

## SCHEDULES

### SCHEDULE 4

#### FORFEITURE ORDERS

#### PART I

#### ENGLAND AND WALES

##### *Interpretation*

- 1 In this Part of this Schedule—
- “forfeiture order” means an order made by a court in England and Wales under section 23, and
  - “forfeited property” means the money or other property to which a forfeiture order applies.

##### *Implementation of forfeiture orders*

- 2 (1) Where a court in England and Wales makes a forfeiture order it may make such other provision as appears to it to be necessary for giving effect to the order, and in particular it may—
- (a) require any of the forfeited property to be paid or handed over to the proper officer or to a constable designated for the purpose by the chief officer of police of a police force specified in the order;
  - (b) direct any of the forfeited property other than money or land to be sold or otherwise disposed of in such manner as the court may direct and the proceeds (if any) to be paid to the proper officer;
  - (c) appoint a receiver to take possession, subject to such conditions and exceptions as may be specified by the court, of any of the forfeited property, to realise it in such manner as the court may direct and to pay the proceeds to the proper officer;
  - (d) direct a specified part of any forfeited money, or of the proceeds of the sale, disposal or realisation of any forfeited property, to be paid by the proper officer to a specified person falling within section 23(7).
- (2) A forfeiture order shall not come into force until there is no further possibility of it being varied, or set aside, on appeal (disregarding any power of a court to grant leave to appeal out of time).
- (3) In sub-paragraph (1)(b) and (d) a reference to the proceeds of the sale, disposal or realisation of property is a reference to the proceeds after deduction of the costs of sale, disposal or realisation.
- (4) Section 140 of the Magistrates' Courts Act 1980 (disposal of non-pecuniary forfeitures) shall not apply.

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- 3 (1) A receiver appointed under paragraph 2 shall be entitled to be paid his remuneration and expenses by the proper officer out of the proceeds of the property realised by the receiver and paid to the proper officer under paragraph 2(1)(c).
- (2) If and so far as those proceeds are insufficient, the receiver shall be entitled to be paid his remuneration and expenses by the prosecutor.
- (3) A receiver appointed under paragraph 2 shall not be liable to any person in respect of any loss or damage resulting from action—
- (a) which he takes in relation to property which is not forfeited property, but which he reasonably believes to be forfeited property,
  - (b) which he would be entitled to take if the property were forfeited property, and
  - (c) which he reasonably believes that he is entitled to take because of his belief that the property is forfeited property.
- (4) Sub-paragraph (3) does not apply in so far as the loss or damage is caused by the receiver's negligence.
- 4 (1) In paragraphs 2 and 3 "the proper officer" means—
- (a) where the forfeiture order is made by a magistrates' court, the justices' chief executive for that court,
  - (b) where the forfeiture order is made by the Crown Court and the defendant was committed to the Crown Court by a magistrates' court, the justices' chief executive for the magistrates' court, and
  - (c) where the forfeiture order is made by the Crown Court and the proceedings were instituted by a bill of indictment preferred by virtue of section 2(2)(b) of the Administration of Justice (Miscellaneous Provisions) Act 1933, the justices' chief executive for the magistrates' court for the place where the trial took place.
- (2) The proper officer shall issue a certificate in respect of a forfeiture order if an application is made by—
- (a) the prosecutor in the proceedings in which the forfeiture order was made,
  - (b) the defendant in those proceedings, or
  - (c) a person whom the court heard under section 23(7) before making the order.
- (3) The certificate shall state the extent (if any) to which, at the date of the certificate, effect has been given to the forfeiture order.

#### *Restraint orders*

- 5 (1) The High Court may make a restraint order under this paragraph where—
- (a) proceedings have been instituted in England and Wales for an offence under any of sections 15 to 18,
  - (b) the proceedings have not been concluded,
  - (c) an application for a restraint order is made to the High Court by the prosecutor, and
  - (d) a forfeiture order has been made, or it appears to the High Court that a forfeiture order may be made, in the proceedings for the offence.
- (2) The High Court may also make a restraint order under this paragraph where—
- (a) it is satisfied that a person is to be charged in England and Wales with an offence under any of sections 15 to 18,

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- (b) an application for a restraint order is made to the High Court by the person who the High Court is satisfied will have the conduct of the proposed proceedings for the offence, and
  - (c) it appears to the High Court that a forfeiture order may be made in those proceedings.
- (3) A restraint order prohibits a person to whom notice of it is given, subject to any conditions and exceptions specified in the order, from dealing with property in respect of which a forfeiture order has been or could be made in the proceedings referred to in sub-paragraph (1) or (2).
- (4) An application for a restraint order may be made to a judge in chambers without notice.
- (5) In this paragraph a reference to dealing with property includes a reference to removing the property from Great Britain.
- 6 (1) A restraint order shall provide for notice of it to be given to any person affected by the order.
- (2) A restraint order may be discharged or varied by the High Court on the application of a person affected by it.
- (3) In particular, a restraint order shall be discharged on an application under sub-paragraph (2)—
  - (a) in the case of an order made under paragraph 5(2), if the proceedings in respect of the offence are not instituted within such time as the High Court considers reasonable, and
  - (b) in any case, if the proceedings for the offence have been concluded.
- 7 (1) A constable may seize any property subject to a restraint order for the purpose of preventing it from being removed from Great Britain.
- (2) Property seized under this paragraph shall be dealt with in accordance with the High Court's directions.
- 8 (1) The Land Charges Act 1972 and the Land Registration Act 1925—
  - (a) shall apply 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) shall apply in relation to applications for restraint orders as they apply in relation to other pending land actions.
- (2) Where a restraint order is made under paragraph 5(1) or an application for such an order is made, the prosecutor in the proceedings for the offence shall be treated for the purposes of section 57 of the Land Registration Act 1925 (inhibitions) as a person interested in respect of any registered land to which the restraint order or the application for the restraint order relates.
- (3) Where a restraint order is made under paragraph 5(2) or an application for such an order is made, the person who the High Court is satisfied will have the conduct of the proposed proceedings shall be treated for the purposes of section 57 of that Act as a person interested in respect of any registered land to which the restraint order or the application for the restraint order relates.

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### *Compensation*

- 9 (1) This paragraph applies where a restraint order is discharged under paragraph 6(3)(a).
- (2) This paragraph also applies where a forfeiture order or a restraint order is made in or in relation to proceedings for an offence under any of sections 15 to 18 which—
- (a) do not result in conviction for an offence under any of those sections,
  - (b) result in conviction for an offence under any of those sections in respect of which the person convicted is subsequently pardoned by Her Majesty, or
  - (c) result in conviction for an offence under any of those sections which is subsequently quashed.
- (3) A person who had an interest in any property which was subject to the order may apply to the High Court for compensation.
- (4) The High Court may order compensation to be paid to the applicant if satisfied—
- (a) that there was a serious default on the part of a person concerned in the investigation or prosecution of the offence,
  - (b) that the person in default was or was acting as a member of a police force, or was a member of the Crown Prosecution Service or was acting on behalf of the Service,
  - (c) that the applicant has suffered loss in consequence of anything done in relation to the property by or in pursuance of the forfeiture order or restraint order, and
  - (d) that, having regard to all the circumstances, it is appropriate to order compensation to be paid.
- (5) The High Court shall not order compensation to be paid where it appears to it that proceedings for the offence would have been instituted even if the serious default had not occurred.
- (6) Compensation payable under this paragraph shall be paid—
- (a) where the person in default was or was acting as a member of a police force, out of the police fund out of which the expenses of that police force are met, and
  - (b) where the person in default was a member of the Crown Prosecution Service, or was acting on behalf of the Service, by the Director of Public Prosecutions.
- 10 (1) This paragraph applies where—
- (a) a forfeiture order or a restraint order is made in or in relation to proceedings for an offence under any of sections 15 to 18, and
  - (b) the proceedings result in a conviction which is subsequently quashed on an appeal under section 7(2) or (5).
- (2) A person who had an interest in any property which was subject to the order may apply to the High Court for compensation.
- (3) The High Court may order compensation to be paid to the applicant if satisfied—
- (a) that the applicant has suffered loss in consequence of anything done in relation to the property by or in pursuance of the forfeiture order or restraint order, and
  - (b) that, having regard to all the circumstances, it is appropriate to order compensation to be paid.

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(4) Compensation payable under this paragraph shall be paid by the Secretary of State.

*Proceedings for an offence: timing*

- 11 (1) For the purposes of this Part of this Schedule 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 the offence;
  - (b) when a person is charged with the offence after being taken into custody without a warrant;
  - (c) when a bill of indictment charging a person with the offence is preferred by virtue of section 2(2)(b) of the Administration of Justice (Miscellaneous Provisions) Act 1933.
- (2) Where the application of sub-paragraph (1) 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.
- (3) For the purposes of this Part of this Schedule 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 forfeited property, or
  - (b) when no forfeiture order has been made in those proceedings and there is no further possibility of one being made as a result of an appeal (disregarding any power of a court to grant leave to appeal out of time).

*Enforcement of orders made elsewhere in the British Islands*

- 12 In the following provisions of this Part of this Schedule—
- “a Scottish order” means—
- (a) an order made in Scotland under section 23 (“a Scottish forfeiture order”),
  - (b) an order made under paragraph 18 (“a Scottish restraint order”), or
  - (c) an order made under any other provision of Part II of this Schedule in relation to a Scottish forfeiture or restraint order;
- “a Northern Ireland order” means—
- (a) an order made in Northern Ireland under section 23 (“a Northern Ireland forfeiture order”),
  - (b) an order made under paragraph 33 (“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 an order made in any of the Islands under a provision of the law of that Island corresponding to—
- (a) section 23 (“an Islands forfeiture order”),
  - (b) paragraph 5 (“an Islands restraint order”), or
  - (c) any other provision of this Part of this Schedule.
- 13 (1) Subject to the provisions of this paragraph, a Scottish, Northern Ireland or Islands order shall have effect in the law of England and Wales.
- (2) But such an order shall be enforced in England and Wales only in accordance with—

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- (a) the provisions of this paragraph, and
  - (b) 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.
- (3) On an application made to it in accordance with rules of court for registration of a Scottish, Northern Ireland or Islands order, the High Court shall direct that the order shall, in accordance with such rules, be registered in that court.
- (4) Rules of court shall also make provision—
  - (a) for cancelling or varying the registration of a Scottish, Northern Ireland or Islands forfeiture order when effect has been given to it, whether in England and Wales 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 a Scottish, Northern Ireland or Islands restraint order which has been discharged or varied by the court by which it was made.
- (5) If a Scottish, Northern Ireland or Islands forfeiture order is registered under this paragraph the High Court shall have, in relation to that order, the same powers as a court has under paragraph 2(1) to give effect to a forfeiture order made by it and—
  - (a) paragraph 3 shall apply accordingly,
  - (b) any functions of a justices' chief executive shall be exercised by the appropriate officer of the High Court, and
  - (c) after making any payment required by virtue of paragraph 2(1)(d) or 3, the balance of any sums received by the appropriate officer of the High Court by virtue of an order made under this sub-paragraph shall be paid by him to the Secretary of State.
- (6) If a Scottish, Northern Ireland or Islands restraint order is registered under this paragraph—
  - (a) paragraphs 7 and 8 shall apply as they apply to a restraint order under paragraph 5, and
  - (b) the High Court shall have power to make an order under section 33 of the Supreme Court Act 1981 (extended power to order inspection of property, &c.) in relation to proceedings brought or likely to be brought for a Scottish, Northern Ireland or Islands restraint order as if those proceedings had been brought or were likely to be brought in the High Court.
- (7) In addition, if a Scottish, Northern Ireland or Islands order is registered under this paragraph—
  - (a) the High Court shall have, in relation to its enforcement, the same power as if the order had originally been made in the High Court,
  - (b) proceedings for or with respect to its enforcement may be taken as if the order had originally been made in the High Court, and
  - (c) proceedings for or with respect to contravention of such an order, whether before or after such registration, may be taken as if the order had originally been made in the High Court.
- (8) The High Court may also make such orders or do otherwise as seems to it appropriate for the purpose of—
  - (a) assisting the achievement in England and Wales of the purposes of a Scottish, Northern Ireland or Islands order, or

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- (b) assisting a receiver or other person directed by a Scottish, Northern Ireland or Islands order to sell or otherwise dispose of property.
- (9) The following documents shall be received in evidence in England and Wales without further proof—
- (a) a document purporting to be a copy of a Scottish, Northern Ireland or Islands order and to be certified as such by a proper officer of the court by which it was made, and
  - (b) a document purporting to be a certificate for purposes corresponding to those of paragraph 4(2) and (3) and to be certified by a proper officer of the court concerned.

*Enforcement of orders made in designated countries*

- 14 (1) Her Majesty may by Order in Council make provision for the purpose of enabling the enforcement in England and Wales of external orders.
- (2) An “external order” means an order—
- (a) which is made in a country or territory designated for the purposes of this paragraph by the Order in Council, and
  - (b) which makes relevant provision.
- (3) “Relevant provision” means—
- (a) provision for the forfeiture of terrorist property (“an external forfeiture order”), or
  - (b) 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 the designated country or territory (“an external restraint order”).
- (4) An Order in Council under this paragraph may, in particular, include provision—
- (a) which, for the purpose of facilitating the enforcement of any external order that may be made, has effect at times before there is an external order to be enforced;
  - (b) for matters corresponding to those for which provision is made by, or can be made under, paragraph 13(1) to (8) in relation to the orders to which that paragraph applies;
  - (c) for the proof of any matter relevant for the purposes of anything falling to be done in pursuance of the Order in Council.
- (5) An Order in Council under this paragraph may also make provision 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.
- (6) An Order in Council under this paragraph—
- (a) may make different provision for different cases, and
  - (b) shall not be made unless a draft of it has been laid before and approved by resolution of each House of Parliament.