

COPYRIGHT, ETC. AND TRADE MARKS (OFFENCES AND ENFORCEMENT) ACT 2002

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Sections 3, 4 and 5

11. [Section 3](#) reproduces in Part I of the Copyright, Designs and Patents Act 1988 provisions corresponding to those in sections 97 and 98 of the Trade Marks Act 1994, allowing forfeiture of infringing goods. Thus, section 3 provides forfeiture provisions for goods infringing copyright, ie infringing copies, and articles specifically designed or adapted for making such copies. Section 97 relates to forfeiture in England, Wales and Northern Ireland and section 98 is a modified version relating to forfeiture in Scotland.
12. The existing forfeiture provisions in trade marks law apply in England, Wales and Northern Ireland where items have come into the possession of a person in connection with the investigation or prosecution of one of the offences, or a related offence under the Trade Descriptions Act 1968, or any offence involving dishonesty or deception. They allow a court to order forfeiture of infringing goods both where a person has been prosecuted for an offence and where there is no prosecution, although in both cases the court must be satisfied that an offence has been committed in relation to the goods. In Scotland, the forfeiture provisions apply where a person has been convicted of one of these offences or on application by the procurator-fiscal. The court can order destruction of goods or release to another person with conditions. Broadly similar provision is introduced by section 3 into Part I of the 1988 Act.
13. [Section 4](#) introduces forfeiture provisions, very similar to those in section 3, into Part II of the Copyright, Designs and Patents Act in respect of goods that infringe rights in performances, ie illicit recordings.
14. [Section 5](#) introduces forfeiture provisions, very similar to those in section 3, into Part VII of the Copyright, Designs and Patents Act in respect of devices that permit fraudulent reception of conditional access transmissions, ie unauthorised decoders used to access transmissions such as satellite television without payment.