of the peace; (*b*) when a person is charged with an offence after having been taken into custody without a warrant; (*c*) when a bill of indictment is preferred
the Bahamas	(*a*) when an information has been laid before a justice of the peace; (*b*) when a person is charged with an offence after having been taken into custody without a warrant; (*c*) when a bill of indictment is preferred
Bahrain	when a bill of indictment is lodged in court against any person for an offence
Barbados	(*a*) when an information has been laid before a magistrate; (*b*) when a person is charged with an offence; (*c*) when a bill of indictment is preferred
Bermuda	when an information is laid charging a person with an offence
the Cayman Islands	(*a*) when a charge has been signed under subsection (3) or (4) of section 13 of the Criminal Procedure Code in respect of the offence; or (*b*) when a person is charged with the offence after being arrested without a warrant under subsection (5) of that section
Gibraltar	when a person is charged with an offence, whether by the laying of an information or otherwise
Guernsey	when a person is charged with an offence

Hong Kong	(*a*) when a magistrate issues a warrant or summons; (*b*) when a person is charged with an offence; (*c*) when an indictment is preferred
Isle of Man	(*a*) where a justice of the peace issues a summons under section 4 of the Summary Jurisdiction Act 1989, when the complaint in relation to the offence is made to him; (*b*) where a justice of the peace issues a warrant for the arrest of any person under that section, when the complaint in relation to the offence is made to him; (*c*) where a person is charged with the offence after being taken into custody without a warrant, when he is taken into custody; (*d*) where an information is preferred by the Attorney General in a case where there have been no committal proceedings, when the information is lodged in the General Registry in accordance with section 4(1) of the Criminal Code Amendment Act 1917
Italy	(*a*) when a person is notified, in accordance with Article 369 of the Italian Code of Criminal Procedure, that a prosecution against him is in progress; (*b*) when a proposal for the application of a preventative measure (''misura di prevenzione'') is laid before a court
Jersey	(*a*) when the Bailiff issues a warrant in respect of an offence for the arrest of a person who is out of the island; (*b*) when a person is arrested and charged with an offence; (*c*) when a summons in respect of an offence is served on a person at the instance of the Attorney General; (*d*) when a summons in respect of the offence is served on a person in accordance with the provisions of Article 8 of the Police Court (Miscellaneous Provisions) (Jersey) Law, 1949
Malaysia	when a person is charged with an offence
Montserrat	(*a*) when a judge issues a summons or warrant in respect of an offence; (*b*) when a person is charged with an offence after being taken into custody without a warrant

Saudi Arabia	when an information has been laid before a judicial authority
Spain	when by virtue of a judicial resolution it is decided to proceed against a person for an offence
Sweden	when a public prosecutor has established that there are reasonable grounds to suspect that a person has committed an offence and accordingly is obliged under the Code of Judicial Procedure to notify the person of the suspicion
Switzerland	when proceedings for an offence are brought before an examining magistrate
United Mexican States	when criminal proceedings are instituted by a judicial authority
United States of America	when an indictment, information or complaint has been filed against a person in respect of an offence

SCHEDULE 2 Article 38(1)

Amendments

The Bankruptcy Amendment (Northern Ireland) Order 1980 (N.I. 4)

2. Article 31 (effect of order of discharge) shall have effect as if amounts payable under external confiscation orders were debts excepted under paragraph (1)(*a*) of that Article.

The Insolvency (Northern Ireland) Order 1989 (N.I. 19)

7. Article 255 (discharge of bankrupt not to release him from liabilities in respect of fines, etc) shall have effect as if the reference to a fine included a reference to an external confiscation order.

SCHEDULE 3 Article 38(2)

Transitional Provisions and Savings

2. Until the coming into operation of the Insolvency (Northern Ireland) Order 1989, Articles 18(1) and (4) and 23 shall have effect as if for references to an insolvency practitioner there were substituted references to an Official Assignee, trustee, liquidator, provisional liquidator or a receiver or manager appointed under section 68 of the Bankruptcy (Ireland) Amendment Act 1872(**a**).

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, Article 21 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*) paragraph (2)(*b*) shall be omitted;

(*c*) for the reference in 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 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 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 paragraph (6) to Articles 312 and 367 of that Order there shall be respectively substituted references to section 12 of the Bankruptcy Amendment Act (Northern Ireland) 1929(**b**) and section 10 of the Conveyancing Act (Ireland) 1634(**c**).

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 Insolvency (Northern Ireland) Order 1989, Article 22 shall have effect with the substitution for references to that Order of references to the Companies (Northern Ireland) Order 1986.

(**a**) 1872 c. 58
(**b**) 1929 c. 1 (N.I.)
(**c**) 1634 c. 3 (Ir)

EXPLANATORY NOTE

(This note is not part of the Order.)

This Order provides that, subject to certain modifications, the Criminal Justice (Confiscation) (Northern Ireland) Order 1990 applies to an order made by a court in any of the countries or territories listed in Schedule 1 (being countries and territories designated under section 26 of the Drug Trafficking Offences Act 1986) for the purpose of recovering payments or other rewards received in connection with drug trafficking or their value, and to proceedings which have been or are to be instituted in a designated country or territory and may result in such an order being made there. It also provides, in Article 7, that the value of any property recovered in a designated country or territory in response to a request by the government of the United Kingdom for assistance in the enforcement of an order is to be treated as reducing the amount payable in Northern Ireland under a confiscation order made by the Crown Court.

Article 2 applies the provisions of the Criminal Justice (Confiscation) (Northern Ireland) Order 1990, with modifications, to confiscation orders of courts in those countries and territories and proceedings which may lead to such an order being made. The modifications to the Criminal Justice (Confiscation) (Northern Ireland) Order 1990 are set out in Schedule 2, and Schedule 3 sets out in full that Order as so modified.