

SCHEDULE 5

ENFORCEMENT

Forfeiture: Scotland

5.—(1) In Scotland a sheriff may make an order for forfeiture of any vessel or relevant assembly in relation to which there has been a contravention of any provision of these Regulations—

- (a) on an application by the procurator-fiscal made in the manner specified in section 310 of the Criminal Procedure (Scotland) Act 1975(1); or
- (b) where a person is convicted of any offence in respect of any such contravention, in addition to any other penalty which the sheriff may impose.

(2) The procurator-fiscal making an application under sub-paragraph (1)(a) above shall serve on any person appearing to him to be the owner of, or otherwise to have an interest in, the vessel or relevant assembly to which the application relates a copy of the application, together with a notice giving him the opportunity to appear at the hearing of the application to show cause why the vessel or relevant assembly as the case may be should not be forfeited.

(3) Service under sub-paragraph (2) above shall be carried out, and such service may be proved, in the manner specified for citation of an accused in summary proceedings under the Criminal Procedure (Scotland) Act 1975.

(4) Any person upon whom a notice is served under sub-paragraph (2) above and any other person claiming to be the owner of, or otherwise to have an interest in, the vessel or relevant assembly to which an application under this paragraph relates shall be entitled to appear at the hearing of the application to show cause why the vessel or relevant assembly as the case may be should not be forfeited.

(5) The sheriff shall not make an order following an application under sub-paragraph (1)(a) above—

- (a) if any person on whom notice is served under sub-paragraph (2) above does not appear, unless service of the notice on that person is proved; or
- (b) if no notice under sub-paragraph (2) above has been served, unless the court is satisfied that in the circumstances it was reasonable not to serve notice on any person.

(6) The sheriff shall make an order under this paragraph only if he is satisfied that there has been a contravention in relation to the vessel or relevant assembly of a provision of these Regulations.

(7) For the avoidance of doubt it is declared that the sheriff may infer for the purposes of this paragraph that there has been a contravention in relation to any vessels or relevant assemblies of any provision of these Regulations if he is satisfied that any such provision has been contravened in relation to a vessel or relevant assembly which is representative of those vessels or relevant assemblies as the case may be (whether by reason of being of the same design or part of the same consignment or batch or otherwise).

(8) Where an order for the forfeiture of any vessel or relevant assembly is made following an application by the procurator-fiscal under sub-paragraph (1)(a) above, any person who appeared, or was entitled to appear, to show cause why it should not be forfeited may, within twenty-one days of the making of the order, appeal to the High Court by Bill of Suspension on the ground of an alleged miscarriage of justice; and section 452(4)(a) to (e) of the Criminal Procedure (Scotland) Act 1975(2) shall apply to an appeal under this sub-paragraph as it applies to a stated case under Part II of that Act.

(9) An order following an application under sub-paragraph (1)(a) above shall not take effect—

(1) 1975 c. 21. section 310 was amended by paragraph 53 of Schedule 7, and Schedule 8, to the Criminal Justice (Scotland) Act 1980 (c. 62); there are extensions of section 310 not relevant to these Regulations.

(2) A new section 452 was substituted by paragraph 11 of Schedule 3 to 1980 c. 62.

Status: This is the original version (as it was originally made).

- (a) until the end of the period of twenty-one days beginning with the day after the day on which the order is made; or
 - (b) if an appeal is made under sub-paragraph (8) above within that period, until the appeal is determined or abandoned.
- (10) An order under sub-paragraph (1)(b) shall not take effect–
- (a) until the end of the period within which an appeal against the order could be brought under the Criminal Procedure (Scotland) Act 1975; or
 - (b) if an appeal is made within that period, until the appeal is determined or abandoned.
- (11) Subject to sub-paragraph (12) below, a vessel or relevant assembly forfeited under this paragraph shall be destroyed in accordance with such directions as the sheriff may give.
- (12) If he thinks fit, the sheriff may direct the vessel or relevant assembly to be released to such person as he may specify, on condition that that person does not supply it to any person otherwise than–
- (a) to a person who carries on a business of buying vessels or relevant assemblies of the same description as it and repairing or reconditioning them; or
 - (b) as scrap (that is to say, for the value of materials included in the vessel or relevant assembly rather than for the value of the vessel or relevant assembly itself).