

Status: Point in time view as at 28/06/1995. This version of this schedule contains provisions that are not valid for this point in time.

Changes to legislation: There are currently no known outstanding effects for the Prevention of Terrorism (Temporary Provisions) Act 1989 (repealed), SCHEDULE 4. (See end of Document for details)

SCHEDULES

SCHEDULE 4

Section 13(8).

FORFEITURE ORDERS

Modifications etc. (not altering text)

C1 Sch. 4 applied (with modifications) by 1998 c. 40, s. 4(7)

PART I

ENGLAND AND WALES

Implementation of forfeiture orders

- 1 (1) Where a court in England and Wales makes an order under section 13(2), (3) or (4) of this Act (in this Part of this Schedule referred to as a “forfeiture order”) it may make an order—
- (a) requiring any money or other property to which the forfeiture order applies to be paid or handed over to the proper officer or to a constable designated for the purpose by the chief officer of police of a police force specified in the order;
 - (b) directing any such property other than money or land to be sold or otherwise disposed of in such manner as the court may direct and the proceeds to be paid to the proper officer;
 - (c) appointing a receiver to take possession, subject to such conditions and exceptions as may be specified by the court, of any such property which is land, to realise it in such manner as the court may direct and to pay the proceeds to the proper officer;
 - (d) directing a specified part of any money, or of the proceeds of the sale, disposal or realisation of any property, to which the forfeiture order applies to be paid by the proper officer to or for a specified person falling within section 13(6) of this Act;
 - (e) making such other provision as appears to the court to be necessary for giving effect to the forfeiture order or to any order made by virtue of paragraph (a), (b), (c) or (d) above.
- (2) A forfeiture order shall not come into force until (disregarding any power of a court to grant leave to appeal out of time) there is no further possibility of the order being set aside.
- (3) Any balance in the hands of the proper officer after making any payment required under sub-paragraph (1)(d) above or paragraph 2 below shall be treated for the

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purposes of section 61 of the Justices of the ^{M1}Peace Act 1979 (application of fines etc.) as if it were a fine imposed by a magistrates' court.

- (4) The proper officer shall, on the application of the prosecutor or defendant in the proceedings in which a forfeiture order is made, 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 this paragraph "the proper officer" means, where the forfeiture order is made by a magistrates' court, the clerk of that court and, where the order is made by the Crown Court —
 - (a) the clerk of the magistrates' court by which the defendant was committed to the Crown Court; or
 - (b) if the proceedings were instituted by a bill of indictment preferred by virtue of section 2(2)(b) of the ^{M2}Administration of Justice (Miscellaneous Provisions) Act 1933, the clerk of the magistrates' court for the place where the trial took place;
 and in this sub-paragraph references to the clerk of a magistrates' court shall be construed in accordance with section 141 of the ^{M3}Magistrates' Courts Act 1980 taking references to that Act as references to this Act.
- (6) In this paragraph 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.
- (7) This paragraph has effect to the exclusion of section 140 of the said Act of 1980.

Marginal Citations

- M1** 1979 c. 55.
M2 1933 c. 36.
M3 1980 c. 43.

- 2 (1) Where a receiver appointed under paragraph 1 above takes any action—
 - (a) in relation to property which is not subject to forfeiture, being action which he would be entitled to take if it were such property;
 - (b) believing, and having reasonable grounds for believing, that he is entitled to take that action in relation to that property,
 he shall not be liable to any person in respect of any loss or damage resulting from his action except in so far as the loss or damage is caused by his negligence.
- (2) A receiver appointed under paragraph 1 above 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 prosecutor.

Restraint orders

- 3 (1) The High Court may in accordance with this paragraph by an order (referred to in this Part of this Schedule as a "restraint order") prohibit any person, subject to such conditions and exceptions as may be specified in the order, from dealing with any

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property liable to forfeiture, that is to say, any property in respect of which a forfeiture order has been made or in respect of which such an order could be made in the proceedings referred to in sub-paragraph (2) or (3) below.

- (2) A restraint order may be made where—
- (a) proceedings have been instituted against a defendant in England or Wales for an offence under Part III of this Act;
 - (b) the proceedings have not been concluded; and
 - (c) either a forfeiture order has been made or it appears to the court that there are reasonable grounds for thinking that a forfeiture order may be made in those proceedings.
- (3) A restraint order may also be made where—
- (a) the court is satisfied that, whether by the laying of an information or otherwise, a person is to be charged in England and Wales with an offence under Part III of this Act; and
 - (b) it appears to the court that a forfeiture order may be made in proceedings for the offence.
- (4) In the application of the provisions of this Part of this Schedule at a time when a restraint order may be made by virtue of sub-paragraph (3) above references to the prosecutor shall be construed as references to the person who the High Court is satisfied is to have the conduct of the proposed proceedings.
- (5) Where the court has made an order under this paragraph by virtue of sub-paragraph (3) above the court may discharge the order if proceedings in respect of the offence are not instituted (whether by the laying of an information or otherwise) within such time as the court considers reasonable.
- (6) For the purposes of this paragraph, dealing with property includes, without prejudice to the generality of that expression—
- (a) where a debt is owed to the person concerned, making a payment to any person in reduction of the amount of the debt; and
 - (b) removing the property from the jurisdiction of the High Court.
- (7) In exercising the powers conferred by this paragraph the court shall not take account of any obligations of any person having an interest in the property subject to the restraint order which might frustrate the making of a forfeiture order.
- (8) For the purposes of this paragraph proceedings for an offence are instituted—
- (a) when a justice of the peace issues a summons or warrant under section 1 of the ^{M4}Magistrates' Courts Act 1980 in respect of that offence;
 - (b) when a person is charged with the offence after being taken into custody without a warrant;
 - (c) when a bill of indictment is preferred by virtue of section 2(2)(b) of the ^{M5}Administration of Justice (Miscellaneous Provisions) Act 1933;
- and where the application of this sub-paragraph 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.
- (9) For the purposes of this paragraph and paragraph 4 below proceedings are concluded—

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- (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 grant leave to appeal out of time) there is no further possibility of a forfeiture order being made in the proceedings.

Marginal Citations

M4 1980 c. 43.

M5 1933 c. 36.

- 4 (1) A restraint order—
 - (a) may be made only on an application by the prosecutor;
 - (b) may be made on an ex parte application to a judge in chambers; and
 - (c) shall provide for notice to be given to persons affected by the order.
 - (2) A restraint order—
 - (a) may be discharged or varied in relation to any property; and
 - (b) shall be discharged when proceedings for the offence are concluded.
 - (3) An application for the discharge or variation of a restraint order may be made by any person affected by it.
- 5 (1) Where the High Court has made a restraint order a constable may for the purpose of preventing any property subject to the order being removed from the jurisdiction of the court seize that property.
 - (2) Property seized under this paragraph shall be dealt with in accordance with the court's directions.
- 6 (1) The ^{M6}Land Charges Act 1972 and the ^{M7}Land Registration Act 1925 shall apply—
 - (a) in relation to restraint orders as they apply in relation to orders affecting land made by the court for the purpose of enforcing judgments or recognizances; and
 - (b) in relation to applications for restraint orders as they apply in relation to other pending land actions.
 - (2) The prosecutor shall be treated for the purposes of section 57 of the Land Registration Act 1925 (inhibitions) as a person interested in relation to any registered land to which a restraint order or an application for such an order relates.

Marginal Citations

M6 1972 c. 61.

M7 1925 c. 21.

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Compensation

- 7 (1) If proceedings are instituted against a person for an offence under Part III of this Act and either—
- (a) the proceedings do not result in his conviction for any such offence; or
 - (b) where he is convicted of one or more such offences—
 - (i) the conviction or convictions concerned are quashed; or
 - (ii) he is pardoned by Her Majesty in respect of the conviction or convictions concerned,
- the High Court may, on an application by a person who had an interest in any property which was subject to a forfeiture or restraint order made in or in relation to those proceedings, order compensation to be paid to the applicant if, having regard to all the circumstances, it considers it appropriate to do so.
- (2) The High Court shall not order compensation to be paid in any case unless it is satisfied—
- (a) that there is some serious default on the part of a person concerned in the investigation or prosecution of the offence concerned, being a person mentioned in sub-paragraph (5) below; and
 - (b) that the applicant has suffered loss in consequence of anything done in relation to the property by or in pursuance of an order under this Part of this Schedule.
- (3) The court shall not order compensation to be paid in any case where it appears to it that the proceedings would have been instituted even if the serious default had not occurred.
- (4) The amount of compensation to be paid under this paragraph shall be such as the High Court thinks just in all the circumstances of the case.
- (5) Compensation payable under this paragraph shall be paid—
- (a) where the person in default was or was acting as a member of a police force, out of the police fund out of which the expenses of that police force are met;
 - (b) where the person in default was a member of the Crown Prosecution Service or acting on behalf of the Service, by the Director of Public Prosecutions.
- (6) Sub-paragraph (8) of paragraph 3 above applies for the purposes of this paragraph as it applies for the purposes of that paragraph.

Enforcement of orders made elsewhere in the British Islands

- 8 (1) In the following provisions of this Part of this Schedule—
- “a Scottish order” means—
 - (a) an order made in Scotland under section 13(2), (3) or (4) of this Act (“a Scottish forfeiture order”);
 - (b) an order made under paragraph 13 below (“a Scottish restraint order”); or
 - (c) an order made under any other provision of Part II of this Schedule in relation to a Scottish forfeiture or restraint order;
 - “a Northern Ireland” order means—

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- (a) an order made in Northern Ireland under section 13(2), (3) or (4) of this Act (“a Northern Ireland forfeiture order”);
 - (b) an order made under paragraph 23 [^{F1}or 25A] below (“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—
- (a) an order made in any of the Islands under section 13(2), (3) or (4) of this Act as extended to that Island under section 28(3) of this Act (“an Islands forfeiture order”);
 - (b) an order under paragraph 3 above as so extended (“an Islands restraint order”); or
 - (c) an order made under any other provision of this Part of this Schedule as so extended in relation to an Islands forfeiture or restraint order.

- (2) In paragraphs (a), (b) and (c) of the definition of “an Islands order” the reference to a provision of this Act as extended to an Island under section 28(3) of this Act includes a reference to any other provision of the law of that Island for purposes corresponding to that provision.

Textual Amendments

- F1** Words in [Sch. 4 para. 8\(1\)](#) inserted by [Northern Ireland \(Emergency Provisions\) Act 1991 \(c. 24, SIF 39:1\)](#), [s. 70\(3\)](#), [Sch. 7 para. 5\(7\)](#).

- 9
- (1) A Scottish order, Northern Ireland order or Islands order shall, subject to the provisions of this paragraph, have effect in the law of England and Wales but shall be enforced in England and Wales only in accordance with the provisions of this paragraph and 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.
 - (2) The High Court shall, on an application made to it in accordance with rules of court for registration of a Scottish order, Northern Ireland order or Islands order, direct that the order shall, in accordance with such rules, be registered in that court.
 - (3) Rules of court shall also make provision—
 - (a) for cancelling or varying the registration of a Scottish, Northern Ireland or Islands forfeiture order when effect has been given to it (whether in England and Wales 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 a Scottish, Northern Ireland or Islands restraint order which has been discharged or varied by the court by which it was made.
 - (4) If a Scottish, Northern Ireland or Islands forfeiture order is registered under this paragraph the High Court shall have, in relation to that order, the same powers as a court has under paragraph 1(1) above in relation to a forfeiture order made by it (and paragraph 2 above applies accordingly) but any functions of the clerk of a magistrates’ court shall be exercised by the appropriate officer of the High Court.

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- (5) After making any payment required by virtue of paragraph 1(1)(d) or 2 above, the balance of any sums received by the appropriate officer of the High Court by virtue of an order made under sub-paragraph (4) above shall be paid by him to the Secretary of State.
- (6) Paragraphs 3(7), 5 and 6 above shall apply to a registered Scottish, Northern Ireland or Islands restraint order as they apply to a restraint order and the High Court shall have the like power to make an order under section 33 of the ^{M8}Supreme Court Act 1981 (extended power to order inspection of property etc.) in relation to proceedings brought or likely to be brought for a Scottish, Northern Ireland or Islands restraint order as if those proceedings had been brought or were likely to be brought in the High Court.
- (7) Without prejudice to the foregoing provisions, if a Scottish order, Northern Ireland order or Islands order is registered under this paragraph—
- (a) the High Court 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 High Court.
- (8) The High Court may, additionally, for the purpose of—
- (a) assisting the achievement in England and Wales of the purposes of a Scottish 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,
- make such orders or do otherwise as seems to it appropriate.
- (9) A document purporting to be a copy of a Scottish 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 or purporting to be a certificate for purposes corresponding to those of paragraph 1(4) above and to be certified by a proper officer of the court concerned shall, in England and Wales, be received in evidence without further proof.

Marginal Citations

M8 1981 c. 54.

Enforcement of orders made in designated countries

- 10 (1) Her Majesty may by Order in Council make such provision as appears to Her Majesty to be appropriate for the purpose of enabling the enforcement in England and Wales of orders to which this paragraph applies.
- (2) This paragraph applies to any order (“an external order”) which is made in a country or territory designated for the purposes of this paragraph by the Order in Council and—
- (a) provides for the forfeiture of terrorist funds within the meaning of section 11(3)(a) or (b) of this Act (“an external forfeiture order”); or

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- (b) makes 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 that country or territory (“an external restraint order”).

[^{F2}(2A) Without prejudice to the generality of sub-paragraph (1) above, the provision that may be made by virtue of that sub-paragraph includes provision 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.]

- (3) Without prejudice to the generality of sub-paragraph (1) above, an Order in Council under this paragraph may make provision for matters corresponding to those for which provision is made by, or can be made under, paragraph 9(1) to (8) above in relation to the orders to which that paragraph applies and for the proof of any matter relevant for the purposes of anything falling to be done in pursuance of the Order in Council.
- (4) An Order in Council under this paragraph may also make such provision as appears to Her Majesty to be appropriate 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.
- (5) An Order under this paragraph may make different provision for different cases.
- (6) No Order shall be made under this paragraph unless a draft of it has been laid before and approved by a resolution of each House of Parliament.

Textual Amendments

F2 Sch. 4 para. 10(2A) inserted (28.6.1995) by 1995 c. 11, s. 14(1)(a)(2)

PART II

SCOTLAND

Implementation of forfeiture orders

- 11 (1) Where a court in Scotland makes an order under section 13(2), (3) or (4) of this Act (in this Part of this Schedule referred to as a “forfeiture order”) it may make an order—
- (a) directing any property to which the forfeiture order applies other than money or land to be sold or otherwise disposed of in such manner as the court may direct;
 - (b) appointing an administrator to take possession, subject to such conditions and exceptions as may be specified by the court, of any such property which is land and to realise it in such manner as the court may direct;
 - (c) directing a specified part of any money, or of the proceeds of the sale, disposal or realisation of any property, to which the forfeiture order applies to be paid to or for a specified person falling within section 13(6) of this Act;

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- (d) making such other provision as appears to the court to be necessary for giving effect to the forfeiture order or to any order made by virtue of paragraph (a), (b) or (c) above.
- (2) The Court of Session may by rules of court prescribe the powers and duties of an administrator appointed under sub-paragraph (1)(b) above.
- (3) 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 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.
- (4) Any balance remaining after making any payment required under sub-paragraph (1) (c) above or paragraph 12 below shall be treated for the purposes of section 203 of the ^{M9}Criminal Procedure (Scotland) Act 1975 (fines payable to HM Exchequer) as if it were a fine imposed in the High Court.
- (5) The clerk of court shall, on the application of the prosecutor or defender in the proceedings in which a forfeiture order is made, 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.
- (6) In this paragraph 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.

Marginal Citations

M9 1975 c. 21.

- 12 (1) Where an administrator appointed under paragraph 11 above takes any action—
 - (a) in relation to property which is not subject to forfeiture, being action which he would be entitled to take if it were such property;
 - (b) believing, and having reasonable grounds for believing, that he is entitled to take that action in relation to that property,
he shall not be liable to any person in respect of any loss or damage resulting from his action except in so far as the loss or damage is caused by his negligence.
- (2) An administrator appointed under paragraph 11 above 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 11 above in the exercise of the powers conferred, and discharge of the duties imposed, on him under or by virtue of that paragraph.

Restraint orders

- 13 (1) The Court of Session may in accordance with this paragraph by an order (referred to in this Part of this Schedule as a “restraint order”) prohibit any person specified in the order, subject to such conditions and exceptions as may be so specified, from

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dealing with any property liable to forfeiture, that is to say, any property in respect of which a forfeiture order has been made or in respect of which such an order could be made in the proceedings referred to in sub-paragraph (2) or (3) below.

- (2) A restraint order may be made in respect of a person where—
 - (a) proceedings have been instituted against him in Scotland for an offence under Part III of this Act;
 - (b) the proceedings have not been concluded; and
 - (c) either a forfeiture order has been made or it appears to the court that there are reasonable grounds for thinking that a forfeiture order may be made in those proceedings.
- (3) A restraint order may also be made where—
 - (a) the court is satisfied that a procurator fiscal proposes to apply for a warrant to arrest and commit a person suspected of an offence under Part III of this Act or to charge such a person with such an offence and that in either case the suspicion is reasonable; and
 - (b) it appears to the court that a forfeiture order may be made in proceedings for the offence.
- (4) Where the court has made an order under this paragraph by virtue of sub-paragraph (3) above the court may discharge the order if proceedings in respect of the offence are not instituted within such time as the court considers reasonable.
- (5) For the purposes of this paragraph, dealing with property includes, without prejudice to the generality of that expression—
 - (a) where a debt is owed to the person concerned, making a payment to any person in reduction of the amount of the debt; and
 - (b) removing the property from the jurisdiction of the Court of Session.
- (6) In exercising the powers conferred by this paragraph the court shall not take account of any obligations of any person having an interest in the property subject to the restraint order which might frustrate the making of a forfeiture order.
- (7) For the purposes of this paragraph proceedings for an offence are instituted—
 - (a) when warrant to arrest a person suspected of or charged with such an offence is granted;
 - (b) when a person is charged with the offence after being taken into custody without a warrant;
 - (c) when a person is charged with the offence without being arrested,
 and where the application of this sub-paragraph 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.
- (8) For the purposes of this paragraph and paragraph 14 below 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.

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- 14 (1) A restraint order—
- (a) may be made only on an application by the Lord Advocate;
 - (b) may be made on an ex parte application which shall be heard in chambers; and
 - (c) shall provide for notice to be given to persons affected by the order.
- (2) On an application made by any person affected by a restraint order, the order—
- (a) may be recalled or varied in relation to any property; and
 - (b) shall be recalled when proceedings for the offence are concluded.
- (3) Where proceedings for the offence are concluded the Lord Advocate shall forthwith apply to the court for recall of the order and the court shall grant the application.
- 15 (1) Where the Court of Session has made a restraint order a constable may for the purpose of preventing any property subject to the order being removed from the jurisdiction of the court seize that property.
- (2) Property seized under this paragraph shall be dealt with in accordance with the court's directions.
- 16 (1) On the application of the Lord Advocate, the Court of Session may, in respect of—
- (a) 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; and
 - (b) moveable property so affected (whether such property generally or particular such property) grant warrant for arrestment if the property would be arrestable were the person entitled to it a debtor.
- (2) Subject to the provisions of this Part of this Schedule, a warrant under sub-paragraph (1) above—
- (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) where granted under sub-paragraph (1)(a) above, 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 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 (1)(a) above as that section applies to an inhibition by separate letters or contained in a summons.
- (4) In the application of section 158 of the said Act of 1868 (recall of inhibition) to such inhibition as is mentioned in sub-paragraph (3) above, references in that section to a particular Lord Ordinary shall be construed as references to any Lord Ordinary.
- (5) That an inhibition or arrestment has been executed under sub-paragraph (2) above 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.

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- (6) No inhibition or arrestment executed under sub-paragraph (2) above shall have effect once, or in so far as, the restraint order affecting the property in respect of which the warrant for such inhibition or arrestment 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.

VALID FROM 31/03/1996

- [^{F3}16A(1) On the application of the prosecutor, 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) above shall have effect as if granted on the dependence of an action for debt at the instance of the prosecutor against the person and may be executed, recalled, loosed or restricted accordingly.
 - (3) The fact that an arrestment has been executed under sub-paragraph (2) above 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) above 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 prosecutor shall apply to the court for an order recalling, or as the case may be, restricting the arrestment accordingly.]

Textual Amendments

- F3** S. 16A inserted (31.3.1996) by 1995 c. 20, s. 117(1), **Sch. 6 para. 189(3)**; S.I. 1996/517, **art. 3(2)** (subject to transitional provisions and savings in arts. 4-6, **Sch. 2**) (which 1995 Act was repealed (1.4.1996) by 1995 c. 40, ss. 6, 7(2), **Sch. 5** (with **Sch. 3 para. 16**)) and the same s. 16A inserted (1.4.1996) by 1995 c. 40, ss. 5, 7(2), **Sch. 4 para. 72(3)(b)**

Compensation

- 17 (1) If proceedings are instituted against a person for an offence under Part III of this Act and either—
- (a) the proceedings do not result in his conviction for any such offence; or
 - (b) where he is convicted of one or more such offences—
 - (i) the conviction or convictions concerned are quashed; or
 - (ii) he is pardoned by Her Majesty in respect of the conviction or convictions concerned,

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the Court of Session may, on an application by a person who had an interest in any property which was subject to a forfeiture or restraint order made in or in relation to those proceedings, order compensation to be paid to the applicant if, having regard to all the circumstances, it considers it appropriate to do so.

- (2) Sub-paragraph (1) above 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) and (b) of that sub-paragraph.
- (3) The court shall not order compensation to be paid in any case unless it is satisfied—
 - (a) that there is some serious default on the part of a person concerned in the investigation or prosecution of the offence concerned, being a person mentioned in sub-paragraph (6) below; and
 - (b) that the applicant has suffered loss in consequence of anything done in relation to the property by or in pursuance of an order under this Part of this Schedule.
- (4) The court shall not order compensation to be paid in any case where it appears to it that the proceedings would have been instituted even if the serious default had not occurred.
- (5) The amount of compensation to be paid under this paragraph shall be such as the court thinks just in all the circumstances of the case.
- (6) Compensation payable under this paragraph shall be paid—
 - (a) where the person in default was a constable of a police force, out of the police fund out of which the expenses of that police force are met;
 - (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) Sub-paragraph (7) of paragraph 13 above applies for the purposes of this paragraph as it applies for the purposes of that paragraph.

Enforcement of orders made elsewhere in the British Islands

- 18 (1) 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 13(2), (3) or (4) of this Act (“an England and Wales forfeiture order”);
 - (b) an order made under paragraph 3 above (“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 13(2), (3) or (4) of this Act (“a Northern Ireland forfeiture order”);
 - (b) an order made under paragraph 23 [F4 or 25A] below (“a Northern Ireland restraint order”); or

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- (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—
 - (a) an order made in any of the Islands under section 13(2), (3) or (4) of this Act as extended to that Island under section 28(3) of this Act (“an Islands forfeiture order”);
 - (b) an order under paragraph 3 above as so extended (“an Islands restraint order”); or
 - (c) an order made under any other provision of Part I of this Schedule as so extended in relation to an Islands forfeiture or restraint order.
- (2) In paragraphs (a), (b) and (c) of the definition of “an Islands order” the reference to a provision of this Act as extended to an Island under section 28(3) of this Act includes a reference to any other provision of the law of that Island for purposes corresponding to that provision.

Textual Amendments

- F4** Words in [paragraph 18\(1\)](#) of Schedule 4 inserted by [Northern Ireland \(Emergency Provisions\) Act 1991 \(c. 24, SIF 39:1\)](#), s. 70(3), [Sch. 7 para. 5\(8\)](#).

- 19 (1) An England and Wales order, Northern Ireland order or Islands order shall, subject to the provisions of this paragraph, have effect in the law of Scotland but shall be enforced in Scotland only in accordance with the provisions of this paragraph and 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.
- (2) The Court of Session shall, 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, direct that the order shall, in accordance with such rules, be registered in that court.
- (3) 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.
- (4) 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 11(1) above in relation to a forfeiture order made by it and paragraphs 11(4) to (6) and 12 above apply accordingly.
- (5) Paragraphs 13(6), 15 and 16 above shall apply to a registered England and Wales, Northern Ireland or Islands restraint order as they apply to a restraint order and the Court of Session shall have the like power to make an order under section 1 of the ^{M10}Administration of Justice (Scotland) Act 1972 (extended power to order inspection of documents etc.) in relation to proceedings brought or likely to be

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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.

- (6) Without prejudice to the foregoing provisions, 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.
- (7) The Court of Session may, additionally, 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,
- make such orders or do otherwise as seems to it appropriate.
- (8) 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 or purporting to be a certificate for purposes corresponding to those of paragraph 11(5) above and to be certified by a proper officer of the court concerned shall, in Scotland, be sufficient evidence of the order.
- (9) 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.

Marginal Citations

M10 1972 c. 59.

Enforcement of orders made in designated countries

- 20 (1) Her Majesty may by Order in Council make such provision as appears to Her Majesty to be appropriate for the purpose of enabling the enforcement in Scotland of orders to which this paragraph applies.
- (2) This paragraph applies to an order (“an external order”) which is made in a country or territory designated for the purposes of this paragraph by the Order in Council and—
- (a) provides for the forfeiture of terrorist funds within the meaning of section 11(3)(a) or (b) of this Act (“an external forfeiture order”); or
 - (b) makes 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 that country or territory (“an external restraint order”).
- [^{F5}(2A) Without prejudice to the generality of sub-paragraph (1) above, the provision that may be made by virtue of that sub-paragraph includes provision which, for the

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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.]

- (3) Without prejudice to the generality of sub-paragraph (1) above, an Order in Council under this paragraph may make provision for matters corresponding to those for which provision is made by, or can be made under, paragraph 19(1) to (7) above in relation to the orders to which that paragraph applies and for the proof of any matter relevant for the purposes of anything falling to be done in pursuance of the Order in Council.
- (4) An Order in Council under this paragraph may also make such provision as appears to Her Majesty to be appropriate 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.
- (5) An Order under this paragraph may make different provision for different cases.
- (6) No Order shall be made under this paragraph unless a draft of it has been laid before and approved by a resolution of each House of Parliament.

Textual Amendments

F5 Sch. 4 para. 20(2A) inserted (28.6.1995) by 1995 c. 11, s. 14(1)(b)(2)

PART III

NORTHERN IRELAND

Implementation of forfeiture orders

- 21 (1) Where a court in Northern Ireland makes an order under section 13(2), (3) or (4) of this Act (in this Part of this Schedule referred to as a “forfeiture order”) it may make an order—
 - (a) requiring any money or other property to which the forfeiture order applies to be paid or handed over to the proper officer or to a member of the Royal Ulster Constabulary designated for the purpose by the Chief Constable;
 - (b) directing any such property other than money or land to be sold or otherwise disposed of in such manner as the court may direct and the proceeds to be paid to the proper officer;
 - (c) appointing a receiver to take possession, subject to such conditions and exceptions as may be specified by the court, of any such property which is land, to realise it in such manner as the court may direct and to pay the proceeds to the proper officer;
 - (d) directing a specified part of any money, or of the proceeds of the sale, disposal or realisation of any property, to which the forfeiture order applies to be paid by the proper officer to or for a specified person falling within section 13(6) of this Act;
 - (e) making such other provision (including provision as to the manner of conveyance or transfer of property which is land) as appears to the court to

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be necessary for giving effect to the forfeiture order or to any order made by virtue of paragraph (a), (b), (c) or (d) above.

- (2) A forfeiture order shall not come into force until (disregarding any power of a court to grant leave to appeal out of time) there is no further possibility of the order being set aside.
- (3) Any balance in the hands of the proper officer after making any payment required under sub-paragraph (1)(d) above or paragraph 22 below shall be treated for the purposes of section 20 of the ^{M11}Administration of Justice (Northern Ireland) Act 1954 (application of fines etc.) as if it were a fine.
- (4) The proper officer shall, on the application of the prosecution or defendant in the proceedings in which a forfeiture order is made, 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 this paragraph “the proper officer” means, where the forfeiture order is made by a court of summary jurisdiction, the clerk of petty sessions and, where the order is made by the Crown Court, the appropriate officer of the Crown Court.
- (6) In this paragraph 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.
- (7) This paragraph has effect to the exclusion of Article 58 of the ^{M12}Magistrates’ Courts (Northern Ireland) Order 1981.

Marginal Citations

M11 1954 c. 9 (N.I.).

M12 S.I. 1981/1675 (N.I.26).

- 22 (1) Where a receiver appointed under paragraph 21 above takes any action—
 - (a) in relation to property which is not subject to forfeiture, being action which he would be entitled to take if it were such property;
 - (b) believing, and having reasonable grounds for believing, that he is entitled to take that action in relation to that property,he shall not be liable to any person in respect of any loss or damage resulting from his action except in so far as the loss or damage is caused by his negligence.
- (2) A receiver appointed under paragraph 21 above 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 prosecution.

Restraint orders

- 23 (1) The High Court may in accordance with this paragraph by an order (referred to in this Part of this Schedule as a “restraint order”) prohibit any person, subject to such conditions and exceptions as may be specified in the order, from dealing with any property liable to forfeiture, that is to say, any property in respect of which a forfeiture

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order has been made or in respect of which such an order could be made in the proceedings referred to in sub-paragraph (2) or (3) below.

- (2) A restraint order may be made where—
 - (a) proceedings have been instituted against a defendant in Northern Ireland for an offence under Part III of this Act;
 - (b) the proceedings have not been concluded; and
 - (c) either a forfeiture order has been made or it appears to the court that there are reasonable grounds for thinking that a forfeiture order may be made in those proceedings.
- (3) A restraint order may also be made where—
 - (a) the High Court is satisfied that, whether by the making of a complaint or otherwise, a person is to be charged in Northern Ireland with an offence under Part III of this Act; and
 - (b) it appears to the court that a forfeiture order may be made in proceedings for the offence.
- (4) In the application of the provisions of this Part of this Schedule at a time when a restraint order may be made by virtue of sub-paragraph (3) above references to the prosecution shall be construed as references to the person who the High Court is satisfied is to have the conduct of the proposed proceedings.
- (5) Where the High Court has made an order under this paragraph by virtue of sub-paragraph (3) above the court may discharge the order if proceedings in respect of the offence are not instituted (whether by the making of a complaint or otherwise) within such time as the court considers reasonable.
- (6) For the purposes of this paragraph, dealing with property includes, without prejudice to the generality of that expression—
 - (a) where a debt is owed to the person concerned, making a payment to any person in reduction of the amount of the debt; and
 - (b) removing the property from the jurisdiction of the High Court.
- (7) In exercising the powers conferred by this paragraph the High Court shall not take account of any obligations of any person having an interest in the property subject to the restraint order which might frustrate the making of a forfeiture order.
- (8) For the purposes of this paragraph proceedings for an offence are instituted—
 - (a) when a summons or a warrant is issued under Article 20 of the ^{M13}Magistrates' Courts (Northern Ireland) Order 1981 in respect of that offence;
 - (b) when a person is charged with the offence after being taken into custody without a warrant;
 - (c) when an indictment is presented under section 2(2)(c), (e) or (f) of the ^{M14}Grand Jury (Abolition) Act (Northern Ireland) 1969;

and where the application of this sub-paragraph 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.
- (9) For the purposes of this paragraph and paragraph 24 below proceedings are concluded—

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- (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 grant leave to appeal out of time) there is no further possibility of a forfeiture order being made in the proceedings.

Marginal Citations

M13 S.I. 1981/1675 (N.I.26).

M14 1969 c. 15 (N.I.).

- 24 (1) A restraint order—
- (a) may be made only on an application by the prosecution;
 - (b) may be made on an ex parte application to a judge in chambers; and
 - (c) shall provide for notice to be given to persons affected by the order.
- (2) A restraint order—
- (a) may be discharged or varied in relation to any property; and
 - (b) shall be discharged when proceedings for the offence are concluded.
- (3) An application for the discharge or variation of a restraint order may be made by any person affected by it.
- 25 (1) Where the High Court has made a restraint order a constable may for the purpose of preventing any property subject to the order being removed from the jurisdiction of the court seize that property.
- (2) Property seized under this paragraph shall be dealt with in accordance with the court's directions.
- [^{F6}25A(1) The power to make a restraint order under the provisions of paragraphs 23 and 24 above shall be exercisable by the Secretary of State in any case in which it appears to him that the information which it would be necessary to provide in support of an application to the High Court or a judge under those provisions would, if disclosed, be likely to place any person in danger or prejudice the capability of members of the Royal Ulster Constabulary or a person authorised under section 57 of the Northern Ireland (Emergency Provisions) Act 1991 to investigate an offence under Part III of this Act.
- (2) In their application by virtue of sub-paragraph (1) above paragraphs 23 to 25 above shall have effect with the necessary modifications and as if references to the High Court were references to the Secretary of State.
- (3) An order made by the Secretary of State by virtue of this paragraph may be varied or discharged by the High Court under paragraph 23(5) or 24(2) above.]

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Textual Amendments

- F6** Sch. 4 para. 25A inserted by Northern Ireland (Emergency Provisions) Act 1991 (c. 24, SIF 39:1), s. 70(3), **Sch. 7 para. 5(9)** (which insertion fell (25.8.1996) by reason of the repeal of 1991 c. 24 by 1996 c. 22, s. 63(7), **Sch. 7 Pt. I** (with s. 63(3)); Sch. 4 para. 25A inserted (25.8.1996) by 1996 c. 22, ss. 62(1), 63(6), **Sch. 6 para. 9(4)** (which 1996 Act is repealed as from the end of 24.8.2000 by 1996 c. 22, s. 62(10) (as substituted by 1998 c. 9, s. 1(3)))

- [^{F7}25B(1) A person who, without lawful authority or reasonable excuse (the proof of which lies on him), contravenes a restraint order is guilty of an offence and liable—
- (a) on conviction on indictment, to imprisonment for a term not exceeding fourteen years or a fine or both;
 - (b) on summary conviction, to imprisonment for a term not exceeding six months or a fine not exceeding the statutory maximum or both.
- (2) Nothing in sub-paragraph (1) above shall be taken to prejudice any power of the High Court to deal with the contravention of a restraint order as a contempt of court.]

Textual Amendments

- F7** Sch. 4 para. 25B inserted by Northern Ireland (Emergency Provisions) Act 1991 (c. 24, SIF 39:1), s. 70(3), **Sch. 7 para. 5(9)** (which insertion fell (25.8.1996) by reason of the repeal of 1991 c. 24 by 1996 c. 22, s. 63(7), **Sch. 7 Pt. I** (with s. 63(3)); Sch. 4 para. 25B inserted (25.8.1996) by 1996 c. 22, ss. 62(1), 63(6), **Sch. 6 para. 9(4)** (which 1996 Act is repealed (N.I.) as from the end of 24.8.2000 by 1996 c. 22, s. 62(10) (as substituted by 1998 c. 9, s. 1(3)))

- 26 (1) The prosecution shall be treated for the purposes of section 66 of the ^{M15}Land Registration Act (Northern Ireland) 1970 (cautions) as a person interested in relation to any registered land to which a restraint order or an application for such an order relates.
- (2) On the application of the prosecution, the Registrar of Titles shall, in respect of any registered land to which a restraint order or an application for such an order relates, make an entry inhibiting any dealing with the land without the consent of the High Court.
- (3) Subsections (2) and (4) of section 67 of the Land Registration Act (Northern Ireland) 1970 (inhibitions) shall apply to an entry made on the application of the prosecution under sub-paragraph (2) above as they apply to an entry made on the application of any person interested in the registered land under subsection (1) of that section.
- (4) In this paragraph—
- “registered land” has the meaning assigned to it by section 45(1)(a) of the ^{M16}Interpretation Act (Northern Ireland) 1954; and
- “Registrar of Titles” and “entry” have the same meanings as in the Land Registration Act (Northern Ireland) 1970.

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Marginal Citations

M15 1970 c. 18 (N.I).

M16 1954 c. 33 (N.I).

Compensation

- 27 (1) If proceedings are instituted against a person for an offence under Part III of this Act and either—
- (a) the proceedings do not result in his conviction for any such offence; or
 - (b) where he is convicted of one or more such offences—
 - (i) the conviction or convictions concerned are quashed; or
 - (ii) he is pardoned by Her Majesty in respect of the conviction or convictions concerned,
- the High Court may, on an application by a person who had an interest in any property which was subject to a forfeiture or restraint order made in or in relation to those proceedings order compensation to be paid to the applicant if, having regard to all the circumstances, it considers it appropriate to do so.
- (2) The High Court shall not order compensation to be paid in any case unless it is satisfied—
- (a) that there is some serious default on the part of a person concerned in the investigation or prosecution of the offence concerned, being a person mentioned in sub-paragraph (5) below; and
 - (b) that the applicant has suffered loss in consequence of anything done in relation to the property by or in pursuance of an order under this Part of this Schedule.
- (3) The High Court shall not order compensation to be paid in any case where it appears to it that the proceedings would have been instituted even if the serious default had not occurred.
- (4) The amount of compensation to be paid under this paragraph shall be such as the High Court thinks just in all the circumstances of the case.
- (5) Compensation payable under this paragraph shall be paid—
- (a) where the person in default was or was acting as a member of the Royal Ulster Constabulary, by the Police Authority for Northern Ireland;
 - (b) where the person in default was a member of the Office of the Director of Public Prosecutions for Northern Ireland, by the Director of Public Prosecutions for Northern Ireland.
- (6) Sub-paragraph (8) of paragraph 23 above applies for the purposes of this paragraph as it applies for the purposes of that paragraph.

Enforcement of orders made elsewhere in the British Islands

- 28 (1) In the following provisions of this Part of this Schedule—
“an England and Wales order” means—

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- (a) an order made in England and Wales under section 13(2), (3), or (4) of this Act (“an England and Wales forfeiture order”);
 - (b) an order made under paragraph 3 above (“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 Scottish order” means—
 - (a) an order made in Scotland under section 13(2), (3) or (4) of this Act (“a Scottish forfeiture order”);
 - (b) an order made under paragraph 13 above (“a Scottish restraint order”); or
 - (c) an order made under any other provision of Part II of this Schedule in relation to a Scottish forfeiture or restraint order;
 - “an Islands order” means—
 - (a) an order made in any of the Islands under section 13(2), (3) or (4) of this Act as extended to that Island under section 28(3) of this Act (“an Islands forfeiture order”);
 - (b) an order under paragraph 3 above as so extended (“an Islands restraint order”); or
 - (c) an order made under any other provision of Part I of this Schedule as so extended in relation to an Islands forfeiture or restraint order.
- (2) In paragraphs (a), (b) and (c) of the definition of “an Islands order” the reference to a provision of this Act as extended to an Island under section 28(3) of this Act includes a reference to any other provision of the law of that Island for purposes corresponding to that provision.
- 29 (1) An England and Wales order, Scottish order or Islands order shall, subject to the provisions of this paragraph, have effect in the law of Northern Ireland but shall be enforced in Northern Ireland only in accordance with the provisions of this paragraph and 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.
- (2) The High Court shall, on an application made to it in accordance with rules of court for registration of an England and Wales order, Scottish order or Islands order, direct that the order shall, in accordance with such rules, be registered in that court.
- (3) Rules of court shall also make provision—
- (a) for cancelling or varying the registration of an England and Wales, Scottish or Islands forfeiture order when effect has been given to it (whether in Northern Ireland 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, Scottish or Islands restraint order which has been discharged or varied by the court by which it was made.
- (4) If an England and Wales, Scottish or Islands forfeiture order is registered under this paragraph the High Court shall have, in relation to that order, the same powers as a court has under paragraph 21(1) above in relation to a forfeiture order made by it (and paragraph 22 above applies accordingly) but any functions of the clerk of petty sessions or the appropriate officer of the Crown Court shall be exercised by the appropriate officer of the High Court.

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- (5) After making any payment required by virtue of paragraph 21(1)(d) or 22 above, the balance of any sums received by the appropriate officer of the High Court by virtue of an order made under sub-paragraph (4) above shall be paid into or disposed for the benefit of the Consolidated Fund.
- (6) Paragraphs 23(7), 25 and 26 above and the ^{M17}Land Registration Act (Northern Ireland) 1970 and the ^{M18}Registration of Deeds Act (Northern Ireland) 1970 shall apply to a registered England and Wales, Scottish or Islands restraint order as they apply to a restraint order and the High Court shall have the like power to make an order under section 21 of the ^{M19}Administration of Justice Act 1969 (extended power to order inspection of property etc.) in relation to proceedings brought or likely to be brought for an England and Wales, Scottish or Islands restraint order as if those proceedings had been brought or were likely to be brought in the High Court.
- (7) Without prejudice to the foregoing provisions, if an England and Wales order, Scottish order or Islands order is registered under this paragraph—
- (a) the High Court 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 High Court.
- (8) The High Court may, additionally, for the purpose of—
- (a) assisting the achievement in Northern Ireland of the purposes of an England and Wales order, Scottish order or Islands order; or
 - (b) assisting any receiver or other person directed by any such order to sell or otherwise dispose of property,
- make such orders or do otherwise as seems to it appropriate.
- (9) A document purporting to be a copy of an England and Wales order, Scottish order or Islands order and to be certified as such by a proper officer of the court by which it was made or purporting to be a certificate for purposes corresponding to those of paragraph 21(4) above and to be certified by a proper officer of the court concerned shall, in Northern Ireland, be received in evidence without further proof.

Marginal Citations

M17 1970 c. 18 (N.I.).

M18 1970 c. 25. (N.I.).

M19 1969 c. 58.

Enforcement of orders made in designated countries

- 30 (1) Her Majesty may by Order in Council make such provision as appears to Her Majesty to be appropriate for the purpose of enabling the enforcement in Northern Ireland of orders to which this paragraph applies.
- (2) This paragraph applies to any order (“an external order”) which is made in a country or territory designated for the purposes of this paragraph by the Order in Council and—

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Changes to legislation: There are currently no known outstanding effects for the Prevention of Terrorism (Temporary Provisions) Act 1989 (repealed), SCHEDULE 4. (See end of Document for details)

- (a) provides for the forfeiture of terrorist funds within the meaning of section 11(3)(a) or (b) of this Act (“an external forfeiture order”); or
- (b) makes provision prohibiting dealing with property which is subject to an external forfeiture order in respect of which such an order could be made in proceedings which have been or are to be instituted in that country or territory (“an external restraint order”).

[^{F8}(2A) Without prejudice to the generality of sub-paragraph (1) above, the provision that may be made by virtue of that sub-paragraph includes provision 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.]

- (3) Without prejudice to the generality of sub-paragraph (1) above, an Order in Council under this paragraph may make provision for matters corresponding to those for which provision is made by, or can be made under, paragraph 29(1) to (8) above in relation to the orders to which that paragraph applies and for the proof of any matter relevant for the purposes of anything falling to be done in pursuance of the Order in Council.
- (4) An Order in Council under this paragraph may also make such provision as appears to Her Majesty to be appropriate 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.
- (5) An Order under this paragraph may make different provision for different cases.
- (6) No Order shall be made under this paragraph unless a draft of it has been laid before and approved by a resolution of each House of Parliament.

Textual Amendments

F8 Sch. 4 para. 30(2A) inserted (28.6.1995) by 1995 c. 11, s. 14(1)(c)(2)

PART IV

INSOLVENCY: UNITED KINGDOM PROVISIONS

Protection of creditors against forfeiture

- 31 (1) During the period of six months following the making of a forfeiture order no money which is subject to the order, or which represents any property subject to it, shall be finally disposed of under this Schedule.
- (2) If, in a case where any money or other property is subject to a forfeiture order—
- (a) the commencement of an insolvency occurs, or has occurred, in the course of any qualifying insolvency proceedings,
 - (b) any functions in relation to that property would (apart from the forfeiture order) be exercisable by an insolvency practitioner acting in those proceedings, and

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- (c) during the period of six months following the making of the forfeiture order any such insolvency practitioner gives written notice to the relevant officer of the matters referred to in paragraphs (a) and (b) above, then sub-paragraph (3) below shall apply in relation to the property in question.
- (3) Where this sub-paragraph applies then, subject to the following provisions of this Part of this Schedule, the property in question or, if it has been sold, the proceeds of sale—
- (a) shall cease to be subject to the forfeiture order and any ancillary order; and
- (b) shall fall to be dealt with in the insolvency proceedings as if the forfeiture order had never been made.
- (4) In any case where—
- (a) sub-paragraph (3) above would, apart from this sub-paragraph, apply in relation to any property, but
- (b) the relevant officer, or any person acting in pursuance of an ancillary order, has entered into a contract for the sale of that property or has incurred any other obligations in relation to it,
- that sub-paragraph shall not take effect in relation to that property, or its proceeds of sale, unless and until those obligations have been discharged.
- (5) Where in consequence of sub-paragraph (3) above any money or other 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 that property but, notwithstanding any provision contained in or made under any other enactment—
- (a) except in sequestration proceedings, his debt shall rank after the debts of all other creditors and shall not be paid until they have been paid in full with interest under section 189(2) or, as the case may be, section 328(4) of the 1986 Act or [^{F9}Article 160(2) or, as the case may be, Article 300(4) of the Insolvency (Northern Ireland) Order 1989]; and
- (b) in sequestration proceedings, his debt shall rank after all the debts mentioned in section 51(1) of the ^{M20}Bankruptcy (Scotland) Act 1985 and shall not be paid until they have been paid in full.
- (6) In any case where—
- (a) by virtue of sub-paragraph (3) above any property ceases to be subject to a forfeiture order in consequence of the making of a bankruptcy order or an award of sequestration, and
- (b) subsequently the bankruptcy order is annulled or the award of sequestration is recalled or reduced,
- the property shall again become subject to the forfeiture order and, if applicable, any ancillary orders.
- (7) If any of the property referred to in sub-paragraph (6) above is money, or has been converted into money, then—
- (a) the court which ordered the annulment, or which recalled or reduced the award of sequestration, shall make an order specifying, for the purposes of paragraph (b) below, property comprised in the estate of the bankrupt or debtor to the amount or value of the property in question; and
- (b) the property so specified shall become subject to the forfeiture order, and any applicable ancillary orders, in place of the property in question.

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(8) In this paragraph—

“the commencement of an insolvency” means—

- (a) the making of a bankruptcy order;
- (b) the date of sequestration of a person’s estate, within the meaning of section 12(4) of the ^{M21}Bankruptcy (Scotland) Act 1985;
- (c) in England and Wales [^{F10}or in Northern Ireland], in the case of the insolvent estate of a deceased person, the making of an insolvency administration order;
- (d) in the case of a company—
 - (i) the passing of a resolution for its winding up; or
 - (ii) the making of an order by the court for the winding up of the company where no such resolution has been passed;

“final disposal under this Schedule”, in relation to any money, means—

- (a) in England and Wales, its payment to the Secretary of State in accordance with paragraph 1(3) or 9(5) above;
- (b) in Scotland, its payment to the proper officer in Exchequer under section 203 of the ^{M22}Criminal Procedure (Scotland) Act 1975;
- (c) in Northern Ireland, its payment into, or its disposal for the benefit of, the Consolidated Fund in accordance with paragraph 21(3) or 29(5) above;

and “finally dispose” shall be construed accordingly.

Textual Amendments

F9 Words in Sch. 4 para. 31(5)(a) substituted (1.10.1991) by S.I. 1989/2405 (N.I. 19), arts. 1(2), 381, Sch. 9 para. 62(a)(i); S.R. 1991/411, art.2.

F10 Words inserted (1.10.1991) by S.I. 1989/2405 (N.I. 19), arts. 1(2), 381, Sch. 9 para. 62(a)(ii); S.R.1991/411 art.2.

Marginal Citations

M20 1985 c. 66.

M21 1985 c. 66.

M22 1975 c. 21.

Expenses incurred in connection with the forfeiture

- 32 (1) Where any money or other property would, apart from this paragraph, fall to be dealt with in accordance with paragraph 31(3) above, the relevant officer may—
- (a) deduct from that money any allowable forfeiture expenses; or
 - (b) retain so much of that property as he considers necessary for the purpose of realising it and deducting any such expenses from the proceeds of realisation;
- and paragraph 31(3) above shall apply only in relation to any balance remaining after making provision for those expenses.
- (2) If any money or other property is delivered up in pursuance of paragraph 31(3) above and provision has not been made for any allowable forfeiture expenses, then—
- (a) the person who incurred them shall have a claim to their value in the insolvency proceedings; and

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- (b) the expenses in question shall be treated for the purposes of the insolvency proceedings as if they were expenses of those proceedings.
- (3) In this paragraph “allowable forfeiture expenses”—
 - (a) means any expenses incurred in relation to property subject to the forfeiture order—
 - (i) by the relevant officer;
 - (ii) by any receiver, administrator or other person appointed by the relevant officer; or
 - (iii) by any person appointed or directed to deal with any property by an order under paragraph 11(1) above; and
 - (b) includes any amount paid, or required to be paid, under paragraph 1(1)(d), 11(1)(c) or 21(1)(d) above.

Protection of insolvency practitioners

- 33 (1) In any case where—
- (a) an insolvency practitioner seizes or disposes of any property in relation to which his functions are not exercisable because it is for the time being subject to a forfeiture or restraint order, and
 - (b) at the time of the seizure or disposal he believes and has reasonable grounds for believing that he is entitled (whether in pursuance of a court order or otherwise) to seize or dispose of that property,
- he shall not be liable to any person in respect of any loss or damage resulting from the seizure or disposal except in so far as the loss or damage is caused by his negligence in so acting.
- (2) An insolvency practitioner shall have a lien on the property mentioned in sub-paragraph (1) above or the proceeds of its sale—
 - (a) for such of his expenses as were incurred in connection with insolvency proceedings in relation to which the seizure or disposal purported to take place; and
 - (b) for so much of his remuneration as may reasonably be assigned for his acting in connection with those proceedings.
 - (3) Sub-paragraphs (1) and (2) above are without prejudice to the generality of any provision contained in the 1986 Act or the ^{M23}Bankruptcy (Scotland) Act 1985 or any other Act or the ^{F11}Insolvency (Northern Ireland) Order 1989].
 - (4) In this paragraph “insolvency practitioner”, in any part of the United Kingdom, means a person acting as an insolvency practitioner in that or any other part of the United Kingdom; and for this purpose—
 - (a) any question whether a person is acting as an insolvency practitioner in England and Wales or in Scotland shall be determined in accordance with section 388 of the 1986 Act, except that—
 - (i) the reference in subsection (2)(a) to a permanent or interim trustee in a sequestration shall be taken to include a reference to a trustee in sequestration;
 - (ii) subsection (5) shall be disregarded; and

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- (iii) the expression shall also include the Official Receiver acting as receiver or manager of property; and
- [^{F12}(b) any question whether a person is acting as an insolvency practitioner in Northern Ireland shall be determined in accordance with Article 3 of the Insolvency (Northern Ireland) Order 1989, except that—
- (i) paragraph (5) shall be disregarded; and
- (ii) the expression shall also include the official receiver acting as receiver or manager of property.]

Textual Amendments

- F11** Words in **Sch. 4 para. 33(3)** substituted (01.10.1991) by **S.I. 1989/2405 (N.I. 19)**, arts. 1(2), 381, **Sch. 9 para. 62(b)(i)**; **S.R. 1991/411**, **art.2**.
- F12** **Sch. 4 para. 33(4)(b)** substituted (01.10.1991) by **S.I. 1989/2405 (N.I. 19)**, arts. 1(2), 381, **Sch. 9 para. 62(b)(ii)**; **S.R. 1991/411**, **art.2**.

Marginal Citations

- M23** 1985 c. 66.

Insolvency practitioners in the Islands and designated countries

- 34 (1) The Secretary of State may by order make provision for securing that an Islands or external insolvency practitioner has, with such modifications as may be specified in the order, the same rights under this Part of this Schedule in relation to property situated in any part of the United Kingdom as he would have if he were an insolvency practitioner in that or any other part of the United Kingdom.
- (2) An order under this paragraph may make provision as to the manner in which, and the conditions subject to which, an Islands or external insolvency practitioner may exercise the rights conferred under sub-paragraph (1) above; and any such order may, in particular, make provision—
- (a) for requiring him to obtain leave of a court as a condition of exercising any such rights; and
- (b) for empowering a court granting any such leave to impose such conditions as it thinks fit.
- (3) An order under this paragraph may make different provision for different cases.
- (4) The power to make an order under this paragraph shall be exercisable by statutory instrument and, in relation to property situated in England and Wales, shall be so exercisable with the concurrence of the Lord Chancellor.
- (5) A statutory instrument containing an order under this paragraph shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (6) In this paragraph—
- “Islands or external insolvency practitioner” means a person exercising under the insolvency law of a relevant country or territory functions corresponding to those exercised by insolvency practitioners under the insolvency law of any part of the United Kingdom;

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“insolvency law” has the meaning given by section 426(10) of the 1986 Act, except that the reference to a relevant country or territory shall be construed in accordance with this paragraph;

“relevant country or territory” means—

- (a) any of the Channel Islands or the Isle of Man; or
- (b) any country or territory designated as mentioned in paragraph 10, 20 or 30 above.

[^{F13}(7) In the application of this paragraph to Northern Ireland—

- (a) for any reference to the Secretary of State there is substituted a reference to the Department of Economic Development in Northern Ireland;
- (b) in sub-paragraph (1) for the words “any part of the United Kingdom” and the words “that or any other part of the United Kingdom” there is substituted the words “Northern Ireland”;
- (c) for sub-paragraph (4) there is substituted the following sub-paragraph—
“(4) An order made under this paragraph by the Department of Economic Development in Northern Ireland shall be a statutory rule for the purposes of the Statutory Rules (Northern Ireland) Order 1979 and shall be subject to negative resolution within the meaning of section 41(6) of the Interpretation Act (Northern Ireland) 1954.”;
- (d) in paragraph 35(1) in the definition of “qualifying insolvency proceedings”—
 - (i) in head (a) for “Companies (Northern Ireland) Order 1986” substitute “Insolvency (Northern Ireland) Order 1989” and for “Part XX” substitute “Part V”;
 - (ii) in head (b) after “Wales” insert “or in Northern Ireland” and after “1986 Act” insert “or Article 364 of the Insolvency (Northern Ireland) Order 1989”;
 - (iii) in head (d) after “Wales” insert “or in Northern Ireland” and after “1986 Act” insert “or Article 365 of the Insolvency (Northern Ireland) Order 1989”.]

Textual Amendments

F13 Sch. 4 para. 34(7) inserted (01.10.1991) by S.I. 1989/2405 (N.I. 19), arts. 1(2), 381, Sch. 9 para. 62(c); S.R. 1991/411, art.2.

Interpretation of Part IV

35 (1) In this Part of this Schedule—

“the 1986 Act” means the ^{M24}Insolvency Act 1986;

“ancillary order” means any order made in connection with the forfeiture in question, other than the forfeiture order;

“forfeiture or restraint order” means a forfeiture or restraint order, as the case may be, of any of the descriptions referred to in Parts I to III of this Schedule;

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“insolvency practitioner”, except in paragraph 33 above, means a person acting in any qualifying insolvency proceedings in any part of the United Kingdom as—

- (a) a liquidator of a company or partnership;
- (b) a trustee in bankruptcy;
- (c) an interim or permanent trustee in sequestration;
- (d) an administrator of the insolvent estate of a deceased person;
- (e) a receiver or manager of any property;

“qualifying insolvency proceedings” means—

- (a) any proceedings under the ^{M25}1986 Act or the Companies (Northern Ireland) Order 1986 for the winding up of a company or an unregistered company and includes any voluntary winding up of a company under Part IV of that Act or Part XX of that Order;
- (b) any proceedings in England and Wales under or by virtue of section 420 of the 1986 Act for the winding up of an insolvent partnership;
- (c) any proceedings in bankruptcy or, in Scotland, any sequestration proceedings;
- (d) any proceedings in England and Wales under or by virtue of section 421 of the 1986 Act in relation to the insolvent estate of a deceased person;

“the relevant officer” means—

- (a) in Scotland—
 - (i) where the forfeiture order in question is made by a court in Scotland, the clerk of that court;
 - (ii) in any other case, the Principal Clerk of Session and Justiciary;
- (b) in any other part of the United Kingdom—
 - (i) where the forfeiture order in question is made by a court in that part, the proper officer within the meaning of paragraph 1 or, as the case may be, paragraph 21 above;
 - (ii) in any other case, the appropriate officer of the High Court.

- (2) Any reference in this Part of this Schedule to the proceeds of the sale or realisation of any property are references to those proceeds after deduction of the costs of sale or realisation.

Marginal Citations

M24 1986 c. 45.

M25 S.I. 1986/1032 (N.I.6).

Status:

Point in time view as at 28/06/1995. This version of this schedule contains provisions that are not valid for this point in time.

Changes to legislation:

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