

## SCHEDULES

### SCHEDULE 4

#### FORFEITURE ORDERS

#### PART II

#### SCOTLAND

##### *Compensation*

- 23 (1) This paragraph applies where a restraint order is recalled under paragraph 19(3)(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 sections 15 to 18 which—
- (a) do not result in conviction for an offence under any of those sections,
  - (b) result in conviction for an offence under any of those sections 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 sections which is subsequently quashed.
- (3) A person who had an interest in any property which was subject to the order may apply to the Court of Session for compensation.
- (4) The Court of Session may order compensation to be paid to the applicant if it is satisfied—
- (a) that there was a serious default on the part of a person concerned in the investigation or prosecution of the offence,
  - (b) that the person in default was a constable of a police force or a constable acting with the powers of such a constable, or was a procurator fiscal or was acting on behalf of the Lord Advocate,
  - (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 the restraint order, and
  - (d) having regard to all the circumstances, it is appropriate to order compensation to be paid.
- (5) The Court of Session shall not order compensation to be paid where it appears to it that the 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—
- (a) where the person in default was a constable of a police force, out of the police fund out of which the expenses of that police force are met;

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*Status: This is the original version (as it was originally enacted).*

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- (b) where the person in default was a constable other than is mentioned in paragraph (a) above, but with the powers of such a constable, by the body under whose authority he acts; and
  - (c) where the person in default was a procurator fiscal or was acting on behalf of the Lord Advocate, by the Lord Advocate.
- (7) This paragraph is without prejudice to any right which may otherwise exist to institute proceedings in respect of delictual liability disclosed by such circumstances as are mentioned in paragraphs (a) to (c) of sub-paragraph (2).