

SCHEDULES

SCHEDULE 2

Article 49.

FINANCIAL INVESTIGATIONS

Modifications etc. (not altering text)

- C1** Sch. 2: transfer of functions from Secretary of State to Department of Justice (12.4.2010) by Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2010 (S.I. 2010/976), arts. 1(2), 4(1)(2), Sch. 1 (with arts. 28-31); S.I. 2010/977, art. 1(2)

Preliminary

1.—(1) In this Schedule “the investigation”, in relation to a financial investigator, means the investigation for the purposes of which the powers conferred by this Schedule are exercisable by him.

(2) References in this Schedule to documents include references to information recorded in any form and, in relation to information recorded otherwise than in legible form, references to its production include references to producing a copy of the information in legible form.

[^{F1}(3) In paragraphs 3 to 7, “financial investigator” includes a person authorised under Article 49(1A) to exercise the powers conferred by paragraph^{F2}. . . 3A.]

F1 2001 NI 1

F2 2002 c. 29

Investigation powers

2.—(1) A financial investigator may by notice in writing require any person who he has reason to believe has information which appears to the investigator to relate to any matter relevant to the investigation to attend before the investigator at a specified place either forthwith or at a specified time and answer questions or otherwise furnish information which appears to the investigator to relate to the investigation.

(2) A financial investigator may by notice in writing require any person who he has reason to believe has information which appears to the investigator to relate to any matter relevant to the investigation to furnish specified information which appears to the investigator to relate to the investigation within a specified time or such further time as the investigator may allow^{F3} or on a specified date] and in a specified manner or in such other manner as the investigator may allow.

(3) A financial investigator may by notice in writing require any person who he has reason to believe has information which appears to the investigator to relate to any matter relevant to the investigation to produce at a specified place and either forthwith or at a specified time any specified documents—

- (a) which are in his possession, custody or power; or

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- (b) to which he has access; or
- (c) of which he may obtain a copy,

and which appear to the investigator to relate to the investigation or any documents of a specified class which appear to the investigator to relate to any such matter.

(4) If any documents are produced pursuant to a notice under sub-paragraph (3) the financial investigator may—

- (a) take copies of or abstracts from them; or
- (b) require the person producing them to provide an explanation of them; or
- (c) retain them if he has reasonable grounds for believing that they might otherwise be concealed, lost, damaged, altered or destroyed.

(5) If any documents are not produced pursuant to a notice under sub-paragraph (3) the financial investigator may require the person who was required to produce them to state, to the best of his knowledge and belief, where they are.

F3 2001 NI 1

Para. 3 rep. by 2002 c. 29

[^{F4}**3A.**—(1) Where it appears to a financial investigator that a specified person may have benefited from [^{F5} his criminal conduct] the investigator may by notice in writing require any solicitor to furnish specified information to the investigator within a specified time and in a specified manner.

[^{F6}(1A) For the purposes of sub-paragraph (1) the question whether a person has benefited from his criminal conduct is to be decided in accordance with Part 4 of the Proceeds of Crime Act 2002.]

(2) The information which may be specified under sub-paragraph (1) is whether at any time during a specified period the specified person was a client of the solicitor in respect of—

- (a) any land or business;
- (b) a company, firm, partnership or trust;
- (c) a bank or other account; or
- (d) any assets in the nature of investments, being assets of the specified person.

(3) Where the specified person was a client as mentioned in sub-paragraph (2), the solicitor shall furnish to the investigator—

- (a) the full name of the client;
- (b) the most recent and all known previous addresses of the client;
- (c) the date of birth (if known) of the client;
- (d) other evidence of identity of the client obtained in accordance with the Money Laundering Regulations 1993; and
- (e) specified details of the nature of any transaction relating to any matter mentioned in that sub-paragraph.

[^{F7}(4) In its application by virtue of Article 49(1B), this paragraph shall have effect as if—

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- (a) for references to a financial investigator there were substituted references to [F8 a [F9 National Crime Agency officer] or a relevant Director (within the meaning of Article 49(5));
 - (b) in sub-paragraphs (1) and (1A) for “benefited from his criminal conduct” there were substituted “obtained property through unlawful conduct”; and
 - (c) in paragraph (1A) for “Part 4” there were substituted “Part 5”.
- (5) Where this paragraph applies by virtue of Article 49 (1B), then—
- (a) paragraphs 4(2), 5 and 6 apply for the purposes of this paragraph with the modification mentioned in sub-paragraph (4)(a); and
 - (b) paragraphs 7 and 8 do not apply for those purposes.]]

F4	2001 NI 1
F5	2002 c. 29
F6	2002 c. 29
F7	2005 NI 15
F8	Words in Sch. 2 para. 3A(4) substituted (1.4.2008) by Serious Organised Crime and Police Act 2005 and Serious Crime Act 2007 (Consequential and Supplementary Amendments to Secondary Legislation) Order 2008 (S.I. 2008/574) , art. 2, Sch. para. 5(5)
F9	Words in Sch. 2 para. 3A(4)(a) substituted (7.10.2013) by Crime and Courts Act 2013 (c. 22) , s. 61(2), Sch. 8 para. 54 ; S.I. 2013/1682, art. 3(v)

Restrictions

4.—(1) A person shall not under paragraph 2 or 3 be required to disclose any information or produce any document which he would be entitled to refuse to disclose or produce on grounds of legal professional privilege in proceedings in the High Court except that a lawyer may be required to furnish the name and address of his client.

(2) A person need not comply with any requirement imposed by a financial investigator under paragraph 2[F10, F11 . . . or 3A] unless the investigator has, if required to do so, produced evidence of his authority, and that evidence need not identify him by name if it contains other means of identification.

F10	2001 NI 1
F11	2002 c. 29

Offences

5.—(1) A person shall be guilty of an offence if without reasonable excuse he fails to comply with a requirement imposed on him under paragraph 2[F12, F13 . . . or 3A].

(2) A person who—

- (a) knows or has reasonable cause to suspect that an investigation is being carried out or is likely to be carried out under this Schedule; and
- (b) falsifies, conceals, destroys or otherwise disposes of, or causes or permits the falsification, concealment, destruction or disposal of, documents which he knows or has reasonable cause to suspect are or would be relevant to such an investigation,

shall be guilty of an offence unless he proves that he had no intention of concealing the facts disclosed by the document from any person carrying out such an investigation.

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(3) A person guilty of an offence under sub-paragraph (1) shall be liable, on summary conviction, to imprisonment for a term not exceeding 6 months or a fine not exceeding level 5 on the standard scale or to both.

(4) A person guilty of an offence under sub-paragraph (2) shall be liable—

- (a) on conviction on indictment, to imprisonment for a term not exceeding 5 years or to a fine or to both;
- (b) on summary conviction, to imprisonment for a term not exceeding 6 months or to a fine not exceeding the statutory maximum or to both.

[^{F14}(5) Notwithstanding anything in Article 19(1) of the Magistrates' Courts (Northern Ireland) Order 1981, summary proceedings for an offence under sub-paragraph (1) or (2) may be brought at any time within the period of 3 months from the date on which evidence sufficient in the opinion of the complainant to justify prosecution for the offence came to his notice or within the period of 12 months from the commission of the offence, whichever period last expires.]

F12 2001 NI 1

F13 2002 c. 29

F14 2001 NI 1

Admissibility of evidence

6. Any answers given or information furnished by a person in response to a requirement imposed under paragraph 2^[F15, F16] . . . or 3A] may not be used in evidence against him except—

- (a) on a prosecution for an offence under the Perjury (Northern Ireland) Order 1979; or
- [^{F17}(b) on his prosecution for some other offence where evidence relating to any such answer or information is adduced, or a question relating to it is asked, by or on behalf of that person; or,]
- (c) on a prosecution for an offence under paragraph 5.

F15 2001 NI 1

F16 2002 c. 29

F17 1999 c. 23

Restriction on disclosure of information

7.—(1) Information obtained by a person in his capacity as a financial investigator may not be disclosed by him except—

- (a) to a constable;
- (b) to any Northern Ireland department or government department or other authority or body discharging its functions on behalf of the Crown (including the Crown in right of Her Majesty's Government in the United Kingdom);
- (c) to any competent authority; or
- (d) to any person or body having, under the law of any country or territory outside the United Kingdom, functions corresponding to any of the functions of any person or body mentioned in heads (a) to (c).

(2) The following are competent authorities for the purposes of sub-paragraph (1)(c)—

- (a) an inspector appointed under^{F18} . . . Part XIV of the Companies Act 1985;

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- (b) the Official Receiver for Northern Ireland;
 - (c) an Official Receiver;
 - (d) the Accountant in Bankruptcy;
 - (e) a person appointed to carry out an investigation under section 55 of the Building Societies Act 1986;
 - (f) a body administering a compensation scheme under section 54 of the Financial Services Act 1986;
 - (g) an inspector appointed under section 94 of that Act;
 - (h) a person exercising powers by virtue of section 106 of that Act;
 - (i) an inspector appointed under section 177 of that Act;
 - (j) a person appointed by the Bank of England under section 41 of the Banking Act 1987 to carry out an investigation and make a report;
 - (k) a person exercising powers by virtue of section 44(2) of the Insurance Companies Act 1982; and
 - (l) any body having supervisory, regulatory or disciplinary functions in relation to any profession or any area of commercial activity.
- (3) The Secretary of State may, by regulations,—
- (a) amend sub-paragraph (2) by adding to, or deleting from, the competent authorities for the purposes of sub-paragraph (1)(c);
 - (b) impose conditions subject to which, and otherwise restrict the circumstances in which, information may be disclosed under sub-paragraph (1)(d).

F18 Words in Sch. 2 para. 7(2)(a) omitted (1.10.2009) by virtue of Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009 (S.I. 2009/1941), art. 2(1), Sch. 1 para. 165 (with art. 10)

Code of practice

8.—(1) The Secretary of State shall make a code of practice in connection with the exercise by financial investigators of the powers conferred by this Schedule^[F19] or Article 50].

(2) When the Secretary of State proposes to issue the code of practice under this paragraph he shall prepare and publish a draft of the code, shall consider any representations made to him about the draft and may modify the draft accordingly.

(3) The Secretary of State shall lay before ^[F20]the Assembly] a draft of the code of practice prepared by him under this paragraph; and when he has laid the draft of the ^[F21]code before the Assembly] he may bring the code into operation by an order made by him.

(4) An order bringing the code of practice into operation may contain such transitional provisions or savings as appear to the Secretary of State to be necessary or expedient in connection with the code.

(5) The Secretary of State may from time to time revise the whole or any part of the code of practice issued by him under this paragraph and issue the code as revised; and the foregoing provisions of this paragraph shall apply (with appropriate modifications) to such a revised code as they apply to the first issue of the code.

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(6) A failure on the part of a financial investigator to comply with any provision of a code of practice issued under this paragraph shall not of itself render him liable to any criminal or civil proceedings.

(7) In all criminal and civil proceedings such a code shall be admissible in evidence; and if any provision of such a code appears to the court or tribunal conducting the proceedings to be relevant to any question arising in the proceedings it shall be taken into account in determining that question.

(8) In this paragraph “criminal proceedings” includes proceedings before a court-martial constituted under the Army Act 1955, the Air Force Act 1955 or the Naval Discipline Act 1957 or a disciplinary court constituted under section 50 of the said Act of 1957 and proceedings before the Courts-Martial Appeal Court.

(9) Nothing in Article 66(8) of the Police and Criminal Evidence (Northern Ireland) Order 1989 shall require financial investigators to have regard in exercising the powers conferred by this Schedule to any provision of a code under that Order.

F19 2001 NI 1

F20 Words in Sch. 2 para. 8(3) substituted (12.4.2010) by Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2010 (S.I. 2010/976), arts. 1(2), 4(3), Sch. 2 para. 15(4)(a) (with arts. 28-31); S.I. 2010/977, art. 1(2)

F21 Words in Sch. 2 para. 8(3) substituted (12.4.2010) by Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2010 (S.I. 2010/976), arts. 1(2), 4(3), Sch. 2 para. 15(4)(b) (with arts. 28-31); S.I. 2010/977, art. 1(2)

Regulations

9. Regulations under paragraphs 3(4) and 7(3) shall be subject to^{F22} negative resolution].

F22 Words in Sch. 2 para. 9 substituted (12.4.2010) by Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2010 (S.I. 2010/976), arts. 1(2), 4(3), Sch. 2 para. 15(5) (with arts. 28-31); S.I. 2010/977, art. 1(2)

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Changes and effects yet to be applied to :

- Instrument restr. by [1998 c. 35 s.14\(3\)\(b\)](#)
- Instrument restr. by [1998 c. 35 s.14\(3\)\(c\)](#)
- defn. of drug trafficking offence applied by [1997 c. 43 s.3\(5\)](#)
- defn. of drug trafficking offence applied by [1997 c. 43 s.3\(5\)](#)