

SCHEDULES

SCHEDULE 4

FORFEITURE ORDERS

PART IV

INSOLVENCY: UNITED KINGDOM PROVISIONS

Protection of creditors against forfeiture

- 31 (1) During the period of six months following the making of a forfeiture order no money which is subject to the order, or which represents any property subject to it, shall be finally disposed of under this Schedule.
- (2) If, in a case where any money or other property is subject to a forfeiture order—
- (a) the commencement of an insolvency occurs, or has occurred, in the course of any qualifying insolvency proceedings,
 - (b) any functions in relation to that property would (apart from the forfeiture order) be exercisable by an insolvency practitioner acting in those proceedings, and
 - (c) during the period of six months following the making of the forfeiture order any such insolvency practitioner gives written notice to the relevant officer of the matters referred to in paragraphs (a) and (b) above,
- then sub-paragraph (3) below shall apply in relation to the property in question.
- (3) Where this sub-paragraph applies then, subject to the following provisions of this Part of this Schedule, the property in question or, if it has been sold, the proceeds of sale—
- (a) shall cease to be subject to the forfeiture order and any ancillary order; and
 - (b) shall fall to be dealt with in the insolvency proceedings as if the forfeiture order had never been made.
- (4) In any case where—
- (a) sub-paragraph (3) above would, apart from this sub-paragraph, apply in relation to any property, but
 - (b) the relevant officer, or any person acting in pursuance of an ancillary order, has entered into a contract for the sale of that property or has incurred any other obligations in relation to it,
- that sub-paragraph shall not take effect in relation to that property, or its proceeds of sale, unless and until those obligations have been discharged.
- (5) Where in consequence of sub-paragraph (3) above any money or other property falls to be dealt with in insolvency proceedings, the Secretary of State shall be taken

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to be a creditor in those proceedings to the amount or value of that property but, notwithstanding any provision contained in or made under any other enactment—

- (a) except in sequestration proceedings, his debt shall rank after the debts of all other creditors and shall not be paid until they have been paid in full with interest under section 189(2) or, as the case may be, section 328(4) of the 1986 Act or Article 25 of the Bankruptcy Amendment (Northern Ireland) Order 1980; and
- (b) in sequestration proceedings, his debt shall rank after all the debts mentioned in section 51(1) of the Bankruptcy (Scotland) Act 1985 and shall not be paid until they have been paid in full.

(6) In any case where—

- (a) by virtue of sub-paragraph (3) above any property ceases to be subject to a forfeiture order in consequence of the making of a bankruptcy order or an award of sequestration, and
- (b) subsequently the bankruptcy order is annulled or the award of sequestration is recalled or reduced,

the property shall again become subject to the forfeiture order and, if applicable, any ancillary orders.

(7) If any of the property referred to in sub-paragraph (6) above is money, or has been converted into money, then—

- (a) the court which ordered the annulment, or which recalled or reduced the award of sequestration, shall make an order specifying, for the purposes of paragraph (b) below, property comprised in the estate of the bankrupt or debtor to the amount or value of the property in question; and
- (b) the property so specified shall become subject to the forfeiture order, and any applicable ancillary orders, in place of the property in question.

(8) In this paragraph—

“the commencement of an insolvency” means—

- (a) the making of a bankruptcy order;
- (b) the date of sequestration of a person’s estate, within the meaning of section 12(4) of the Bankruptcy (Scotland) Act 1985;
- (c) in England and Wales, in the case of the insolvent estate of a deceased person, the making of an insolvency administration order;
- (d) in the case of a company—
 - (i) the passing of a resolution for its winding up; or
 - (ii) the making of an order by the court for the winding up of the company where no such resolution has been passed;

“final disposal under this Schedule”, in relation to any money, means—

- (a) in England and Wales, its payment to the Secretary of State in accordance with paragraph 1(3) or 9(5) above;
- (b) in Scotland, its payment to the proper officer in Exchequer under section 203 of the Criminal Procedure (Scotland) Act 1975;
- (c) in Northern Ireland, its payment into, or its disposal for the benefit of, the Consolidated Fund in accordance with paragraph 21(3) or 29(5) above;

and “finally dispose” shall be construed accordingly.

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Expenses incurred in connection with the forfeiture

- 32 (1) Where any money or other property would, apart from this paragraph, fall to be dealt with in accordance with paragraph 31(3) above, the relevant officer may—
- (a) deduct from that money any allowable forfeiture expenses; or
 - (b) retain so much of that property as he considers necessary for the purpose of realising it and deducting any such expenses from the proceeds of realisation; and paragraph 31(3) above shall apply only in relation to any balance remaining after making provision for those expenses.
- (2) If any money or other property is delivered up in pursuance of paragraph 31(3) above and provision has not been made for any allowable forfeiture expenses, then—
- (a) the person who incurred them shall have a claim to their value in the insolvency proceedings; and
 - (b) the expenses in question shall be treated for the purposes of the insolvency proceedings as if they were expenses of those proceedings.
- (3) In this paragraph “allowable forfeiture expenses”—
- (a) means any expenses incurred in relation to property subject to the forfeiture order—
 - (i) by the relevant officer;
 - (ii) by any receiver, administrator or other person appointed by the relevant officer; or
 - (iii) by any person appointed or directed to deal with any property by an order under paragraph 11(1) above; and
 - (b) includes any amount paid, or required to be paid, under paragraph 1(1)(d), 11(1)(c) or 21(1)(d) above.

Protection of insolvency practitioners

- 33 (1) In any case where—
- (a) an insolvency practitioner seizes or disposes of any property in relation to which his functions are not exercisable because it is for the time being subject to a forfeiture or restraint order, and
 - (b) at the time of the seizure or disposal he believes and has reasonable grounds for believing that he is entitled (whether in pursuance of a court order or otherwise) to seize or dispose of that property,
- he shall not be liable to any person in respect of any loss or damage resulting from the seizure or disposal except in so far as the loss or damage is caused by his negligence in so acting.
- (2) An insolvency practitioner shall have a lien on the property mentioned in sub-paragraph (1) above or the proceeds of its sale—
- (a) for such of his expenses as were incurred in connection with insolvency proceedings in relation to which the seizure or disposal purported to take place; and
 - (b) for so much of his remuneration as may reasonably be assigned for his acting in connection with those proceedings.
- (3) Sub-paragraphs (1) and (2) above are without prejudice to the generality of any provision contained in the 1986 Act or the Bankruptcy (Scotland) Act 1985 or any

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other Act or the Bankruptcy Acts (Northern Ireland) 1857 to 1980 or the Companies (Northern Ireland) Order 1986.

- (4) In this paragraph “insolvency practitioner”, in any part of the United Kingdom, means a person acting as an insolvency practitioner in that or any other part of the United Kingdom; and for this purpose—
- (a) any question whether a person is acting as an insolvency practitioner in England and Wales or in Scotland shall be determined in accordance with section 388 of the 1986 Act, except that—
 - (i) the reference in subsection (2)(a) to a permanent or interim trustee in a sequestration shall be taken to include a reference to a trustee in sequestration;
 - (ii) subsection (5) shall be disregarded; and
 - (iii) the expression shall also include the Official Receiver acting as receiver or manager of property; and
 - (b) a person acts as an insolvency practitioner in Northern Ireland if he acts as an Official Assignee, trustee, liquidator, receiver or manager of a company, provisional liquidator or a receiver or manager under section 68 of the Bankruptcy (Ireland) Amendment Act 1872.

Insolvency practitioners in the Islands and designated countries

- 34 (1) The Secretary of State may by order make provision for securing that an Islands or external insolvency practitioner has, with such modifications as may be specified in the order, the same rights under this Part of this Schedule in relation to property situated in any part of the United Kingdom as he would have if he were an insolvency practitioner in that or any other part of the United Kingdom.
- (2) An order under this paragraph may make provision as to the manner in which, and the conditions subject to which, an Islands or external insolvency practitioner may exercise the rights conferred under sub-paragraph (1) above; and any such order may, in particular, make provision—
- (a) for requiring him to obtain leave of a court as a condition of exercising any such rights; and
 - (b) for empowering a court granting any such leave to impose such conditions as it thinks fit.
- (3) An order under this paragraph may make different provision for different cases.
- (4) The power to make an order under this paragraph shall be exercisable by statutory instrument and, in relation to property situated in England and Wales, shall be so exercisable with the concurrence of the Lord Chancellor.
- (5) A statutory instrument containing an order under this paragraph shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (6) In this paragraph—
- “Islands or external insolvency practitioner” means a person exercising under the insolvency law of a relevant country or territory functions corresponding to those exercised by insolvency practitioners under the insolvency law of any part of the United Kingdom;

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“insolvency law” has the meaning given by section 426(10) of the 1986 Act, except that the reference to a relevant country or territory shall be construed in accordance with this paragraph;

“relevant country or territory” means—

- (a) any of the Channel Islands or the Isle of Man; or
- (b) any country or territory designated as mentioned in paragraph 10, 20 or 30 above.

Interpretation of Part IV

35 (1) In this Part of this Schedule—

“the 1986 Act” means the Insolvency Act 1986;

“ancillary order” means any order made in connection with the forfeiture in question, other than the forfeiture order;

“forfeiture or restraint order” means a forfeiture or restraint order, as the case may be, of any of the descriptions referred to in Parts I to III of this Schedule;

“insolvency practitioner”, except in paragraph 33 above, means a person acting in any qualifying insolvency proceedings in any part of the United Kingdom as—

- (a) a liquidator of a company or partnership;
- (b) a trustee in bankruptcy;
- (c) an interim or permanent trustee in sequestration;
- (d) an administrator of the insolvent estate of a deceased person;
- (e) a receiver or manager of any property;

“qualifying insolvency proceedings” means—

- (a) any proceedings under the 1986 Act or the Companies (Northern Ireland) Order 1986 for the winding up of a company or an unregistered company and includes any voluntary winding up of a company under Part IV of that Act or Part XX of that Order;
- (b) any proceedings in England and Wales under or by virtue of section 420 of the 1986 Act for the winding up of an insolvent partnership;
- (c) any proceedings in bankruptcy or, in Scotland, any sequestration proceedings;
- (d) any proceedings in England and Wales under or by virtue of section 421 of the 1986 Act in relation to the insolvent estate of a deceased person;

“the relevant officer” means—

- (a) in Scotland—
 - (i) where the forfeiture order in question is made by a court in Scotland, the clerk of that court;
 - (ii) in any other case, the Principal Clerk of Session and Justiciary;
- (b) in any other part of the United Kingdom—
 - (i) where the forfeiture order in question is made by a court in that part, the proper officer within the meaning of paragraph 1 or, as the case may be, paragraph 21 above;
 - (ii) in any other case, the appropriate officer of the High Court.

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- (2) Any reference in this Part of this Schedule to the proceeds of the sale or realisation of any property are references to those proceeds after deduction of the costs of sale or realisation.