

SCHEDULES

SCHEDULE 6

Section 104

SEIZURE AND FORFEITURE OF RESTRICTED APPARATUS

Application of Schedule

- 1 (1) This Schedule applies to restricted apparatus seized—
 - (a) in pursuance of a warrant granted under section 97; or
 - (b) in the exercise of the power conferred by section 99(3).
- (2) Apparatus is restricted apparatus for the purposes of this Schedule if custody or control of apparatus of any class or description to which it belongs is for the time being restricted by a restriction order under section 62.

Notice of seizure

- 2 (1) OFCOM must give notice of the seizure of the restricted apparatus to every person who, to their knowledge, was at the time of the seizure the owner or one of the owners of the apparatus.
- (2) The notice must set out the grounds of the seizure.
- (3) Where there is no proper address for the purposes of the service of a notice under sub-paragraph (1) in a manner authorised by section 112, the requirements of that sub-paragraph shall be satisfied by the publication of a notice of the seizure in the London, Edinburgh or Belfast Gazette (according to the part of the United Kingdom where the seizure took place).
- (4) Apparatus may be condemned or taken to have been condemned under this Schedule only if the requirements of this paragraph have been complied with in the case of that apparatus.

Notice of claim

- 3 A person claiming that the restricted apparatus is not liable to forfeiture must give written notice of his claim to OFCOM.
- 4 (1) A notice of claim must be given within one month after the day of the giving of the notice of seizure.
- (2) A notice of claim must specify—
 - (a) the name and address of the claimant; and
 - (b) in the case of a claimant who is outside the United Kingdom, the name and address of a solicitor in the United Kingdom who is authorised to accept service of process and to act on behalf of the claimant.
- (3) Service of process upon a solicitor so specified is to be taken to be proper service upon the claimant.

Status: This is the original version (as it was originally enacted).

Condemnation

- 5 The restricted apparatus is to be taken to have been duly condemned as forfeited if—
- (a) by the end of the period for the giving of a notice of claim in respect of the apparatus, no notice of claim has been given to OFCOM; or
 - (b) a notice of claim is given which does not comply with the requirements of paragraphs 3 and 4.
- 6 (1) Where a notice of claim in respect of the restricted apparatus is duly given in accordance with paragraphs 3 and 4, OFCOM may take proceedings for the condemnation of the apparatus by the court.
- (2) In such proceedings—
- (a) if the court finds that the apparatus was liable to forfeiture at the time of seizure, it must condemn the apparatus as forfeited unless cause is shown why it should not; and
 - (b) if the court finds that the apparatus was not liable to forfeiture at that time, or cause is shown why it should not be forfeited, the court must order the return of the apparatus to the person appearing to the court to be entitled to it.
- (3) If OFCOM decide not to take proceedings for condemnation in a case in which a notice of claim has been so given, they must return the apparatus to the person appearing to them to be the owner of the apparatus, or to one of the persons appearing to them to be the owners of it.
- (4) Apparatus required to be returned in accordance with sub-paragraph (3) must be returned as soon as reasonably practicable after the decision not to take proceedings for condemnation.
- (5) OFCOM's decision whether to take such proceedings must be taken as soon as reasonably practicable after the receipt of the notice of claim.
- 7 Where the restricted apparatus is condemned or taken to have been condemned as forfeited, the forfeiture is to have effect as from the time of the seizure.

Proceedings for condemnation by court

- 8 Proceedings for condemnation are civil proceedings and may be instituted—
- (a) in England or Wales, in the High Court or in a magistrates' court;
 - (b) in Scotland, in the Court of Session or in the sheriff court;
 - (c) in Northern Ireland, in the High Court or in a court of summary jurisdiction.
- 9 Proceedings for the condemnation of restricted apparatus instituted in a magistrates' court in England or Wales, in the sheriff court in Scotland or in a court of summary jurisdiction in Northern Ireland may be so instituted—
- (a) in a court having jurisdiction in a place where an offence under section 66 involving that apparatus was committed;
 - (b) in a court having jurisdiction in proceedings for such an offence;
 - (c) in a court having jurisdiction in the place where the claimant resides or, if the claimant has specified a solicitor under paragraph 4, in the place where that solicitor has his office; or
 - (d) in a court having jurisdiction in the place where that apparatus was seized or to which it was first brought after being seized.

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

- 10 (1) In proceedings for condemnation that are instituted in England and Wales or Northern Ireland, the claimant or his solicitor must make his oath that the seized apparatus was, or was to the best of his knowledge and belief, the property of the claimant at the time of the seizure.
- (2) In proceedings for condemnation instituted in the High Court—
- (a) the court may require the claimant to give such security for the costs of the proceedings as may be determined by the court; and
- (b) the claimant must comply with such a requirement.
- (3) If a requirement of this paragraph is not complied with, the court must give judgment for OFCOM.
- 11 (1) In the case of proceedings for condemnation instituted in a magistrates' court in England or Wales, either party may appeal against the decision of that court to the Crown Court.
- (2) In the case of proceedings for condemnation instituted in a court of summary jurisdiction in Northern Ireland, either party may appeal against the decision of that court to the county court.
- (3) This paragraph does not affect any right to require the statement of a case for the opinion of the High Court.
- 12 Where an appeal has been made (whether by case stated or otherwise) against the decision of the court in proceedings for the condemnation of restricted apparatus, the apparatus is to be left with OFCOM pending the final determination of the matter.

Disposal of unclaimed property

- 13 (1) This paragraph applies where a requirement is imposed by or under this Schedule for apparatus to be returned to a person.
- (2) If the apparatus is still in OFCOM's possession after the end of the period of 12 months beginning with the day after the requirement to return it arose, OFCOM may dispose of it in any manner they think fit.
- (3) OFCOM may exercise their power under this paragraph to dispose of apparatus only if it is not practicable at the time when the power is exercised to dispose of the apparatus by returning it immediately to the person to whom it is required to be returned.

Provisions as to proof

- 14 In proceedings arising out of the seizure of restricted apparatus, the fact, form and manner of the seizure is to be taken, without further evidence and unless the contrary is shown, to have been as set forth in the process.
- 15 In any proceedings, the condemnation by a court of restricted apparatus as forfeited may be proved by the production of—
- (a) the order or certificate of condemnation; or
- (b) a certified copy of the order purporting to be signed by an officer of the court by which the order or certificate was made or granted.

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

Special provisions as to certain claimants

- 16 (1) This paragraph applies for the purposes of—
- (a) a claim to the restricted apparatus; and
 - (b) proceedings for its condemnation.
- (2) Where at the time of the seizure the apparatus is—
- (a) the property of a body corporate,
 - (b) the property of two or more partners, or
 - (c) the property of more than five persons,
- the oath required by paragraph 10 to be taken by the claimant, and any other thing required by this Schedule or by rules of court to be done by the owner of the apparatus, may be done by a person falling within sub-paragraph (3) or by a person authorised to act on his behalf.
- (3) The persons are—
- (a) where the owner is a body corporate, the secretary or some duly authorised officer of that body;
 - (b) where the owners are in partnership, any one or more of the owners;
 - (c) where there are more than five owners and they are not in partnership, any two or more of the owners acting on behalf of themselves and any of their co-owners who are not acting on their own behalf.

Saving for owner's rights

- 17 Neither the imposition of a requirement by or under this Schedule to return apparatus to a person nor the return of apparatus to a person in accordance with such a requirement affects—
- (a) the rights in relation to that apparatus of any other person; or
 - (b) the right of any other person to enforce his rights against the person to whom it is returned.