



Criminal Justice (Scotland) Act 1995

1995 CHAPTER 20

PART II

PROCEEDS OF CRIME AND PROPERTY USED IN CRIME

CHAPTER II

FORFEITURE OF PROPERTY USED IN CRIME

87 **Suspended forfeiture order**

- (1) This section applies where in respect of any offence—
 - (a) the accused is convicted, whether in solemn or summary proceedings; or
 - (b) in the case of summary proceedings, (without proceeding to conviction) an order is made discharging him absolutely.
- (2) Where this section applies, the court may, if it is satisfied on the application of the prosecutor that any property which was at the time of the offence or of the accused's apprehension in his ownership or possession or under his control—
 - (a) has been used for the purpose of committing, or facilitating the commission of, any offence; or
 - (b) was intended to be used for that purpose,make an order (a "suspended forfeiture order") in respect of that property.
- (3) Any application under this section shall be made—
 - (a) in proceedings on indictment, when the prosecutor moves for sentence or if the accused is remitted for sentence under section 104 of the 1975 Act, before sentence is pronounced; and
 - (b) in summary proceedings, following upon the conviction of the accused or, as the case may be, the finding that he committed the offence with which he was charged.

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- (4) If the prosecutor knows or reasonably suspects the identity of a person (other than the accused) as being the owner of, or otherwise having an interest in, the property to which the suspended forfeiture order relates, he shall intimate that fact to the court on making the application and the order shall name that person as a person having an interest or suspected of having an interest in the property.
- (5) Any reference in this Chapter to facilitating the commission of an offence shall include a reference to the taking of any steps after it has been committed for the purpose of disposing of any property to which it relates or of avoiding apprehension or detection.
- (6) Where, by itself, the use of property constitutes an offence in whole or in part, that property shall be regarded for the purpose of subsection (2)(a) above as used for the purpose of committing the offence, unless the enactment which created the offence expressly excludes the application of this section.
- (7) Subject to subsection (8) below, where the accused is convicted of an offence under any enactment, the court shall not be precluded from making a suspended forfeiture order in respect of any property by reason only that the property would not be liable to forfeiture under that enactment.
- (8) Subsection (7) shall not apply—
 - (a) if the enactment concerned expressly excludes the application of this section; or
 - (b) to any property which has been used or has been intended to be used as mentioned in subsection (2)(a) or (b) above in relation to the offence of which the accused has been convicted, if the enactment concerned specifies the category of property which is to be liable to forfeiture thereunder, and the category so specified does not include the category of property which has been used or has been intended to be used as aforesaid.
- (9) Where the court makes both a suspended forfeiture order and a compensation order under section 58 of the Criminal Justice (Scotland) Act 1980 against the same accused in the same proceedings, it may order that, in the event of the property subject to the suspended forfeiture order being forfeited under section 90 of this Act, the proceeds of sale of that property shall be first directed towards satisfaction of the compensation order.
- (10) As soon as may be after a suspended forfeiture order has been made, the prosecutor—
 - (a) shall notify in writing any person named in the order in pursuance of subsection (4) above that the order has been made, and that the person so notified may be entitled to apply to the court for—
 - (i) the order to be recalled under section 91 of this Act; or
 - (ii) a direction under section 92 of this Act; and
 - (b) if the property in respect of which the order has been made includes heritable property in Scotland, shall cause a certified copy of the order to be recorded in the General Register of Sasines or as the case may be registered in the Land Register of Scotland; and
 - (c) if the court directs him to do so, shall insert a notice in the Edinburgh Gazette or in such other newspaper or journal as appears to the court to be appropriate specifying the terms of the suspended forfeiture order.
- (11) Any property in respect of which a suspended forfeiture order is made shall be taken into the possession of or placed under the control of the clerk of court until—

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- (a) the order is recalled; or
 - (b) the property is forfeited to the Crown and disposed of under section 90 of this Act or forfeited to another person under that section.
- (12) For the purposes of any appeal or review a suspended forfeiture order is a sentence.
- (13) Where, in disposing of an appeal, the High Court makes an order the effect of which is to release from liability to forfeiture any heritable property in Scotland in respect of which a suspended forfeiture order was made, the prosecutor shall, as soon as may be after the appeal has been disposed of, cause a certified copy of the order of the court to be recorded in the General Register of Sasines or, as the case may be, registered in the Land Register of Scotland.
- (14) In this section “the court” does not include a district court, whether or not constituted by a stipendiary magistrate.

88 Forfeiture: district court

- (1) Where, in respect of any offence tried in the district court, the accused is convicted or (without proceeding to conviction) an order is made discharging him absolutely the court may, if it is satisfied on the application of the prosecutor that any moveable property which was at the time of the offence or of the accused’s apprehension in his ownership or possession or under his control—
- (a) has been used for the purpose of committing, or facilitating the commission of, any offence; or
 - (b) was intended to be used for that purpose,
- order that the property shall be forfeited to and vest in the Crown or such other person as the court may direct.
- (2) Any application under subsection (1) above shall be made following upon the conviction of the accused or, as the case may be, the finding that he committed the offence with which he was charged.
- (3) Where, by itself, the use of property constitutes an offence in whole or in part, that property shall be regarded for the purpose of subsection (1)(a) above as used for the purpose of committing the offence, unless the enactment which created the offence expressly excludes the application of this section.
- (4) Subject to subsection (5) below, where the accused is convicted of an offence under any enactment, the court shall not be precluded from making an order under subsection (1) above in respect of any property by reason only that the property would not be liable to forfeiture under that enactment.
- (5) Subsection (4) above shall not apply—
- (a) if the enactment concerned expressly excludes the application of this section; or
 - (b) to any property which has been used or has been intended to be used as mentioned in subsection (1)(a) or (b) above in relation to the offence of which the accused has been convicted, if the enactment concerned specifies the category of property which is to be liable to forfeiture thereunder, and the category so specified does not include the category of property which has been used or has been intended to be used as aforesaid.
- (6) Where the court makes—

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- (a) an order under subsection (1) above that property shall be forfeited to the Crown; and
- (b) a compensation order under section 58 of the Criminal Justice (Scotland) Act 1980,

against the same accused in the same proceedings, it may order that the proceeds of sale of the property forfeited by virtue of subsection (1) above shall be first directed towards satisfaction of the compensation order.

- (7) For the purposes of any appeal or review an order under subsection (1) above is a sentence.
- (8) In this section “the court” means the district court.

89 Warrant to search for and seize property

- (1) Where—
 - (a) the sheriff is satisfied, on an application being made to him by the prosecutor—
 - (i) that proceedings have been, or are likely to be, instituted against a person in Scotland for an offence; and
 - (ii) that there is reasonable cause to believe that property specified in the application is to be found in a place or in premises specified in the application; and
 - (b) it appears to him that there are reasonable grounds for thinking that in the event of the person being convicted of the offence a suspended forfeiture order might be made in relation to the property,

he may grant a warrant authorising a person named therein to enter and search the place or premises and seize the property.
- (2) Where a court has made a suspended forfeiture order in respect of any property, if it is satisfied on the application of the prosecutor—
 - (a) that there is reasonable cause to believe that the property is to be found in any place or premises; and
 - (b) that admission to the place or premises has been refused or that it is reasonably believed that such admission will be refused,

it may grant a warrant authorising a person named therein to enter and search the place or premises and seize the property.
- (3) An application for a warrant under subsection (2) above may be made at the same time as an application for a suspended forfeiture order.

90 Forfeiture of property subject to suspended forfeiture order

- (1) Subject to the following provisions of this section, property in respect of which a suspended forfeiture order has been made shall be forfeited to and vest in the Crown, or such other person as the court may direct, as follows—
 - (a) heritable property situated in Scotland shall be forfeited at the end of the period of six months commencing with the date on which a certified copy of the suspended forfeiture order is recorded in the General Register of Sasines or, as the case may be, registered in the Land Register of Scotland;

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- (b) heritable property situated outside Scotland shall be forfeited at the end of the period of six months commencing with the date of the making of the suspended forfeiture order;
 - (c) moveable property shall be forfeited at the end of the period of 60 days commencing with the date of the making of the suspended forfeiture order.
- (2) Notwithstanding subsection (1)(c) above, moveable property which is certified by the prosecutor as being—
- (a) of a perishable or dangerous nature;
 - (b) of no commercial value; or
 - (c) property which cannot lawfully be sold, supplied or possessed,
- shall be forfeited immediately after the making of the suspended forfeiture order.
- (3) If an application for recall or variation of the suspended forfeiture order concerned has been made under section 91 of this Act, there shall be no forfeiture of property mentioned in paragraph (a), (b) or (c) of subsection (1) above unless and until whichever is the later of the following occurs—
- (a) the application is finally disposed of in favour of the prosecutor, or
 - (b) the period mentioned in that paragraph has expired.
- (4) Without prejudice to subsection (2) above, in the event of an appeal against conviction or sentence, there shall be no forfeiture of property until whichever is the later of the following occurs—
- (a) the appeal, if it is proceeded with, is determined in favour of the prosecutor, or
 - (b) the period mentioned in paragraph (a) or, as the case may be, (b) or (c) of subsection (1) above has expired.
- (5) Property which has been forfeited to the Crown under this section shall be dealt with by the Crown in such manner as seems to it to be appropriate.
- (6) A certificate by the clerk of court that property was forfeited to and vested in the Crown, or another person, under this section on the date specified in the certificate shall be conclusive evidence of that fact; and, in the case of a certificate in respect of heritable property situated in Scotland, the prosecutor shall, forthwith, cause a certified copy of the certificate to be recorded in the General Register of Sasines or, as the case may be, registered in the Land Register of Scotland.

91 Recall or variation of suspended forfeiture order

- (1) The court shall, on an application being made to it under this section by a person other than the accused, make an order (a “recalling order”) recalling a suspended forfeiture order in relation to any property or an interest in property if—
- (a) it is satisfied by the applicant on the balance of probabilities that he is the owner of the property or otherwise has an interest in it; and
 - (b) subsection (2) or subsection (3) below is applicable.
- (2) This subsection applies if the court is not satisfied by the prosecutor that—
- (a) where the applicant was the owner of or otherwise had an interest in the property before the commission of the offence in connection with which the suspended forfeiture order was made, he—

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- (i) knew or ought to have known that the property was intended to be used for the purpose of committing, or facilitating the commission of, the offence, and
 - (ii) did not take all the steps which were reasonable for him to take to prevent such intended use; or
 - (b) where he has become the owner of, or has otherwise acquired an interest in, the property after the commission of the offence, the applicant knew or ought to have known that the property had been intended to be, or had been, so used.
- (3) This subsection applies if the court is satisfied as mentioned in subsection (2) above, but it appears to the court that, in all the circumstances of the case, forfeiture of the property would be excessive or inappropriate.
- (4) Where a recalling order relates to heritable property situated in Scotland, the prosecutor shall, as soon as may be after—
- (a) the expiry of the period within which the prosecutor may appeal under section 93(1)(b) of this Act against the making of the order without such an appeal being lodged; or
 - (b) where such an appeal is lodged within that period, the determination of the appeal in favour of the recalling order,
- cause a certified copy of the recalling order to be recorded in the General Register of Sasines or, as the case may be, registered in the Land Register of Scotland.
- (5) Where the prosecutor believes that the person named in the suspended forfeiture order in pursuance of section 87(4) of this Act is not the owner of, or does not otherwise have an interest in, the property concerned then—
- (a) if he does not know who the true owner is, or who otherwise truly has the interest, he may apply to the court under this section for an order varying the suspended forfeiture order by deleting that name from it;
 - (b) if he does know or reasonably suspects the identity of the true owner or the person who otherwise truly has the interest (“the correct person”), he may apply to the court under this section for an order varying the suspended forfeiture order by substituting the name of the correct person for that of the person so named.
- (6) Where no person is named in the suspended forfeiture order in pursuance of section 87(4) of this Act but the prosecutor later comes to believe that a person is, or may be, the owner of, or otherwise has or may have an interest in, the property concerned, he may apply to the court for an order varying the suspended forfeiture order by naming that person as a person having or being suspected of having such an interest.
- (7) The court shall grant any application made in pursuance of subsection (5) or (6) above; and sections 87(10) and 90 of this Act shall apply in relation to an order varying a suspended forfeiture order in accordance with an application under subsection (5) or (6) above as they apply in relation to a suspended forfeiture order.
- (8) An application under this section may be made at any time before the property concerned is forfeited to the Crown or another person under section 90 of this Act.
- (9) The court shall not be entitled in considering any application under this section to review the sentence passed, or any probation order or order of discharge made, in respect of the offence concerned otherwise than as provided by this section.

(10) In this section “the court” means the court which made the suspended forfeiture order.

92 Property wrongly forfeited: return or compensation

- (1) Where the court, on an application being made to it by a person other than the accused—
 - (a) is satisfied by the applicant on the balance of probabilities that in relation to any property forfeited to the Crown or another person under section 90 of this Act or by virtue of an order for forfeiture made under any other enactment he was the owner of, or a person otherwise having an interest in, the property immediately before such forfeiture; and
 - (b) subsection (3) or (4) below is applicable,it shall make an order under subsection (2) below.
- (2) An order under this subsection shall direct the Crown or, as the case may be, the other person, if the applicant—
 - (a) was the owner of the property, to return it to him if reasonably practicable to do so or, if not, to pay compensation to him of an amount determined under subsection (5) below; or
 - (b) otherwise had an interest in the property, to pay compensation to him of an amount corresponding to the value of such interest.
- (3) This subsection applies if the court is not satisfied that—
 - (a) where the applicant was the owner of or otherwise had an interest in the property before the commission of the offence in connection with which the suspended forfeiture order or order for forfeiture was made, he knew or ought to have known that the property was intended to be used for the purpose of committing, or facilitating the commission of, the offence, and did not take all the steps which were reasonable for him to take to prevent such intended use; or
 - (b) where the applicant has become the owner of, or has otherwise acquired an interest in, the property after the commission of the offence, he knew or ought to have known that the property had been intended to be, or had been, so used.
- (4) This subsection applies if the court is satisfied as mentioned in subsection (3) above, but it appears to the court that, in all the circumstances of the case, forfeiture of the property would be excessive or inappropriate.
- (5) For the purposes of subsection (2) above, the amount determined under this subsection shall be an amount equal to the amount of any consideration received for the property or the value of any such consideration at the time of the disposal, or, if no consideration was received, an amount equal to the value of the property at the time of the disposal.
- (6) An application under subsection (1) shall be made not later than three years after the date on which the property was forfeited as mentioned in subsection (1)(a) above.
- (7) Where, after property has been forfeited by virtue of section 90 of this Act, the prosecutor comes to believe that the person named in the suspended forfeiture order in pursuance of section 87(4) of this Act is not the owner of, or a person otherwise having an interest in, the property concerned, then—
 - (a) whether he knows who the true owner was, or who the person truly with the interest was, or not, he shall forthwith notify the court in writing of that belief; and

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- (b) if he does know or reasonably suspects the identity of the person who was the true owner or who truly had the interest, he shall forthwith notify that person in writing that he may be entitled to apply to the court for a direction under this section.
- (8) Where no person has been named in the suspended forfeiture order in pursuance of section 87(4) of this Act or in a variation order under section 91(5) of this Act but, after the property concerned has been forfeited under section 90 of this Act, the prosecutor comes to believe that a person was or might have been the owner of, or otherwise had or might have had an interest in, the property concerned, he shall forthwith notify—
- (a) the court of his belief; and
 - (b) that person in writing that he may be entitled to apply to the court for a direction under this section.
- (9) The court shall not be entitled in considering any application under this section to review the sentence passed, or any probation order or order of discharge made, in respect of the offence concerned otherwise than as provided by this section.
- (10) In this section “the court” means the court which made the suspended forfeiture order or order for forfeiture.

93 Appeal against court decision under section 91(1) or 92(2)

- (1) An appeal shall lie to the High Court of Justiciary at the instance of—
- (a) the applicant against the refusal to make;
 - (b) the prosecutor against the making of,
- an order under section 91(1) or 92(2) of this Act, and the High Court in determining such an appeal may make such order as could have been made by the court on an application under that section.
- (2) The procedure in an appeal under this section shall be the same as the procedure in an appeal against sentence.
- (3) Where a suspended forfeiture order relating to heritable property situated in Scotland is recalled on appeal to the High Court of Justiciary, the prosecutor shall, as soon as may be after the appeal has been disposed of, cause a certified copy of the interlocutor of the Court to be recorded in the General Register of Sasines or, as the case may be, registered in the Land Register of Scotland.