

SCHEDULES

SCHEDULE 4

FORFEITURE ORDERS

PART IV

INSOLVENCY: UNITED KINGDOM PROVISIONS

Protection of creditors against forfeiture

- 46 (1) During the period of six months beginning with the making of a forfeiture order, the following shall not be finally disposed of under this Schedule—
- (a) the money to which the order applies, and
 - (b) the money which represents any property to which the order applies.
- (2) For the purposes of this paragraph money is finally disposed of under this Schedule when—
- (a) in England and Wales, it is paid to the Lord Chancellor in accordance with section 60 of the Justices of the Peace Act 1997 (application of fines, &c.) or to the Secretary of State in accordance with paragraph 13(5)(c),
 - (b) in Scotland, it is paid to the Treasury in accordance with section 211(5) of the Criminal Procedure (Scotland) Act 1995 (as modified by paragraph 16(3)), or
 - (c) in Northern Ireland, it is paid into the Consolidated Fund in accordance with paragraph 32(4) or 43(5)(c).
- 47 (1) This paragraph applies where—
- (a) before or after a forfeiture order is made, the commencement of an insolvency occurs in qualifying insolvency proceedings,
 - (b) an insolvency practitioner would, but for the forfeiture order, exercise a function in those proceedings in relation to property to which the forfeiture order applies, and
 - (c) he gives written notice to the relevant officer of the matters referred to in paragraphs (a) and (b) before the end of the period of six months beginning with the making of the forfeiture order.
- (2) Sub-paragraph (3) shall apply to—
- (a) the property in relation to which the insolvency practitioner would, but for the forfeiture order, exercise a function as described in sub-paragraph (1) (b), and
 - (b) the proceeds of sale of that property.
- (3) The property—
- (a) shall cease to be subject to the forfeiture order and any ancillary order, and

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- (b) shall be dealt with in the insolvency proceedings as if the forfeiture order had never been made.
- (4) But—
 - (a) the property to which sub-paragraph (3) applies is the balance remaining after the relevant officer has exercised his powers under paragraph 50(1), and
 - (b) sub-paragraph (3) shall not take effect in respect of property in relation to which the relevant officer, or any person acting in pursuance of an ancillary order, has incurred obligations until those obligations have been discharged.
- (5) In this paragraph “the commencement of an insolvency” means—
 - (a) the making of a bankruptcy order,
 - (b) the award of sequestration,
 - (c) in England and Wales or in Northern Ireland, in the case of the insolvent estate of a deceased person, the making of an insolvency administration order, or
 - (d) in the case of a company, the passing of a resolution for its winding up, or where no such resolution has been passed, the making of an order by the court for the winding up of the company.
- 48 (1) Where by virtue of paragraph 47(3) property falls to be dealt with in insolvency proceedings, the Secretary of State shall be taken to be a creditor in those proceedings to the amount or value of the property.
- (2) Except in a sequestration, his debt—
 - (a) shall rank after the debts of all other creditors, and
 - (b) shall not be paid until they have been paid in full with interest under the relevant provision.
- (3) In sub-paragraph (2)(b) the “relevant provision” means—
 - (a) in relation to the winding up of a company in England and Wales or Scotland, section 189(2) of the Insolvency Act 1986,
 - (b) in relation to a bankruptcy in England and Wales, section 328(4) of that Act,
 - (c) in relation to the winding up of a company in Northern Ireland, Article 160(2) of the Insolvency (Northern Ireland) Order 1989, and
 - (d) in relation to a bankruptcy in Northern Ireland, Article 300(4) of that Order.
- (4) In a sequestration, his debt shall rank after all of 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.
- (5) Sub-paragraphs (2) to (4) apply notwithstanding any provision contained in or made under any other enactment.
- 49 (1) This paragraph applies to property which ceased to be subject to a forfeiture order by virtue of paragraph 47(3) in consequence of the making of a bankruptcy order or an award of sequestration.
- (2) The property shall again become subject to the forfeiture order and, if applicable, any ancillary order if—
 - (a) the bankruptcy order is annulled, or
 - (b) the award of sequestration is recalled or reduced.
- (3) Where the property is money or has been converted into money—

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- (a) the relevant court shall make an order specifying property comprised in the estate of the bankrupt or debtor to the amount or value of the property, and
 - (b) the specified property shall become subject to the forfeiture order, and any applicable ancillary order, in place of the property.
- (4) In sub-paragraph (3) the “relevant court” means—
- (a) the court which ordered the annulment of the bankruptcy, or
 - (b) the court which recalled or reduced the award of sequestration.