

*These notes refer to the Terrorism Act 2000 (c.11)
which received Royal Assent on 20th July 2000*

TERRORISM ACT 2000

EXPLANATORY NOTES

COMMENTARY

Schedule 4: Forfeiture Orders

101. If a person is convicted of a terrorist property offence under Part III of the Act, then property connected with the offence will be subject to forfeiture, under section 23. This kind of forfeiture is known as “criminal forfeiture” because it follows conviction for a criminal offence. It is to be distinguished from the “civil forfeiture” which applies under section 28 to terrorist cash seized at borders. Schedule 4, which corresponds to Schedule 4 of the PTA and has similar effect, sets out the procedure for criminal forfeiture under section 23.
102. The Schedule is in four Parts, subdivided as shown below:
- Part I: England and Wales
 - Interpretation
 - Implementation of forfeiture orders
 - Restraint orders
 - Compensation
 - Proceedings for an offence: timing
 - Enforcement of orders made elsewhere in the British Islands
 - Enforcement of orders made in designated countries
 - Part II: Scotland
 - Implementation of forfeiture orders
 - Administrators
 - Restraint orders
 - Compensation
 - Proceedings for an offence: timing
 - Enforcement of orders made elsewhere in the British Islands
 - Enforcement of orders made in designated countries
 - Part III: Northern Ireland
 - Interpretation
 - Implementation of forfeiture orders

- Restraint orders
- Compensation
- Proceedings for an offence: timing
- Enforcement of orders made elsewhere in the British Islands
- Enforcement of orders made in designated countries
- Part IV: Insolvency: United Kingdom provisions

Paragraphs 2–4: Implementation of forfeiture orders

103. These paragraphs correspond to paragraphs 1–2 of Schedule 4 to the PTA and have the same effect. *Sub-paragraph (2)* of paragraph 2 allows for the fact that a forfeiture order could be made on conviction but set aside if the conviction is overturned on appeal: while such an outcome is still a possibility, the money or other property will not be handed over. The exception is an appeal “out of time”: in other words, the possibility that a case may be looked at again years later in the light of new or newly-discovered evidence. Forfeiture orders can come into effect when this possibility still exists.

104. Section 140 of the [Magistrates’ Court Act 1980 \(c. 43\)](#) provides as follows:

Subject to any enactment relating to customs or excise, anything other than money forfeited on a conviction by a magistrates’ court or the forfeiture of which may be enforced by a magistrates’ court shall be sold or otherwise disposed of in such manner as the court may direct; and the proceeds shall be applied as if they were a fine imposed under the enactment on which proceedings for the forfeiture are founded.

It is disapplied by *sub-paragraph (4)* of paragraph 2 to ensure there is no overlap with *sub-paragraph (1)(b)–(c)*.

Paragraphs 5–8: Restraint orders

105. These paragraphs correspond to paragraphs 3–6 of Schedule 4 to the PTA and have the same effect. The purpose of restraint orders is to prevent someone accused of a Part III offence from selling his property in order to avoid forfeiture. They can therefore be made at an early stage in the case: even (under *sub-paragraph (2)* of paragraph 5) before proceedings have been formally instituted. Although the restraint order is formally made by the High Court, the prosecution can apply without notice (that is, *ex parte*) to a judge in chambers (*sub-paragraph (4)*). This is because in some cases it is important to act as quickly as possible.

106. [Paragraph 8](#) provides for restraint orders to be treated in the same manner as certain civil actions under the [Land Charges Act 1972 \(c. 61\)](#) and the [Land Registration Act 1925 \(c. 21\)](#) and enables the orders to be registered, so restricting dealing in the restrained property.

Paragraphs 9–10: Compensation

107. [Paragraph 9](#) corresponds to paragraph 7 of Schedule 4 to the PTA and has similar effect. Whereas under the PTA, compensation could only be paid where proceedings had been instituted, under the Act it will also be payable where a restraint order is made in relation to expected proceedings but the proceedings are not in the event instituted. Paragraph 10 comes into play when an organisation is deproscribed following a successful appeal to POAC. It enables a person with an interest in any property which has been subject to a forfeiture or restraint order under the Schedule to apply to the High Court for compensation.

Paragraph 11: Proceedings for an offence: timing

108. This paragraph corresponds to paragraphs 3(8)–(9) of Schedule 4 to the PTA and has the same effect.

Paragraphs 12–13: Enforcement of orders made elsewhere in the British Islands

109. These paragraphs correspond to paragraphs 8–9 of Schedule 4 of the PTA and have the same effect. They allow orders made in Scotland, Northern Ireland, the Isle of Man and the Channel Islands to be enforced in England and Wales. (There are similar provisions in the Scotland and Northern Ireland Parts of the Schedule.)
110. They provide that the order made in Scotland, Northern Ireland or the Islands must be registered with the High Court: under *sub-paragraphs (3)–(4)* of paragraph 13 it is for the High Court to make rules about how exactly such orders are to be initially registered and later cancelled or varied. Once the order is registered, the rest of paragraph 13 ensures that the High Court has the appropriate powers to deal with it.

Paragraph 14: Enforcement of orders made in designated countries

111. This paragraph corresponds to paragraph 10 of Schedule 4 to the PTA and has the same effect. It makes it possible for restraint and forfeiture orders made in other countries to be enforced in England and Wales in accordance with the procedures in an Order in Council designating that country.

Paragraphs 15–44: Scotland and Northern Ireland

112. These paragraphs make provision for Scotland and Northern Ireland equivalent to that for England and Wales in paragraphs 1–14. Paragraphs 36–37 apply in Northern Ireland only and have no equivalent in England and Wales or Scotland. However, by virtue of section 112(5) these provisions are treated as part of Part VII of the Act and are therefore temporary and subject to annual renewal.

Paragraphs 45–53: Insolvency: UK Provisions

113. These paragraphs allow for cases where a person subject to a forfeiture order is declared bankrupt. Under *sub-paragraph (3)* of paragraph 47, the forfeiture order is set aside; but under paragraph 48, the Secretary of State is taken to be a creditor, and has to be paid after the debts of all other creditors. If the bankruptcy order is annulled then under paragraph 49 the forfeiture order comes back into effect. Paragraphs 50–51 provide limited protection from liability for insolvency practitioners in respect of the exercise of their duties.