

COUNTER-TERRORISM ACT 2008

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 3 – Prosecution and Punishment of Terrorist Offences

Forfeiture

Section 34 – Forfeiture: terrorist property offences

93. **Section 34** replaces section 23 of the 2000 Act (forfeiture: terrorist property offences), which deals with the power of a court to order the forfeiture of money or other property from a person convicted of offences under sections 15 to 18 of that Act (“terrorist finance” offences). The principal change made to section 23 is that the court may make a forfeiture order in respect of money or other property which had been used for the purposes of terrorism. So, for example, the court could order the forfeiture of a flat which was used for making bombs.

Section 35 – Forfeiture: other terrorism offences and offences with a terrorist connection

94. **Section 35** inserts a new section 23A into the 2000 Act. This allows the court which convicts a person of certain offences to order the forfeiture of money or other property in the possession or under the control of the convicted person at the time of the offence and which either had been used for the purposes of terrorism or was intended by that person to be used for those purposes, or which the court believes will be used for the purposes of terrorism unless forfeited. The offences in respect of which this power of forfeiture is available are certain offences under the 2000 Act and the Terrorism Act 2006 (but not the terrorist finance offences, which are covered by new section 23), and, in England and Wales and in Scotland (but not in Northern Ireland) offences falling within Schedule 2 which the court determines have a terrorist connection (as defined in section 93) under section 30 or 31.
95. Section 23A(5) allows the Secretary of State to amend the list of offences to which the provision applies by order, subject to affirmative resolution (see *subsection (2)* of section 35 which amends section 123 of the 2000 Act which specifies the instruments made under that Act which are subject to the affirmative resolution procedure).

Section 36– Forfeiture: supplementary provisions

96. **Section 36** inserts a new section 23B into the 2000 Act which contains supplementary provisions in relation to the court’s power to make a forfeiture order under section 23 or 23A.
97. Section 23B(1) allows a person other than the convicted person who claims to have an interest in anything which can be forfeited to be given an opportunity to be heard by the court before it makes an order.

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(c.28) which received Royal Assent on 26 November 2008*

98. Section 23B(2) requires the court, before making an order, to have regard to the value of the property and the likely effect (financial or otherwise) a forfeiture order will have on the convicted person.
99. Section 23B(3) makes provisions for procedures in Scotland.
100. Section 23B(4) gives effect to Schedule 4 to the 2000 Act which makes further provision in relation to forfeiture orders made under sections 23 and 23A. Schedule 4 is consequentially amended by Schedule 3 to this Act.

Section 37 – Forfeiture: application of proceeds to compensate victims

101. *Subsection (1)* of section 37 inserts a new paragraph 4A into Part 1 of Schedule 4 to the 2000 Act. Paragraph 4A(1) allows a court making a forfeiture order in a case where the offender has been convicted of an offence which has resulted in another person suffering personal injury, loss or damage, or where any such offence is taken into consideration, to order that an amount is to be paid to that person out of the proceeds of the forfeiture. The court may specify a sum which the amount to be paid may not exceed.
102. Paragraph 4A(2) defines for this purpose the proceeds of forfeiture as being the aggregate amount of any forfeited money plus the proceeds of any sale or disposal of forfeited property, after deduction of the costs of the sale or disposal. This sum will then be reduced by the amount of any payment made under paragraph 2(1)(d) (to a person with an interest in the property) or 3(1) (to a receiver appointed to implement the forfeiture order) of Schedule 4 to the 2000 Act.
103. Paragraph 4A(3) provides that a court may only make an order under this paragraph if it is satisfied that it would have made an order under section 130 of the Powers of Criminal Courts (Sentencing) Act 2000 (which is the general power under which a court may make a compensation order on conviction) requiring the offender to pay compensation, if it had not been for the inadequacy of the offender's means.
104. *Subsection (2)* inserts new paragraph 17A into Part 2 of Schedule 4 to the 2000 Act, making similar provision in Scotland; and *subsection (3)* inserts new paragraph 32A into Part 3 of Schedule 4, making similar provision for Northern Ireland.

Section 38 – Forfeiture: other amendments

105. *Subsection (1)* of section 38 substitutes a new section 120A into the 2000 Act.
106. New section 120A(1) sets out some specific items, connected to the offence, which may be forfeited in relation to specific offences in the 2000 Act. For sections 54 and 58, there is no change as to what may already be forfeited under the 2000 Act.
107. New section 120A(2) provides that the court must give an opportunity to be heard to any person other than the convicted person who claims to have an interest in anything which can be forfeited under this section. (This replicates provision to this effect which is currently in sections 54 and 58 of the 2000 Act.)
108. New section 120A(3) provides that a forfeiture order does not come into effect until all possibilities of it being varied or set aside on appeal have been exhausted. (Provision to this effect is currently in sections 54 and 58.)
109. New section 120A(4) allows the court to make any provision necessary to give effect to the forfeiture, including provisions relating to the retention, handling, disposal or destruction of what is forfeited. Destruction might be ordered for example in relation to articles seized whose continued existence are considered dangerous.
110. *Subsection (3)* of section 38 inserts a new section 11A into the Terrorism Act 2006. New section 11A(1) allows for the forfeiture on conviction for an offence under sections 9 or 10 of the Terrorism Act 2006 of any radioactive device or material, or any nuclear facility made or used in the commission of the offence. New section 11A(2) provides

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similar powers in relation to an offence committed under section 11 of the Terrorism Act 2006, allowing the forfeiture of certain nuclear materials which were the subject of demands or threats falling within subsections (1) and (3) of that section. There are similar supplementary provisions to those in the new section 120A.

Section 39 – Forfeiture: consequential amendments

111. **Section 39** gives effect to Schedule 3 which makes amendments consequential upon the new provisions concerning forfeiture orders in section 34 - 39.

Schedule 3 – Forfeiture: consequential amendments

112. **Schedule 3** contains amendments consequential on those made by sections 34 to 38. These are mainly to amend Schedule 4 to the 2000 Act, to take account of the extended forfeiture regime. Schedule 4 to the 2000 Act makes supplementary provision concerning forfeiture orders under section 23 of the 2000 Act, for example in relation to restraint orders and how forfeiture orders may be enforced.