

SCHEDULES

SCHEDULE 4

FORFEITURE ORDERS

PART II

SCOTLAND

Implementation of forfeiture orders

- 15 In this Part of this Schedule—
- “forfeiture order” means an order made by a court in Scotland under section 23, and
- “forfeited property” means the money or other property to which a forfeiture order applies.
- 16 (1) Where a court in Scotland 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) 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;
 - (b) appoint an administrator to take possession, subject to such conditions and exceptions as may be specified by the court, of any of the forfeited property and to realise it in such manner as the court may direct;
 - (c) 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 to a specified person falling within section 23(7).
- (2) A forfeiture order shall not come into force so long as an appeal is pending against the order or against the conviction on which it was made; and for this purpose where an appeal is competent but has not been brought it shall be treated as pending until the expiry of a period of fourteen days from the date when the order was made.
- (3) Any balance remaining after making any payment required under sub-paragraph (1) (c) or paragraph 17 shall be treated for the purposes of section 211(5) of the Criminal Procedure (Scotland) Act 1995 (fines payable to the Treasury) as if it were a fine imposed in the High Court of Justiciary.
- (4) The clerk of court shall, on the application of—
- (a) the prosecutor in the proceedings in which a forfeiture order is made,
 - (b) the accused in those proceedings, or
 - (c) a person whom the court heard under section 23(7) before making the order,
- certify in writing the extent (if any) to which, at the date of the certificate, effect has been given to the order in respect of the money or other property to which it applies.

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- (5) In sub-paragraph (1) references to the proceeds of the sale, disposal or realisation of property are references to the proceeds after deduction of the costs of sale, disposal or realisation.

Administrators

- 17 (1) The Court of Session may by rules of court prescribe the powers and duties of an administrator appointed under paragraph 16.
- (2) An administrator appointed under paragraph 16 shall be entitled to be paid his remuneration and expenses out of the proceeds of the property realised by him or, if and so far as those proceeds are insufficient, by the Lord Advocate.
- (3) The accountant of court shall supervise an administrator appointed under paragraph 16 in the exercise of the powers conferred, and discharge of the duties imposed, on him under or by virtue of that paragraph.
- (4) An administrator appointed under paragraph 16 shall not be liable to any person in respect of any loss or damage resulting from action—
- (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 takes reasonably believing that he is entitled to take because of his belief that the property is forfeited property.
- (5) Sub-paragraph (4) does not apply in so far as the loss or damage is caused by the administrator's negligence.

Restraint orders

- 18 (1) The Court of Session, on an application made by the Lord Advocate, may make a restraint order under this paragraph where—
- (a) proceedings have been instituted in Scotland for an offence under any of sections 15 to 18,
 - (b) the proceedings have not been concluded, and
 - (c) a forfeiture order has been made, or it appears to the court that a forfeiture order may be made, in the proceedings for the offence.
- (2) The Court of Session may also, on such an application, make a restraint order under this paragraph where—
- (a) it is satisfied that a person is to be prosecuted in Scotland for an offence under any of sections 15 to 18, and
 - (b) it appears to the Court of Session that a forfeiture order may be made in 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 the proceedings referred to in sub-paragraph (1) or (2).
- (4) An application for a restraint order may be made ex parte in chambers.

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- (5) For the purposes of this paragraph, dealing with property includes removing the property from Great Britain.
- 19 (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 recalled or varied by the Court of Session on the application of any person affected by it.
- (3) A restraint order shall be recalled—
- (a) in the case of an order made under paragraph 18(2), if the proceedings in respect of the offence are not instituted within such time as the Court of Session considers reasonable, or
 - (b) in the case of an order made under paragraph 18(1) or (2), when proceedings for the offence are concluded.
- (4) When proceedings for the offence are concluded the Lord Advocate shall forthwith apply to the Court for recall of the order.
- 20 (1) A constable may seize any property subject to a restraint order for the purpose of preventing it from being removed from Great Britain.
- (2) Property seized under this paragraph shall be dealt with in accordance with the Court's directions.
- 21 (1) On the application of the Lord Advocate, the Court of Session may, in respect of heritable property in Scotland affected by a restraint order (whether such property generally or particular such property) grant warrant for inhibition against any person interdicted by the order.
- (2) Subject to this Part of this Schedule, a warrant under sub-paragraph (1)—
- (a) shall have effect as if granted on the dependence of an action for debt at the instance of the Lord Advocate against the person and may be executed, recalled, loosed or restricted accordingly;
 - (b) shall have the effect of letters of inhibition and shall forthwith be registered by the Lord Advocate in the register of inhibitions and adjudications.
- (3) Section 155 of the Titles to Land Consolidation (Scotland) Act 1868 (effective date of inhibition) shall apply in relation to an inhibition for which warrant has been granted under sub-paragraph (2)(a) as that section applies to an inhibition by separate letters or contained in a summons.
- (4) The execution of an inhibition under sub-paragraph (2) in respect of property shall not prejudice the exercise of an administrator's powers under or for the purposes of this Part of this Schedule in respect of that property.
- (5) No inhibition executed under sub-paragraph (2) shall have effect once, or in so far as, the restraint order affecting the property in respect of which the warrant for the inhibition has been granted has ceased to have effect in respect of that property, and the Lord Advocate shall—
- (a) apply for the recall, or as the case may be restriction, of the inhibition or arrestment accordingly; and
 - (b) ensure that recall, or restriction, of an inhibition on such application is reflected in the register of inhibitions and adjudications.

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- 22 (1) On the application of the Lord Advocate, the court may, in respect of moveable property affected by a restraint order (whether such property generally or particular such property), grant warrant for arrestment if the property would be arrestable if the person entitled to it were a debtor.
- (2) A warrant under sub-paragraph (1) shall have effect as if granted on the dependence of an action for debt at the instance of the Lord Advocate against the person and may be executed, recalled, loosed or restricted accordingly.
- (3) The execution of an arrestment under sub-paragraph (2) in respect of property shall not prejudice the exercise of an administrator's powers under or for the purposes of this Part of this Schedule in respect of that property.
- (4) No arrestment executed under sub-paragraph (2) shall have effect once, or in so far as, the restraint order affecting the property in respect of which the warrant for such arrestment has been granted has ceased to have effect in respect of that property; and the Lord Advocate shall apply to the court for an order recalling, or as the case may be, restricting the arrestment accordingly.

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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- (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).
- 24 (1) This paragraph applies where—
- (a) 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, and
 - (b) the proceedings result in a conviction which is subsequently quashed on an appeal under section 7(2) or (5) as applied by section 8(1).
- (2) A person who had an interest in any property which was subject to the order may apply to the Court of Session for compensation.
- (3) The Court of Session may order compensation to be paid to the applicant if satisfied—
- (a) 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
 - (b) that, having regard to all the circumstances, it is appropriate to order compensation to be paid.
- (4) Compensation payable under this paragraph shall be paid by the Secretary of State.

Proceedings for an offence: timing

- 25 (1) For the purposes of this Part of this Schedule proceedings for an offence are instituted—
- (a) when a person is arrested for the offence,
 - (b) when a warrant to arrest or cite a person is granted,
 - (c) when an indictment or complaint is served on a person in respect of the offence.
- (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 money or other property to which it applies, or
 - (b) when (disregarding any power of a court to extend the period within which an appeal may be made) there is no further possibility of a forfeiture order being made in the proceedings.

Enforcement of orders made elsewhere in the British Islands

- 26 In the following provisions of this Part of this Schedule—

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“an England and Wales order” means—

- (a) an order made in England and Wales under section 23 (“an England and Wales forfeiture order”),
- (b) an order made under paragraph 5 (“an England and Wales restraint order”), or
- (c) an order made under any other provision of Part I of this Schedule in relation to an England and Wales forfeiture or restraint order;

“a Northern Ireland order” means—

- (a) an order made in Northern Ireland under section 23 (“a Northern Ireland forfeiture order”),
- (b) an order made under paragraph 33 (“a Northern Ireland restraint order”), or
- (c) an order made under any other provision of Part III of this Schedule in relation to a Northern Ireland forfeiture or restraint order;

“an Islands order” means an order made in any of the Islands under a provision of the law of that Island corresponding to—

- (a) section 23 (“an Islands forfeiture order”),
- (b) paragraph 18 (“an Islands restraint order”), or
- (c) any other provision of this Part of this Schedule.

- 27 (1) Subject to the provisions of this paragraph, an England and Wales order, Northern Ireland order or Islands order shall have effect in the law of Scotland.
- (2) But such an order shall be enforced in Scotland only in accordance with—
- (a) the provisions of this paragraph, and
 - (b) any provision made by rules of court as to the manner in which, and the conditions subject to which, such orders are to be enforced there.
- (3) On an application made to it in accordance with rules of court for registration of an England and Wales order, Northern Ireland order or Islands order, the Court of Session shall direct that the order shall, in accordance with such rules, be registered in that court.
- (4) Rules of court shall also make provision—
- (a) for cancelling or varying the registration of an England and Wales, Northern Ireland or Islands forfeiture order when effect has been given to it, whether in Scotland or elsewhere, in respect of all or, as the case may be, part of the money or other property to which the order applies,
 - (b) for cancelling or varying the registration of an England and Wales, Northern Ireland or Islands restraint order which has been discharged or varied by the court by which it was made.
- (5) If an England and Wales, Northern Ireland or Islands forfeiture order is registered under this paragraph the Court of Session shall have, in relation to that order, the same powers as a court has under paragraph 16(1) above in relation to a forfeiture order made by it and paragraphs 16(3) to (5) and 17 apply accordingly.
- (6) If an England and Wales, Northern Ireland or Islands forfeiture order is registered under this paragraph—
- (a) paragraphs 20 and 21 above shall apply as they apply to a restraint order, and
 - (b) the Court of Session shall have the like power to make an order under section 1 of the Administration of Justice (Scotland) Act 1972 (extended

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power to order inspection of documents, &c.) in relation to proceedings brought or likely to be brought for an England and Wales, Northern Ireland or Islands restraint order as if those proceedings had been brought or were likely to be brought in the Court of Session.

- (7) In addition, if an England and Wales order, Northern Ireland order or Islands order is registered under this paragraph—
- (a) the Court of Session shall have, in relation to its enforcement, the same power,
 - (b) proceedings for or with respect to its enforcement may be taken, and
 - (c) proceedings for or with respect to any contravention of such an order (whether before or after such registration) may be taken,
- as if the order had originally been made in the Court of Session.
- (8) The Court of Session may also make such orders or do otherwise as seems to it appropriate for the purpose of—
- (a) assisting the achievement in Scotland of the purposes of an England and Wales order, Northern Ireland order or Islands order, or
 - (b) assisting any receiver or other person directed by any such order to sell or otherwise dispose of property.
- (9) The following documents shall, in Scotland, be sufficient evidence of their contents—
- (a) a document purporting to be a copy of an England and Wales order, Northern Ireland order or Islands order and to be certified as such by a proper officer of the court by which it was made, and
 - (b) a document purporting to be a certificate for purposes corresponding to those of paragraph 16(4) and to be certified by a proper officer of the court concerned.
- (10) Nothing in any England and Wales order, Northern Ireland order or Islands order prejudices any enactment or rule of law in respect of the recording of deeds relating to heritable property in Scotland or the registration of interests in such property.

Enforcement of orders made in designated countries

- 28 (1) Her Majesty may by Order in Council make provision for the purpose of enabling the enforcement in Scotland of external orders.
- (2) An “external order” means an order—
- (a) which is made in a country or territory designated for the purposes of this paragraph by the Order in Council, and
 - (b) which makes relevant provision.
- (3) “Relevant provision” means—
- (a) provision for the forfeiture of terrorist property (“an external forfeiture order”); or
 - (b) provision prohibiting dealing with property which is subject to an external forfeiture order or in respect of which such an order could be made in proceedings which have been or are to be instituted in the designated country or territory (“an external restraint order”).
- (4) An Order in Council under this paragraph may, in particular, include provision—

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- (a) which, for the purpose of facilitating the enforcement of any external order that may be made, has effect at times before there is an external order to be enforced,
 - (b) for matters corresponding to those for which provision is made by, or can be made under, paragraph 27(1) to (8) in relation to the orders to which that paragraph applies, and
 - (c) for the proof of any matter relevant for the purposes of anything falling to be done in pursuance of the Order in Council.
- (5) An Order in Council under this paragraph may also make provision with respect to anything falling to be done on behalf of the United Kingdom in a designated country or territory in relation to proceedings in that country or territory for or in connection with the making of an external order.
- (6) An Order under this paragraph—
- (a) may make different provision for different cases, and
 - (b) shall not be made unless a draft of it has been laid before and approved by resolution of each House of Parliament.