

SCHEDULES

SCHEDULE 4

Section 40

FORFEITURE OF MONEY HELD IN BANK AND BUILDING SOCIETY ACCOUNTS

- 1 Schedule 1 to the Anti-terrorism, Crime and Security Act 2001 (forfeiture of terrorist cash) is amended as follows.
- 2 After paragraph 10P (inserted by Schedule 3 above) insert—

“PART 4B

FORFEITURE OF TERRORIST MONEY HELD IN BANK AND BUILDING SOCIETY ACCOUNTS

Application for account freezing order

- 10Q (1) This paragraph applies if an enforcement officer has reasonable grounds for suspecting that money held in an account maintained with a bank or building society—
- (a) is within subsection (1)(a) or (b) of section 1, or
 - (b) is property earmarked as terrorist property.
- (2) Where this paragraph applies the enforcement officer may apply to the relevant court for an account freezing order in relation to the account in which the money is held.
- (3) But—
- (a) an enforcement officer may not apply for an account freezing order unless the officer is a senior officer or is authorised to do so by a senior officer, and
 - (b) the senior officer must consult the Treasury before making the application for the order or (as the case may be) authorising the application to be made, unless in the circumstances it is not reasonably practicable to do so.
- (4) For the purposes of this Part of this Schedule—
- (a) an account freezing order is an order that, subject to any exclusions (see paragraph 10U), prohibits each person by or for whom the account to which the order applies is operated from making withdrawals or payments from the account;
 - (b) an account is operated by or for a person if the person is an account holder or a signatory or identified as a beneficiary in relation to the account.
- (5) An application for an account freezing order may be made without notice if the circumstances of the case are such that notice of the application

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would prejudice the taking of any steps under this Part of this Schedule to forfeit money that is within subsection (1)(a) or (b) of section 1 or is property earmarked as terrorist property.

- (6) The money referred to in sub-paragraph (1) may be all or part of the credit balance of the account.
- (7) In this Part of this Schedule—
- “bank” has the meaning given by paragraph 10R;
 - “building society” has the same meaning as in the Building Societies Act 1986;
 - “enforcement officer” means—
 - (a) a constable, or
 - (b) a counter-terrorism financial investigator;
 - “relevant court”—
 - (a) in England and Wales and Northern Ireland, means a magistrates’ court, and
 - (b) in Scotland, means the sheriff;
 - “senior officer” means a police officer of at least the rank of superintendent.

Meaning of “bank”

- 10R (1) “Bank” means an authorised deposit-taker, other than a building society, that has its head office or a branch in the United Kingdom.
- (2) In sub-paragraph (1), “authorised deposit-taker” means—
- (a) a person who has permission under Part 4A of the Financial Services and Markets Act 2000 to accept deposits;
 - (b) a person who—
 - (i) is specified, or is within a class of persons specified, by an order under section 38 of that Act (exemption orders), and
 - (ii) accepts deposits;
 - (c) an EEA firm of the kind mentioned in paragraph 5(b) of Schedule 3 to that Act that has permission under paragraph 15 of that Schedule (as a result of qualifying for authorisation under paragraph 12(1) of that Schedule) to accept deposits.
- (3) A reference in sub-paragraph (2) to a person or firm with permission to accept deposits does not include a person or firm with permission to do so only for the purposes of, or in the course of, an activity other than accepting deposits.

Making of account freezing order

- 10S (1) This paragraph applies where an application for an account freezing order is made under paragraph 10Q in relation to an account.
- (2) The relevant court may make the order if satisfied that there are reasonable grounds for suspecting that money held in the account (whether all or part of the credit balance of the account)—

- (a) is within subsection (1)(a) or (b) of section 1, or
 - (b) is property earmarked as terrorist property.
- (3) An account freezing order ceases to have effect at the end of the period specified in the order (which may be varied under paragraph 10T) unless it ceases to have effect at an earlier or later time in accordance with the provision made by paragraphs 10W(6)(c), 10Y(2) to (7), 10Z2(6) to (8) and 10Z3.
- (4) The period specified by the relevant court for the purposes of subparagraph (3) (whether when the order is first made or on a variation under paragraph 10T) may not exceed the period of 2 years, starting with the day on which the account freezing order is (or was) made.
- (5) An account freezing order must provide for notice to be given to persons affected by the order.

Variation and setting aside of account freezing order

- 10T (1) The relevant court may at any time vary or set aside an account freezing order on an application made by—
- (a) an enforcement officer, or
 - (b) any person affected by the order.
- (2) But an enforcement officer may not make an application under subparagraph (1) unless the officer is a senior officer or is authorised to do so by a senior officer.
- (3) Before varying or setting aside an account freezing order the court must (as well as giving the parties to the proceedings an opportunity to be heard) give such an opportunity to any person who may be affected by its decision.
- (4) In relation to Scotland, the references in this paragraph to setting aside an order are to be read as references to recalling it.

Exclusions

- 10U (1) The power to vary an account freezing order includes (amongst other things) power to make exclusions from the prohibition on making withdrawals or payments from the account to which the order applies.
- (2) Exclusions from the prohibition may also be made when the order is made.
- (3) An exclusion may (amongst other things) make provision for the purpose of enabling a person by or for whom the account is operated—
- (a) to meet the person's reasonable living expenses, or
 - (b) to carry on any trade, business, profession or occupation.
- (4) An exclusion may be made subject to conditions.
- (5) Where a magistrates' court exercises the power to make an exclusion for the purpose of enabling a person to meet legal expenses that the person

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has incurred, or may incur, in respect of proceedings under this Schedule, it must ensure that the exclusion—

- (a) is limited to reasonable legal expenses that the person has reasonably incurred or that the person reasonably incurs,
 - (b) specifies the total amount that may be released for legal expenses in pursuance of the exclusion, and
 - (c) is made subject to the same conditions as would be the required conditions (see section 286A of the Proceeds of Crime Act 2002) if the order had been made under section 245A of that Act (in addition to any conditions imposed under sub-paragraph (4)).
- (6) A magistrates' court, in deciding whether to make an exclusion for the purpose of enabling a person to meet legal expenses in respect of proceedings under this Schedule—
- (a) must have regard to the desirability of the person being represented in any proceedings under this Schedule in which the person is a participant, and
 - (b) must disregard the possibility that legal representation of the person in any such proceedings might, were an exclusion not made—
 - (i) be made available under arrangements made for the purposes of Part 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012, or
 - (ii) be funded by the Northern Ireland Legal Services Commission.
- (7) The sheriff's power to make exclusions may not be exercised for the purpose of enabling any person to meet any legal expenses in respect of proceedings under this Schedule.
- (8) The power to make exclusions must, subject to sub-paragraph (6), be exercised with a view to ensuring, so far as practicable, that there is not undue prejudice to the taking of any steps under this Part of this Schedule to forfeit money that is within subsection (1)(a) or (b) of section 1 or is property earmarked as terrorist property.

Restriction on proceedings and remedies

- 10V (1) If a court in which proceedings are pending in respect of an account maintained with a bank or building society is satisfied that an account freezing order has been applied for or made in respect of the account, it may either stay the proceedings or allow them to continue on any terms it thinks fit.
- (2) Before exercising the power conferred by sub-paragraph (1), the court must (as well as giving the parties to any of the proceedings concerned an opportunity to be heard) give such an opportunity to any person who may be affected by the court's decision.
- (3) In relation to Scotland, the reference in sub-paragraph (1) to staying the proceedings is to be read as a reference to sisting the proceedings.

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Account forfeiture notice

- 10W (1) This paragraph applies while an account freezing order has effect.
- (2) A senior officer may give a notice for the purpose of forfeiting money held in the frozen account (whether all or part of the credit balance of the account) if satisfied that the money—
- (a) is within subsection (1)(a) or (b) of section 1, or
 - (b) is property earmarked as terrorist property.
- (3) A notice given under sub-paragraph (2) is referred to in this Part of this Schedule as an account forfeiture notice.
- (4) An account forfeiture notice must—
- (a) state the amount of money held in the frozen account which it is proposed be forfeited,
 - (b) confirm that the senior officer is satisfied as mentioned in sub-paragraph (2),
 - (c) specify a period for objecting to the proposed forfeiture and an address to which any objections must be sent, and
 - (d) explain that the money will be forfeited unless an objection is received at that address within the period for objecting.
- (5) The period for objecting must be at least 30 days starting with the day after the notice is given.
- (6) If no objection is made within the period for objecting, and the notice has not lapsed under paragraph 10Y—
- (a) the amount of money stated in the notice is forfeited (subject to paragraph 10Z),
 - (b) the bank or building society with which the frozen account is maintained must transfer that amount of money into an interest-bearing account nominated by an enforcement officer, and
 - (c) immediately after the transfer has been made, the account freezing order made in relation to the frozen account ceases to have effect.
- (7) An objection may be made by anyone (whether a recipient of the notice or not).
- (8) An objection means a written objection sent to the address specified in the notice; and an objection is made when it is received at the address.
- (9) An objection does not prevent forfeiture of the money held in the frozen account under paragraph 10Z2.

Giving of account forfeiture notice

- 10X (1) The Secretary of State must by regulations made by statutory instrument make provision about how an account forfeiture notice is to be given.
- (2) The regulations may (amongst other things) provide—

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- (a) for an account forfeiture notice to be given to such person or persons, and in such manner, as may be prescribed;
 - (b) for circumstances in which, and the time at which, an account forfeiture notice is to be treated as having been given.
- (3) The regulations must ensure that where an account forfeiture notice is given it is, if possible, given to every person to whom notice of the account freezing order was given.
- (4) A statutory instrument containing regulations under this paragraph is subject to annulment in pursuance of a resolution of either House of Parliament.

Lapse of account forfeiture notice

- 10Y (1) An account forfeiture notice lapses if—
- (a) an objection is made within the period for objecting specified in the notice under paragraph 10W(4)(c),
 - (b) an application is made under paragraph 10Z2 for the forfeiture of money held in the frozen account, or
 - (c) an order is made under paragraph 10T setting aside (or recalling) the relevant account freezing order.
- (2) If an account forfeiture notice lapses under sub-paragraph (1)(a), the relevant account freezing order ceases to have effect at the end of the period of 48 hours starting with the making of the objection (“the 48-hour period”).
- (3) If within the 48-hour period an application is made—
- (a) for a variation of the relevant account freezing order under paragraph 10T so as to extend the period specified in the order, or
 - (b) for forfeiture of money held in the frozen account under paragraph 10Z2,
- the order continues to have effect until the relevant time (and then ceases to have effect).
- (4) In the case of an application of the kind mentioned in sub-paragraph (3)(a), the relevant time means—
- (a) if an extension is granted, the time determined in accordance with paragraph 10S(3), or
 - (b) if an extension is not granted, the time when the application is determined or otherwise disposed of.
- (5) In the case of an application of the kind mentioned in sub-paragraph (3)(b), the relevant time is the time determined in accordance with paragraph 10Z2(6).
- (6) If within the 48-hour period it is decided that no application of the kind mentioned in sub-paragraph (3)(a) or (b) is to be made, an enforcement officer must, as soon as possible, notify the bank or building society with which the frozen account is maintained of that decision.

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- (7) If the bank or building society is notified in accordance with sub-paragraph (6) before the expiry of the 48-hour period, the relevant account freezing order ceases to have effect on the bank or building society being so notified.
- (8) In relation to an account forfeiture notice—
 - (a) “the frozen account” is the account in which the money to which the account forfeiture notice relates is held;
 - (b) “the relevant account freezing order” is the account freezing order made in relation to the frozen account.
- (9) In calculating a period of 48 hours for the purposes of this paragraph no account is to be taken of—
 - (a) any Saturday or Sunday,
 - (b) Christmas Day,
 - (c) Good Friday, or
 - (d) any day that is a bank holiday under the Banking and Financial Dealings Act 1971 in the part of the United Kingdom in which the account freezing order was made.

Application to set aside forfeiture

- 10Z
- (1) A person aggrieved by the forfeiture of money in pursuance of paragraph 10W(6)(a) may apply to the relevant court for an order setting aside the forfeiture of the money or any part of it.
 - (2) The application must be made before the end of the period of 30 days starting with the day on which the period for objecting ended (“the 30-day period”).
 - (3) But the relevant court may give permission for an application to be made after the 30-day period has ended if it thinks that there are exceptional circumstances to explain why the applicant—
 - (a) failed to object to the forfeiture within the period for objecting, and
 - (b) failed to make an application within the 30-day period.
 - (4) On an application under this paragraph the relevant court must consider whether the money to which the application relates could be forfeited under paragraph 10Z2 (ignoring the forfeiture mentioned in sub-paragraph (1)).
 - (5) If the relevant court is satisfied that the money to which the application relates or any part of it could not be forfeited under that paragraph it must set aside the forfeiture of that money or part.
 - (6) Where the relevant court sets aside the forfeiture of any money—
 - (a) it must order the release of that money, and
 - (b) the money is to be treated as never having been forfeited.
 - (7) Where money is released by virtue of sub-paragraph (6)(a), there must be added to the money on its release any interest accrued on it whilst in the account referred to in paragraph 10W(6)(b).

Application of money forfeited under account forfeiture notice

- 10Z1 (1) Money forfeited in pursuance of paragraph 10W(6)(a), and any interest accrued on it whilst in the account referred to in paragraph 10W(6)(b)—
- (a) if, before being forfeited, the money was held in an account in relation to which an account freezing order made by a magistrates' court had effect, is to be paid into the Consolidated Fund;
 - (b) if, before being forfeited, the money was held in an account in relation to which an account freezing order made by the sheriff had effect, is to be paid into the Scottish Consolidated Fund.
- (2) But it is not to be paid in—
- (a) before the end of the period within which an application under paragraph 10Z may be made (ignoring the possibility of an application by virtue of paragraph 10Z(3)), or
 - (b) if an application is made within that period, before the application is determined or otherwise disposed of.

Forfeiture order

- 10Z2 (1) This paragraph applies while an account freezing order has effect.
- (2) An application for the forfeiture of money held in the frozen account (whether all or part of the credit balance of the account) may be made—
- (a) to a magistrates' court, by an enforcement officer, or
 - (b) to the sheriff, by the Scottish Ministers.
- (3) The court or sheriff may order the forfeiture of the money or any part of it if satisfied that the money or part—
- (a) is within subsection (1)(a) or (b) of section 1, or
 - (b) is property earmarked as terrorist property.
- (4) But in the case of property earmarked as terrorist property which belongs to joint tenants, one of whom is an excepted joint owner, an order by a magistrates' court may not apply to so much of it as the court thinks is attributable to the excepted joint owner's share.
- (5) For the purposes of sub-paragraph (4)—
- (a) an excepted joint owner is a joint tenant who obtained the property in circumstances in which it would not (as against him or her) be earmarked, and
 - (b) references to the excepted joint owner's share of property are to so much of the property as would have been his or hers if the joint tenancy had been severed.
- (6) Where an application is made under sub-paragraph (2), the account freezing order is to continue to have effect until the time referred to in sub-paragraph (7)(b) or (8).
- (7) Where money held in a frozen account is ordered to be forfeited under sub-paragraph (3)—

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- (a) the bank or building society with which the frozen account is maintained must transfer that amount of money into an interest-bearing account nominated by an enforcement officer, and
 - (b) immediately after the transfer has been made the account freezing order made in relation to the frozen account ceases to have effect.
- (8) Where, other than by the making of an order under sub-paragraph (3), an application under sub-paragraph (2) is determined or otherwise disposed of, the account freezing order ceases to have effect immediately after that determination or other disposal.

Continuation of account freezing order pending appeal

- 10Z3 (1) This paragraph applies where, on an application under sub-paragraph (2) of paragraph 10Z2 in relation to an account to which an account freezing order applies, the court or sheriff decides—
- (a) to make an order under sub-paragraph (3) of that paragraph in relation to part only of the money to which the application related, or
 - (b) not to make an order under sub-paragraph (3) of that paragraph.
- (2) The person who made the application under paragraph 10Z2(2) may apply without notice to the court or sheriff that made the decision referred to in sub-paragraph (1)(a) or (b) for an order that the account freezing order is to continue to have effect.
- (3) Where the court or sheriff makes an order under sub-paragraph (2) the account freezing order is to continue to have effect until—
- (a) the end of the period of 48 hours starting with the making of the order under sub-paragraph (2), or
 - (b) if within that period of 48 hours an appeal is brought under paragraph 10Z4 against the decision referred to in sub-paragraph (1)(a) or (b), the time when the appeal is determined or otherwise disposed of.
- (4) Sub-paragraph (9) of paragraph 10Y applies for the purposes of sub-paragraph (3) as it applies for the purposes of that paragraph.

Appeal against decision under paragraph 10Z2

- 10Z4 (1) Any party to proceedings for an order for the forfeiture of money under paragraph 10Z2 who is aggrieved by an order under that paragraph or by the decision of the court not to make such an order may appeal—
- (a) from an order or decision of a magistrates' court in England and Wales, to the Crown Court;
 - (b) from an order or decision of the sheriff, to the Sheriff Appeal Court;
 - (c) from an order or decision of a magistrates' court in Northern Ireland, to a county court.

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- (2) An appeal under sub-paragraph (1) must be made before the end of the period of 30 days starting with the day on which the court makes the order or decision.
- (3) Sub-paragraph (2) is subject to paragraph 10Z5.
- (4) The court hearing the appeal may make any order it thinks appropriate.
- (5) If the court upholds an appeal against an order forfeiting the money, it may order the release of the whole or any part of the money.
- (6) Where money is released by virtue of sub-paragraph (5), there must be added to the money on its release any interest accrued on it whilst in the account referred to in paragraph 10Z2(7)(a).

Extended time for appealing in certain cases where deproscription order made

- 10Z5 (1) This paragraph applies where—
- (a) a successful application for an order under paragraph 10Z2 relies (wholly or partly) on the fact that an organisation is proscribed,
 - (b) an application under section 4 of the Terrorism Act 2000 for a deproscription order in respect of the organisation is refused by the Secretary of State,
 - (c) the money forfeited by the order under paragraph 10Z2 was made subject to an account freezing order on or after the date of the refusal of that application,
 - (d) an appeal against that refusal is allowed under section 5 of the Terrorism Act 2000,
 - (e) a deproscription order is made accordingly, and
 - (f) if the order is made in reliance on section 123(5) of the Terrorism Act 2000, a resolution is passed by each House of Parliament under section 123(5)(b) of that Act.
- (2) Where this paragraph applies, an appeal under paragraph 10Z4 against the making of an order under paragraph 10Z2 may be brought at any time before the end of the period of 30 days beginning with the date on which the deproscription order comes into force.
- (3) In this paragraph a “deproscription order” means an order under section 3(3)(b) or (8) of the Terrorism Act 2000.

Application of money forfeited under account forfeiture order

- 10Z6 (1) Money forfeited by an order under paragraph 10Z2, and any interest accrued on it whilst in the account referred to in sub-paragraph (7)(a) of that paragraph—
- (a) if forfeited by a magistrates’ court, is to be paid into the Consolidated Fund, and
 - (b) if forfeited by the sheriff, is to be paid into the Scottish Consolidated Fund.

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- (2) But it is not to be paid in—
- (a) before the end of the period within which an appeal under paragraph 10Z4 may be made, or
 - (b) if a person appeals under that paragraph, before the appeal is determined or otherwise disposed of.

Compensation

- 10Z7 (1) This paragraph applies if—
- (a) an account freezing order is made, and
 - (b) none of the money held in the account to which the order applies is forfeited in pursuance of an account forfeiture notice or by an order under paragraph 10Z2.
- (2) Where this paragraph applies a person by or for whom the account to which the account freezing order applies is operated may make an application to the relevant court for compensation.
- (3) If the relevant court is satisfied that the applicant has suffered loss as a result of the making of the account freezing order and that the circumstances are exceptional, the relevant court may order compensation to be paid to the applicant.
- (4) The amount of compensation to be paid is the amount the relevant court thinks reasonable, having regard to the loss suffered and any other relevant circumstances.
- (5) If the account freezing order was applied for by a constable, the compensation is to be paid as follows—
- (a) in the case of a constable of a police force in England and Wales, it is to be paid out of the police fund from which the expenses of the police force are met;
 - (b) in the case of a constable of the Police Service of Scotland, it is to be paid by the Scottish Police Authority;
 - (c) in the case of a police officer within the meaning of the Police (Northern Ireland) Act 2000, it is to be paid out of money provided by the Chief Constable of the Police Service of Northern Ireland.
- (6) If the account freezing order was applied for by a counter-terrorism financial investigator, the compensation is to be paid as follows—
- (a) in the case of an investigator who was—
 - (i) a member of the civilian staff of a police force (including the metropolitan police force), within the meaning of Part 1 of the Police Reform and Social Responsibility Act 2011, or
 - (ii) a member of staff of the City of London police force, it is to be paid out of the police fund from which the expenses of the police force are met;
 - (b) in the case of an investigator who was a member of staff of the Police Service of Northern Ireland, it is to be paid out of

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money provided by the Chief Constable of the Police Service of Northern Ireland.”

- 3 (1) Paragraph 19 (general interpretation) is amended as follows.
- (2) In sub-paragraph (1), at the appropriate places insert—
- ““account forfeiture notice” (in Part 4B) has the meaning given by paragraph 10W(3),”;
 - ““account freezing order” (in Part 4B) has the meaning given by paragraph 10Q(4)(a),”;
 - ““bank” (in Part 4B) has the meaning given by paragraph 10R,”;
 - ““building society” (in Part 4B) has the meaning given by paragraph 10Q(7),”;
 - ““enforcement officer” (in Part 4B) has the meaning given by paragraph 10Q(7),”;
 - ““relevant court” (in Part 4B) has the meaning given by paragraph 10Q(7),”;
 - ““senior officer” (in Part 4B) has the meaning given by paragraph 10Q(7),”.
- (3) After sub-paragraph (6) insert—
- “(7) References (in Part 4B) to an account being operated by or for a person are to be read in accordance with paragraph 10Q(4)(b).”