

SCHEDULES

SCHEDULE 4

FORFEITURE ORDERS

PART IV

INSOLVENCY: UNITED KINGDOM PROVISIONS

General

- 45 In this Part of this Schedule—
- “ancillary order” means an order made in connection with a forfeiture, other than the forfeiture order,
 - “forfeiture order” means—
 - (a) an order made in England and Wales, Scotland or Northern Ireland under section 23,
 - (b) an Islands forfeiture order within the meaning given in paragraph 12, 26 or 42, or
 - (c) an external forfeiture order which is enforceable in England and Wales, Scotland or Northern Ireland by virtue of an Order in Council made under paragraph 14, 28 or 44,
 - “forfeited property” means the money or other property to which a forfeiture order applies, and
 - “restraint order” means—
 - (a) an order made under paragraph 5, 18 or 33,
 - (b) an Islands restraint order within the meaning given in paragraph 12, 26 or 42, or
 - (c) an external restraint order which is enforceable in England and Wales, Scotland or Northern Ireland by virtue of an Order in Council made under paragraph 14, 28 or 44.

Protection of creditors against forfeiture

- 46 (1) During the period of six months beginning with the making of a forfeiture order, the following shall not be finally disposed of under this Schedule—
- (a) the money to which the order applies, and
 - (b) the money which represents any property to which the order applies.
- (2) For the purposes of this paragraph money is finally disposed of under this Schedule when—
- (a) in England and Wales, it is paid to the Lord Chancellor in accordance with section 60 of the Justices of the Peace Act 1997 (application of fines, &c.) or to the Secretary of State in accordance with paragraph 13(5)(c),

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- (b) in Scotland, it is paid to the Treasury in accordance with section 211(5) of the Criminal Procedure (Scotland) Act 1995 (as modified by paragraph 16(3)), or
 - (c) in Northern Ireland, it is paid into the Consolidated Fund in accordance with paragraph 32(4) or 43(5)(c).
- 47 (1) This paragraph applies where—
- (a) before or after a forfeiture order is made, the commencement of an insolvency occurs in qualifying insolvency proceedings,
 - (b) an insolvency practitioner would, but for the forfeiture order, exercise a function in those proceedings in relation to property to which the forfeiture order applies, and
 - (c) he gives written notice to the relevant officer of the matters referred to in paragraphs (a) and (b) before the end of the period of six months beginning with the making of the forfeiture order.
- (2) Sub-paragraph (3) shall apply to—
- (a) the property in relation to which the insolvency practitioner would, but for the forfeiture order, exercise a function as described in sub-paragraph (1) (b), and
 - (b) the proceeds of sale of that property.
- (3) The property—
- (a) shall cease to be subject to the forfeiture order and any ancillary order, and
 - (b) shall be dealt with in the insolvency proceedings as if the forfeiture order had never been made.
- (4) But—
- (a) the property to which sub-paragraph (3) applies is the balance remaining after the relevant officer has exercised his powers under paragraph 50(1), and
 - (b) sub-paragraph (3) shall not take effect in respect of property in relation to which the relevant officer, or any person acting in pursuance of an ancillary order, has incurred obligations until those obligations have been discharged.
- (5) In this paragraph “the commencement of an insolvency” means—
- (a) the making of a bankruptcy order,
 - (b) the award of sequestration,
 - (c) in England and Wales or in Northern Ireland, in the case of the insolvent estate of a deceased person, the making of an insolvency administration order, or
 - (d) in the case of a company, the passing of a resolution for its winding up, or where no such resolution has been passed, the making of an order by the court for the winding up of the company.
- 48 (1) Where by virtue of paragraph 47(3) 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 the property.
- (2) Except in a sequestration, his debt—
- (a) shall rank after the debts of all other creditors, and
 - (b) shall not be paid until they have been paid in full with interest under the relevant provision.

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- (3) In sub-paragraph (2)(b) the “relevant provision” means—
- (a) in relation to the winding up of a company in England and Wales or Scotland, section 189(2) of the Insolvency Act 1986,
 - (b) in relation to a bankruptcy in England and Wales, section 328(4) of that Act,
 - (c) in relation to the winding up of a company in Northern Ireland, Article 160(2) of the Insolvency (Northern Ireland) Order 1989, and
 - (d) in relation to a bankruptcy in Northern Ireland, Article 300(4) of that Order.
- (4) In a sequestration, his debt shall rank after all of the debts mentioned in section 51(1) of the Bankruptcy (Scotland) Act 1985 and shall not be paid until they have been paid in full.
- (5) Sub-paragraphs (2) to (4) apply notwithstanding any provision contained in or made under any other enactment.
- 49 (1) This paragraph applies to property which ceased to be subject to a forfeiture order by virtue of paragraph 47(3) in consequence of the making of a bankruptcy order or an award of sequestration.
- (2) The property shall again become subject to the forfeiture order and, if applicable, any ancillary order if—
- (a) the bankruptcy order is annulled, or
 - (b) the award of sequestration is recalled or reduced.
- (3) Where the property is money or has been converted into money—
- (a) the relevant court shall make an order specifying property comprised in the estate of the bankrupt or debtor to the amount or value of the property, and
 - (b) the specified property shall become subject to the forfeiture order, and any applicable ancillary order, in place of the property.
- (4) In sub-paragraph (3) the “relevant court” means—
- (a) the court which ordered the annulment of the bankruptcy, or
 - (b) the court which recalled or reduced the award of sequestration.

Expenses incurred in connection with forfeiture

- 50 (1) Where money or other property falls to be dealt with in accordance with paragraph 47(3), the relevant officer may—
- (a) deduct allowable forfeiture expenses from that money;
 - (b) retain so much of that property as he considers necessary for the purpose of realising it and deducting allowable forfeiture expenses from the proceeds of realisation.
- (2) Where property is delivered up in pursuance of paragraph 47(3) and the relevant officer has not made provision under sub-paragraph (1) for all the allowable forfeiture expenses then—
- (a) a person who has incurred allowable forfeiture expenses for which provision has not been made shall have a claim to their value in the insolvency proceedings, and
 - (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”—

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- (a) means expenses incurred in relation to the forfeited property by the relevant officer,
- (b) means expenses incurred in relation to the forfeited property by a receiver, administrator or other person appointed by the relevant officer,
- (c) means expenses incurred in relation to the forfeited property by any person appointed or directed to deal with any property under paragraph 16, and
- (d) includes sums paid or required to be paid under paragraph 2(1)(d), 16(1)(c) or 30(1)(d).

Protection of insolvency practitioners

- 51 (1) This paragraph applies where an insolvency practitioner seizes or disposes of property which is subject to a forfeiture order or a restraint order and—
- (a) he reasonably believes that he is entitled to do so in the exercise of his functions, and
 - (b) he would be so entitled if the property were not subject to a forfeiture order or a restraint order.
- (2) The insolvency practitioner 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.
- (3) The insolvency practitioner shall have a lien on the property seized or the proceeds of its sale—
- (a) for such of his expenses as were incurred in connection with the insolvency proceedings in relation to which the seizure or disposal purported to take place, and
 - (b) for so much of his remuneration as may be reasonably assigned for his acting in connection with those proceedings.
- (4) Sub-paragraphs (1) to (3) are without prejudice to the generality of any provision contained in the Insolvency Act 1986 or the Bankruptcy (Scotland) Act 1985 or any other Act or the Insolvency (Northern Ireland) Order 1989.
- (5) 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.
- (6) For the purpose of sub-paragraph (5) 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 Insolvency Act 1986, except that—
- (a) the reference in section 388(2)(a) to a permanent or interim trustee in the sequestration of a debtor’s estate shall be taken to include a reference to a trustee in sequestration,
 - (b) section 388(5) shall be disregarded, and
 - (c) the expression shall also include the Official Receiver acting as receiver or manager of property.
- (7) For the purpose of sub-paragraph (5) 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—
- (a) Article 3(5) shall be disregarded, and

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- (b) the expression shall also include the Official Receiver acting as receiver or manager of property.

Insolvency practitioners in the Islands and designated countries

- 52 (1) An order may be made under this paragraph to secure that an Islands or external insolvency practitioner has the same rights under this Part of this Schedule in relation to—
- (a) property situated in England and Wales,
 - (b) property situated in Scotland, or
 - (c) property situated in Northern Ireland,
- as he would have if he were an insolvency practitioner in that part of the United Kingdom.
- (2) The Secretary of State may make an order—
- (a) under sub-paragraph (1)(a) with the concurrence of the Lord Chancellor;
 - (b) under sub-paragraph (1)(b).
- (3) An order under sub-paragraph (1)(c)—
- (a) may be made by the Department of Enterprise, Trade and Investment in Northern Ireland,
 - (b) shall be a statutory rule for the purposes of the Statutory Rules (Northern Ireland) Order 1979, and
 - (c) shall be subject to negative resolution within the meaning of section 41(6) of the Interpretation (Northern Ireland) Act 1954.
- (4) An order under this paragraph may, in particular, include—
- (a) provision which modifies the rights under this Part of this Schedule which are to be conferred under the order;
 - (b) provision as to the manner in which the rights conferred under the order are to be exercised;
 - (c) provision as to the conditions subject to which those rights are to be exercised, including the obtaining of leave from a court;
 - (d) provision for empowering a court granting such leave to impose such conditions as it thinks fit.
- (5) An order under this paragraph may make different provision for different purposes.
- (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,
- “insolvency law” has the same meaning as in section 426(10) of the Insolvency Act 1986, except that the reference to a relevant country or territory shall be construed in accordance with this paragraph, and
- “relevant country or territory” means—
- (a) any of the Channel Islands,
 - (b) the Isle of Man, or
 - (c) any country or territory designated as mentioned in paragraph 14, 28 or 44.

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Interpretation

- 53 (1) In this Part of this Schedule (other than in paragraph 51) “insolvency practitioner” 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) the permanent or interim trustee on the debtor’s estate,
 - (d) an administrator of the insolvent estate of a deceased person, or
 - (e) a receiver or manager of any property.
- (2) In this Part of this Schedule “qualifying insolvency proceedings” means—
- (a) any proceedings under the Insolvency Act 1986 or the Insolvency (Northern Ireland) Order 1989 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 V of that Order,
 - (b) any proceedings in England and Wales or Northern Ireland under or by virtue of section 420 of the Insolvency Act 1986 or Article 364 of the Insolvency (Northern Ireland) Order 1989 for the winding up of an insolvent partnership,
 - (c) any proceedings in bankruptcy or, in Scotland, any sequestration of a debtor’s estate, or
 - (d) any proceedings in England and Wales or in Northern Ireland under or by virtue of section 421 of the Insolvency Act 1986 or Article 365 of the Insolvency (Northern Ireland) Order 1989 in relation to the insolvent estate of a deceased person.
- (3) In this Part of this Schedule “the relevant officer” means in England and Wales and in Northern Ireland—
- (a) where the forfeiture order in question is made by a court in England and Wales, the proper officer within the meaning given in paragraph 4,
 - (b) where the forfeiture order in question is made by a court in Northern Ireland, the proper officer within the meaning given in paragraph 32, and
 - (c) in any other case, the appropriate officer of the High Court.
- (4) In this Part of this Schedule “the relevant officer” means in Scotland—
- (a) where the forfeiture order in question is made by a court in Scotland, the clerk of the court,
 - (b) in any other case, the Principal Clerk of Session and Justiciary.
- (5) In this Part of this Schedule references to the proceeds of sale or realisation of property are references to the proceeds after deduction of the costs of sale or realisation.