

SCHEDULES

SCHEDULE 4

FORFEITURE ORDERS

PART II

SCOTLAND

Implementation of forfeiture orders

- 11 (1) Where a court in Scotland makes an order under section 13(2), (3) or (4) of this Act (in this Part of this Schedule referred to as a “forfeiture order”) it may make an order —
- (a) directing any property to which the forfeiture order applies other than money or land to be sold or otherwise disposed of in such manner as the court may direct;
 - (b) appointing an administrator to take possession, subject to such conditions and exceptions as may be specified by the court, of any such property which is land and to realise it in such manner as the court may direct;
 - (c) directing a specified part of any money, or of the proceeds of the sale, disposal or realisation of any property, to which the forfeiture order applies to be paid to or for a specified person falling within section 13(6) of this Act;
 - (d) making such other provision as appears to the court to be necessary for giving effect to the forfeiture order or to any order made by virtue of paragraph (a), (b) or (c) above.
- (2) The Court of Session may by rules of court prescribe the powers and duties of an administrator appointed under sub-paragraph (1)(b) above.
- (3) A forfeiture order shall not come into force so long as an appeal is pending against the order or against the conviction on which it was made; and for this purpose where an appeal is competent but has not been brought it shall be treated as pending until the expiry of a period of fourteen days from the date when the order was made.
- (4) Any balance remaining after making any payment required under sub-paragraph (1) (c) above or paragraph 12 below shall be treated for the purposes of section 203 of the Criminal Procedure (Scotland) Act 1975 (fines payable to HM Exchequer) as if it were a fine imposed in the High Court.
- (5) The clerk of court shall, on the application of the prosecutor or defender in the proceedings in which a forfeiture order is made, certify in writing the extent (if any) to which, at the date of the certificate, effect has been given to the order in respect of the money or other property to which it applies.

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- (6) In this paragraph references to the proceeds of the sale, disposal or realisation of property are references to the proceeds after deduction of the costs of sale, disposal or realisation.
- 12 (1) Where an administrator appointed under paragraph 11 above takes any action—
- (a) in relation to property which is not subject to forfeiture, 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) An administrator appointed under paragraph 11 above shall be entitled to be paid his remuneration and expenses out of the proceeds of the property realised by him or, if and so far as those proceeds are insufficient, by the Lord Advocate.
- (3) The accountant of court shall supervise an administrator appointed under paragraph 11 above in the exercise of the powers conferred, and discharge of the duties imposed, on him under or by virtue of that paragraph.

Restraint orders

- 13 (1) The Court of Session may in accordance with this paragraph by an order (referred to in this Part of this Schedule as a “restraint order”) prohibit any person specified in the order, subject to such conditions and exceptions as may be so specified, 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 in respect of a person where—
- (a) proceedings have been instituted against him in Scotland 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 a procurator fiscal proposes to apply for a warrant to arrest and commit a person suspected of an offence under Part III of this Act or to charge such a person with such an offence and that in either case the suspicion is reasonable; and
 - (b) it appears to the court that a forfeiture order may be made in proceedings for the offence.
- (4) 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 within such time as the court considers reasonable.
- (5) For the purposes of this paragraph, dealing with property includes, without prejudice to the generality of that expression—
- (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

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- (b) removing the property from the jurisdiction of the Court of Session.
- (6) 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.
- (7) For the purposes of this paragraph proceedings for an offence are instituted—
- (a) when warrant to arrest a person suspected of or charged with such an offence is granted;
 - (b) when a person is charged with the offence after being taken into custody without a warrant;
 - (c) when a person is charged with the offence without being arrested,
- 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.
- (8) For the purposes of this paragraph and paragraph 14 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 extend the period within which an appeal may be made) there is no further possibility of a forfeiture order being made in the proceedings.
- 14 (1) A restraint order—
- (a) may be made only on an application by the Lord Advocate;
 - (b) may be made on an ex parte application which shall be heard in chambers; and
 - (c) shall provide for notice to be given to persons affected by the order.
- (2) On an application made by any person affected by a restraint order, the order—
- (a) may be recalled or varied in relation to any property; and
 - (b) shall be recalled when proceedings for the offence are concluded.
- (3) Where proceedings for the offence are concluded the Lord Advocate shall forthwith apply to the court for recall of the order and the court shall grant the application.
- 15 (1) Where the Court of Session 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.
- 16 (1) On the application of the Lord Advocate, the Court of Session may, in respect of—
- (a) heritable property in Scotland affected by a restraint order (whether such property generally or particular such property) grant warrant for inhibition against any person interdicted by the order; and
 - (b) moveable property so affected (whether such property generally or particular such property) grant warrant for arrestment if the property would be arrestable were the person entitled to it a debtor.

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- (2) Subject to the provisions of this Part of this Schedule, a warrant under sub-paragraph (1) above—
 - (a) shall have effect as if granted on the dependence of an action for debt at the instance of the Lord Advocate against the person and may be executed, recalled, loosed or restricted accordingly;
 - (b) where granted under sub-paragraph (1)(a) above, shall have the effect of letters of inhibition and shall forthwith be registered by the Lord Advocate in the register of inhibitions and adjudications.
- (3) Section 155 of the Titles to Land Consolidation (Scotland) Act 1868 (effective date of inhibition) shall apply in relation to an inhibition for which warrant has been granted under sub-paragraph (1)(a) above as that section applies to an inhibition by separate letters or contained in a summons.
- (4) In the application of section 158 of the said Act of 1868 (recall of inhibition) to such inhibition as is mentioned in sub-paragraph (3) above, references in that section to a particular Lord Ordinary shall be construed as references to any Lord Ordinary.
- (5) That an inhibition or arrestment has been executed under sub-paragraph (2) above in respect of property shall not prejudice the exercise of an administrator's powers under or for the purposes of this Part of this Schedule in respect of that property.
- (6) No inhibition or arrestment executed under sub-paragraph (2) above shall have effect once, or in so far as, the restraint order affecting the property in respect of which the warrant for such inhibition or arrestment has been granted has ceased to have effect in respect of that property, and the Lord Advocate shall—
 - (a) apply for the recall, or as the case may be restriction, of the inhibition or arrestment accordingly; and
 - (b) ensure that recall, or restriction, of an inhibition on such application is reflected in the register of inhibitions and adjudications.

Compensation

- 17 (1) If proceedings are instituted against a person for an offence under Part III of this Act and either—
 - (a) the proceedings do not result in his conviction for any such offence; or
 - (b) where he is convicted of one or more such offences—
 - (i) the conviction or convictions concerned are quashed; or
 - (ii) he is pardoned by Her Majesty in respect of the conviction or convictions concerned,

the Court of Session may, on an application by a person who had an interest in any property which was subject to a forfeiture or restraint order made in or in relation to those proceedings, order compensation to be paid to the applicant if, having regard to all the circumstances, it considers it appropriate to do so.
- (2) Sub-paragraph (1) above is without prejudice to any right which may otherwise exist to institute proceedings in respect of delictual liability disclosed by such circumstances as are mentioned in paragraphs (a) and (b) of that sub-paragraph.
- (3) The court shall not order compensation to be paid in any case unless it is satisfied—

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- (a) that there is some serious default on the part of a person concerned in the investigation or prosecution of the offence concerned, being a person mentioned in sub-paragraph (6) below; and
 - (b) that the applicant has suffered loss in consequence of anything done in relation to the property by or in pursuance of an order under this Part of this Schedule.
- (4) The court shall not order compensation to be paid in any case where it appears to it that the proceedings would have been instituted even if the serious default had not occurred.
- (5) The amount of compensation to be paid under this paragraph shall be such as the court thinks just in all the circumstances of the case.
- (6) Compensation payable under this paragraph shall be paid—
- (a) where the person in default was a constable of a police force, out of the police fund out of which the expenses of that police force are met;
 - (b) where the person in default was a constable other than is mentioned in paragraph (a) above, but with the powers of such a constable, by the body under whose authority he acts; and
 - (c) where the person in default was a procurator fiscal or was acting on behalf of the Lord Advocate, by the Lord Advocate.
- (7) Sub-paragraph (7) of paragraph 13 above applies for the purposes of this paragraph as it applies for the purposes of that paragraph.

Enforcement of orders made elsewhere in the British Islands

- 18 (1) In the following provisions of this Part of this Schedule—
- “an England and Wales order” means—
 - (a) an order made in England and Wales under section 13(2), (3) or (4) of this Act (“an England and Wales forfeiture order”);
 - (b) an order made under paragraph 3 above (“an England and Wales restraint order”); or
 - (c) an order made under any other provision of Part I of this Schedule in relation to an England and Wales forfeiture or restraint order;
 - “a Northern Ireland order” means—
 - (a) an order made in Northern Ireland under section 13(2), (3) or (4) of this Act (“a Northern Ireland forfeiture order”);
 - (b) an order made under paragraph 23 below (“a Northern Ireland restraint order”); or
 - (c) an order made under any other provision of Part III of this Schedule in relation to a Northern Ireland forfeiture or restraint order;
 - “an Islands order” means—
 - (a) an order made in any of the Islands under section 13(2), (3) or (4) of this Act as extended to that Island under section 28(3) of this Act (“an Islands forfeiture order”);
 - (b) an order under paragraph 3 above as so extended (“an Islands restraint order”); or
 - (c) an order made under any other provision of Part I of this Schedule as so extended in relation to an Islands forfeiture or restraint order.

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- (2) In paragraphs (a), (b) and (c) of the definition of “an Islands order” the reference to a provision of this Act as extended to an Island under section 28(3) of this Act includes a reference to any other provision of the law of that Island for purposes corresponding to that provision.
- 19 (1) An England and Wales order, Northern Ireland order or Islands order shall, subject to the provisions of this paragraph, have effect in the law of Scotland but shall be enforced in Scotland only in accordance with the provisions of this paragraph and any provision made by rules of court as to the manner in which and the conditions subject to which such orders are to be enforced there.
- (2) The Court of Session shall, on an application made to it in accordance with rules of court for registration of an England and Wales order, Northern Ireland order or Islands order, direct that the order shall, in accordance with such rules, be registered in that court.
- (3) Rules of court shall also make provision—
- (a) for cancelling or varying the registration of an England and Wales, Northern Ireland or Islands forfeiture order when effect has been given to it (whether in Scotland or elsewhere) in respect of all or, as the case may be, part of the money or other property to which the order applies;
 - (b) for cancelling or varying the registration of an England and Wales, Northern Ireland or Islands restraint order which has been discharged or varied by the court by which it was made.
- (4) If an England and Wales, Northern Ireland or Islands forfeiture order is registered under this paragraph the Court of Session shall have, in relation to that order, the same powers as a court has under paragraph 11(1) above in relation to a forfeiture order made by it and paragraphs 11(4) to (6) and 12 above apply accordingly.
- (5) Paragraphs 13(6), 15 and 16 above shall apply to a registered England and Wales, Northern Ireland or Islands restraint order as they apply to a restraint order and the Court of Session shall have the like power to make an order under section 1 of the Administration of Justice (Scotland) Act 1972 (extended power to order inspection of documents etc.) in relation to proceedings brought or likely to be brought for an England and Wales, Northern Ireland or Islands restraint order as if those proceedings had been brought or were likely to be brought in the Court of Session.
- (6) Without prejudice to the foregoing provisions, if an England and Wales order, Northern Ireland order or Islands order is registered under this paragraph—
- (a) the Court of Session shall have, in relation to its enforcement, the same power;
 - (b) proceedings for or with respect to its enforcement may be taken; and
 - (c) proceedings for or with respect to any contravention of such an order (whether before or after such registration) may be taken,
- as if the order had originally been made in the Court of Session.
- (7) The Court of Session may, additionally, for the purpose of—
- (a) assisting the achievement in Scotland of the purposes of an England and Wales order, Northern Ireland order or Islands order; or
 - (b) assisting any receiver or other person directed by any such order to sell or otherwise dispose of property,
- make such orders or do otherwise as seems to it appropriate.

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- (8) A document purporting to be a copy of an England and Wales order, Northern Ireland order or Islands order and to be certified as such by a proper officer of the court by which it was made or purporting to be a certificate for purposes corresponding to those of paragraph 11(5) above and to be certified by a proper officer of the court concerned shall, in Scotland, be sufficient evidence of the order.
- (9) Nothing in any England and Wales order, Northern Ireland order or Islands order prejudices any enactment or rule of law in respect of the recording of deeds relating to heritable property in Scotland or the registration of interests in such property.

Enforcement of orders made in designated countries

- 20 (1) Her Majesty may by Order in Council make such provision as appears to Her Majesty to be appropriate for the purpose of enabling the enforcement in Scotland of orders to which this paragraph applies.
- (2) This paragraph applies to an order (“an external order”) which is made in a country or territory designated for the purposes of this paragraph by the Order in Council and—
 - (a) provides for the forfeiture of terrorist funds within the meaning of section 11(3)(a) or (b) of this Act (“an external forfeiture order”); or
 - (b) makes provision prohibiting dealing with property which is subject to an external forfeiture order or in respect of which such an order could be made in proceedings which have been or are to be instituted in that country or territory (“an external restraint order”).
- (3) Without prejudice to the generality of sub-paragraph (1) above, an Order in Council under this paragraph may make provision for matters corresponding to those for which provision is made by, or can be made under, paragraph 19(1) to (7) above in relation to the orders to which that paragraph applies and for the proof of any matter relevant for the purposes of anything falling to be done in pursuance of the Order in Council.
- (4) An Order in Council under this paragraph may also make such provision as appears to Her Majesty to be appropriate with respect to anything falling to be done on behalf of the United Kingdom in a designated country or territory in relation to proceedings in that country or territory for or in connection with the making of an external order.
- (5) An Order under this paragraph may make different provision for different cases.
- (6) No Order shall be made under this paragraph unless a draft of it has been laid before and approved by a resolution of each House of Parliament.