

SCHEDULES

SCHEDULE 18

Section 277

FORFEITURE OF PROPERTY UNDER SECTION 275 OR 276

Application of Schedule

- 1 (1) This Schedule applies where—
 - (a) property seized by an enforcement officer in the exercise of any power conferred by this Act is in the possession of the relevant authority,
 - (b) the relevant authority is satisfied that there are reasonable grounds for believing that the property is forfeitable property, and
 - (c) either—
 - (i) no proceedings are being taken against any person in respect of the property, or
 - (ii) any such proceedings have concluded without any order for forfeiture having been made in respect of the property.
- (2) The following property is “forfeitable property”—
 - (a) any item the use of which for sea fishing would in any circumstances constitute an offence under the law of England and Wales;
 - (b) any fish in respect of which, by virtue of the fish failing to meet requirements as to size, an offence under the law of England and Wales has been committed.

Notice of intended forfeiture

- 2 (1) The relevant authority must give notice of the intended forfeiture of the property (“notice of intended forfeiture”) to each of the following persons—
 - (a) every person who appears to the authority to have been the owner of the property, or one of its owners, at the time of the seizure of the property;
 - (b) in the case of property seized from a vessel, the master, owner and charterer (if any) of the vessel at that time;
 - (c) in the case of property seized from premises, every person who appears to the authority to have been an occupier of the premises at that time;
 - (d) in any other case, the person (if any) from whom the property was seized.
- (2) The notice of intended forfeiture must set out—
 - (a) a description of the property,
 - (b) the grounds of the intended forfeiture, and
 - (c) how a person may give a notice of claim under this Schedule and the period within which such a notice must be given.
- (3) In a case where—

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- (a) the property was seized following an inspection carried out in exercise of the power conferred by section 264, and
- (b) the relevant authority, after taking reasonable steps to do so, is unable to identify any person as owning the property,

the reference in sub-paragraph (1) to a requirement to give notice of intended forfeiture to such a person is to be read as a reference to a requirement to take such steps as the authority thinks fit to bring the contents of the notice to the attention of persons likely to be interested in it.

- (4) Property may be treated or condemned as forfeited under this Schedule only if—
 - (a) the requirements of this paragraph have been complied with in the case of the property, or
 - (b) it was not reasonably practicable for them to be complied with.

Notice of claim

3 A person claiming that the property is not liable to forfeiture must give written notice of the claim to the relevant authority.

- 4 (1) A notice of claim must be given—
- (a) within one month of the day of the giving of the notice of intended forfeiture, or
 - (b) if no such notice has been given, within one month of the date of the seizure of the property.

- (2) A notice of claim must specify—
- (a) the name and address of the claimant, and
 - (b) in the case of a claimant who is outside the United Kingdom, the name and address of a solicitor in the United Kingdom who is authorised to accept service of process and to act on behalf of the claimant.

(3) Service of process upon a solicitor so specified is to be taken to be proper service upon the claimant.

(4) In a case in which notice of intended forfeiture was given to different persons on different days, the reference in this paragraph to the day on which that notice was given is a reference—

- (a) in relation to a person to whom notice of intended forfeiture was given, to the day on which that notice was given to that person, and
- (b) in relation to any other person, to the day on which notice of intended forfeiture was given to the last person to be given such a notice.

Automatic forfeiture in a case where no claim is made

- 5 The property is to be taken to have been duly condemned as forfeited if—
- (a) by the end of the period for the giving of a notice of claim in respect of the property, no notice of claim has been given to the relevant authority, or
 - (b) a notice of claim has been given which does not comply with the requirements of paragraphs 3 and 4.

Decision whether to take court proceedings to condemn property as forfeited

- 6 (1) Where a notice of claim in respect of the property is duly given in accordance with paragraphs 3 and 4, the relevant authority must decide whether to take proceedings to ask the court to condemn the property as forfeited.
- (2) The decision whether to take such proceedings must be taken as soon as reasonably practicable after the receipt of the notice of claim.

Return of property if no forfeiture proceedings

- 7 (1) If, in a case in which a notice of claim has been given, the relevant authority decides not to take proceedings for condemnation of the property, it must return the property to the person appearing to it to be the owner of the property, or, if there is more than one such person, to one of those persons.
- (2) Any property required to be returned in accordance with sub-paragraph (1) must be returned as soon as reasonably practicable after the decision not to take proceedings for condemnation.

Forfeiture proceedings

- 8 (1) This paragraph applies if, in a case in which a notice of claim has been given, the relevant authority decides to take proceedings for the condemnation of the property by the court.
- (2) If the court is satisfied that the property is forfeitable property, it must condemn the property as forfeited.
- (3) If the court is not satisfied that the property is forfeitable property, the court must order the return of the property to the person appearing to the court to be entitled to it or, if there is more than one such person, to one of those persons.

Supplementary provision about forfeiture proceedings

- 9 Proceedings by virtue of this Schedule are civil proceedings and may be instituted—
- (a) in the High Court, or
- (b) in any magistrates' court in England or Wales.
- 10 (1) In proceedings by virtue of this Schedule, the claimant or the claimant's solicitor must make an oath that, at the time of the seizure, the property was, or was to the best of that person's knowledge and belief, the property of the claimant.
- (2) In proceedings by virtue of this Schedule instituted in the High Court—
- (a) the court may require the claimant to give such security for the costs of the proceedings as may be determined by the court, and
- (b) the claimant must comply with such a requirement.
- (3) If a requirement of this paragraph is not complied with, the court must give judgment for the relevant authority.
- 11 (1) In the case of proceedings by virtue of this Schedule instituted in a magistrates' court in England or Wales, either party may appeal against the decision of that court to the Crown Court.

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- (2) This paragraph does not affect any right to require the statement of a case for the opinion of the High Court.
- 12 Where an appeal has been made (whether by case stated or otherwise) against the decision of the court in proceedings by virtue of this Schedule in relation to property, the property is to be left with the relevant authority pending the final determination of the matter.

Effect of forfeiture

- 13 Where property is treated or condemned as forfeited under this Schedule, the forfeiture is to be treated as having taken effect as from the time of the seizure.

Disposal of property which is not returned

- 14 (1) This paragraph applies where any property is required to be returned to a person under this Schedule.
- (2) If the property is still in the relevant authority's possession after the end of the period of three months beginning with the day after the requirement to return it arose, the relevant authority may dispose of it in any manner it thinks fit.
- (3) The relevant authority may exercise its power under this paragraph to dispose of property only if it is not practicable at the time when the power is exercised to dispose of the property by returning it immediately to the person to whom it is required to be returned.

Provisions as to proof

- 15 In proceedings under this Schedule, the fact, form and manner of the seizure of the property are to be taken, without further evidence and unless the contrary is shown, to have been as set forth in the process.
- 16 In any proceedings, the condemnation by a court of property as forfeited under this Schedule may be proved by the production of—
- (a) the order or certificate of condemnation, or
 - (b) a certified copy of the order purporting to be signed by an officer of the court by which the order or certificate was made or granted.

Special provisions as to certain claimants

- 17 (1) This paragraph applies where, at the time of the seizure of the property, it was—
- (a) the property of a body corporate,
 - (b) the property of two or more partners, or
 - (c) the property of more than five persons.
- (2) The oath required by paragraph 10, and any other thing required by this Schedule or by rules of court to be done by the owner of the property, may be sworn or done by—
- (a) a person falling within sub-paragraph (3), or
 - (b) a person authorised to act on behalf of such a person.
- (3) The persons are—

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- (a) where the owner is a body corporate, the secretary or some duly authorised officer of that body;
- (b) where the owners are in partnership, any one or more of the owners;
- (c) where there are more than five owners and they are not in partnership, any two or more of the owners acting on behalf of themselves and any of their co-owners who are not acting on their own behalf.

Power to destroy fish before condemnation, etc

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- (1) The relevant authority may destroy any fish liable to be treated or condemned as forfeited under this Schedule, even if such fish have not yet been so treated or condemned.
 - (2) If in proceedings under this Schedule the court is not satisfied that any fish destroyed under this paragraph were forfeitable property, the relevant authority must, if requested to do so, pay to the claimant a sum of money equal to the market value of the fish at the time of seizure.
 - (3) A claimant who accepts any sum of money paid under sub-paragraph (2) is not entitled to maintain any action on account of the seizure, detention or destruction of the fish.
 - (4) For the purposes of sub-paragraph (2), the market value of any fish at the time of seizure is to be taken to be such amount as the relevant authority and the claimant may agree or, in default of agreement, as may be determined by a referee appointed by the court.
 - (5) The procedure on any reference to a referee under sub-paragraph (4) is to be such as may be determined by the referee.
 - (6) The referee's decision is final and conclusive.

Saving for owner's rights

- 19
- Neither the imposition of a requirement by virtue of this Schedule to return property to a person nor the return of property to a person in accordance with such a requirement affects—
- (a) the rights in relation to that property of any other person, or
 - (b) the right of any other person to enforce any rights against the person to whom it is returned.

Interpretation

- 20
- In this Schedule—
- “the court” is to be read in accordance with paragraph 9;
 - “forfeitable property” is to be read in accordance with paragraph 1(2).