

## SCHEDULES

### SCHEDULE 4

#### FORFEITURE ORDERS

#### 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 purposes of section 61 of the Justices of the 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.

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- (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 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 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.
- 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 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

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- (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 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 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—
    - (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.
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- (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.

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- 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 Land Charges Act 1972 and the 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.

#### *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—
- (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 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.
- 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;

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- (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.
- (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 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.

*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
  - (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”).
- (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.