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## SCHEDULES

### SCHEDULE 3

Sections 139, 143 and 145.

#### PROVISIONS RELATING TO FORFEITURE

##### Modifications etc. (not altering text)

- C1 Sch. 3 extended by S.I. 1987/1521, reg. 3(2); 1987/2105, reg. 5(1) and 1988/1476, art. 5(1)
- C2 Sch. 3 amended by S.I. 1988/1852 (N.I. 19), art. 4(2)
- C3 Sch. 3 extended (E.W.S.) by Scotch Whisky Act 1988 (c. 22, SIF 109:1), s. 1(4)
- C4 Sch. 3 extended (01.01.1992) by S.I. 1991/2724, reg. 10(1)  
Sch. 3 extended (01.01.1992) by S.I. 1991/2725, reg. 6(1)
- C5 Sch. 3 extended (01.01.1992) by S.I. 1991/2727, reg. 7(1)
- C6 Sch. 3 applied (23.6.1993) by S.I. 1993/1353, reg. 4(1)  
Sch. 3 applied (1.7.1995) by S.I. 1995/1447, reg. 4(1)

##### *Notice of seizure*

- 1 (1) The Commissioners shall, except as provided in sub-paragraph (2) below, give notice of the seizure of any thing as liable to forfeiture and of the grounds therefor to any person who to their knowledge was at the time of the seizure the owner or one of the owners thereof.
- (2) Notice need not be given under this paragraph if the seizure was made in the presence of—
- (a) the person whose offence or suspected offence occasioned the seizure; or
  - (b) the owner or any of the owners of the thing seized or any servant or agent of his; or
  - (c) in the case of any thing seized in any ship or aircraft, the master or commander.

##### Modifications etc. (not altering text)

- C7 Sch. 3 para. 1 modified by S.I. 1986/260, regs. 5(k), 18

- 2 Notice under paragraph 1 above shall be given in writing and shall be deemed to have been duly served on the person concerned—
- (a) if delivered to him personally; or
  - (b) if addressed to him and left or forwarded by post to him at his usual or last known place of abode or business or, in the case of a body corporate, at their registered or principal office; or
  - (c) where he has no address within the United Kingdom [<sup>F1</sup>or the Isle of Man], or his address is unknown, by publication of notice of the seizure in the London, Edinburgh or Belfast Gazette.

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#### Textual Amendments

**F1** Words inserted by [Isle of Man Act 1979 \(c. 58\), Sch. 1 para. 23](#)

#### *Notice of claim*

- 3 Any person claiming that any thing seized as liable to forfeiture is not so liable shall, within one month of the date of the notice of seizure or, where no such notice has been served on him, within one month of the date of the seizure, give notice of his claim in writing to the Commissioners at any office of customs and excise.
- 4 (1) Any notice under paragraph 3 above shall specify the name and address of the claimant and, in the case of a claimant who is outside the United Kingdom [<sup>F2</sup>and the Isle of Man], shall specify 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.
- (2) Service of process upon a solicitor so specified shall be deemed to be proper service upon the claimant.

#### Textual Amendments

**F2** Words inserted by [Isle of Man Act 1979 \(c. 58\), Sch. 1 para. 24](#)

#### Modifications etc. (not altering text)

**C8** [Sch. 3 para. 4\(1\)\(2\)](#) amended (E.W.) (01.01.1992) by [S.I. 1991/2684, arts. 2, 4, Sch.1](#)

#### *Condemnation*

- 5 If on the expiration of the relevant period under paragraph 3 above for the giving of notice of claim in respect of any thing no such notice has been given to the Commissioners, or if, in the case of any such notice given, any requirement of paragraph 4 above is not complied with, the thing in question shall be deemed to have been duly condemned as forfeited.
- 6 Where notice of claim in respect of any thing is duly given in accordance with paragraphs 3 and 4 above, the Commissioners shall take proceedings for the condemnation of that thing by the court, and if the court finds that the thing was at the time of seizure liable to forfeiture the court shall condemn it as forfeited.
- 7 Where any thing is in accordance with either of paragraphs 5 or 6 above condemned or deemed to have been condemned as forfeited, then, without prejudice to any delivery up or sale of the thing by the Commissioners under paragraph 16 below, the forfeiture shall have effect as from the date when the liability to forfeiture arose.

#### *Proceedings for condemnation by court*

- 8 Proceedings for condemnation shall be civil proceedings and may be instituted—
- (a) in England or Wales either in the High Court or in a magistrates' court;
  - (b) in Scotland either in the Court of Session or in the sheriff court;
  - (c) in Northern Ireland either in the High Court or in a court of summary jurisdiction.

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- 9 Proceedings for the condemnation of any thing 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 any such court having jurisdiction in the place where any offence in connection with that thing was committed or where any proceedings for such an offence are instituted; or
  - (b) in any such court having jurisdiction in the place where the claimant resides or, if the claimant has specified a solicitor under paragraph 4 above, in the place where that solicitor has his office; or
  - (c) in any such court having jurisdiction in the place where that thing was found, detained or seized or to which it is first brought after being found, detained or seized.

**Modifications etc. (not altering text)**

**C9** Sch. 3 para. 9(b) amended (E.W.) (01.01.1992) by S.I. 1991/2684, arts. 2, 4, Sch. 1

- 10 (1) In any proceedings for condemnation instituted in England, Wales or Northern Ireland, the claimant or his solicitor shall make oath that the thing seized was, or was to the best of his knowledge and belief, the property of the claimant at the time of the seizure.
- (2) In any such proceedings instituted in the High Court, the claimant shall give such security for the costs of the proceedings as may be determined by the Court.
- (3) If any requirement of this paragraph is not complied with, the court shall give judgment for the Commissioners.
- 11 (1) In the case of any proceedings for condemnation instituted in a magistrates' court in England or Wales, without prejudice to any right to require the statement of a case for the opinion of the High Court, either party may appeal against the decision of that court to the Crown Court.
- (2) In the case of any proceedings for condemnation instituted in a court of summary jurisdiction in Northern Ireland, without prejudice to any right to require the statement of a case for the opinion of the High Court, either party may appeal against the decision of that court to the county court.
- 12 Where an appeal, including an appeal by way of case stated, has been made against the decision of the court in any proceedings for the condemnation of any thing, that thing shall, pending the final determination of the matter, be left with the Commissioners or at any convenient office of customs and excise.

*Provisions as to proof*

- 13 In any proceedings arising out of the seizure of any thing, the fact, form and manner of the seizure shall be taken to have been as set forth in the process without any further evidence thereof, unless the contrary is proved.
- 14 In any proceedings, the condemnation by a court of any thing as forfeited may be proved by the production either of the order or certificate of condemnation or of a certified copy thereof purporting to be signed by an officer of the court by which the order or certificate was made or granted.

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*Special provisions as to certain claimants*

- 15 For the purposes of any claim to, or proceedings for the condemnation of, any thing, where that thing is at the time of seizure the property of a body corporate, of two or more partners or of any number of persons exceeding five, the oath required by paragraph 10 above to be taken and any other thing required by this Schedule or by any rules of the court to be done by, or by any person authorised by, the claimant or owner may be taken or done by, or by any other person authorised by, the following persons respectively, that is to say—
- (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 of those owners;
  - (c) where the owners are any number of persons exceeding five not being in partnership, any two of those persons on behalf of themselves and their co-owners.

*Power to deal with seizures before condemnation, etc.*

- 16 Where any thing has been seized as liable to forfeiture the Commissioners may at any time if they see fit and notwithstanding that the thing has not yet been condemned, or is not yet deemed to have been condemned, as forfeited—
- (a) deliver it up to any claimant upon his paying to the Commissioners such sum as they think proper, being a sum not exceeding that which in their opinion represents the value of the thing, including any duty or tax chargeable thereon which has not been paid;
  - (b) if the thing seized is a living creature or is in the opinion of the Commissioners of a perishable nature, sell or destroy it.
- 17 (1) If, where any thing is delivered up, sold or destroyed under paragraph 16 above, it is held in proceedings taken under this Schedule that the thing was not liable to forfeiture at the time of its seizure, the Commissioners shall, subject to any deduction allowed under sub-paragraph (2) below, on demand by the claimant tender to him—
- (a) an amount equal to any sum paid by him under sub-paragraph (a) of that paragraph; or
  - (b) where they have sold the thing, an amount equal to the proceeds of sale; or
  - (c) where they have destroyed the thing, an amount equal to the market value of the thing at the time of its seizure.
- (2) Where the amount to be tendered under sub-paragraph (1)(a), (b) or (c) above includes any sum on account of any duty or tax chargeable on the thing which had not been paid before its seizure the Commissioners may deduct so much of that amount as represents that duty or tax.
- (3) If the claimant accepts any amount tendered to him under sub-paragraph (1) above, he shall not be entitled to maintain any action on account of the seizure, detention, sale or destruction of the thing.
- (4) For the purposes of sub-paragraph (1)(c) above, the market value of any thing at the time of its seizure shall be taken to be such amount as the Commissioners and the claimant may agree or, in default of agreement, as may be determined by a referee appointed by the Lord Chancellor (not being an official of any government department [<sup>F3</sup> or an office-holder in, or a member of the staff of, the Scottish

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Administration]), whose decision shall be final and conclusive; and the procedure on any reference to a referee shall be such as may be determined by the referee.

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**Textual Amendments**

**F3** Words in [Sch. 3 para. 17\(4\)](#) inserted (1.7.1999) by S.I. 1999/1820, arts. 1(2), 4, Sch. 2 Pt. I para. 59; S.I. 1998/3178, [art. 3](#)

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