

*Status: Point in time view as at 24/03/2003.*

*Changes to legislation: Civic Government (Scotland) Act 1982, Schedule 2A is up to date with all changes known to be in force on or before 25 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

## SCHEDULES

### [<sup>F1</sup>SCHEDULE 2A

Section 54(2C).

#### RETENTION AND DISPOSAL OF PROPERTY SEIZED UNDER SECTION 54(2A) OF THIS ACT

##### Textual Amendments

**F1** Sch. 2A inserted (1.12.1998) by 1998 c. 37, s. 24(4), Sch. 1; S.I. 1998/2327, art. 4

##### *Application*

- 1 This schedule applies to property seized under section 54(2A) of this Act.

##### *Retention*

- 2 (1) Subject to sub-paragraph (2) below, property to which this Schedule applies may be retained for a period of twenty-eight days beginning with the day on which it was seized.
- (2) Where proceedings for an offence are instituted within the period specified in sub-paragraph (1) above against any person, the property may be retained for a period beginning on the day on which it was seized and ending on the day when—
- (a) the prosecutor certifies that the property is not, or is no longer, required as a production in criminal proceedings or for any purpose relating to such proceedings;
  - (b) the accused in such proceedings—
    - (i) is sentenced or otherwise dealt with for the offence; or
    - (ii) is acquitted of the offence; or
  - (c) the proceedings are expressly abandoned by the prosecutor or are deserted *simpliciter*.

##### *Arrangements for custody of property*

- 3 (1) Subject to the proviso to section 17(3)(b) of the <sup>M1</sup>Police (Scotland) Act 1967 (duty to comply with instructions received from prosecutor), the chief constable shall, in accordance with the provisions of this Schedule, make such arrangements as he considers appropriate for the care, custody, return or disposal of property to which this Schedule applies.
- (2) Any reference in this Schedule to property being in the possession of, delivered by or disposed of by, the chief constable includes a reference to its being in the possession of, delivered by or disposed of by, another person under arrangements made under sub-paragraph (1) above.

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#### Marginal Citations

M1 1967 c.77.

### *Disposal*

- 4 Where the period of retention permitted by paragraph 2 above expires and the chief constable has reason to believe that the person from whom the property was seized is not the owner or the person having right to possession of it, he shall take reasonable steps to ascertain the identity of the owner or of the person with that right and to notify him of the procedures determined under paragraph 5(1) below.
- 5 (1) Subject to sub-paragraphs (5) and (6) below, the owner or any person having right to possession of any property to which this Schedule applies and which, at the expiry of the period of retention permitted by paragraph 2 above, is in the possession of the chief constable may at any time prior to its disposal under paragraph 6 below claim that property in accordance with such procedure as the chief constable may determine.
- (2) Subject to sub-paragraphs (3), (5) and (6) below, where the chief constable considers that the person making a claim in accordance with the procedure determined under sub-paragraph (1) above is the owner of the property or has a right to possession of it, he shall deliver the property to the claimant.
- (3) Subject to sub-paragraph (4) below, the chief constable may impose such conditions connected with the delivery to the claimant of property under sub-paragraph (2) above as he thinks fit and, without prejudice to that generality, such conditions may relate to the payment of such reasonable charges (including any reasonable expenses incurred in relation to the property by or on behalf of him) as he may determine.
- (4) No condition relating to the payment of any charge shall be imposed by the chief constable on the owner or person having right of possession of the property where he is satisfied that that person did not know, and had no reason to suspect, that the property to which this Schedule applies was likely to be used in a manner which gave rise to its seizure.
- (5) This paragraph does not apply where the period of retention expires in such manner as is mentioned in paragraph 2(2)(b)(i) above and the court by which he was convicted has made a suspended forfeiture order or a restraint order in respect of the property to which this Schedule applies.
- (6) This paragraph shall cease to apply where at any time—
- (a) the property to which this Schedule applies—
    - (i) is seized under any other power available to a constable; or
    - (ii) passes into the possession of the prosecutor; or
  - (b) proceedings for an offence are instituted, where the property to which this Schedule applies is required as a production.
- 6 (1) Where this sub-paragraph applies, the chief constable may—
- (a) sell property to which this Schedule applies; or
  - (b) if in his opinion it would be impracticable to sell such property, dispose of it.
- (2) Sub-paragraph (1) above applies—

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- (a) at any time after the expiry of the relevant period where, within that period—
    - (i) no claim has been made under paragraph 5 above; or
    - (ii) any such a claim which has been made has been rejected by the chief constable; and
  - (b) where a claim has been made under paragraph 5 above and not determined within the relevant period, at any time after the rejection of that claim by the chief constable.
- (3) In sub-paragraph (2) above, the “relevant period” means a period of six months beginning with the day on which the period of retention permitted by paragraph 2 above expired.
- (4) Sections 71, 72 and 77(1) of this Act shall apply to a disposal under this paragraph as they apply to a disposal under section 68 of this Act.

#### *Appeals*

- 7
- (1) A claimant under sub-paragraph (2) of paragraph 5 above may appeal to the sheriff against any decision of the chief constable made under that paragraph as respects the claim.
  - (2) The previous owner of any property disposed of for value under paragraph 6 above may appeal to the sheriff against any decision of the chief constable made under section 72 of this Act as applied by sub-paragraph (4) of that paragraph.
  - (3) Subsections (3) to (5) of section 76 of this Act shall apply to an appeal under this paragraph as they apply to an appeal under that section.

#### *Interpretation*

- 8
- In this Schedule—
- “chief constable” means the chief constable for the police area in which the property to which this Schedule applies was seized, and includes a constable acting under the direction of the chief constable for the purposes of this Schedule;
- [<sup>F2</sup>“restraint order” means a restraint order made under Part 3 of the Proceeds of Crime Act 2002]
- “suspended forfeiture order” shall be construed in accordance with section 21(2) of that Act.]

#### **Textual Amendments**

- F2** Words in Sch. 2A para. 8 substituted (24.3.2003) by Proceeds of Crime Act 2002 (c. 29), s. 458(1), Sch. 11 para. 12(3); S.S.I. 2003/210, art. 2(1)(b)(2), sch. (with art. 7)

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