

2010 No. 214

CRIMINAL LAW

**The Knives etc. (Disposal of Forfeited Property) (Scotland)
Order 2010**

<i>Made</i> - - - -	<i>26th May 2010</i>
<i>Laid before the Scottish Parliament</i>	<i>27th May 2010</i>
<i>Coming into force</i> - -	<i>25th June 2010</i>

The Scottish Ministers make the following Order in exercise of the powers conferred by section 27K(7) and (8)(a) of the Civic Government (Scotland) Act 1982(a) and all other powers enabling them to do so.

Citation and Commencement

1. This Order may be cited as the Knives etc. (Disposal of Forfeited Property) (Scotland) Order 2010 and comes into force on 25th June 2010.

Interpretation

2. In this Order—

“the Act” means the Civic Government (Scotland) Act 1982;

“museum or similar institution” means any institution to which the public are given access which has as its purpose, or one of its purposes, the preservation and display of material of historical, aesthetic or technical interest;

“property” means property in the possession of the police by virtue of section 27K(2) of the Act; and

“the relevant authority” means a police authority or a joint police board (constituted under an amalgamation scheme made under the Police (Scotland) Act 1967(b)) having possession of the property under section 27K(2) of the Act.

Property to which this Order applies

3.—(1) Subject to paragraph (2), this Order applies to property in respect of which—

- (a) no application under section 27K(3) of the Act has been made before the end of the period of 6 months beginning with the date on which the forfeiture order was made; or
- (b) such application, having been made, has been refused.

(a) 1982 c.45. Section 27K was inserted by section 58 of the Custodial Sentences and Weapons (Scotland) Act 2007 (asp 17).
(b) 1967 c.77.

- (2) Where, within the period specified in paragraph (1)(a)—
- (a) an application has been made under section 27K(3) of the Act but not determined; or
 - (b) the person upon whose conviction the court ordered the forfeiture of the property under section 27J of the Act has appealed against the conviction or sentence,

this Order does not apply to the property unless and until that application or appeal has been refused.

Disposal of Property

4.—(1) Subject to paragraphs (4) to (6) below, rights in the property will vest in the relevant authority where either the appeal or application (as the case may be) referred to in article 3 is refused or where a recovery order is granted but section 27K(6) of the Act applies (rights lost at the end of 6 months).

(2) Subject to paragraphs (3) and (4) below, property to which this Order applies must be destroyed by the police.

(3) Subject to paragraph (4), the relevant authority may, instead of arranging for the destruction of the property, give or sell it to a museum or similar institution but only where the relevant authority is satisfied that the property is of particular rarity, aesthetic quality or technical or historical interest.

(4) On application by the Lord Advocate the court may direct that any property to which the forfeiture order relates, is to vest in any person other than the relevant authority for its destruction or disposal, and may dis-apply paragraph (6) and make such other order relating to any proceeds as it considers appropriate.

(5) The title to any property given or sold to a museum or similar institution, or any other person transfers to that institution or person in accordance with paragraphs (3) or (4), and except for proceeds mentioned in paragraph (6), discharges the rights and duties of the relevant authority under paragraphs (1) and (2).

(6) The proceeds of any disposals under this Order (if any) are to be paid to, and vest in, the relevant authority unless a court orders otherwise.

KENNY MACASKILL

A member of the Scottish Executive

St Andrew's House,
Edinburgh
26th May 2010

EXPLANATORY NOTE

(This note is not part of the Order)

This Order allows the police to destroy property which is in their possession by virtue of a forfeiture order made under section 27J of the Civic Government (Scotland) Act 1982.

The police can only destroy property where, after a period of 6 months from the date a forfeiture order was made under section 27J(2), no application for recovery under section 27K(3) has been made, or such an application having been made, was refused. If an application is made under section 27K(3) within the 6 month period, this Order does not apply unless and until the application has been refused. Similarly, if the person upon whose conviction the court ordered the forfeiture of the property appeals against their conviction or sentence within 6 months of the making of the forfeiture order, this Order does not apply unless and until that appeal is refused.

If the relevant authority is satisfied that the property that would otherwise be destroyed under a forfeiture order is of particular rarity, aesthetic quality or technical or historical interest, then it may give or sell the object to a museum or other similar institution, rather than have the object destroyed. The rights to the property will then vest in the museum or other similar institution. Any money received as a result of selling property would be paid to and would vest in the relevant authority unless a court orders otherwise.

The Lord Advocate has a right to apply for the property to be vested in any person for its destruction or disposal instead of the police and the court may make an order relating to proceeds as it considers appropriate.

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