

**Changes to legislation:** Antisocial Behaviour etc. (Scotland) Act 2004, SCHEDULE 1 is up to date with all changes known to be in force on or before 13 December 2018. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

## SCHEDULE 1

(introduced by section 47(9))

### POWERS IN RELATION TO EQUIPMENT SEIZED UNDER SECTION 47

#### Annotations:

#### Modifications etc. (not altering text)

- C1** Sch. 1 applied (with modifications) by 1990 c. 43, s. 81(3C) (as inserted (1.12.2004) by Antisocial Behaviour etc. (Scotland) Act 2004 (asp 8), ss. 144(1), 145(2), Sch. 4 para. 3; S.S.I. 2004/420, art. 3, Sch. 3)

- 1 In this schedule—
- (a) “noise offence” means, in relation to equipment seized under section 47(2), an offence under section 45;
  - (b) “seized equipment” means equipment seized in the exercise of the power of seizure and removal conferred by section 47(2);
  - (c) “related equipment”, in relation to any conviction of, or proceedings for a noise offence, means seized equipment used or alleged to have been used in the commission of the offence;
  - (d) “responsible local authority”, in relation to seized equipment, means the local authority by or on whose behalf the equipment was seized.
- 2 (1) Any seized equipment may be retained—
- (a) during the period of 28 days beginning with the seizure; or
  - (b) if it is related equipment in proceedings for a noise offence instituted within that period against any person, until—
    - (i) that person is sentenced or otherwise dealt with for, or acquitted of, the offence; or
    - (ii) the proceedings are discontinued.
- (2) Sub-paragraph (1) does not authorise the retention of seized equipment if—
- (a) a person has been given a fixed penalty notice under section 46 in respect of any noise;
  - (b) the equipment was seized because of its use in the emission of the noise in respect of which the fixed penalty notice was given; and
  - (c) that person has paid the fixed penalty before the end of the period allowed for its payment.
- 3 (1) Where a person is convicted of a noise offence the court may make an order (a “forfeiture order”) for forfeiture of any related equipment.
- (2) The court may make a forfeiture order whether or not it deals also with the offender in respect of the offence in any other way and without regard to any restrictions on forfeiture in any enactment.
- (3) In considering whether to make a forfeiture order in respect of any equipment, a court shall have regard—
- (a) to the value of the equipment; and
  - (b) to the likely financial and other effects on the offender of the making of the order (taken with any other order that the court contemplates making).

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- (4) A forfeiture order operates to deprive the offender of any rights in the equipment to which it relates.
- 4 (1) Where any equipment has been forfeited under paragraph 3, the sheriff may, on the application of a person (other than the person in whose case the forfeiture order was made) who claims the equipment, make an order for delivery of the equipment to the applicant.
- (2) An order such as is mentioned in sub-paragraph (1) may only be made if the sheriff is satisfied that the applicant is the owner of the equipment.
- (3) No application may be made under sub-paragraph (1) after the expiry of the period of 6 months beginning with the date on which a forfeiture order was made in respect of the equipment.
- (4) Where the responsible local authority is of the opinion that the person in whose case the forfeiture order was made is not the owner of the equipment, it must take reasonable steps to bring to the attention of persons who may be entitled to do so their right to make an application under sub-paragraph (1).
- (5) An order under sub-paragraph (1) does not affect the right of any person to take, within the period of 6 months beginning with the date of the order, proceedings for the recovery of the equipment from the person in possession of it in pursuance of the order (but the right ceases on the expiry of that period).
- (6) If, on the expiry of the period of 6 months beginning with the date on which a forfeiture order was made in respect of the equipment, no order has been made under sub-paragraph (1), the responsible local authority may dispose of the equipment.

*Return etc. of seized equipment*

- 5 If in proceedings for a noise offence no order for forfeiture of related equipment is made, the court may (whether or not a person is convicted of the offence) give such directions as it thinks fit as to the return, retention or disposal of the equipment by the responsible local authority.
- 6 (1) Where in the case of any seized equipment no proceedings in which it is related equipment are begun within the period mentioned in paragraph 2(1)(a)—
- (a) the responsible local authority shall return the equipment to any person who —
- (i) appears to it to be the owner of the equipment; and
- (ii) makes a claim for the return of the equipment within the period mentioned in sub-paragraph (2); and
- (b) if no such person makes such a claim within that period, the responsible local authority may dispose of the equipment.
- (2) The period referred to in sub-paragraph (1)(a)(ii) is the period of 6 months beginning with the expiry of the period mentioned in paragraph 2(1)(a).
- (3) The responsible local authority shall take reasonable steps to bring to the attention of persons who may be entitled to do so their right to make such a claim.
- (4) Subject to sub-paragraph (6), the responsible local authority is not required to return any seized equipment under sub-paragraph (1)(a) until the person making the claim

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has paid any such reasonable charges for the seizure, removal and retention of the equipment as the authority may demand.

(5) If—

(a) equipment is sold in pursuance of—

(i) paragraph 4(6);

(ii) directions under paragraph 5; or

(iii) this paragraph; and

(b) before the expiration of the period of one year beginning with the date on which the equipment is sold any person satisfies the responsible local authority that at the time of its sale the person was the owner of the equipment,

the authority shall pay that person any sum by which any proceeds of sale exceed any such reasonable charges for the seizure, removal or retention of the equipment as the authority may demand.

(6) The responsible local authority cannot demand charges from any person under subparagraph (4) or (5) who it is satisfied did not know, and had no reason to suspect, that the equipment was likely to be used in the emission of noise exceeding the level determined under section 48.

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**Changes and effects yet to be applied to the whole Act associated Parts and Chapters:**

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 85B inserted by [2014 asp 14 s. 21\(1\)](#)