

SCHEDULES

SCHEDULE 2

FORFEITURE ORDERS

PART 1

TERRITORY ORDERS

Interpretation

1. In this Schedule—

“forfeiture order” means an order made by a court under article 15, and

“forfeited property” means the money or other property to which a forfeiture order applies.

Implementation of forfeiture orders

2.—(1) Where a court makes a forfeiture order it may make such other provision as appears to it to be necessary for giving effect to the order, and in particular it may—

- (a) require any of the forfeited property to be paid or handed over to the proper officer or to a constable designated for the purpose by the chief officer of the police force of the Territory;
- (b) direct any of the forfeited property other than money or land to be sold or otherwise disposed of in such manner as the court may direct and the proceeds (if any) to be paid to the proper officer;
- (c) appoint a receiver to take possession, subject to such conditions and exceptions as may be specified by the court, of any of the forfeited property, to realise it in such manner as the court may direct and to pay the proceeds to the proper officer;
- (d) direct a specified part of any forfeited money, or of the proceeds of the sale, disposal or realisation of any forfeited property, to be paid by the proper officer to a specified person falling within article 15(7).

(2) A forfeiture order shall not come into force until there is no further possibility of it being varied or set aside on appeal (disregarding any power of a court to grant leave to appeal out of time).

(3) In sub-paragraph (1)(b) and (d) a reference to the proceeds of the sale, disposal or realisation of property is a reference to the proceeds after deduction of the costs of sale, disposal or realisation.

3.—(1) A receiver appointed under paragraph 2 shall be entitled to be paid his remuneration and expenses out of the proceeds of the property realised by the receiver and paid to the proper officer under paragraph 2(1)(c).

(2) If and so far as those proceeds are insufficient, the receiver shall be entitled to be paid his remuneration and expenses out of the funds of the government of the Territory.

(3) A receiver appointed under paragraph 2 shall not be liable to any person in respect of any loss or damage resulting from action—

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- (a) which he takes in relation to property which is not forfeited property, but which he reasonably believes to be forfeited property,
 - (b) which he would be entitled to take if the property were forfeited property, and
 - (c) which he reasonably believes that he is entitled to take because of his belief that the property is forfeited property.
- (4) Sub-paragraph (3) does not apply in so far as the loss or damage is caused by the receiver's negligence.

4.—(1) In paragraphs 2 and 3 “the proper officer” means the person holding or acting in the office (however styled) of clerk to the court by which the forfeiture order was made.

(2) The proper officer shall issue a certificate in respect of a forfeiture order if an application is made by—

- (a) the prosecutor in the proceedings in which the forfeiture order was made,
- (b) the defendant in those proceedings, or
- (c) a person whom the court heard under article 15(7) before making the order.

(3) The certificate shall state the extent (if any) to which, at the date of the certificate, effect has been given to the forfeiture order.

Restraint orders

5.—(1) The Supreme Court may make a restraint order under this paragraph where—

- (a) proceedings have been instituted for an offence under any of articles 6 to 9,
- (b) the proceedings have not been concluded,
- (c) an application for a restraint order is made to the Supreme Court by the prosecutor, and
- (d) a forfeiture order has been made, or it appears to the Supreme Court that a forfeiture order may be made, in the proceedings for the offence.

(2) The Supreme Court may also make a restraint order under this paragraph where—

- (a) a criminal investigation has been started with regard to an offence under any of articles 6 to 9,
- (b) an application for a restraint order is made to the Supreme Court by a person who the Supreme Court is satisfied will have the conduct of any proceedings for the offence, and
- (c) it appears to the Supreme Court that a forfeiture order may be made in any proceedings for the offence.

(3) A restraint order prohibits a person to whom notice of it is given, subject to any conditions and exceptions specified in the order, from dealing with property in respect of which a forfeiture order has been or could be made in any proceedings referred to in sub-paragraph (1) or (2).

(4) An application for a restraint order may be made ex parte to a judge in Chambers.

(5) In this paragraph a reference to dealing with property includes a reference to removing the property from the Territory.

(6) In this paragraph “criminal investigation” means an investigation which police officers or others have a duty to conduct with a view to it being ascertained whether a person should be charged with an offence.

6.—(1) A restraint order shall provide for notice of it to be given to any person affected by the order.

(2) A restraint order may be discharged or varied by the Supreme Court on the application of a person affected by it.

(3) A restraint order made under paragraph 5(1) shall in particular be discharged on an application under sub-paragraph (2) if the proceedings for the offence have been concluded.

(4) A restraint order made under paragraph 5(2) shall in particular be discharged on an application under sub-paragraph (2)—

(a) if no proceedings in respect of offences under any of articles 6 to 9 are instituted within such time as the Supreme Court considers reasonable, or

(b) if all proceedings in respect of offences under any of articles 6 to 9 have been concluded.

7.—(1) A constable may seize any property subject to a restraint order for the purpose of preventing it from being removed from the Territory.

(2) Property seized under this paragraph shall be dealt with in accordance with the Supreme Court's directions.

8.—(1) Any provision of any law in force in the Territory with respect to land charges or land registration—

(a) shall apply in relation to restraint orders as they apply in relation to orders affecting land made by the court for the purpose of enforcing judgments or recognizances, and

(b) shall apply in relation to applications for restraint orders as they apply in relation to other pending land actions.

(2) Where a restraint order is made under paragraph 5(1) or an application for such an order is made, the prosecutor in the proceedings for the offence shall be treated for the purposes of any provision relating to inhibitions contained in any law in force in the Territory with respect to land registration as a person interested in respect of any registered land to which the restraint order or the application for the restraint order relates.

(3) Where a restraint order is made under paragraph 5(2) or an application for such an order is made, the person who the Supreme Court is satisfied will have the conduct of any proceedings for an offence under any of articles 6 to 9 shall be treated for the purposes of any such provision as is referred to in sub-paragraph (2) as a person interested in respect of any registered land to which the restraint order or the application for a restraint order relates.

Compensation

9.—(1) This paragraph applies where a restraint order is discharged under paragraph 6(4)(a).

(2) This paragraph also applies where a forfeiture order or a restraint order is made in or in relation to proceedings for an offence under any of articles 6 to 9 which—

(a) do not result in conviction for an offence under any of those articles,

(b) result in conviction for an offence under any of those articles in respect of which the person convicted is subsequently pardoned by Her Majesty, or

(c) result in conviction for an offence under any of those articles which is subsequently quashed.

(3) A person who has an interest in any property which was subject to the order may apply to the Supreme Court for compensation.

(4) The Supreme Court may order compensation to be paid to the applicant if satisfied—

(a) that there was a serious default on the part of a person concerned in the investigation or prosecution of the offence,

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- (b) that the person concerned was or was acting as a member of the police force of the Territory or was or was acting under the authority of the Attorney General or the Director of Public Prosecutions of the Territory,
 - (c) that the applicant has suffered loss in consequence of anything done in relation to the property by or in pursuance of the forfeiture order or restraint order, and
 - (d) that, having regard to all the circumstances, it is appropriate to order compensation to be paid.
- (5) The Supreme Court shall not order compensation to be paid where it appears to it that proceedings for the offence would have been instituted even if the serious default had not occurred.
- (6) Compensation payable under this paragraph shall be paid out of the funds of the government of the Territory.

Proceedings for an offence: timing

- 10.**—(1) For the purpose of this Part of this Schedule, proceedings for an offence are instituted—
- (a) when a summons or warrant is issued, or a complaint is laid, in respect of the offence;
 - (b) when a person is charged with the offence after being taken into custody without a warrant; or
 - (c) when a bill of indictment charging a person with the offence is preferred.
- (2) Where the application of sub-paragraph (1) would result in there being more than one time for the institution of proceedings they shall be taken to be instituted at the earliest of those times.
- (3) For the purposes of this Part of this Schedule proceedings are concluded—
- (a) when a forfeiture order has been made in those proceedings and effect has been given to it in respect of all the forfeited property, or
 - (b) when no forfeiture order has been made in those proceedings and there is no further possibility of one being made as a result of an appeal (disregarding any power of a court to grant leave to appeal out of time).