

SCHEDULES

SCHEDULE 1

Section 1

FORFEITURE OF TERRORIST CASH

PART 1

INTRODUCTORY

Terrorist cash

- 1 (1) This Schedule applies to cash (“terrorist cash”) which—
 - (a) is within subsection (1)(a) or (b) of section 1, or
 - (b) is property earmarked as terrorist property.
- (2) “Cash” means—
 - (a) coins and notes in any currency,
 - (b) postal orders,
 - (c) cheques of any kind, including travellers' cheques,
 - (d) bankers' drafts,
 - (e) bearer bonds and bearer shares,found at any place in the United Kingdom.
- (3) Cash also includes any kind of monetary instrument which is found at any place in the United Kingdom, if the instrument is specified by the Secretary of State by order.
- (4) The power to make an order under sub-paragraph (3) is exercisable by statutory instrument, which is subject to annulment in pursuance of a resolution of either House of Parliament.

PART 2

SEIZURE AND DETENTION

Seizure of cash

- 2 (1) An authorised officer may seize any cash if he has reasonable grounds for suspecting that it is terrorist cash.
- (2) An authorised officer may also seize cash part of which he has reasonable grounds for suspecting to be terrorist cash if it is not reasonably practicable to seize only that part.

Status: This is the original version (as it was originally enacted).

Detention of seized cash

- 3 (1) While the authorised officer continues to have reasonable grounds for his suspicion, cash seized under this Schedule may be detained initially for a period of 48 hours.
- (2) The period for which the cash or any part of it may be detained may be extended by an order made by a magistrates' court or (in Scotland) the sheriff; but the order may not authorise the detention of any of the cash—
- (a) beyond the end of the period of three months beginning with the date of the order, and
 - (b) in the case of any further order under this paragraph, beyond the end of the period of two years beginning with the date of the first order.
- (3) A justice of the peace may also exercise the power of a magistrates' court to make the first order under sub-paragraph (2) extending the period.
- (4) An order under sub-paragraph (2) must provide for notice to be given to persons affected by it.
- (5) An application for an order under sub-paragraph (2)—
- (a) in relation to England and Wales and Northern Ireland, may be made by the Commissioners of Customs and Excise or an authorised officer,
 - (b) in relation to Scotland, may be made by a procurator fiscal,
- and the court, sheriff or justice may make the order if satisfied, in relation to any cash to be further detained, that one of the following conditions is met.
- (6) The first condition is that there are reasonable grounds for suspecting that the cash is intended to be used for the purposes of terrorism and that either—
- (a) its continued detention is justified while its intended use is further investigated or consideration is given to bringing (in the United Kingdom or elsewhere) proceedings against any person for an offence with which the cash is connected, or
 - (b) proceedings against any person for an offence with which the cash is connected have been started and have not been concluded.
- (7) The second condition is that there are reasonable grounds for suspecting that the cash consists of resources of an organisation which is a proscribed organisation and that either—
- (a) its continued detention is justified while investigation is made into whether or not it consists of such resources or consideration is given to bringing (in the United Kingdom or elsewhere) proceedings against any person for an offence with which the cash is connected, or
 - (b) proceedings against any person for an offence with which the cash is connected have been started and have not been concluded.
- (8) The third condition is that there are reasonable grounds for suspecting that the cash is property earmarked as terrorist property and that either—
- (a) its continued detention is justified while its derivation is further investigated or consideration is given to bringing (in the United Kingdom or elsewhere) proceedings against any person for an offence with which the cash is connected, or
 - (b) proceedings against any person for an offence with which the cash is connected have been started and have not been concluded.

Payment of detained cash into an account

- 4
- (1) If cash is detained under this Schedule for more than 48 hours, it is to be held in an interest-bearing account and the interest accruing on it is to be added to it on its forfeiture or release.
 - (2) In the case of cash seized under paragraph 2(2), the authorised officer must, on paying it into the account, release so much of the cash then held in the account as is not attributable to terrorist cash.
 - (3) Sub-paragraph (1) does not apply if the cash is required as evidence of an offence or evidence in proceedings under this Schedule.

Release of detained cash

- 5
- (1) This paragraph applies while any cash is detained under this Schedule.
 - (2) A magistrates' court or (in Scotland) the sheriff may direct the release of the whole or any part of the cash if satisfied, on an application by the person from whom it was seized, that the conditions in paragraph 3 for the detention of cash are no longer met in relation to the cash to be released.
 - (3) A authorised officer or (in Scotland) a procurator fiscal may, after notifying the magistrates' court, sheriff or justice under whose order cash is being detained, release the whole or any part of it if satisfied that the detention of the cash to be released is no longer justified.
 - (4) But cash is not to be released—
 - (a) if an application for its forfeiture under paragraph 6, or for its release under paragraph 9, is made, until any proceedings in pursuance of the application (including any proceedings on appeal) are concluded,
 - (b) if (in the United Kingdom or elsewhere) proceedings are started against any person for an offence with which the cash is connected, until the proceedings are concluded.

PART 3

FORFEITURE

Forfeiture

- 6
- (1) While cash is detained under this Schedule, an application for the forfeiture of the whole or any part of it may be made—
 - (a) to a magistrates' court by the Commissioners of Customs and Excise or an authorised officer,
 - (b) (in Scotland) to the sheriff by the Scottish Ministers.
 - (2) The court or sheriff may order the forfeiture of the cash or any part of it if satisfied that the cash or part is terrorist cash.
 - (3) In the case of property earmarked as terrorist property which belongs to joint tenants one of whom is an excepted joint owner, the order may not apply to so much of it as the court or sheriff thinks is attributable to the excepted joint owner's share.

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- (4) An excepted joint owner is a joint tenant who obtained the property in circumstances in which it would not (as against him) be earmarked; and references to his share of the earmarked property are to so much of the property as would have been his if the joint tenancy had been severed.

Appeal against forfeiture

- 7 (1) Any party to proceedings in which an order is made under paragraph 6 (“a forfeiture order”) who is aggrieved by the order may appeal—
- (a) in relation to England and Wales, to the Crown Court,
 - (b) in relation to Scotland, to the Court of Session,
 - (c) in relation to Northern Ireland, to a county court.
- (2) An appeal under sub-paragraph (1) must be made—
- (a) within the period of 30 days beginning with the date on which the order is made, or
 - (b) if sub-paragraph (6) applies, before the end of the period of 30 days beginning with the date on which the order under section 3(3)(b) of the Terrorism Act 2000 (c. 11) referred to in that sub-paragraph comes into force.
- (3) The appeal is to be by way of a rehearing.
- (4) The court hearing the appeal may make any order it thinks appropriate.
- (5) If the court upholds the appeal, it may order the release of the cash.
- (6) Where a successful application for a forfeiture order relies (wholly or partly) on the fact that an organisation is proscribed, this sub-paragraph applies if—
- (a) a deproscription appeal under section 5 of the Terrorism Act 2000 is allowed in respect of the organisation,
 - (b) an order is made under section 3(3)(b) of that Act in respect of the organisation in accordance with an order of the Proscribed Organisations Appeal Commission under section 5(4) of that Act (and, if the order is made in reliance on section 123(5) of that Act, a resolution is passed by each House of Parliament under section 123(5)(b)), and
 - (c) the forfeited cash was seized under this Schedule on or after the date of the refusal to deproscribe against which the appeal under section 5 of that Act was brought.

Application of forfeited cash

- 8 (1) Cash forfeited under this Schedule, and any accrued interest on it—
- (a) if forfeited by a magistrates' court in England and Wales or Northern Ireland, is to be paid into the Consolidated Fund,
 - (b) if forfeited by the sheriff, 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 appeal under paragraph 7 may be made, or
 - (b) if a person appeals under that paragraph, before the appeal is determined or otherwise disposed of.

PART 4

MISCELLANEOUS

Victims

- 9 (1) A person who claims that any cash detained under this Schedule, or any part of it, belongs to him may apply to a magistrates' court or (in Scotland) the sheriff for the cash or part to be released to him.
- (2) The application may be made in the course of proceedings under paragraph 3 or 6 or at any other time.
- (3) If it appears to the court or sheriff concerned that—
- (a) the applicant was deprived of the cash claimed, or of property which it represents, by criminal conduct,
 - (b) the property he was deprived of was not, immediately before he was deprived of it, property obtained by or in return for criminal conduct and nor did it then represent such property, and
 - (c) the cash claimed belongs to him,
- the court or sheriff may order the cash to be released to the applicant.

Compensation

- 10 (1) If no forfeiture order is made in respect of any cash detained under this Schedule, the person to whom the cash belongs or from whom it was seized may make an application to the magistrates' court or (in Scotland) the sheriff for compensation.
- (2) If, for any period after the initial detention of the cash for 48 hours, the cash was not held in an interest-bearing account while detained, the court or sheriff may order an amount of compensation to be paid to the applicant.
- (3) The amount of compensation to be paid under sub-paragraph (2) is the amount the court or sheriff thinks would have been earned in interest in the period in question if the cash had been held in an interest-bearing account.
- (4) If the court or sheriff is satisfied that, taking account of any interest to be paid under this Schedule or any amount to be paid under sub-paragraph (2), the applicant has suffered loss as a result of the detention of the cash and that the circumstances are exceptional, the court or sheriff may order compensation (or additional compensation) to be paid to him .
- (5) The amount of compensation to be paid under sub-paragraph (4) is the amount the court or sheriff thinks reasonable, having regard to the loss suffered and any other relevant circumstances.
- (6) If the cash was seized by a customs officer, the compensation is to be paid by the Commissioners of Customs and Excise.
- (7) If the cash was seized 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,

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- (b) in the case of a constable of a police force in Scotland, it is to be paid by the police authority or joint police board for the police area for which that force is maintained,
 - (c) in the case of a police officer within the meaning of the Police (Northern Ireland) Act 2000 (c. 32), it is to be paid out of money provided by the Chief Constable.
- (8) If the cash was seized by an immigration officer, the compensation is to be paid by the Secretary of State.
- (9) If a forfeiture order is made in respect only of a part of any cash detained under this Schedule, this paragraph has effect in relation to the other part.
- (10) This paragraph does not apply if the court or sheriff makes an order under paragraph 9.

PART 5

PROPERTY EARMARKED AS TERRORIST PROPERTY

Property obtained through terrorism

- 11 (1) A person obtains property through terrorism if he obtains property by or in return for acts of terrorism, or acts carried out for the purposes of terrorism.
- (2) In deciding whether any property was obtained through terrorism—
- (a) it is immaterial whether or not any money, goods or services were provided in order to put the person in question in a position to carry out the acts,
 - (b) it is not necessary to show that the act was of a particular kind if it is shown that the property was obtained through acts of one of a number of kinds, each of which would have been an act of terrorism, or an act carried out for the purposes of terrorism.

Property earmarked as terrorist property

- 12 (1) Property obtained through terrorism is earmarked as terrorist property.
- (2) But if property obtained through terrorism has been disposed of (since it was so obtained), it is earmarked as terrorist property only if it is held by a person into whose hands it may be followed.
- (3) Earmarked property obtained through terrorism may be followed into the hands of a person obtaining it on a disposal by—
- (a) the person who obtained the property through terrorism, or
 - (b) a person into whose hands it may (by virtue of this sub-paragraph) be followed.

Tracing property

- 13 (1) Where property obtained through terrorism (“the original property”) is or has been earmarked as terrorist property, property which represents the original property is also earmarked.

- (2) If a person enters into a transaction by which—
 - (a) he disposes of earmarked property, whether the original property or property which (by virtue of this Part) represents the original property, and
 - (b) he obtains other property in place of it,
the other property represents the original property.
- (3) If a person disposes of earmarked property which represents the original property, the property may be followed into the hands of the person who obtains it (and it continues to represent the original property).

Mixing property

- 14 (1) Sub-paragraph (2) applies if a person's property which is earmarked as terrorist property is mixed with other property (whether his property or another's).
- (2) The portion of the mixed property which is attributable to the property earmarked as terrorist property represents the property obtained through terrorism.
- (3) Property earmarked as terrorist property is mixed with other property if (for example) it is used—
 - (a) to increase funds held in a bank account,
 - (b) in part payment for the acquisition of an asset,
 - (c) for the restoration or improvement of land,
 - (d) by a person holding a leasehold interest in the property to acquire the freehold.

Accruing profits

- 15 (1) This paragraph applies where a person who has property earmarked as terrorist property obtains further property consisting of profits accruing in respect of the earmarked property.
- (2) The further property is to be treated as representing the property obtained through terrorism.

General exceptions

- 16 (1) If—
 - (a) a person disposes of property earmarked as terrorist property, and
 - (b) the person who obtains it on the disposal does so in good faith, for value and without notice that it was earmarked,the property may not be followed into that person's hands and, accordingly, it ceases to be earmarked.
- (2) If—
 - (a) in pursuance of a judgment in civil proceedings (whether in the United Kingdom or elsewhere), the defendant makes a payment to the claimant or the claimant otherwise obtains property from the defendant,
 - (b) the claimant's claim is based on the defendant's criminal conduct, and
 - (c) apart from this sub-paragraph, the sum received, or the property obtained, by the claimant would be earmarked as terrorist property,

the property ceases to be earmarked.

In relation to Scotland, “claimant” and “defendant” are to be read as “pursuer” and “defender”; and, in relation to Northern Ireland, “claimant” is to be read as “plaintiff”.

(3) If—

- (a) a payment is made to a person in pursuance of a compensation order under Article 14 of the Criminal Justice (Northern Ireland) Order 1994 (S.I. 1994/2795 (N.I. 15)), section 249 of the Criminal Procedure (Scotland) Act 1995 (c. 46) or section 130 of the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6), and
- (b) apart from this sub-paragraph, the sum received would be earmarked as terrorist property,

the property ceases to be earmarked.

(4) If—

- (a) a payment is made to a person in pursuance of a restitution order under section 27 of the Theft Act (Northern Ireland) 1969 (c. 16 (NI)) or section 148(2) of the Powers of Criminal Courts (Sentencing) Act 2000 or a person otherwise obtains any property in pursuance of such an order, and
- (b) apart from this sub-paragraph, the sum received, or the property obtained, would be earmarked as terrorist property,

the property ceases to be earmarked.

(5) If—

- (a) in pursuance of an order made by the court under section 382(3) or 383(5) of the Financial Services and Markets Act 2000 (c. 8) (restitution orders), an amount is paid to or distributed among any persons in accordance with the court’s directions, and
- (b) apart from this sub-paragraph, the sum received by them would be earmarked as terrorist property,

the property ceases to be earmarked.

(6) If—

- (a) in pursuance of a requirement of the Financial Services Authority under section 384(5) of the Financial Services and Markets Act 2000 (c. 8) (power of authority to require restitution), an amount is paid to or distributed among any persons, and
- (b) apart from this sub-paragraph, the sum received by them would be earmarked as terrorist property,

the property ceases to be earmarked.

(7) Where—

- (a) a person enters into a transaction to which paragraph 13(2) applies, and
- (b) the disposal is one to which sub-paragraph (1) applies,

this paragraph does not affect the question whether (by virtue of paragraph 13(2)) any property obtained on the transaction in place of the property disposed of is earmarked.

PART 6

INTERPRETATION

Property

- 17 (1) Property is all property wherever situated and includes—
- (a) money,
 - (b) all forms of property, real or personal, heritable or moveable,
 - (c) things in action and other intangible or incorporeal property.
- (2) Any reference to a person's property (whether expressed as a reference to the property he holds or otherwise) is to be read as follows.
- (3) In relation to land, it is a reference to any interest which he holds in the land.
- (4) In relation to property other than land, it is a reference—
- (a) to the property (if it belongs to him), or
 - (b) to any other interest which he holds in the property.

Obtaining and disposing of property

- 18 (1) References to a person disposing of his property include a reference—
- (a) to his disposing of a part of it, or
 - (b) to his granting an interest in it,
- (or to both); and references to the property disposed of are to any property obtained on the disposal.
- (2) If a person grants an interest in property of his which is earmarked as terrorist property, the question whether the interest is also earmarked is to be determined in the same manner as it is on any other disposal of earmarked property.
- (3) A person who makes a payment to another is to be treated as making a disposal of his property to the other, whatever form the payment takes.
- (4) Where a person's property passes to another under a will or intestacy or by operation of law, it is to be treated as disposed of by him to the other.
- (5) A person is only to be treated as having obtained his property for value in a case where he gave unexecuted consideration if the consideration has become executed consideration.

General interpretation

- 19 (1) In this Schedule—
- “authorised officer” means a constable, a customs officer or an immigration officer,
- “cash” has the meaning given by paragraph 1,
- “constable”, in relation to Northern Ireland, means a police officer within the meaning of the Police (Northern Ireland) Act 2000 (c. 32),
- “criminal conduct” means conduct which constitutes an offence in any part of the United Kingdom, or would constitute an offence in any part of the United Kingdom if it occurred there,

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“customs officer” means an officer commissioned by the Commissioners of Customs and Excise under section 6(3) of the Customs and Excise Management Act 1979 (c. 2),

“forfeiture order” has the meaning given by paragraph 7,

“immigration officer” means a person appointed as an immigration officer under paragraph 1 of Schedule 2 to the Immigration Act 1971 (c. 77),

“interest”, in relation to land—

(a) in the case of land in England and Wales or Northern Ireland, means any legal estate and any equitable interest or power,

(b) in the case of land in Scotland, means any estate, interest, servitude or other heritable right in or over land, including a heritable security,

“interest”, in relation to property other than land, includes any right (including a right to possession of the property),

“part”, in relation to property, includes a portion,

“property obtained through terrorism” has the meaning given by paragraph 11,

“property earmarked as terrorist property” is to be read in accordance with Part 5,

“proscribed organisation” has the same meaning as in the Terrorism Act 2000 (c. 11),

“terrorism” has the same meaning as in the Terrorism Act 2000,

“terrorist cash” has the meaning given by paragraph 1,

“value” means market value.

- (2) Paragraphs 17 and 18 and the following provisions apply for the purposes of this Schedule.
- (3) For the purpose of deciding whether or not property was earmarked as terrorist property at any time (including times before commencement), it is to be assumed that this Schedule was in force at that and any other relevant time.
- (4) References to anything done or intended to be done for the purposes of terrorism include anything done or intended to be done for the benefit of a proscribed organisation.
- (5) An organisation’s resources include any cash which is applied or made available, or is to be applied or made available, for use by the organisation.
- (6) Proceedings against any person for an offence are concluded when—
 - (a) the person is convicted or acquitted,
 - (b) the prosecution is discontinued or, in Scotland, the trial diet is deserted simpliciter, or
 - (c) the jury is discharged without a finding.