

## SCHEDULES

### SCHEDULE 4

#### FORFEITURE ORDERS

#### PART I

#### ENGLAND AND WALES

##### *Restraint orders*

- 3 (1) The High Court may in accordance with this paragraph by an order (referred to in this Part of this Schedule as a “restraint order”) prohibit any person, subject to such conditions and exceptions as may be specified in the order, from dealing with any property liable to forfeiture, that is to say, any property in respect of which a forfeiture order has been made or in respect of which such an order could be made in the proceedings referred to in sub-paragraph (2) or (3) below.
- (2) A restraint order may be made where—
- (a) proceedings have been instituted against a defendant in England or Wales for an offence under Part III of this Act;
  - (b) the proceedings have not been concluded; and
  - (c) either a forfeiture order has been made or it appears to the court that there are reasonable grounds for thinking that a forfeiture order may be made in those proceedings.
- (3) A restraint order may also be made where—
- (a) the court is satisfied that, whether by the laying of an information or otherwise, a person is to be charged in England and Wales with an offence under Part III of this Act; and
  - (b) it appears to the court that a forfeiture order may be made in proceedings for the offence.
- (4) In the application of the provisions of this Part of this Schedule at a time when a restraint order may be made by virtue of sub-paragraph (3) above references to the prosecutor shall be construed as references to the person who the High Court is satisfied is to have the conduct of the proposed proceedings.
- (5) Where the court has made an order under this paragraph by virtue of sub-paragraph (3) above the court may discharge the order if proceedings in respect of the offence are not instituted (whether by the laying of an information or otherwise) within such time as the court considers reasonable.
- (6) For the purposes of this paragraph, dealing with property includes, without prejudice to the generality of that expression—

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*Status: This is the original version (as it was originally enacted).*

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- (a) where a debt is owed to the person concerned, making a payment to any person in reduction of the amount of the debt; and
  - (b) removing the property from the jurisdiction of the High Court.
- (7) In exercising the powers conferred by this paragraph the court shall not take account of any obligations of any person having an interest in the property subject to the restraint order which might frustrate the making of a forfeiture order.
- (8) For the purposes of this paragraph proceedings for an offence are instituted—
- (a) when a justice of the peace issues a summons or warrant under section 1 of the Magistrates' Courts Act 1980 in respect of that offence;
  - (b) when a person is charged with the offence after being taken into custody without a warrant;
  - (c) when a bill of indictment is preferred by virtue of section 2(2)(b) of the Administration of Justice (Miscellaneous Provisions) Act 1933;
- and where the application of this sub-paragraph would result in there being more than one time for the institution of proceedings they shall be taken to be instituted at the earliest of those times.
- (9) For the purposes of this paragraph and paragraph 4 below proceedings are concluded—
- (a) when a forfeiture order has been made in those proceedings and effect has been given to it in respect of all the money or other property to which it applies; or
  - (b) when (disregarding any power of a court to grant leave to appeal out of time) there is no further possibility of a forfeiture order being made in the proceedings.
- 4 (1) A restraint order—
- (a) may be made only on an application by the prosecutor;
  - (b) may be made on an ex parte application to a judge in chambers; and
  - (c) shall provide for notice to be given to persons affected by the order.
- (2) A restraint order—
- (a) may be discharged or varied in relation to any property; and
  - (b) shall be discharged when proceedings for the offence are concluded.
- (3) An application for the discharge or variation of a restraint order may be made by any person affected by it.
- 5 (1) Where the High Court has made a restraint order a constable may for the purpose of preventing any property subject to the order being removed from the jurisdiction of the court seize that property.
- (2) Property seized under this paragraph shall be dealt with in accordance with the court's directions.
- 6 (1) The Land Charges Act 1972 and the Land Registration Act 1925 shall apply—
- (a) in relation to restraint orders as they apply in relation to orders affecting land made by the court for the purpose of enforcing judgments or recognizances; and
  - (b) in relation to applications for restraint orders as they apply in relation to other pending land actions.

- (2) The prosecutor shall be treated for the purposes of section 57 of the Land Registration Act 1925 (inhibitions) as a person interested in relation to any registered land to which a restraint order or an application for such an order relates.