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SCHEDULES

SCHEDULE 4

FORFEITURE ORDERS

PART II

SCOTLAND

Implementation of forfeiture orders

- 15 In this Part of this Schedule—
- “forfeiture order” means an order made by a court in Scotland under section 23 [^{F1}or 23A], and
- “forfeited property” means the money or other property to which a forfeiture order applies.
- [^{F2} “relevant offence ” means—
- (a) an offence under any of sections 15 to 18,
 - (b) an offence to which section 23A applies, or
 - (c) in relation to a restraint order, any offence specified in Schedule 2 to the Counter-Terrorism Act 2008 (offences where terrorist connection to be considered).]

Annotations:

Amendments (Textual)

- F1** Sch. 4 para. 15: words in definition of "forfeiture order" inserted (18.6.2009) by Counter-Terrorism Act 2008 (c. 28), ss. 39, 100(5), **Sch. 3 para. 5(11)(a)** (with s. 101(2)); S.I. 2009/1256, **art. 2(c)**
- F2** Sch. 4 para. 15: definition of "relevant offence" inserted (18.6.2009) by Counter-Terrorism Act 2008 (c. 28), ss. 39, 100(5), **Sch. 3 para. 5(11)(b)** (with s. 101(2)); S.I. 2009/1256, **art. 2(c)**

- 16 (1) Where a court in Scotland 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) 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;
 - (b) appoint an administrator to take possession, subject to such conditions and exceptions as may be specified by the court, of any of the forfeited property and to realise it in such manner as the court may direct;
 - (c) 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 to a specified person falling within [^{F3}section 23B(1)].
- (2) 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

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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.

- (3) Any balance remaining after making any payment required under sub-paragraph (1) (c) or paragraph 17 shall be treated for the purposes of section 211(5) of the ^{M1}Criminal Procedure (Scotland) Act 1995 (fines payable to the Treasury) as if it were a fine imposed in the High Court of Justiciary.
- (4) The clerk of court shall, on the application of—
- (a) the prosecutor in the proceedings in which a forfeiture order is made,
 - (b) the accused in those proceedings, or
 - (c) a person whom the court heard under [^{F3}section 23B(1)] before making the order,
- 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.
- (5) In sub-paragraph (1) 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.

Annotations:

Amendments (Textual)

- F3** Words in Sch. 4 para. 16(1)(c)(4)(c) substituted (18.6.2009) by Counter-Terrorism Act 2008 (c. 28), ss. 39, 100(5), **Sch. 3 para. 5(12)** (with s. 101(2)); S.I. 2009/1256, **art. 2(c)**

Modifications etc. (not altering text)

- C1** Sch. 4 para. 16(1) extended (13.12.2001) by S.I. 2001/3927, **art. 18**
- C2** Sch. 4 paras. 16(3)-(5) applied (13.12.2001) by S.I. 2001/3927, **art. 18**

Marginal Citations

- M1** 1995 c.46.

Administrators

- 17 (1) The Court of Session may by rules of court prescribe the powers and duties of an administrator appointed under paragraph 16.
- (2) An administrator appointed under paragraph 16 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 16 in the exercise of the powers conferred, and discharge of the duties imposed, on him under or by virtue of that paragraph.
- (4) An administrator appointed under paragraph 16 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

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(c) which he takes reasonably believing that he is entitled to take because of his belief that the property is forfeited property.

(5) Sub-paragraph (4) does not apply in so far as the loss or damage is caused by the administrator's negligence.

Annotations:

Modifications etc. (not altering text)

C3 Sch. 4 para. 17 applied (13.12.2001) by [S.I. 2001/3927](#), [art. 18](#)

[^{F4}Application of proceeds to compensate victims

Annotations:

Amendments (Textual)

F4 Sch. 4 para. 17A and preceding cross-heading inserted (18.6.2009) by [Counter-Terrorism Act 2008](#) (c. 28), [ss. 37\(2\), 100\(5\)](#) (with [s. 101\(2\)](#)); [S.I. 2009/1256](#), [art. 2\(c\)](#)

- 17A (1) Where a court makes a forfeiture order in a case where—
- (a) the offender has been convicted of an offence that has resulted in a person suffering personal injury, loss or damage, or
 - (b) any such offence is taken into consideration by the court in determining sentence,
- the court may also order that an amount not exceeding a sum specified by the court is to be paid to that person out of the proceeds of the forfeiture.
- (2) For this purpose the proceeds of the forfeiture means the aggregate amount of—
- (a) any forfeited money, and
 - (b) the proceeds of the sale, disposal or realisation of any forfeited property, after deduction of the costs of the sale, disposal or realisation,
- reduced by the amount of any payment under paragraph 16(1)(c) or 17(2).
- (3) The court may make an order under this paragraph only if it is satisfied that but for the inadequacy of the offender's means it would have made a compensation order under section 249 of the Criminal Procedure (Scotland) Act 1995 under which the offender would have been required to pay compensation of an amount not less than the specified amount.]

Restraint orders

- 18 (1) The Court of Session, on an application made by the Lord Advocate, may make a restraint order under this paragraph where—
- (a) proceedings have been instituted in Scotland for [^{F5}a relevant offence],
 - (b) the proceedings have not been concluded, and
 - (c) a forfeiture order has been made, or it appears to the court that a forfeiture order may be made, in the proceedings for the offence.

[^{F6}(2) The Court of Session may also make a restraint order on such an application where—

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- (a) a criminal investigation has been instituted in Scotland with regard to [^{F5}a relevant offence], and
 - (b) it appears to the Court of Session that a forfeiture order may be made in any proceedings for the offence.]
- (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 [^{F7}any proceedings] referred to in sub-paragraph (1) or (2).
- (4) An application for a restraint order may be made ex parte in chambers.
- (5) For the purposes of this paragraph, dealing with property includes removing the property from Great Britain.
- [^{F8}(6) In this paragraph “ criminal investigation ” means an investigation which police officers or other persons have a duty to conduct with a view to it being ascertained whether a person should be charged with an offence.]

Annotations:

Amendments (Textual)

- F5** Words in Sch. 4 para. 18(1)(a) substituted (18.6.2009) by Counter-Terrorism Act 2008 (c. 28), ss. 39, 100(5), **Sch. 3 para. 5(13)** (with s. 101(2)); S.I. 2009/1256, **art. 2(e)**
- F6** Sch. 4 Pt. 2 para. 18(2) substituted (20.12.2001) by 2001 c. 24, s. 3, **Sch. 2 Pt. 2 para. 3(2)**; S.I. 2001/4019, **art. 2(1)(c)**
- F7** Words in Sch. 4 Pt. 2 para. 18(3) substituted (20.12.2001) by 2001 c. 24, s. 3, **Sch. 2 Pt. 2 para. 3(3)**; S.I. 2001/4019, **art. 2(1)(c)**
- F8** Sch. 4 Pt. 2 para. 18(6) inserted (20.12.2001) by 2001 c. 24, s. 3, **Sch. 2 Pt. 2 para. 3(4)**; S.I. 2001/4019, **art. 2(1)(c)**

- 19 (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 recalled or varied by the Court of Session on the application of any person affected by it.
- [^{F9}(3) A restraint order made under paragraph 18(1) shall in particular be recalled on an application under sub-paragraph (2) if the proceedings for the offence have been concluded.
- (3A) A restraint order made under paragraph 18(2) shall in particular be discharged on an application under sub-paragraph (2)—
- (a) if no proceedings in respect of [^{F10}relevant offences] are instituted within such time as the Court of Session considers reasonable, and
 - (b) if all proceedings in respect of [^{F10}relevant offences] have been concluded.]
- (4) When proceedings for the offence are concluded the Lord Advocate shall forthwith apply to the Court for recall of the order.

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Annotations:

Amendments (Textual)

- F9** Sch. 4 para. 19(3)(3A) substituted for Sch. 4 para. 19(3) (20.12.2001) by 2001 c. 24, s. 3, **Sch. 2 Pt. 2 para. 3(5)**; S.I. 2001/4019, **art. 2(1)(c)**
- F10** Words in Sch. 4 para. 19(3A)(a)(b) substituted (18.6.2009) by Counter-Terrorism Act 2008 (c. 28), ss. 39, 100(5), **Sch. 3 para. 5(14)** (with s. 101(2)); S.I. 2009/1256, **art. 2(c)**

- 20 (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 Court's directions.

Annotations:

Modifications etc. (not altering text)

- C4** Sch. 4 para. 20 applied (13.12.2001) by S.I. 2001/3927, **art. 19**

- 21 (1) On the application of the Lord Advocate, the Court of Session may, in respect of 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.
- (2) Subject to this Part of this Schedule, a warrant under sub-paragraph (1)—
- (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) 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 ^{M2}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 (2)(a) as that section applies to an inhibition by separate letters or contained in a summons.
- (4) The execution of an inhibition under sub-paragraph (2) 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.
- (5) No inhibition executed under sub-paragraph (2) shall have effect once, or in so far as, the restraint order affecting the property in respect of which the warrant for the inhibition 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.

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Annotations:

Modifications etc. (not altering text)

C5 Sch. 4 para. 20 applied (13.12.2001) by S.I. 2001/3927, art. 19

Marginal Citations

M2 1868 c.101.

- 22 (1) On the application of the Lord Advocate, the court may, in respect of moveable property affected by a restraint order (whether such property generally or particular such property), grant warrant for arrestment if the property would be arrestable if the person entitled to it were a debtor.
- (2) A warrant under sub-paragraph (1) 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.
- (3) The execution of an arrestment under sub-paragraph (2) 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.
- (4) No arrestment executed under sub-paragraph (2) shall have effect once, or in so far as, the restraint order affecting the property in respect of which the warrant for such arrestment has been granted has ceased to have effect in respect of that property; and the Lord Advocate shall apply to the court for an order recalling, or as the case may be, restricting the arrestment accordingly.
- 23 (1) This paragraph applies where a restraint order is recalled under paragraph [F11]19(3A)(a)].
- (2) This paragraph also applies where a forfeiture order or a restraint order is made in or in relation to proceedings for [F12]a relevant offence] which—
- (a) do not result in conviction for an [F13]a relevant offence],
 - (b) result in conviction for [F13]a relevant offence] s in respect of which the person convicted is subsequently pardoned by Her Majesty, or
 - (c) result in conviction for [F13]a relevant offence] which is subsequently quashed.
- (3) A person who had an interest in any property which was subject to the order may apply to the Court of Session for compensation.
- (4) The Court of Session may order compensation to be paid to the applicant if it is 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 a constable of a police force or a constable acting with the powers of such a constable, or was a procurator fiscal or was acting on behalf of the Lord Advocate,
 - (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 the restraint order, and
 - (d) having regard to all the circumstances, it is appropriate to order compensation to be paid.

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- (5) The Court of Session shall not order compensation to be paid where it appears to it that the 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 a constable of a police force, [^{F14}by the Scottish Police Authority] ;
 - (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) This paragraph 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) to (c) of sub-paragraph (2).

Annotations:

Amendments (Textual)

- F11** Word in Sch. 4 Pt. 2 para. 23(1) substituted (20.12.2001) by 2001 c. 24, s. 3, **Sch. 2 Pt. 2 para. 3(6)**; S.I. 2001/4019, **art. 2(1)(c)**
- F12** Words in Sch. 4 para. 23(2) substituted (18.6.2009) by Counter-Terrorism Act 2008 (c. 28), ss. 39, 100(5), **Sch. 3 para. 5(16)(a)** (with s. 101(2)); S.I. 2009/1256, **art. 2(c)**
- F13** Words in Sch. 4 para. 23(2)(a)(b)(c) substituted (18.6.2009) by Counter-Terrorism Act 2008 (c. 28), ss. 39, 100(5), **Sch. 3 para. 5(16)(b)** (with s. 101(2)); S.I. 2009/1256, **art. 2(c)**
- F14** Words in Sch. 4 para. 23(6)(a) substituted (1.4.2013) by The Police and Fire Reform (Scotland) Act 2012 (Consequential Provisions and Modifications) Order 2013 (S.I. 2013/602), art. 1(2), **Sch. 2 para. 32(3)**

- ^{x124} (1) This paragraph applies where—
- (a) a forfeiture order or a restraint order is made in or in relation to proceedings for [^{F15}a relevant offence], and
 - (b) the proceedings result in a conviction which is subsequently quashed on an appeal under section 7(2) or (5) as applied by section 8(1).
- (2) A person who had an interest in any property which was subject to the order may apply to the Court of Session for compensation.
- (3) The Court of Session 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.
- (4) Compensation payable under this paragraph shall be paid by the Secretary of State.

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Annotations:

Editorial Information

- X1** The omission of the cross-heading "Compensation" on 18.6.2009 gives rise to a change in the structure of this legislation on SLD which breaks the continuity of historical versions of the existing provisions which are now brought under "Restraint Orders" cross-heading.

Amendments (Textual)

- F15** Words in Sch. 4 para. 24(1)(a) substituted (18.6.2009) by Counter-Terrorism Act 2008 (c. 28), ss. 39, 100(5), **Sch. 3 para. 5(17)** (with s. 101(2)); S.I. 2009/1256, **art. 2(c)**

F16 . . .

Annotations:

Amendments (Textual)

- F16** Sch. 4 para. 23: preceding cross-heading omitted (18.6.2009) by virtue of Counter-Terrorism Act 2008 (c. 28), ss. 39, 100(5), **Sch. 3 para. 5(15)** (with s. 101(2)); S.I. 2009/1256, **art. 2(c)**

Proceedings for an offence: timing

- 25 (1) For the purposes of this Part of this Schedule proceedings for an offence are instituted—
- (a) when a person is arrested for the offence,
 - (b) when a warrant to arrest or cite a person is granted,
 - (c) when an indictment or complaint is served on a person in respect of the offence.
- (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 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.

[^{F17}Domestic and overseas freezing orders

Annotations:

Amendments (Textual)

- F17** Sch. 4 paras. 25A-25G and cross-headings inserted (3.12.2014) by Crime (International Co-operation) Act 2003 (c. 32), s. 94(1), **Sch. 4 para. 5**; S.I. 2014/3192, **art. 2(b)**

- 25A (1) This paragraph has effect for the purposes of paragraphs 25B to 25G.

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- (2) The relevant Framework Decision means the Framework Decision on the execution in the European Union of orders freezing property or evidence adopted by the Council of the European Union on 22nd July 2003.
- (3) A listed offence means—
 - (a) an offence described in Article 3(2) of the relevant Framework Decision, or
 - (b) a prescribed offence or an offence of a prescribed description.
- (4) An order under sub-paragraph (3)(b) which, for the purposes of paragraph 25D, prescribes an offence or a description of offences may require that the conduct which constitutes the offence or offences would, if it occurred in a part of the United Kingdom, constitute an offence in that part.
- (5) Specified information, in relation to a certificate under paragraph 25B or 25D, means—
 - (a) any information required to be given by the form of certificate annexed to the relevant Framework Decision, or
 - (b) any prescribed information.
- (6) In this paragraph, “prescribed” means prescribed by an order made by the Secretary of State.
- (7) A participating country means—
 - (a) a country other than the United Kingdom which is a member State on a day appointed for the commencement of Schedule 4 to the Crime (International Co-operation) Act 2003, and
 - (b) any other member State designated by an order made by the Secretary of State.
- (8) “Country” includes territory.
- (9) Section 14(2)(a) applies for the purposes of determining what are the proceeds of the commission of an offence.

Domestic freezing orders: certification

- 25B
- (1) If any of the property to which an application for a restraint order relates is property in a participating country, the applicant may ask the Court of Session to make a certificate under this paragraph.
 - (2) The Court of Session may make a certificate under this paragraph if—
 - (a) it makes a restraint order in relation to property in the participating country, and
 - (b) it is satisfied that there is a good arguable case that the property is likely to be used for the purposes of a listed offence or is the proceeds of the commission of a listed offence.
 - (3) A certificate under this paragraph is a certificate which—
 - (a) is made for the purposes of the relevant Framework Decision, and
 - (b) gives the specified information.
 - (4) If the Court of Session makes a certificate under this paragraph—
 - (a) the restraint order must provide for notice of the certificate to be given to the person affected by it, and

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- (b) paragraph 19(2) to (4) applies to the certificate as it applies to the restraint order.

Sending domestic freezing orders

- 25C (1) If a certificate is made under paragraph 25B, the restraint order and the certificate are to be sent to the Lord Advocate for forwarding to—
- (a) a court exercising jurisdiction in the place where the property is situated, or
 - (b) any authority recognised by the government of the participating country as the appropriate authority for receiving orders of that kind.
- (2) The restraint order and the certificate must be accompanied by a forfeiture order, unless the certificate indicates when the court expects a forfeiture order to be sent.
- (3) The certificate must include a translation of it into an appropriate language of the participating country (if that language is not English).
- (4) The certificate must be signed by or on behalf of the court and must include a statement as to the accuracy of the information given in it.
- The signature may be an electronic signature.
- (5) If the restraint order and the certificate are not accompanied by a forfeiture order, but a forfeiture order is subsequently made, it is to be sent to the Lord Advocate for forwarding as mentioned in sub-paragraph (1).

Overseas freezing orders

- 25D (1) Paragraph 25E applies where an overseas freezing order made by an appropriate court or authority in a participating country is received by the Secretary of State from the court or authority which made or confirmed the order.
- (2) An overseas freezing order is an order prohibiting dealing with property—
- (a) which is in the United Kingdom,
 - (b) which the appropriate court or authority considers is likely to be used for the purposes of a listed offence or is the proceeds of the commission of such an offence, and
 - (c) in respect of which an order has been or may be made by a court exercising criminal jurisdiction in the participating country for the forfeiture of the property,
- and in respect of which the following requirements of this paragraph are met.
- (3) The action which the appropriate court or authority considered would constitute or, as the case may be, constituted the listed offence is action done as an act of terrorism or for the purposes of terrorism.
- (4) The order must relate to—
- (a) criminal proceedings instituted in the participating country, or
 - (b) a criminal investigation being carried on there.
- (5) The order must be accompanied by a certificate which gives the specified information; but a certificate may be treated as giving any specified information which is not given in it if the Secretary of State has the information in question.
- (6) The certificate must—

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- (a) be signed by or on behalf of the court or authority which made or confirmed the order,
- (b) include a statement as to the accuracy of the information given in it,
- (c) if it is not in English, include a translation of it into English.

The signature may be an electronic signature.

- (7) The order must be accompanied by an order made by a court exercising criminal jurisdiction in that country for the forfeiture of the property, unless the certificate indicates when such an order is expected to be sent.
- (8) An appropriate court or authority in a participating country in relation to an overseas freezing order is—
 - (a) a court exercising criminal jurisdiction in the country,
 - (b) a prosecuting authority in the country,
 - (c) any other authority in the country which appears to the Secretary of State to have the function of making such orders.
- (9) References in paragraphs 25E to 25G to an overseas freezing order include its accompanying certificate.

Enforcement of overseas freezing orders

- 25E (1) Where this paragraph applies the Secretary of State must send a copy of the overseas freezing order to the Court of Session and to the Lord Advocate.
- (2) The court is to consider the overseas freezing order on its own initiative within a period prescribed by rules of court.
 - (3) Before giving effect to the overseas freezing order, the court must give the Lord Advocate an opportunity to be heard.
 - (4) The court may decide not to give effect to the overseas freezing order only if, in its opinion, giving effect to it would be incompatible with any of the Convention rights (within the meaning of the Human Rights Act 1998).
- 25F The Court of Session may postpone giving effect to an overseas freezing order in respect of any property—
- (a) in order to avoid prejudicing a criminal investigation which is taking place in the United Kingdom, or
 - (b) if, under an order made by a court in criminal proceedings in the United Kingdom, the property may not be dealt with.
- 25G (1) Where the Court of Session decides to give effect to an overseas freezing order, the Deputy Principal Clerk of Session must—
- (a) register the order in the Books of Council and Session,
 - (b) provide for notice of the registration to be given to any person affected by it.
- (2) For the purpose of enforcing an overseas freezing order registered in the Books of Council and Session, the order is to have effect as if it were an order made by the Court of Session.
 - (3) Paragraphs 20 and 21 apply to an overseas freezing order registered in the Books of Council and Session as they apply to a restraint order under paragraph 18.

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- (4) The Court of Session may cancel the registration of the order, or vary the property to which the order applies, on an application by the Lord Advocate or any other person affected by it, if or to the extent that—
- (a) the court is of the opinion mentioned in paragraph 25E(4), or
 - (b) the court is of the opinion that the order has ceased to have effect in the participating country.
- (5) Her Majesty may by Order in Council make further provision for the enforcement in Scotland of registered overseas freezing orders.
- (6) An Order in Council under this paragraph—
- (a) may make different provision for different cases,
 - (b) is not to be made unless a draft of it has been laid before and approved by resolution of each House of Parliament.]

Enforcement of orders made elsewhere in the British Islands

- 26 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 23 [^{F18}or 23A] (“an England and Wales forfeiture order”),
 - (b) an order made under paragraph 5 (“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 23 [^{F18}or 23A] (“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 [^{F18}or 23A] (“an Islands forfeiture order”),
 - (b) paragraph 18 (“an Islands restraint order”), or
 - (c) any other provision of this Part of this Schedule.

Annotations:

Amendments (Textual)

F18 Words in Sch. 4 para. 26 inserted (18.6.2009) by Counter-Terrorism Act 2008 (c. 28), ss. 39, 100(5), Sch. 3 para. 5(18) (with s. 101(2)); S.I. 2009/1256, art. 2(c)

- 27 (1) Subject to the provisions of this paragraph, an England and Wales order, Northern Ireland order or Islands order shall have effect in the law of Scotland.
- (2) But such an order shall be enforced in Scotland only in accordance with—
- (a) the provisions of this paragraph, and

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- (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 an England and Wales order, Northern Ireland order or Islands order, the Court of Session 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 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.
- (5) 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 16(1) above in relation to a forfeiture order made by it and paragraphs 16(3) to (5) and 17 apply accordingly.
- (6) If an England and Wales, Northern Ireland or Islands forfeiture order is registered under this paragraph—
 - (a) paragraphs 20 and 21 above shall apply as they apply to a restraint order, and
 - (b) the Court of Session shall have the like power to make an order under section 1 of the ^{M3}Administration of Justice (Scotland) Act 1972 (extended power to order inspection of documents, &c.) 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.
- (7) In addition, 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.
- (8) The Court of Session may also make such orders or do otherwise as seems to it appropriate 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.
- (9) The following documents shall, in Scotland, be sufficient evidence of their contents—
 - (a) 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, and

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- (b) a document purporting to be a certificate for purposes corresponding to those of paragraph 16(4) and to be certified by a proper officer of the court concerned.

- (10) 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.

Annotations:

Commencement Information

- II** Sch. 4 wholly in force at 19.2.2001; Sch. 4 not in force at Royal Assent see s. 128; Sch. 4 para. 27(2)(b)(3)(4) in force at 31.10.2000 by [S.I. 2000/2944](#), [art. 2\(h\)\(ii\)](#); Sch. 4 in force at 19.2.2001 in so far as not already in force by [S.I. 2001/421](#), [art. 2](#)

Marginal Citations

- M3** [1972 c.59](#).

Enforcement of orders made in designated countries

- 28 (1) Her Majesty may by Order in Council make provision for the purpose of enabling the enforcement in Scotland of external orders.
- (2) An “external order” means an order [^{F19}(other than an overseas freezing order within the meaning of paragraph 25D)]—
- (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 27(1) to (8) in relation to the orders to which that paragraph applies, and
- (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.

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- (6) An Order 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.

Annotations:

Amendments (Textual)

F19 Words in Sch. 4 para. 28(2) inserted (3.12.2014) by [Crime \(International Co-operation\) Act 2003 \(c. 32\)](#), s. 94(1), [Sch. 4 para. 6](#); S.I. 2014/3192, art. 2(b)

Changes to legislation:

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Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- Sch. 4 para. 11(1)(aa) inserted by [2003 c. 44 Sch. 36 para. 14\(2\)](#)
- Sch. 4 para. 11(2A) inserted by [2003 c. 44 Sch. 36 para. 14\(3\)](#)
- Sch. 4 para. 11(1)(aa) words substituted by [2015 c. 2 Sch. 11 para. 17\(2\)](#)
- Sch. 4 para. 11(2A) words substituted by [2015 c. 2 Sch. 11 para. 17\(3\)](#)
- Sch. 8 para. 18(2)(ab)(ac) amendment by [2016 asp 1, Sch. 2 para. 37\(a\)\(i\)](#) extended to E.W.N.I. by [S.I. 2018/46 art. 18](#)
- Sch. 8 para. 18(4) amendment by [2016 asp 1, Sch. 2 para. 37\(a\)\(ii\)](#) extended to E.W.N.I. by [S.I. 2018/46 art. 18](#)
- Sch. 8 para. 18(4) inserted by [2016 asp 1 sch. 2 para. 37\(a\)\(ii\)](#)
- Sch. 8 para. 14(2A) inserted by [2008 c. 28 s. 16\(3\)](#) (This amendment not applied to legislation.gov.uk. S. 16 repealed (31.10.2013) by 2012 c. 9, Sch. 10 Pt. 1; S.I. 2013/2104, art. 3(d))
- Sch. 8 para. 14(4)(ba) inserted by [2008 c. 28 s. 16\(5\)](#) (This amendment not applied to legislation.gov.uk. S. 16 repealed (31.10.2013) by 2012 c. 9, Sch. 10 Pt. 1; S.I. 2013/2104, art. 3(d))
- Sch. 8 para. 15(1)(aa) (ab) inserted by [2010 c. 17 s. 17\(4\)\(b\)](#) (This amendment not applied to legislation.gov.uk. Ss. 16-19 repealed (31.10.2013) without ever being in force by 2012 c. 9, Sch. 9 para. 4(2), Sch. 10 Pt. 1; S.I. 2013/2104, art. 3(c)(d))
- Sch. 8 para. 15(2A) inserted by [2010 c. 17 s. 17\(7\)](#) (This amendment not applied to legislation.gov.uk. Ss. 16-19 repealed (31.10.2013) without ever being in force by 2012 c. 9, Sch. 9 para. 4(2), Sch. 10 Pt. 1; S.I. 2013/2104, art. 3(c)(d))
- Sch. 8 para. 15(4) inserted by [2010 c. 17 s. 17\(8\)](#) (This amendment not applied to legislation.gov.uk. Ss. 16-19 repealed (31.10.2013) without ever being in force by 2012 c. 9, Sch. 9 para. 4(2), Sch. 10 Pt. 1; S.I. 2013/2104, art. 3(c)(d))
- Sch. 8 para. 14-14I substituted for Sch. 8 para. 14 by [2010 c. 17 s. 17\(2\)](#) (This amendment not applied to legislation.gov.uk. Ss. 16-19 repealed (31.10.2013) without ever being in force by 2012 c. 9, Sch. 9 para. 4(2), Sch. 10 Pt. 1; S.I. 2013/2104, art. 3(c)(d))
- Sch. 8 para. 20(3)-(3C) substituted for Sch. 8 para. 20(3) by [2010 c. 17 s. 18\(2\)\(a\)](#) (This amendment not applied to legislation.gov.uk. Ss. 16-19 repealed (31.10.2013) without ever being in force by 2012 c. 9, Sch. 9 para. 4(2), Sch. 10 Pt. 1; S.I. 2013/2104, art. 3(c)(d))
- Sch. 8 para. 18(2)(ab)(ac) substituted for word by [2016 asp 1 sch. 2 para. 37\(a\)\(i\)](#)