

*Status: Point in time view as at 31/01/2018.*

*Changes to legislation: Terrorism Act 2000, SCHEDULE 4 is up to date with all changes known to be in force on or before 07 September 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

## SCHEDULES

### SCHEDULE 4

Section 23.

#### FORFEITURE ORDERS

#### PART I

#### ENGLAND AND WALES

##### *Interpretation*

- 1 In this Part of this Schedule—
- “forfeiture order” means an order made by a court in England and Wales under section 23 [<sup>F1</sup>or 23A], and
- “forfeited property” means the money or other property to which a forfeiture order applies.
- [<sup>F2</sup> “relevant offence ” means—
- (a) an offence under any of sections 15 to 18,
  - (b) an offence to which section 23A applies, or
  - (c) in relation to a restraint order, any offence specified in Schedule 2 to the Counter-Terrorism Act 2008 (offences where terrorist connection to be considered).]

##### **Textual Amendments**

- F1** Sch. 4 para. 1: words in definition of "forfeiture order" inserted (18.6.2009) by Counter-Terrorism Act 2008 (c. 28), ss. 39, 100(5), **Sch. 3 para. 5(2)(a)** (with s. 101(2)); S.I. 2009/1256, **art. 2(c)**
- F2** Sch. 4 para. 1: definition of "relevant offence" inserted (18.6.2009) by Counter-Terrorism Act 2008 (c. 28), ss. 39, 100(5), **Sch. 3 para. 5(2)(b)** (with s. 101(2)); S.I. 2009/1256, **art. 2(c)**

##### *Implementation of forfeiture orders*

- 2 (1) Where a court in England and Wales 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) require any of the forfeited property to be paid or handed over to the proper officer or to a constable designated for the purpose by the chief officer of police of a police force specified in the order;
  - (b) 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 and the proceeds (if any) to be paid to the proper officer;
  - (c) appoint a receiver to take possession, subject to such conditions and exceptions as may be specified by the court, of any of the forfeited property,

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to realise it in such manner as the court may direct and to pay the proceeds to the proper officer;

(d) 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 by the proper officer to a specified person falling within [<sup>F3</sup>section 23B(1)].

(2) A forfeiture order shall not come into force until there is no further possibility of it being varied, or set aside, on appeal (disregarding any power of a court to grant leave to appeal out of time).

(3) In sub-paragraph (1)(b) and (d) a reference to the proceeds of the sale, disposal or realisation of property is a reference to the proceeds after deduction of the costs of sale, disposal or realisation.

(4) Section 140 of the <sup>M1</sup>Magistrates' Courts Act 1980 (disposal of non-pecuniary forfeitures) shall not apply.

#### Textual Amendments

**F3** Words in Sch. 4 para. 2(1)(d) substituted (18.6.2009) by Counter-Terrorism Act 2008 (c. 28), ss. 39, 100(5), **Sch. 3 para. 5(3)** (with s. 101(2)); S.I. 2009/1256, **art. 2(c)**

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

**C1** Sch. 4 para. 2(1) extended (with modifications) (13.12.2001) by S.I. 2001/3927 art. 11(1)

#### Marginal Citations

**M1** 1980 c. 43.

3 (1) A receiver appointed under paragraph 2 shall be entitled to be paid his remuneration and expenses by the proper officer out of the proceeds of the property realised by the receiver and paid to the proper officer under paragraph 2(1)(c).

(2) If and so far as those proceeds are insufficient, the receiver shall be entitled to be paid his remuneration and expenses by the prosecutor.

(3) A receiver appointed under paragraph 2 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 reasonably believes that he is entitled to take because of his belief that the property is forfeited property.

(4) Sub-paragraph (3) does not apply in so far as the loss or damage is caused by the receiver's negligence.

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

**C2** Sch. 4 para. 3 applied (13.12.2001) by S.I. 2001/3927, **art. 11(1)**

4 (1) In paragraphs 2 and 3 “the proper officer” means—

(a) where the forfeiture order is made by a magistrates' court, the [<sup>F4</sup>designated officer] for that court,

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- (b) where the forfeiture order is made by the Crown Court and the defendant was committed to the Crown Court by a magistrates' court, the [<sup>F4</sup>designated officer] for the magistrates' court, and
  - (c) where the forfeiture order is made by the Crown Court and the proceedings were instituted by a bill of indictment preferred by virtue of section 2(2)(b) of the <sup>M2</sup>Administration of Justice (Miscellaneous Provisions) Act 1933, the [<sup>F4</sup>designated officer] for the magistrates' court for the place where the trial took place.
- (2) The proper officer shall issue a certificate in respect of a forfeiture order if an application is made by—
- (a) the prosecutor in the proceedings in which the forfeiture order was made,
  - (b) the defendant in those proceedings, or
  - (c) a person whom the court heard under [<sup>F5</sup>section 23B(1)] before making the order.
- (3) The certificate shall state the extent (if any) to which, at the date of the certificate, effect has been given to the forfeiture order.

#### Textual Amendments

- F4** Words in Sch. 4 para. 4(1) substituted (1.4.2005) by [Courts Act 2003 \(c. 39\), s. 108\(1\), Sch. 8 para. 388\(2\); S.I. 2005/910, art. 3](#)
- F5** Words in Sch. 4 para. 4(2)(c) substituted (18.6.2009) by [Counter-Terrorism Act 2008 \(c. 28\), ss. 39, 100\(5\), Sch. 3 para. 5\(4\) \(with s. 101\(2\)\); S.I. 2009/1256, art. 2\(c\)](#)

#### Marginal Citations

- M2** 1933 c. 36.

#### *[<sup>F6</sup>Application of proceeds to compensate victims*

#### Textual Amendments

- F6** Sch. 4 para. 4A and preceding cross-heading inserted (18.6.2009) by [Counter-Terrorism Act 2008 \(c. 28\), ss. 37\(1\), 100\(5\) \(with s. 101\(2\)\); S.I. 2009/1256, art. 2\(c\)](#)

- 4A (1) Where a court makes a forfeiture order in a case where—
- (a) the offender has been convicted of an offence that has resulted in a person suffering personal injury, loss or damage, or
  - (b) any such offence is taken into consideration by the court in determining sentence,
- the court may also order that an amount not exceeding a sum specified by the court is to be paid to that person out of the proceeds of the forfeiture.
- (2) For this purpose the proceeds of the forfeiture means the aggregate amount of—
- (a) any forfeited money, and
  - (b) the proceeds of the sale, disposal or realisation of any forfeited property, after deduction of the costs of the sale, disposal or realisation,
- reduced by the amount of any payment under paragraph 2(1)(d) or 3(1).

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- (3) The court may make an order under this paragraph only if it is satisfied that but for the inadequacy of the offender's means it would have made a compensation order under section 130 of the Powers of Criminal Courts (Sentencing) Act 2000 under which the offender would have been required to pay compensation of an amount not less than the specified amount.]

#### *Restraint orders*

- 5 (1) The High Court may make a restraint order under this paragraph where—
- (a) proceedings have been instituted in England and Wales for [<sup>F7</sup>a relevant offence],
  - (b) the proceedings have not been concluded,
  - (c) an application for a restraint order is made to the High Court by the prosecutor, and
  - (d) a forfeiture order has been made, or it appears to the High Court that a forfeiture order may be made, in the proceedings for the offence.
- [<sup>F8</sup>(2) The High Court may also make a restraint order under this paragraph where—
- (a) a criminal investigation has been started in England and Wales with regard to [<sup>F7</sup>a relevant offence],
  - (b) an application for a restraint order is made to the High Court by the person who the High Court is satisfied will have the conduct of any proceedings for the offence, and
  - (c) it appears to the High Court that a forfeiture order may be made in any 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 [<sup>F9</sup>any proceedings] referred to in sub-paragraph (1) or (2).
- (4) An application for a restraint order may be made to a judge in chambers without notice.
- (5) In this paragraph a reference to dealing with property includes a reference to removing the property from Great Britain.
- [<sup>F10</sup>(6) In this paragraph “ criminal investigation ” means an investigation which police officers or other persons have a duty to conduct with a view to it being ascertained whether a person should be charged with an offence. ]

#### **Textual Amendments**

- F7** Words in Sch. 4 para. 5(1)(a)(2)(a) substituted (18.6.2009) by Counter-Terrorism Act 2008 (c. 28), ss. 39, 100(5), **Sch. 3 para. 5(5)** (with s. 101(2)); S.I. 2009/1256, **art. 2(c)**
- F8** Sch. 4 Pt. 1 para. 5(2) substituted (20.12.2001) by 2001 c. 24, s. 3, **Sch. 2 Pt. 2 para. 2(2)**; S.I. 2001/4019, **art. 2(1)(c)**
- F9** Words in Sch. 4 Pt. 1 para. 5(3) substituted (20.12.2001) by 2001 c. 24, s. 3, **Sch. 2 Pt. 2 para. 2(3)**; S.I. 2001/4019, **art. 2(1)(c)**
- F10** Sch. 4 Pt. 1 para. 5(6) inserted (20.12.2001) by 2001 c. 24, s. 3, **Sch. 2 Pt. 2 para 2(4)**; S.I. 2001/4019, **art. 2(1)(c)**

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- 6 (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 discharged or varied by the High Court on the application of a person affected by it.
- [<sup>F11</sup>(3) A restraint order made under paragraph 5(1) shall in particular be discharged on an application under sub-paragraph (2) if the proceedings for the offence have been concluded.
- (4) A restraint order made under paragraph 5(2) shall in particular be discharged on an application under sub-paragraph (2)—
- (a) if no proceedings in respect of [<sup>F12</sup>relevant offences] are instituted within such time as the High Court considers reasonable, and
  - (b) if all proceedings in respect of [<sup>F12</sup>relevant offences] have been concluded.]

**Textual Amendments**

- F11** Sch. 4 para. 6(3)(4) substituted for Sch. 4 para. 6(3) (20.12.2001) by 2001 c. 24, s. 3, **Sch. 2 Pt. 2 para. 2(5)**; S.I. 2001/4019, **art. 2(1)(c)**
- F12** Words in Sch. 4 para. 6(4)(a)(b) substituted (18.6.2009) by Counter-Terrorism Act 2008 (c. 28), ss. 39, 100(5), **Sch. 3 para. 5(5)** (with s. 101(2)); S.I. 2009/1256, **art. 2(c)**

- 7 (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 High Court's directions.

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

- C3** Sch. 4 para. 7 applied (13.12.2001) by S.I. 2001/3927, **art. 12**

- 8 (1) The <sup>M3</sup>Land Charges Act 1972 and the [<sup>F13</sup>Land Registration Act 2002]—
- (a) shall apply in relation to restraint orders as they apply in relation to orders affecting land made by the court for the purpose of enforcing judgments or recognizances, and [<sup>F14</sup>, except that no notice may be entered in the register of title under the Land Registration Act 2002 in respect of such orders]
  - (b) shall apply in relation to applications for restraint orders as they apply in relation to other pending land actions.
- (2) <sup>F15</sup> .....
- (3) <sup>F15</sup> .....

**Textual Amendments**

- F13** Words in Sch. 4 para. 8(1) substituted (13.10.2003) by 2002 c. 9, s. 133, **Sch. 11 para. 38(a)** (with s. 129); S.I. 2003/1725, **art. 2**
- F14** Words in Sch. 4 para. 8(1)(a) inserted (13.10.2003) by 2002 c. 9, s. 133, **Sch. 11 para. 38(b)** (with s. 129); S.I. 2003/1725, **art. 2**

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**F15** Sch. 4 para. 8(2)(3) repealed (13.10.2003) by 2002 c. 9, s. 135, Sch. 13 (with s. 129, Sch. 12 para. 1); S.I. 2003/1725, art. 2

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

**C4** Sch. 4 para. 8 applied (13.12.2001) by S.I. 2001/3927, art. 12

**Marginal Citations**

**M3** 1972 c. 61.

- 9 (1) This paragraph applies where a restraint order is discharged under [F16] paragraph 6(4)(a)].
- (2) This paragraph also applies where a forfeiture order or a restraint order is made in or in relation to proceedings for [F17] a relevant offence] which—
- (a) do not result in conviction for [F18] a relevant offence],
  - (b) result in conviction for [F18] a relevant offence] in respect of which the person convicted is subsequently pardoned by Her Majesty, or
  - (c) result in conviction for [F18] a relevant offence] which is subsequently quashed.
- (3) A person who had an interest in any property which was subject to the order may apply to the High Court for compensation.
- (4) The High Court may order compensation to be paid to the applicant if 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 or was acting as a member of a police force, or was a member of the Crown Prosecution Service or was acting on behalf of the Service,
  - (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 restraint order, and
  - (d) that, having regard to all the circumstances, it is appropriate to order compensation to be paid.
- (5) The High Court shall not order compensation to be paid where it appears to it that 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 or was acting as a member of a police force, out of the police fund out of which the expenses of that police force are met, and
  - (b) where the person in default was a member of the Crown Prosecution Service, or was acting on behalf of the Service, by the Director of Public Prosecutions.

**Textual Amendments**

**F16** Words in Sch. 4 Pt. 1 para. 9(1) substituted (20.12.2001) by 2001 c. 24, s. 3, Sch. 2 Pt. 2 para. 2(7); S.I. 2001/4019, art. 2(1)(c)

**F17** Words in Sch. 4 para. 9(2) substituted (18.6.2009) by Counter-Terrorism Act 2008 (c. 28), ss. 39, 100(5), Sch. 3 para. 5(8)(a) (with s. 101(2)); S.I. 2009/1256, art. 2(c)

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**F18** Words in Sch. 4 para. 9(2)(a)(b)(c) substituted (18.6.2009) by Counter-Terrorism Act 2008 (c. 28), ss. 39, 100(5), **Sch. 3 para. 5(8)(b)** (with s. 101(2)); S.I. 2009/1256, **art. 2(c)**

- 10 (1) This paragraph applies where—
- (a) a forfeiture order or a restraint order is made in or in relation to proceedings for [<sup>F19</sup>a relevant offence], and
  - (b) the proceedings result in a conviction which is subsequently quashed on an appeal under section 7(2) or (5).
- (2) A person who had an interest in any property which was subject to the order may apply to the High Court for compensation.
- (3) The High Court 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.

#### Textual Amendments

**F19** Words in Sch. 4 para. 10(1)(a) substituted (18.6.2009) by Counter-Terrorism Act 2008 (c. 28), ss. 39, 100(5), **Sch. 3 para. 5(9)** (with s. 101(2)); S.I. 2009/1256, **art. 2(c)**

*F20*  
...

#### Textual Amendments

**F20** Sch. 4 para. 9: preceding cross-heading omitted (18.6.2009) by virtue of Counter-Terrorism Act 2008 (c. 28), ss. 39, 100(5), **Sch. 3 para. 5(7)** (with s. 101(2)); S.I. 2009/1256, **art. 2(c)**

#### *Proceedings for an offence: timing*

- 11 (1) For the purposes of this Part of this Schedule proceedings for an offence are instituted—
- (a) when a justice of the peace issues a summons or warrant under section 1 of the <sup>M4</sup>Magistrates' Courts Act 1980 in respect of the offence;
  - (b) when a person is charged with the offence after being taken into custody without a warrant;
  - (c) when a bill of indictment charging a person with the offence is preferred by virtue of section 2(2)(b) of the <sup>M5</sup>Administration of Justice (Miscellaneous Provisions) Act 1933.
- (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—

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- (a) when a forfeiture order has been made in those proceedings and effect has been given to it in respect of all the forfeited property, or
- (b) when no forfeiture order has been made in those proceedings and there is no further possibility of one being made as a result of an appeal (disregarding any power of a court to grant leave to appeal out of time).

#### Marginal Citations

**M4** 1980 c. 43.

**M5** 1933 c. 36.

#### *[<sup>F21</sup>Domestic and overseas freezing orders*

#### Textual Amendments

**F21** Sch. 4 paras. 11A-11G and cross-headings inserted (3.12.2014) by [Crime \(International Co-operation\) Act 2003 \(c. 32\), s. 94\(1\), Sch. 4 para. 3](#); S.I. 2014/3192, art. 2(b)

- 11A (1) This paragraph has effect for the purposes of paragraphs 11B to 11G.
- (2) The relevant Framework Decision means the Framework Decision on the execution in the European Union of orders freezing property or evidence adopted by the Council of the European Union on 22nd July 2003.
  - (3) A listed offence means—
    - (a) an offence described in Article 3(2) of the relevant Framework Decision, or
    - (b) a prescribed offence or an offence of a prescribed description.
  - (4) An order under sub-paragraph (3)(b) which, for the purposes of paragraph 11D, prescribes an offence or a description of offences may require that the conduct which constitutes the offence or offences would, if it occurred in a part of the United Kingdom, constitute an offence in that part.
  - (5) Specified information, in relation to a certificate under paragraph 11B or 11D, means—
    - (a) any information required to be given by the form of certificate annexed to the relevant Framework Decision, or
    - (b) any prescribed information.
  - (6) In this paragraph, “prescribed” means prescribed by an order made by the Secretary of State.
  - (7) A participating country means—
    - (a) a country other than the United Kingdom which is a member State on a day appointed for the commencement of Schedule 4 to the Crime (International Co-operation) Act 2003, and
    - (b) any other member State designated by an order made by the Secretary of State.
  - (8) “Country” includes territory.



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- (9) Section 14(2)(a) applies for the purposes of determining what are the proceeds of the commission of an offence.

*Domestic freezing orders: certification*

- 11B (1) If any of the property to which an application for a restraint order relates is property in a participating country, the applicant may ask the High Court to make a certificate under this paragraph.
- (2) The High Court may make a certificate under this paragraph if—
- (a) it makes a restraint order in relation to property in the participating country, and
  - (b) it is satisfied that there is a good arguable case that the property is likely to be used for the purposes of a listed offence or is the proceeds of the commission of a listed offence.
- (3) A certificate under this paragraph is a certificate which—
- (a) is made for the purposes of the relevant Framework Decision, and
  - (b) gives the specified information.
- (4) If the High Court makes a certificate under this paragraph—
- (a) the restraint order must provide for notice of the certificate to be given to the person affected by it, and
  - (b) paragraph 6(2) to (4) applies to the certificate as it applies to the restraint order.

*Sending domestic freezing orders*

- 11C (1) If a certificate is made under paragraph 11B, the restraint order and the certificate are to be sent to the Secretary of State for forwarding to—
- (a) a court exercising jurisdiction in the place where the property is situated, or
  - (b) any authority recognised by the government of the participating country as the appropriate authority for receiving orders of that kind.
- (2) The restraint order and the certificate must be accompanied by a forfeiture order, unless the certificate indicates when the court expects a forfeiture order to be sent.
- (3) The certificate must include a translation of it into an appropriate language of the participating country (if that language is not English).
- (4) The certificate must be signed by or on behalf of the court and must include a statement as to the accuracy of the information given in it.
- The signature may be an electronic signature.
- (5) If the restraint order and the certificate are not accompanied by a forfeiture order, but a forfeiture order is subsequently made, it is to be sent to the Secretary of State for forwarding as mentioned in sub-paragraph (1).

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### *Overseas freezing orders*

- 11D (1) Paragraph 11E applies where an overseas freezing order made by an appropriate court or authority in a participating country is received by the Secretary of State from the court or authority which made or confirmed the order.
- (2) An overseas freezing order is an order prohibiting dealing with property—
- (a) which is in the United Kingdom,
  - (b) which the appropriate court or authority considers is likely to be used for the purposes of a listed offence or is the proceeds of the commission of such an offence, and
  - (c) in respect of which an order has been or may be made by a court exercising criminal jurisdiction in the participating country for the forfeiture of the property,
- and in respect of which the following requirements of this paragraph are met.
- (3) The action which the appropriate court or authority considered would constitute or, as the case may be, constituted the listed offence is action done as an act of terrorism or for the purposes of terrorism.
- (4) The order must relate to—
- (a) criminal proceedings instituted in the participating country, or
  - (b) a criminal investigation being carried on there.
- (5) The order must be accompanied by a certificate which gives the specified information; but a certificate may be treated as giving any specified information which is not given in it if the Secretary of State has the information in question.
- (6) The certificate must—
- (a) be signed by or on behalf of the court or authority which made or confirmed the order,
  - (b) include a statement as to the accuracy of the information given in it,
  - (c) if it is not in English, include a translation of it into English (or, if appropriate, Welsh).
- The signature may be an electronic signature.
- (7) The order must be accompanied by an order made by a court exercising criminal jurisdiction in that country for the forfeiture of the property, unless the certificate indicates when such an order is expected to be sent.
- (8) An appropriate court or authority in a participating country in relation to an overseas freezing order is—
- (a) a court exercising criminal jurisdiction in the country,
  - (b) a prosecuting authority in the country,
  - (c) any other authority in the country which appears to the Secretary of State to have the function of making such orders.
- (9) References in paragraphs 11E to 11G to an overseas freezing order include its accompanying certificate.

### *Enforcement of overseas freezing orders*

- 11E (1) Where this paragraph applies the Secretary of State must send a copy of the overseas freezing order to the High Court and to the Director of Public Prosecutions.

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- (2) The court is to consider the overseas freezing order on its own initiative within a period prescribed by rules of court.
  - (3) Before giving effect to the overseas freezing order, the court must give the Director an opportunity to be heard.
  - (4) The court may decide not to give effect to the overseas freezing order only if, in its opinion, giving effect to it would be incompatible with any of the Convention rights (within the meaning of the Human Rights Act 1998).
- 11F The High Court may postpone giving effect to an overseas freezing order in respect of any property—
- (a) in order to avoid prejudicing a criminal investigation which is taking place in the United Kingdom, or
  - (b) if, under an order made by a court in criminal proceedings in the United Kingdom, the property may not be dealt with.
- 11G (1) Where the High Court decides to give effect to an overseas freezing order, it must—
- (a) register the order in that court,
  - (b) provide for notice of the registration to be given to any person affected by it.
- (2) For the purpose of enforcing an overseas freezing order registered in the High Court, the order is to have effect as if it were an order made by that court.
- (3) Paragraph 7 applies to an overseas freezing order registered in the High Court as it applies to a restraint order under paragraph 5.
- (4) The High Court may cancel the registration of the order, or vary the property to which the order applies, on an application by the Director of Public Prosecutions or any other person affected by it, if or to the extent that—
- (a) the court is of the opinion mentioned in paragraph 11E(4), or
  - (b) the court is of the opinion that the order has ceased to have effect in the participating country.
- (5) Her Majesty may by Order in Council make further provision for the enforcement in England and Wales of registered overseas freezing orders.
- (6) An Order in Council under this paragraph—
- (a) may make different provision for different cases,
  - (b) is not to be made unless a draft of it has been laid before and approved by resolution of each House of Parliament.]

*Enforcement of orders made elsewhere in the British Islands*

- 12 In the following provisions of this Part of this Schedule—
- “a Scottish order” means—
- (a) an order made in Scotland under section 23 [F22 or 23A] (“a Scottish forfeiture order”),
  - (b) an order made under paragraph 18 (“a Scottish restraint order”), or
  - (c) an order made under any other provision of Part II of this Schedule in relation to a Scottish forfeiture or restraint order;
- “a Northern Ireland order” means—

*Status: Point in time view as at 31/01/2018.*

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- (a) an order made in Northern Ireland under section 23 [<sup>F22</sup>or 23A] (“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 [<sup>F22</sup>or 23A] (“an Islands forfeiture order”),
  - (b) paragraph 5 (“an Islands restraint order”), or
  - (c) any other provision of this Part of this Schedule.

#### Textual Amendments

**F22** Words in Sch. 4 para. 12 inserted (18.6.2009) by Counter-Terrorism Act 2008 (c. 28), ss. 39, 100(5), Sch. 3 para. 5(10) (with s. 101(2)); S.I. 2009/1256, art. 2(c)

- 13 (1) Subject to the provisions of this paragraph, a Scottish, Northern Ireland or Islands order shall have effect in the law of England and Wales.
- (2) But such an order shall be enforced in England and Wales 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 a Scottish, Northern Ireland or Islands order, the High Court 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 a Scottish, Northern Ireland or Islands forfeiture order when effect has been given to it, whether in England and Wales 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 a Scottish, Northern Ireland or Islands restraint order which has been discharged or varied by the court by which it was made.
- (5) If a Scottish, Northern Ireland or Islands forfeiture order is registered under this paragraph the High Court shall have, in relation to that order, the same powers as a court has under paragraph 2(1) to give effect to a forfeiture order made by it and—
- (a) paragraph 3 shall apply accordingly,
  - (b) any functions of [<sup>F23</sup>the designated officer for a magistrates' court] shall be exercised by the appropriate officer of the High Court, and
  - (c) after making any payment required by virtue of paragraph 2(1)(d) or 3, the balance of any sums received by the appropriate officer of the High Court by virtue of an order made under this sub-paragraph shall be paid by him to the Secretary of State.
- (6) If a Scottish, Northern Ireland or Islands restraint order is registered under this paragraph—

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- (a) paragraphs 7 and 8 shall apply as they apply to a restraint order under paragraph 5, and
  - (b) the High Court shall have power to make an order under section 33 of the <sup>M6</sup>[<sup>F24</sup>Senior Courts Act 1981](extended power to order inspection of property, &c.) in relation to proceedings brought or likely to be brought for a Scottish, Northern Ireland or Islands restraint order as if those proceedings had been brought or were likely to be brought in the High Court.
- (7) In addition, if a Scottish, Northern Ireland or Islands order is registered under this paragraph—
- (a) the High Court shall have, in relation to its enforcement, the same power as if the order had originally been made in the High Court,
  - (b) proceedings for or with respect to its enforcement may be taken as if the order had originally been made in the High Court, and
  - (c) proceedings for or with respect to contravention of such an order, whether before or after such registration, may be taken as if the order had originally been made in the High Court.
- (8) The High Court may also make such orders or do otherwise as seems to it appropriate for the purpose of—
- (a) assisting the achievement in England and Wales of the purposes of a Scottish, Northern Ireland or Islands order, or
  - (b) assisting a receiver or other person directed by a Scottish, Northern Ireland or Islands order to sell or otherwise dispose of property.
- (9) The following documents shall be received in evidence in England and Wales without further proof—
- (a) a document purporting to be a copy of a Scottish, Northern Ireland 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 4(2) and (3) and to be certified by a proper officer of the court concerned.

#### Textual Amendments

**F23** Words in Sch. 4 para. 13(5)(b) substituted (1.4.2005) by [Courts Act 2003 \(c. 39\)](#), s. 109(1), [Sch. 8 para. 388\(3\)](#); [S.I. 2005/910](#), [art. 3](#)

**F24** Act: for the words "Supreme Court Act 1981" wherever they occur in any enactment there are substituted (1.10.2009) the words "Senior Courts Act 1981" by [Constitutional Reform Act 2005 \(c. 4\)](#), ss. 59, 148(1), [Sch. 11 para. 1\(2\)](#); [S.I. 2009/1604](#), [art. 2\(d\)](#)

#### Commencement Information

**II** Sch. 4 para. 13 wholly in force at 19.2.2001; Sch. 4 para. 13 not in force at Royal Assent see s. 128; Sch. 4 para. 13(2)(b)(3)(4) in force at 31.10.2000 by [S.I. 2000/2944](#), [art. 2\(h\)\(i\)](#); Sch. 4 in force at 19.2.2001 in so far as not already in force by [S.I. 2001/421](#), [art. 2](#)

#### Marginal Citations

**M6** [1981 c. 54](#).

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*Enforcement of orders made in designated countries*

- 14 (1) Her Majesty may by Order in Council make provision for the purpose of enabling the enforcement in England and Wales of external orders.
- (2) An “external order” means an order [<sup>F25</sup> (other than an overseas freezing order within the meaning of paragraph 11D) ]—
- (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—
- (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 13(1) to (8) in relation to the orders to which that paragraph applies;
  - (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 in Council 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.

**Textual Amendments**

**F25** Words in Sch. 4 para. 14(2) inserted (3.12.2014) by [Crime \(International Co-operation\) Act 2003 \(c. 32\)](#), s. 94(1), [Sch. 4 para. 4](#); S.I. 2014/3192, art. 2(b)

**PART II**

SCOTLAND

*Implementation of forfeiture orders*

- 15 In this Part of this Schedule—

*Status: Point in time view as at 31/01/2018.*

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“forfeiture order” means an order made by a court in Scotland under section 23 [<sup>F26</sup>or 23A], and

“forfeited property” means the money or other property to which a forfeiture order applies.

[<sup>F27</sup> “relevant offence” means—

- (a) an offence under any of sections 15 to 18,
- (b) an offence to which section 23A applies, or
- (c) in relation to a restraint order, any offence specified in Schedule 2 to the Counter-Terrorism Act 2008 (offences where terrorist connection to be considered).]

#### Textual Amendments

- F26** Sch. 4 para. 15: words in definition of “forfeiture order” inserted (18.6.2009) by Counter-Terrorism Act 2008 (c. 28), ss. 39, 100(5), **Sch. 3 para. 5(11)(a)** (with s. 101(2)); S.I. 2009/1256, **art. 2(c)**
- F27** Sch. 4 para. 15: definition of “relevant offence” inserted (18.6.2009) by Counter-Terrorism Act 2008 (c. 28), ss. 39, 100(5), **Sch. 3 para. 5(11)(b)** (with s. 101(2)); S.I. 2009/1256, **art. 2(c)**

- 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 [<sup>F28</sup>section 23B(1)].
- (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 <sup>M7</sup>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 [<sup>F28</sup>section 23B(1)] 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.
- (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.

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#### Textual Amendments

**F28** Words in Sch. 4 para. 16(1)(c)(4)(c) substituted (18.6.2009) by Counter-Terrorism Act 2008 (c. 28), ss. 39, 100(5), **Sch. 3 para. 5(12)** (with s. 101(2)); S.I. 2009/1256, **art. 2(c)**

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

**C5** Sch. 4 para. 16(1) extended (13.12.2001) by S.I. 2001/3927, **art. 18**

**C6** Sch. 4 paras. 16(3)-(5) applied (13.12.2001) by S.I. 2001/3927, **art. 18**

#### Marginal Citations

**M7** 1995 c.46.

### *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—
- which he takes in relation to property which is not forfeited property, but which he reasonably believes to be forfeited property,
  - which he would be entitled to take if the property were forfeited property, and
  - 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.

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

**C7** Sch. 4 para. 17 applied (13.12.2001) by S.I. 2001/3927, **art. 18**

### *[<sup>F29</sup>Application of proceeds to compensate victims*

#### Textual Amendments

**F29** Sch. 4 para. 17A and preceding cross-heading inserted (18.6.2009) by Counter-Terrorism Act 2008 (c. 28), ss. 37(2), 100(5) (with s. 101(2)); S.I. 2009/1256, **art. 2(c)**

- 17A (1) Where a court makes a forfeiture order in a case where—
- the offender has been convicted of an offence that has resulted in a person suffering personal injury, loss or damage, or



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- (b) any such offence is taken into consideration by the court in determining sentence,  
the court may also order that an amount not exceeding a sum specified by the court is to be paid to that person out of the proceeds of the forfeiture.
- (2) For this purpose the proceeds of the forfeiture means the aggregate amount of—
- (a) any forfeited money, and
- (b) the proceeds of the sale, disposal or realisation of any forfeited property, after deduction of the costs of the sale, disposal or realisation, reduced by the amount of any payment under paragraph 16(1)(c) or 17(2).
- (3) The court may make an order under this paragraph only if it is satisfied that but for the inadequacy of the offender's means it would have made a compensation order under section 249 of the Criminal Procedure (Scotland) Act 1995 under which the offender would have been required to pay compensation of an amount not less than the specified amount.]

#### *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 [F30 a relevant offence],
- (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.
- [F31(2) The Court of Session may also make a restraint order on such an application where—
- (a) a criminal investigation has been instituted in Scotland with regard to [F30 a relevant offence], and
- (b) it appears to the Court of Session that a forfeiture order may be made in any 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 [F32 any proceedings] referred to in sub-paragraph (1) or (2).
- (4) An application for a restraint order may be made ex parte in chambers.
- (5) For the purposes of this paragraph, dealing with property includes removing the property from Great Britain.
- [F33(6) In this paragraph “ criminal investigation ” means an investigation which police officers or other persons have a duty to conduct with a view to it being ascertained whether a person should be charged with an offence. ]

#### **Textual Amendments**

**F30** Words in Sch. 4 para. 18(1)(a) substituted (18.6.2009) by Counter-Terrorism Act 2008 (c. 28), ss. 39, 100(5), **Sch. 3 para. 5(13)** (with s. 101(2)); S.I. 2009/1256, **art. 2(c)**

**F31** Sch. 4 Pt. 2 para. 18(2) substituted (20.12.2001) by 2001 c. 24, s. 3, **Sch. 2 Pt. 2 para. 3(2)**; S.I. 2001/4019, **art. 2(1)(c)**

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- F32** Words in Sch. 4 Pt. 2 para. 18(3) substituted (20.12.2001) by 2001 c. 24, s. 3, **Sch. 2 Pt. 2 para. 3(3)**; S.I. 2001/4019, **art. 2(1)(c)**
- F33** Sch. 4 Pt. 2 para. 18(6) inserted (20.12.2001) by 2001 c. 24, s. 3, **Sch. 2 Pt. 2 para. 3(4)**; S.I. 2001/4019, **art. 2(1)(c)**

- 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.
- <sup>F34</sup>(3) A restraint order made under paragraph 18(1) shall in particular be recalled on an application under sub-paragraph (2) if the proceedings for the offence have been concluded.
- (3A) A restraint order made under paragraph 18(2) shall in particular be discharged on an application under sub-paragraph (2)—
- (a) if no proceedings in respect of <sup>F35</sup>[relevant offences] are instituted within such time as the Court of Session considers reasonable, and
- (b) if all proceedings in respect of <sup>F35</sup>[relevant offences] have been concluded.]
- (4) When proceedings for the offence are concluded the Lord Advocate shall forthwith apply to the Court for recall of the order.

#### Textual Amendments

- F34** Sch. 4 para. 19(3)(3A) substituted for Sch. 4 para. 19(3) (20.12.2001) by 2001 c. 24, s. 3, **Sch. 2 Pt. 2 para. 3(5)**; S.I. 2001/4019, **art. 2(1)(c)**
- F35** Words in Sch. 4 para. 19(3A)(a)(b) substituted (18.6.2009) by Counter-Terrorism Act 2008 (c. 28), ss. 39, 100(5), **Sch. 3 para. 5(14)** (with s. 101(2)); S.I. 2009/1256, **art. 2(c)**

- 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.

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

- C8** Sch. 4 para. 20 applied (13.12.2001) by S.I. 2001/3927, **art. 19**

- 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.

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- (3) Section 155 of the <sup>M8</sup>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.

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

**C9** Sch. 4 para. 20 applied (13.12.2001) by [S.I. 2001/3927](#), [art. 19](#)

**Marginal Citations**

**M8** 1868 c.101.

- 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.
- 23 (1) This paragraph applies where a restraint order is recalled under paragraph <sup>F36</sup>19(3A)(a)].
- (2) This paragraph also applies where a forfeiture order or a restraint order is made in or in relation to proceedings for <sup>F37</sup>a relevant offence] which—
  - (a) do not result in conviction for an <sup>F38</sup>a relevant offence],
  - (b) result in conviction for <sup>F38</sup>a relevant offence] s in respect of which the person convicted is subsequently pardoned by Her Majesty, or

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- (c) result in conviction for [<sup>F38</sup>a relevant offence] 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, [<sup>F39</sup>by the Scottish Police Authority] ;
  - (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).

#### Textual Amendments

- F36** Word in Sch. 4 Pt. 2 para. 23(1) substituted (20.12.2001) by 2001 c. 24, s. 3, **Sch. 2 Pt. 2 para. 3(6)**; S.I. 2001/4019, **art. 2(1)(c)**
- F37** Words in Sch. 4 para. 23(2) substituted (18.6.2009) by Counter-Terrorism Act 2008 (c. 28), ss. 39, 100(5), **Sch. 3 para. 5(16)(a)** (with s. 101(2)); S.I. 2009/1256, **art. 2(c)**
- F38** Words in Sch. 4 para. 23(2)(a)(b)(c) substituted (18.6.2009) by Counter-Terrorism Act 2008 (c. 28), ss. 39, 100(5), **Sch. 3 para. 5(16)(b)** (with s. 101(2)); S.I. 2009/1256, **art. 2(c)**
- F39** Words in Sch. 4 para. 23(6)(a) substituted (1.4.2013) by The Police and Fire Reform (Scotland) Act 2012 (Consequential Provisions and Modifications) Order 2013 (S.I. 2013/602), art. 1(2), **Sch. 2 para. 32(3)**

- <sup>x124</sup> (1) This paragraph applies where—
- (a) a forfeiture order or a restraint order is made in or in relation to proceedings for [<sup>F40</sup>a relevant offence], 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).

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- (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.

#### **Editorial Information**

- X1** The omission of the cross-heading "Compensation" on 18.6.2009 gives rise to a change in the structure of this legislation on SLD which breaks the continuity of historical versions of the existing provisions which are now brought under "Restraint Orders" cross-heading.

#### **Textual Amendments**

- F40** Words in Sch. 4 para. 24(1)(a) substituted (18.6.2009) by Counter-Terrorism Act 2008 (c. 28), ss. 39, 100(5), **Sch. 3 para. 5(17)** (with s. 101(2)); S.I. 2009/1256, **art. 2(c)**

*F41* . . .

#### **Textual Amendments**

- F41** Sch. 4 para. 23: preceding cross-heading omitted (18.6.2009) by virtue of Counter-Terrorism Act 2008 (c. 28), ss. 39, 100(5), **Sch. 3 para. 5(15)** (with s. 101(2)); S.I. 2009/1256, **art. 2(c)**

#### *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.

*Status: Point in time view as at 31/01/2018.*

*Changes to legislation: Terrorism Act 2000, SCHEDULE 4 is up to date with all changes known to be in force on or before 07 September 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

### *[<sup>F42</sup>Domestic and overseas freezing orders*

#### **Textual Amendments**

**F42** Sch. 4 paras. 25A-25G and cross-headings inserted (3.12.2014) by [Crime \(International Co-operation\) Act 2003 \(c. 32\), s. 94\(1\), Sch. 4 para. 5](#); S.I. 2014/3192, art. 2(b)

- 25A (1) This paragraph has effect for the purposes of paragraphs 25B to 25G.
- (2) The relevant Framework Decision means the Framework Decision on the execution in the European Union of orders freezing property or evidence adopted by the Council of the European Union on 22nd July 2003.
- (3) A listed offence means—
- (a) an offence described in Article 3(2) of the relevant Framework Decision, or
  - (b) a prescribed offence or an offence of a prescribed description.
- (4) An order under sub-paragraph (3)(b) which, for the purposes of paragraph 25D, prescribes an offence or a description of offences may require that the conduct which constitutes the offence or offences would, if it occurred in a part of the United Kingdom, constitute an offence in that part.
- (5) Specified information, in relation to a certificate under paragraph 25B or 25D, means—
- (a) any information required to be given by the form of certificate annexed to the relevant Framework Decision, or
  - (b) any prescribed information.
- (6) In this paragraph, “prescribed” means prescribed by an order made by the Secretary of State.
- (7) A participating country means—
- (a) a country other than the United Kingdom which is a member State on a day appointed for the commencement of Schedule 4 to the Crime (International Co-operation) Act 2003, and
  - (b) any other member State designated by an order made by the Secretary of State.
- (8) “Country” includes territory.
- (9) Section 14(2)(a) applies for the purposes of determining what are the proceeds of the commission of an offence.

#### *Domestic freezing orders: certification*

- 25B (1) If any of the property to which an application for a restraint order relates is property in a participating country, the applicant may ask the Court of Session to make a certificate under this paragraph.
- (2) The Court of Session may make a certificate under this paragraph if—
- (a) it makes a restraint order in relation to property in the participating country, and

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- (b) it is satisfied that there is a good arguable case that the property is likely to be used for the purposes of a listed offence or is the proceeds of the commission of a listed offence.
- (3) A certificate under this paragraph is a certificate which—
  - (a) is made for the purposes of the relevant Framework Decision, and
  - (b) gives the specified information.
- (4) If the Court of Session makes a certificate under this paragraph—
  - (a) the restraint order must provide for notice of the certificate to be given to the person affected by it, and
  - (b) paragraph 19(2) to (4) applies to the certificate as it applies to the restraint order.

#### *Sending domestic freezing orders*

- 25C (1) If a certificate is made under paragraph 25B, the restraint order and the certificate are to be sent to the Lord Advocate for forwarding to—
  - (a) a court exercising jurisdiction in the place where the property is situated, or
  - (b) any authority recognised by the government of the participating country as the appropriate authority for receiving orders of that kind.
- (2) The restraint order and the certificate must be accompanied by a forfeiture order, unless the certificate indicates when the court expects a forfeiture order to be sent.
- (3) The certificate must include a translation of it into an appropriate language of the participating country (if that language is not English).
- (4) The certificate must be signed by or on behalf of the court and must include a statement as to the accuracy of the information given in it.
- The signature may be an electronic signature.
- (5) If the restraint order and the certificate are not accompanied by a forfeiture order, but a forfeiture order is subsequently made, it is to be sent to the Lord Advocate for forwarding as mentioned in sub-paragraph (1).

#### *Overseas freezing orders*

- 25D (1) Paragraph 25E applies where an overseas freezing order made by an appropriate court or authority in a participating country is received by the Secretary of State from the court or authority which made or confirmed the order.
- (2) An overseas freezing order is an order prohibiting dealing with property—
  - (a) which is in the United Kingdom,
  - (b) which the appropriate court or authority considers is likely to be used for the purposes of a listed offence or is the proceeds of the commission of such an offence, and
  - (c) in respect of which an order has been or may be made by a court exercising criminal jurisdiction in the participating country for the forfeiture of the property,and in respect of which the following requirements of this paragraph are met.

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- (3) The action which the appropriate court or authority considered would constitute or, as the case may be, constituted the listed offence is action done as an act of terrorism or for the purposes of terrorism.
- (4) The order must relate to—
  - (a) criminal proceedings instituted in the participating country, or
  - (b) a criminal investigation being carried on there.
- (5) The order must be accompanied by a certificate which gives the specified information; but a certificate may be treated as giving any specified information which is not given in it if the Secretary of State has the information in question.
- (6) The certificate must—
  - (a) be signed by or on behalf of the court or authority which made or confirmed the order,
  - (b) include a statement as to the accuracy of the information given in it,
  - (c) if it is not in English, include a translation of it into English.

The signature may be an electronic signature.
- (7) The order must be accompanied by an order made by a court exercising criminal jurisdiction in that country for the forfeiture of the property, unless the certificate indicates when such an order is expected to be sent.
- (8) An appropriate court or authority in a participating country in relation to an overseas freezing order is—
  - (a) a court exercising criminal jurisdiction in the country,
  - (b) a prosecuting authority in the country,
  - (c) any other authority in the country which appears to the Secretary of State to have the function of making such orders.
- (9) References in paragraphs 25E to 25G to an overseas freezing order include its accompanying certificate.

#### *Enforcement of overseas freezing orders*

- 25E (1) Where this paragraph applies the Secretary of State must send a copy of the overseas freezing order to the Court of Session and to the Lord Advocate.
- (2) The court is to consider the overseas freezing order on its own initiative within a period prescribed by rules of court.
  - (3) Before giving effect to the overseas freezing order, the court must give the Lord Advocate an opportunity to be heard.
  - (4) The court may decide not to give effect to the overseas freezing order only if, in its opinion, giving effect to it would be incompatible with any of the Convention rights (within the meaning of the Human Rights Act 1998).
- 25F The Court of Session may postpone giving effect to an overseas freezing order in respect of any property—
- (a) in order to avoid prejudicing a criminal investigation which is taking place in the United Kingdom, or
  - (b) if, under an order made by a court in criminal proceedings in the United Kingdom, the property may not be dealt with.



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- 25G (1) Where the Court of Session decides to give effect to an overseas freezing order, the Deputy Principal Clerk of Session must—
- (a) register the order in the Books of Council and Session,
  - (b) provide for notice of the registration to be given to any person affected by it.
- (2) For the purpose of enforcing an overseas freezing order registered in the Books of Council and Session, the order is to have effect as if it were an order made by the Court of Session.
- (3) Paragraphs 20 and 21 apply to an overseas freezing order registered in the Books of Council and Session as they apply to a restraint order under paragraph 18.
- (4) The Court of Session may cancel the registration of the order, or vary the property to which the order applies, on an application by the Lord Advocate or any other person affected by it, if or to the extent that—
- (a) the court is of the opinion mentioned in paragraph 25E(4), or
  - (b) the court is of the opinion that the order has ceased to have effect in the participating country.
- (5) Her Majesty may by Order in Council make further provision for the enforcement in Scotland of registered overseas freezing orders.
- (6) An Order in Council under this paragraph—
- (a) may make different provision for different cases,
  - (b) is not to be made unless a draft of it has been laid before and approved by resolution of each House of Parliament.]

*Enforcement of orders made elsewhere in the British Islands*

- 26 In the following provisions of this Part of this Schedule—
- “an England and Wales order” means—
- (a) an order made in England and Wales under section 23 [<sup>F43</sup>or 23A] (“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 [<sup>F43</sup>or 23A] (“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 [<sup>F43</sup>or 23A] (“an Islands forfeiture order”),
  - (b) paragraph 18 (“an Islands restraint order”), or
  - (c) any other provision of this Part of this Schedule.

*Status: Point in time view as at 31/01/2018.*

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### Textual Amendments

**F43** Words in Sch. 4 para. 26 inserted (18.6.2009) by Counter-Terrorism Act 2008 (c. 28), ss. 39, 100(5), Sch. 3 para. 5(18) (with s. 101(2)); S.I. 2009/1256, art. 2(c)

- 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 <sup>M9</sup>Administration of Justice (Scotland) Act 1972 (extended 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—

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- (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.

#### Commencement Information

- I2** Sch. 4 wholly in force at 19.2.2001; Sch. 4 not in force at Royal Assent see s. 128; Sch. 4 para. 27(2)(b)(3)(4) in force at 31.10.2000 by [S.I. 2000/2944](#), [art. 2\(h\)\(ii\)](#); Sch. 4 in force at 19.2.2001 in so far as not already in force by [S.I. 2001/421](#), [art. 2](#)

#### Marginal Citations

- M9** [1972 c.59](#).

#### *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 [<sup>F44</sup>(other than an overseas freezing order within the meaning of paragraph 25D)]—
- (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—
- (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,

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- (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.

#### Textual Amendments

**F44** Words in Sch. 4 para. 28(2) inserted (3.12.2014) by [Crime \(International Co-operation\) Act 2003 \(c. 32\)](#), s. 94(1), [Sch. 4 para. 6](#); S.I. 2014/3192, art. 2(b)

### PART III

#### NORTHERN IRELAND

##### *Interpretation*

- 29 In this Part of this Schedule—
- “forfeiture order” means an order made by a court in Northern Ireland under section 23 [<sup>F45</sup>or 23A], and
  - “forfeited property” means the money or other property to which a forfeiture order applies.
- [<sup>F46</sup> “ relevant offence ” means—
- (a) an offence under any of sections 15 to 18, or
  - (b) an offence to which section 23A applies.]

#### Textual Amendments

**F45** Sch. 4 para. 29: words in definition of "forfeiture order" inserted (18.6.2009) by [Counter-Terrorism Act 2008 \(c. 28\)](#), ss. 39, 100(5), [Sch. 3 para. 5\(19\)\(a\)](#) (with s. 101(2)); S.I. 2009/1256, [art. 2\(c\)](#)

**F46** Sch. 4 para. 29: definition of "relevence offence" inserted (18.6.2009) by [Counter-Terrorism Act 2008 \(c. 28\)](#), ss. 39, 100(5), [Sch. 3 para. 5\(19\)\(b\)](#) (with s. 101(2)); S.I. 2009/1256, [art. 2\(c\)](#)

##### *Implementation of forfeiture orders*

- 30 (1) Where a court in Northern Ireland 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—

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- (a) require any of the forfeited property to be paid or handed over to the proper officer or to a member of the Royal Ulster Constabulary designated for the purpose by the Chief Constable;
  - (b) 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 and the proceeds (if any) to be paid to the proper officer;
  - (c) appoint a receiver to take possession, subject to such conditions and exceptions as may be specified by the court, of any of the forfeited property, to realise it in such manner as the court may direct and to pay the proceeds to the proper officer;
  - (d) 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 by the proper officer to a specified person falling within <sup>F47</sup>section 23B(1)].
- (2) A forfeiture order shall not come into force until there is no further possibility of it being varied, or set aside, on appeal (disregarding any power of a court to grant leave to appeal out of time).
- (3) In sub-paragraph (1)(b) and (d) a reference to the proceeds of the sale, disposal or realisation of property is a reference to the proceeds after deduction of the costs of sale, disposal or realisation.
- (4) Article 58 of the <sup>M10</sup>Magistrates' Courts (Northern Ireland) Order 1981 (disposal of non-pecuniary forfeitures) shall not apply.

#### Textual Amendments

**F47** Words in Sch. 4 para. 30(1)(d) substituted (18.6.2009) by Counter-Terrorism Act 2008 (c. 28), ss. 39, 100(5), **Sch. 3 para. 5(20)** (with s. 101(2)); S.I. 2009/1256, **art. 2(c)**

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

**C10** Sch. 4 para. 30(1) extended (with modifications) (13.12.2001) by S.I. 2001/3927, **art. 25(1)**

#### Marginal Citations

**M10** S.I. 1981/1675 (N.I. 26).

- 31
- (1) A receiver appointed under paragraph 30 shall be entitled to be paid his remuneration and expenses by the proper officer out of the proceeds of the property realised by the receiver and paid to the proper officer under paragraph 30(1)(c).
  - (2) If and so far as those proceeds are insufficient, the receiver shall be entitled to be paid his remuneration and expenses by the prosecutor.
  - (3) A receiver appointed under paragraph 30 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 reasonably believes that he is entitled to take because of his belief that the property is forfeited property.
  - (4) Sub-paragraph (3) does not apply in so far as the loss or damage is caused by the receiver's negligence.

*Status: Point in time view as at 31/01/2018.*

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

**C11** Sch. 4 para. 31 applied (13.12.2001) by [S.I. 2001/3927](#), [art. 25\(1\)](#)

- 32 (1) In paragraphs 30 and 31 “the proper officer” means—
- (a) where the forfeiture order is made by a court of summary jurisdiction, the clerk of petty sessions, and
  - (b) where the forfeiture order is made by the Crown Court, the appropriate officer of the Crown Court.
- (2) The proper officer shall issue a certificate in respect of a forfeiture order if an application is made by—
- (a) the prosecutor in the proceedings in which the forfeiture order was made,
  - (b) the defendant in those proceedings, or
  - (c) a person whom the court heard under [<sup>F48</sup>section 23B(1)] before making the order.
- (3) The certificate shall state the extent (if any) to which, at the date of the certificate, effect has been given to the forfeiture order.
- (4) Any balance in the hands of the proper officer after making any payment required under paragraph 30(1)(d) or 31 shall be treated for the purposes of section 20 of the <sup>M11</sup>Administration of Justice (Northern Ireland) Act 1954 (application of fines, &c.) as if it were a fine.

#### Textual Amendments

**F48** Words in Sch. 4 para. 32(2)(c) substituted (18.6.2009) by [Counter-Terrorism Act 2008 \(c. 28\)](#), [ss. 39, 100\(5\)](#), [Sch. 3 para. 5\(21\)](#) (with [s. 101\(2\)](#)); [S.I. 2009/1256](#), [art. 2\(c\)](#)

#### Marginal Citations

**M11** 1954 c. 9 (N.I.).

### *[<sup>F49</sup>Application of proceeds to compensate victims*

#### Textual Amendments

**F49** Sch. 4 para. 32A and preceding cross-heading inserted (18.6.2009) by [Counter-Terrorism Act 2008 \(c. 28\)](#), [ss. 37\(3\), 100\(5\)](#) (with [s. 101\(2\)](#)); [S.I. 2009/1256](#), [art. 2\(c\)](#)

- 32A (1) Where a court makes a forfeiture order in a case where—
- (a) the offender has been convicted of an offence that has resulted in a person suffering personal injury, loss or damage, or
  - (b) any such offence is taken into consideration by the court in determining sentence,
- the court may also order that an amount not exceeding a sum specified by the court is to be paid to that person out of the proceeds of the forfeiture.
- (2) For this purpose the proceeds of the forfeiture means the aggregate amount of—
- (a) any forfeited money, and

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- (b) the proceeds of the sale, disposal or realisation of any forfeited property, after deduction of the costs of the sale, disposal or realisation, reduced by the amount of any payment under paragraph 30(1)(d) or 31(1).
- (3) The court may make an order under this paragraph only if it is satisfied that but for the inadequacy of the offender's means it would have made a compensation order under Article 14 of the Criminal Justice (Northern Ireland) Order 1994 under which the offender would have been required to pay compensation of an amount not less than the specified amount.]

#### *Restraint orders*

- 33 (1) The High Court may make a restraint order under this paragraph where—
- (a) proceedings have been instituted in Northern Ireland for [<sup>F50</sup>a relevant offence],
  - (b) the proceedings have not been concluded,
  - (c) an application for a restraint order is made to the High Court by the prosecutor, and
  - (d) a forfeiture order has been made, or it appears to the High Court that a forfeiture order may be made, in the proceedings for the offence.
- [<sup>F51</sup>(2) The High Court may also make a restraint order under this paragraph where—
- (a) a criminal investigation has been started in Northern Ireland with regard to [<sup>F50</sup>a relevant offence],
  - (b) an application for a restraint order is made to the High Court by the person who the High Court is satisfied will have the conduct of any proceedings for the offence, and
  - (c) it appears to the High Court that a forfeiture order may be made in any 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 [<sup>F52</sup>any proceedings] referred to in sub-paragraph (1) or (2).
- (4) An application for a restraint order may be made to a judge in chambers without notice.
- (5) For the purposes of this paragraph a reference to dealing with property includes a reference to removing the property from Northern Ireland.
- [<sup>F53</sup>(6) In this paragraph “ criminal investigation ” means an investigation which police officers or other persons have a duty to conduct with a view to it being ascertained whether a person should be charged with an offence. ]

#### **Textual Amendments**

- F50** Words in Sch. 4 para. 33(1)(a)(2)(a) substituted (18.6.2009) by Counter-Terrorism Act 2008 (c. 28), ss. 39, 100(5), **Sch. 3 para. 5(22)** (with s. 101(2)); S.I. 2009/1256, **art. 2(c)**
- F51** Sch. 4 Pt. 3 para. 33(2) substituted (20.12.2001) by 2001 c. 24, s. 3, **Sch. 2 Pt. 2 para. 4(2)**; S.I. 2001/4019, **art. 2(1)(c)**
- F52** Words in Sch. 4 Pt. 3 para. 33(3) substituted (20.12.2001) by 2001 c. 24, s. 3, **Sch. 2 Pt. 2 para. 4(3)**; S.I. 2001/4019, **art. 2(1)(c)**

*Status: Point in time view as at 31/01/2018.*

*Changes to legislation: Terrorism Act 2000, SCHEDULE 4 is up to date with all changes known to be in force on or before 07 September 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

**F53** Sch. 4 Pt. 3 para. 33(6) inserted (20.12.2001) by 2001 c. 24, s. 3, **Sch. 2 Pt. 2 para. 4(4)**; S.I. 2001/4019, **art. 2(1)(c)**

- 34 (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 discharged or varied by the High Court on the application of a person affected by it.
- [<sup>F54</sup>(3) A restraint order made under paragraph 33(1) shall in particular be discharged on an application under sub-paragraph (2) if the proceedings for the offence have been concluded.
- (4) A restraint order made under paragraph 33(2) shall in particular be discharged on an application under sub-paragraph (2)—
- (a) if no proceedings in respect of [<sup>F55</sup>relevant offences] are instituted within such time as the High Court considers reasonable, and
  - (b) if all proceedings in respect of [<sup>F55</sup>relevant offences] have been concluded.]

#### Textual Amendments

**F54** Sch. 4 Pt. 3 para. 34(3)(4) inserted (20.12.2001) by 2001 c. 24, s. 3, **Sch. 2 Pt. 2 para. 4(5)**; S.I. 2001/4019, **art. 2(1)(c)**

**F55** Words in Sch. 4 para. 34(4)(a)(b) substituted (18.6.2009) by Counter-Terrorism Act 2008 (c. 28), ss. 39, 100(5), **Sch. 3 para. 5(23)** (with s. 101(2)); S.I. 2009/1256, **art. 2(c)**

- 35 (1) A constable may seize any property subject to a restraint order for the purpose of preventing it from being removed from Northern Ireland.
- (2) Property seized under this paragraph shall be dealt with in accordance with the High Court's directions.

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

**C12** Sch. 4 para. 35 applied (13.12.2001) by S.I. 2001/3927, **art. 26**

- [<sup>F56</sup>36 (1) The power to make a restraint order under the provisions of paragraph 33 shall be exercisable by the Secretary of State in any case in which it appears to him that the information which it would be necessary to provide in support of an application to the High Court or a judge under those provisions would, if disclosed, be likely to place any person in danger or prejudice the capability of members of the Royal Ulster Constabulary to investigate an offence under any of sections 15 to 18.
- (2) In their application by virtue of sub-paragraph (1) paragraphs 33 to 35 shall have effect with the necessary modifications and as if references to the High Court were references to the Secretary of State.
- (3) An order made by the Secretary of State by virtue of this paragraph may be varied or discharged by the High Court under paragraph 34.]



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#### Textual Amendments

**F56** Sch. 4 para. 36 ceased to have effect (N.I.) (19.2.2003) by virtue of [The Terrorism Act 2000 \(Continuance of Part VII\) Order 2003 \(S.I. 2003/427\)](#), [art. 2\(2\)\(b\)](#); and repealed (N.I.) (19.2.2006) by [Terrorism \(Northern Ireland\) Act 2006 \(c. 4\)](#), s. 5(2)(3), [Sch.](#)

- 37 (1) A person commits an offence if he contravenes a restraint order.
- (2) It is a defence for a person charged with an offence under this paragraph to prove that he had a reasonable excuse for the contravention.
- (3) A person guilty of an offence under this paragraph shall be liable—
- (a) on conviction on indictment, to imprisonment for a term not exceeding 14 years, to a fine or to both, or
  - (b) on summary conviction, to imprisonment for a term not exceeding six months, to a fine not exceeding the statutory maximum, or to both.
- (4) Nothing in this paragraph shall be taken to prejudice any power of the High Court to deal with the contravention of a restraint order as a contempt of court.

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

**C13** Sch. 4 para. 37 modified (N.I.) (19.2.2006) by [Terrorism \(Northern Ireland\) Act 2006 \(c. 4\)](#), ss. {1(9)}, 5(3)

- 38 (1) The prosecutor shall be treated for the purposes of section 66 of the <sup>M12</sup>Land Registration Act (Northern Ireland) 1970 (cautions) as a person interested in respect of any registered land to which a restraint order or an application for such an order relates.
- (2) On the application of the prosecutor, the Registrar of Titles shall, in respect of any registered land to which a restraint order or an application for such an order relates, make an entry inhibiting any dealing with the land without the consent of the High Court.
- (3) Subsections (2) and (4) of section 67 of the <sup>M13</sup>Land Registration Act (Northern Ireland) 1970 (inhibitions) shall apply to an entry made on the application of the prosecutor under sub-paragraph (2) as they apply to an entry made on the application of any person interested in the registered land under subsection (1) of that section.
- (4) In this paragraph—
- “registered land” has the meaning assigned to it by section 45(1)(a) of the <sup>M14</sup>Interpretation Act (Northern Ireland) 1954,
  - “Registrar of Titles” and “entry” have the same meanings as in the <sup>M15</sup>Land Registration Act (Northern Ireland) 1970, and
  - “prosecutor” in a case where a restraint order is made under paragraph 33(2) or an application for such an order is made, means the person who the High Court is satisfied has or will have the conduct of [<sup>F57</sup>any proceedings for [<sup>F58</sup>a relevant offence]].

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#### Textual Amendments

- F57** Words in Sch. 4 para. 38(4) substituted (20.12.2001) by 2001 c. 24, s. 3, **Sch. 2 Pt. 2 para. 4(6)**; S.I. 2001/4019, **art. 2(1)(c)**
- F58** Sch. 4 para. 38(4): words in definition of "prosecutor" substituted (18.6.2009) by Counter-Terrorism Act 2008 (c. 28), ss. 39, 100(5), **Sch. 3 para. 5(24)** (with s. 101(2)); S.I. 2009/1256, **art. 2(c)**

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

- C14** Sch. 4 para. 38 applied (13.12.2001) by S.I. 2001/3927, **art. 26**

#### Marginal Citations

- M12** 1970 c. 18(N.I.).
- M13** 1970 c. 18(N.I.).
- M14** 1954 c. 33(N.I.).
- M15** 1970 c. 18(N.I.).

- <sup>x239</sup> (1) This paragraph applies where a restraint order is discharged under [F<sup>59</sup> paragraph 34(4)(a)].
- (2) This paragraph also applies where a forfeiture order or a restraint order is made in or in relation to proceedings for [F<sup>60</sup>a relevant offence] which—
- (a) do not result in conviction for [F<sup>61</sup>a relevant offence],
  - (b) result in conviction for [F<sup>61</sup>a relevant offence] in respect of which the person convicted is subsequently pardoned by Her Majesty, or
  - (c) result in a conviction for [F<sup>61</sup>a relevant offence] which is subsequently quashed.
- (3) A person who had an interest in any property which was subject to the order may apply to the High Court for compensation.
- (4) The High Court may order compensation to be paid to the applicant if 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 or was acting as a member of the Royal Ulster Constabulary, or was a [F<sup>62</sup>member of staff of the Public Prosecution Service for Northern Ireland],
  - (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 restraint order, and
  - (d) that, having regard to all the circumstances, it is appropriate to order compensation to be paid.
- (5) The High Court shall not order compensation to be paid where it appears to it that 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 or was acting as a member of the Royal Ulster Constabulary, out of funds put at the disposal of the Chief Constable under section 10(5) of the <sup>M16</sup>Police (Northern Ireland) Act 1998, and

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- (b) where the person in default was a [<sup>F63</sup>member of staff of the Public Prosecution Service for Northern Ireland], by the Director of Public Prosecutions for Northern Ireland.

#### Editorial Information

- X2** The omission of the cross-heading "Compensation" on 18.6.2009 gives rise to a change in the structure of this legislation on SLD which breaks the continuity of historical versions of the existing provisions which are now brought under "Restraint Orders" cross-heading.

#### Textual Amendments

- F59** Word in Sch. 4 Pt. 3 para. 39(1) substituted (20.12.2001) by 2001 c. 24, s. 3, **Sch. 2 Pt. 2 para. 4(7)**; S.I. 2001/4019, **art. 2(1)(c)**
- F60** Words in Sch. 4 para. 39(2) substituted (18.6.2009) by Counter-Terrorism Act 2008 (c. 28), ss. 39, 100(5), **Sch. 3 para. 5(26)(a)** (with s. 101(2)); S.I. 2009/1256, **art. 2(c)**
- F61** Words in Sch. 4 para. 39(2)(a)(b)(c) substituted (18.6.2009) by Counter-Terrorism Act 2008 (c. 28), ss. 39, 100(5), **Sch. 3 para. 5(26)(b)** (with s. 101(2)); S.I. 2009/1256, **art. 2(c)**
- F62** Words in Sch. 4 para. 39(4)(b) substituted (13.6.2005) by 2002 c. 26, s. 85, Sch. 12 para. 80; S.R. 2005/281, **art. 2, Sch. 1**
- F63** Words in Sch. 4 para. 39(6)(b) substituted (13.6.2005) by 2002 c. 26, s. 85, Sch. 12 para. 80; S.R. 2005/281, **art. 2, Sch. 1**

#### Marginal Citations

- M16** 1998 c. 32.

- <sup>x3</sup>40 (1) This paragraph applies where—
- (a) a forfeiture order or a restraint order is made in or in relation to proceedings for [<sup>F64</sup>a relevant offence], 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(2).
- (2) A person who had an interest in any property which was subject to the order may apply to the High Court for compensation.
- (3) The High Court 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.

#### Editorial Information

- X3** The omission of the cross-heading "Compensation" on 18.6.2009 gives rise to a change in the structure of this legislation on SLD which breaks the continuity of historical versions of the existing provisions which are now brought under "Restraint Orders" cross-heading.

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#### Textual Amendments

**F64** Words in Sch. 4 para. 40(1)(a) substituted (18.6.2009) by Counter-Terrorism Act 2008 (c. 28), ss. 39, 100(5), **Sch. 3 para. 5(27)** (with s. 101(2)); S.I. 2009/1256, **art. 2(c)**

*F65*  
...

#### Textual Amendments

**F65** Sch. 4 para. 39: preceding cross-heading omitted (18.6.2009) by virtue of Counter-Terrorism Act 2008 (c. 28), ss. 39, 100(5), **Sch. 3 para. 5(25)** (with s. 101(2)); S.I. 2009/1256, **art. 2(c)**

#### *Proceedings for an offence: timing*

- 41 (1) For the purposes of this Part of this Schedule proceedings for an offence are instituted—
- (a) when a summons or warrant is issued under Article 20 of the<sup>M17</sup>Magistrates' Courts (Northern Ireland) Order 1981 in respect of the offence;
  - (b) when a person is charged with the offence after being taken into custody without a warrant;
  - (c) when an indictment charging a person with the offence is presented under section 2(2)(c), (e) or (f) of the<sup>M18</sup>Grand Jury (Abolition) Act (Northern Ireland) 1969.
- (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 forfeited property, or
  - (b) when no forfeiture order has been made in those proceedings and there is no further possibility of one being made as a result of an appeal (disregarding any power of a court to grant leave to appeal out of time).

#### Marginal Citations

**M17** S.I. 1981/1675 (N.I. 26).  
**M18** 1969 c. 15(N.I.).

#### *[<sup>F66</sup>Domestic and overseas freezing orders*

#### Textual Amendments

**F66** Sch. 4 paras. 41A-41G and cross-headings inserted (3.12.2014) by **Crime (International Co-operation) Act 2003 (c. 32)**, s. 94(1), **Sch. 4 para. 7**; S.I. 2014/3192, **art. 2(b)**

- 41A (1) This paragraph has effect for the purposes of paragraphs 41B to 41G.

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- (2) The relevant Framework Decision means the Framework Decision on the execution in the European Union of orders freezing property or evidence adopted by the Council of the European Union on 22nd July 2003.
- (3) A listed offence means—
  - (a) an offence described in Article 3(2) of the relevant Framework Decision, or
  - (b) a prescribed offence or an offence of a prescribed description.
- (4) An order under sub-paragraph (3)(b) which, for the purposes of paragraph 41D, prescribes an offence or a description of offences may require that the conduct which constitutes the offence or offences would, if it occurred in a part of the United Kingdom, constitute an offence in that part.
- (5) Specified information, in relation to a certificate under paragraph 41B or 41D, means—
  - (a) any information required to be given by the form of certificate annexed to the relevant Framework Decision, or
  - (b) any prescribed information.
- (6) In this paragraph, “prescribed” means prescribed by an order made by the Secretary of State.
- (7) A participating country means—
  - (a) a country other than the United Kingdom which is a member State on a day appointed for the commencement of Schedule 4 to the Crime (International Co-operation) Act 2003, and
  - (b) any other member State designated by an order made by the Secretary of State.
- (8) “Country” includes territory.
- (9) Section 14(2)(a) applies for the purposes of determining what are the proceeds of the commission of an offence.

*Domestic freezing orders: certification*

- 41B
- (1) If any of the property to which an application for a restraint order relates is property in a participating country, the applicant may ask the High Court to make a certificate under this paragraph.
  - (2) The High Court may make a certificate under this paragraph if—
    - (a) it makes a restraint order in relation to property in the participating country, and
    - (b) it is satisfied that there is a good arguable case that the property is likely to be used for the purposes of a listed offence or is the proceeds of the commission of a listed offence.
  - (3) A certificate under this paragraph is a certificate which—
    - (a) is made for the purposes of the relevant Framework Decision, and
    - (b) gives the specified information.
  - (4) If the High Court makes a certificate under this paragraph—
    - (a) the restraint order must provide for notice of the certificate to be given to the person affected by it, and

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- (b) paragraph 34(2) to (4) applies to the certificate as it applies to the restraint order.

*Sending domestic freezing orders*

- 41C (1) If a certificate is made under paragraph 41B, the restraint order and the certificate are to be sent to the Secretary of State for forwarding to—
- (a) a court exercising jurisdiction in the place where the property is situated, or
  - (b) any authority recognised by the government of the participating country as the appropriate authority for receiving orders of that kind.
- (2) The restraint order and the certificate must be accompanied by a forfeiture order, unless the certificate indicates when the court expects a forfeiture order to be sent.
- (3) The certificate must include a translation of it into an appropriate language of the participating country (if that language is not English).
- (4) The certificate must be signed by or on behalf of the court and must include a statement as to the accuracy of the information given in it.
- The signature may be an electronic signature.
- (5) If the restraint order and the certificate are not accompanied by a forfeiture order, but a forfeiture order is subsequently made, it is to be sent to the Secretary of State for forwarding as mentioned in sub-paragraph (1).

*Overseas freezing orders*

- 41D (1) Paragraph 41E applies where an overseas freezing order made by an appropriate court or authority in a participating country is received by the Secretary of State from the court or authority which made or confirmed the order.
- (2) An overseas freezing order is an order prohibiting dealing with property—
- (a) which is in the United Kingdom,
  - (b) which the appropriate court or authority considers is likely to be used for the purposes of a listed offence or is the proceeds of the commission of such an offence, and
  - (c) in respect of which an order has been or may be made by a court exercising criminal jurisdiction in the participating country for the forfeiture of the property,
- and in respect of which the following requirements of this paragraph are met.
- (3) The action which the appropriate court or authority considered would constitute or, as the case may be, constituted the listed offence is action done as an act of terrorism or for the purposes of terrorism.
- (4) The order must relate to—
- (a) criminal proceedings instituted in the participating country, or
  - (b) a criminal investigation being carried on there.
- (5) The order must be accompanied by a certificate which gives the specified information; but a certificate may be treated as giving any specified information which is not given in it if the Secretary of State has the information in question.
- (6) The certificate must—

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- (a) be signed by or on behalf of the court or authority which made or confirmed the order,
- (b) include a statement as to the accuracy of the information given in it,
- (c) if it is not in English, include a translation of it into English.

The signature may be an electronic signature.

- (7) The order must be accompanied by an order made by a court exercising criminal jurisdiction in that country for the forfeiture of the property, unless the certificate indicates when such an order is expected to be sent.
- (8) An appropriate court or authority in a participating country in relation to an overseas freezing order is—
  - (a) a court exercising criminal jurisdiction in the country,
  - (b) a prosecuting authority in the country,
  - (c) any other authority in the country which appears to the Secretary of State to have the function of making such orders.
- (9) References in paragraphs 41E to 41G to an overseas freezing order include its accompanying certificate.

#### *Enforcement of overseas freezing orders*

- 41E (1) Where this paragraph applies the Secretary of State must send a copy of the overseas freezing order to the High Court and to the Director of Public Prosecutions for Northern Ireland.
  - (2) The court is to consider the overseas freezing order on its own initiative within a period prescribed by rules of court.
  - (3) Before giving effect to the overseas freezing order, the court must give the Director an opportunity to be heard.
  - (4) The court may decide not to give effect to the overseas freezing order only if, in its opinion, giving effect to it would be incompatible with any of the Convention rights (within the meaning of the Human Rights Act 1998).
- 41F The High Court may postpone giving effect to an overseas freezing order in respect of any property—
  - (a) in order to avoid prejudicing a criminal investigation which is taking place in the United Kingdom, or
  - (b) if, under an order made by a court in criminal proceedings in the United Kingdom, the property may not be dealt with.
- 41G (1) Where the High Court decides to give effect to an overseas freezing order, it must—
  - (a) register the order in that court,
  - (b) provide for notice of the registration to be given to any person affected by it.
  - (2) For the purpose of enforcing an overseas freezing order registered in the High Court, the order is to have effect as if it were an order made by that court.
  - (3) Paragraph 35 applies to an overseas freezing order registered in the High Court as it applies to a restraint order under paragraph 33.

*Status: Point in time view as at 31/01/2018.*

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- (4) The High Court may cancel the registration of the order, or vary the property to which the order applies, on an application by the Director of Public Prosecutions for Northern Ireland or any other person affected by it, if or to the extent that—
- (a) the court is of the opinion mentioned in paragraph 41E(4), or
  - (b) the court is of the opinion that the order has ceased to have effect in the participating country.
- (5) Her Majesty may by Order in Council make further provision for the enforcement in Northern Ireland of registered overseas freezing orders.
- (6) An Order in Council under this paragraph—
- (a) may make different provision for different cases,
  - (b) is not to be made unless a draft of it has been laid before and approved by resolution of each House of Parliament.]

*Enforcement of orders made elsewhere in the British Islands*

- 42 In the following provisions of this Part of this Schedule—
- “an England and Wales order” means—
- (a) an order made in England and Wales under section 23 [<sup>F67</sup>or 23A] (“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 Scottish order” means—
- (a) an order made in Scotland under section 23 [<sup>F67</sup>or 23A] (“a Scottish forfeiture order”),
  - (b) an order made under paragraph 18 (“a Scottish restraint order”), or
  - (c) an order made under any other provision of Part II of this Schedule in relation to a Scottish 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 [<sup>F67</sup>or 23A] (“an Islands forfeiture order”),
  - (b) paragraph 33 (“an Islands restraint order”), or
  - (c) any other provision of this Part of this Schedule.

**Textual Amendments**

**F67** Words in Sch. 4 para. 42 inserted (18.6.2009) by Counter-Terrorism Act 2008 (c. 28), ss. 39, 100(5), Sch. 3 para. 5(28) (with s. 101(2)); S.I. 2009/1256, art. 2(c)

- 43 (1) Subject to the provisions of this paragraph, an England and Wales, Scottish or Islands order shall have effect in the law of Northern Ireland.
- (2) But such an order shall be enforced in Northern Ireland 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.



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- (3) On an application made to it in accordance with rules of court for registration of an England and Wales, Scottish or Islands order, the High Court 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, Scottish or Islands forfeiture order when effect has been given to it, whether in Northern Ireland 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, Scottish or Islands restraint order which has been discharged or varied by the court by which it was made.
- (5) If an England and Wales, Scottish or Islands forfeiture order is registered under this paragraph the High Court shall have, in relation to that order, the same powers as a court has under paragraph 30(1) to give effect to a forfeiture order made by it and—
  - (a) paragraph 31 shall apply accordingly,
  - (b) any functions of the clerk of petty sessions or the appropriate officer of the Crown Court shall be exercised by the appropriate officer of the High Court, and
  - (c) after making any payment required by virtue of paragraph 30(1)(d) or 31, the balance of any sums received by the appropriate officer of the High Court by virtue of an order made under this sub-paragraph shall be paid into the Consolidated Fund.
- (6) If an England and Wales, Scottish or Islands restraint order is registered under this paragraph—
  - (a) paragraphs 35 and 38 shall apply as they apply to a restraint order under paragraph 33, and
  - (b) the High Court shall have the like power to make an order under section 21 of the <sup>M19</sup>Administration of Justice Act 1969 (extended power to order inspection of property, &c.) in relation to proceedings brought or likely to be brought for an England and Wales, Scottish or Islands restraint order as if those proceedings had been brought or were likely to be brought in the High Court.
- (7) In addition, if an England and Wales, Scottish or Islands order is registered under this paragraph—
  - (a) the High Court shall have, in relation to its enforcement, the same power as if the order had originally been made in the High Court,
  - (b) proceedings for or with respect to its enforcement may be taken as if the order had originally been made in the High Court, 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 High Court.
- (8) The High Court may also make such orders or do otherwise as seems to it appropriate for the purpose of—
  - (a) assisting the achievement in Northern Ireland of the purposes of an England and Wales, Scottish or Islands order, or
  - (b) assisting any receiver or other person directed by any such order to sell or otherwise dispose of property.

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- (9) The following documents shall be received in evidence in Northern Ireland without further proof—
- (a) a document purporting to be a copy of an England and Wales, Scottish 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 32(2) and (3) and to be certified by a proper officer of the court concerned.

#### Commencement Information

**I3** Sch. 4 wholly in force at 19.2.2001; Sch. 4 not in force at Royal Assent see s. 128; Sch. 4 para. 43(2)(b)(3)(4) in force at 31.10.2000 by [S.I. 2000/2944](#), [art. 2\(h\)\(iii\)](#); Sch. 4 para. 43 in force at 19.2.2001 in so far as not already in force by [S.I. 2001/421](#), [art. 2](#)

#### Marginal Citations

**M19** 1969 c. 58.

#### *Enforcement of orders made in designated countries*

- 44 (1) Her Majesty may by Order in Council make provision for the purpose of enabling the enforcement in Northern Ireland of external orders.
- (2) An “external order” means an order [<sup>F68</sup>(other than an overseas freezing order within the meaning of paragraph 41D) ] —
- (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—
- (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 43(1) to (8) in relation to the orders to which that paragraph applies;
  - (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.

*Status: Point in time view as at 31/01/2018.*

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- (6) An Order in Council 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.

#### Textual Amendments

- F68** Words in Sch. 4 para. 44(2) inserted (3.12.2014) by [Crime \(International Co-operation\) Act 2003 \(c. 32\)](#), s. 94(1), [Sch. 4 para. 8](#); S.I. 2014/3192, art. 2(b)

## PART IV

### INSOLVENCY: UNITED KINGDOM PROVISIONS

#### *General*

- 45 In this Part of this Schedule—
- “ancillary order” means an order made in connection with a forfeiture, other than the forfeiture order,
- “forfeiture order” means—
- (a) an order made in England and Wales, Scotland or Northern Ireland under section 23 [<sup>F69</sup>or 23A],
  - (b) an Islands forfeiture order within the meaning given in paragraph 12, 26 or 42, or
  - (c) an external forfeiture order which is enforceable in England and Wales, Scotland or Northern Ireland by virtue of an Order in Council made under paragraph 14, 28 or 44,
- “forfeited property” means the money or other property to which a forfeiture order applies, and
- “restraint order” means—
- (a) an order made under paragraph 5, 18 or 33,
  - (b) an Islands restraint order within the meaning given in paragraph 12, 26 or 42, or
  - (c) an external restraint order which is enforceable in England and Wales, Scotland or Northern Ireland by virtue of an Order in Council made under paragraph 14, 28 or 44 [<sup>F70</sup>or an order which is enforceable in England and Wales, Scotland or Northern Ireland by virtue of paragraph 11G, 25G or 41G ] .

#### Textual Amendments

- F69** Words in Sch. 4 para. 45 inserted (18.6.2009) by [Counter-Terrorism Act 2008 \(c. 28\)](#), ss. 39, 100(5), [Sch. 3 para. 5\(29\)](#) (with s. 101(2)); S.I. 2009/1256, art. 2(c)
- F70** Words in Sch. 4 para. 45 inserted (3.12.2014) by [Crime \(International Co-operation\) Act 2003 \(c. 32\)](#), s. 94(1), [Sch. 4 para. 9](#); S.I. 2014/3192, art. 2(b)

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*Protection of creditors against forfeiture*

- 46 (1) During the period of six months beginning with the making of a forfeiture order, the following shall not be finally disposed of under this Schedule—
- (a) the money to which the order applies, and
  - (b) the money which represents any property to which the order applies.
- (2) For the purposes of this paragraph money is finally disposed of under this Schedule when—
- (a) in England and Wales, it is paid to the Lord Chancellor in accordance with [F71section 38 of the Courts Act 2003 (application of receipts of designated officers)] or to the Secretary of State in accordance with paragraph 13(5)(c),
  - (b) in Scotland, it is paid to the Treasury in accordance with section 211(5) of the M20Criminal Procedure (Scotland) Act 1995 (as modified by paragraph 16(3)), or
  - (c) in Northern Ireland, it is paid into the Consolidated Fund in accordance with paragraph 32(4) or 43(5)(c).

**Textual Amendments**

**F71** Words in Sch. 4 para. 46(2)(a) substituted (1.4.2005) by [Courts Act 2003 \(c. 39\), s. 109\(1\), Sch. 8 para. 388\(4\)](#); [S.I. 2005/910, art. 3](#)

**Marginal Citations**

**M20** 1995 c. 46.

- 47 (1) This paragraph applies where—
- (a) before or after a forfeiture order is made, the commencement of an insolvency occurs in qualifying insolvency proceedings,
  - (b) an insolvency practitioner would, but for the forfeiture order, exercise a function in those proceedings in relation to property to which the forfeiture order applies, and
  - (c) he gives written notice to the relevant officer of the matters referred to in paragraphs (a) and (b) before the end of the period of six months beginning with the making of the forfeiture order.
- (2) Sub-paragraph (3) shall apply to—
- (a) the property in relation to which the insolvency practitioner would, but for the forfeiture order, exercise a function as described in sub-paragraph (1) (b), and
  - (b) the proceeds of sale of that property.
- (3) The property—
- (a) shall cease to be subject to the forfeiture order and any ancillary order, and
  - (b) shall be dealt with in the insolvency proceedings as if the forfeiture order had never been made.
- (4) But—
- (a) the property to which sub-paragraph (3) applies is the balance remaining after the relevant officer has exercised his powers under paragraph 50(1), and

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- (b) sub-paragraph (3) shall not take effect in respect of property in relation to which the relevant officer, or any person acting in pursuance of an ancillary order, has incurred obligations until those obligations have been discharged.
- (5) In this paragraph “the commencement of an insolvency” means—
- (a) the making of a bankruptcy order,
  - (b) the award of sequestration,
  - (c) in England and Wales or in Northern Ireland, in the case of the insolvent estate of a deceased person, the making of an insolvency administration order, or
  - (d) in the case of a company, the passing of a resolution for its winding up, or where no such resolution has been passed, the making of an order by the court for the winding up of the company.
- 48 (1) Where by virtue of paragraph 47(3) property falls to be dealt with in insolvency proceedings, the Secretary of State shall be taken to be a creditor in those proceedings to the amount or value of the property.
- (2) Except in a sequestration, his debt—
- (a) shall rank after the debts of all other creditors, and
  - (b) shall not be paid until they have been paid in full with interest under the relevant provision.
- (3) In sub-paragraph (2)(b) the “relevant provision” means—
- (a) in relation to the winding up of a company in England and Wales or Scotland, section 189(2) of the <sup>M21</sup>Insolvency Act 1986,
  - (b) in relation to a bankruptcy in England and Wales, section 328(4) of that Act,
  - (c) in relation to the winding up of a company in Northern Ireland, Article 160(2) of the <sup>M22</sup>Insolvency (Northern Ireland) Order 1989, and
  - (d) in relation to a bankruptcy in Northern Ireland, Article 300(4) of that Order.
- (4) In a sequestration, his debt shall rank after all of the debts mentioned in section [F72]129(1) of the Bankruptcy (Scotland) Act 2016] and shall not be paid until they have been paid in full.
- (5) Sub-paragraphs (2) to (4) apply notwithstanding any provision contained in or made under any other enactment.

#### Textual Amendments

**F72** Words in Sch. 4 para. 48(4) substituted (30.11.2016) by [The Bankruptcy \(Scotland\) Act 2016 \(Consequential Provisions and Modifications\) Order 2016 \(S.I. 2016/1034\)](#), art. 1, **Sch. 1 para. 21(2)**

#### Marginal Citations

**M21** 1986 c. 45.

**M22** S.I. 1989/2405 (N.I. 19).

- 49 (1) This paragraph applies to property which ceased to be subject to a forfeiture order by virtue of paragraph 47(3) in consequence of the making of a bankruptcy order or an award of sequestration.
- (2) The property shall again become subject to the forfeiture order and, if applicable, any ancillary order if—

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- (a) the bankruptcy order is annulled, or
  - (b) the award of sequestration is recalled or reduced.
- (3) Where the property is money or has been converted into money—
- (a) the relevant court shall make an order specifying property comprised in the estate of the bankrupt or debtor to the amount or value of the property, and
  - (b) the specified property shall become subject to the forfeiture order, and any applicable ancillary order, in place of the property.
- (4) In sub-paragraph (3) the “relevant court” means—
- (a) the court which ordered the annulment of the bankruptcy, or
  - (b) the court which recalled or reduced the award of sequestration.

*Expenses incurred in connection with forfeiture*

- 50 (1) Where money or other property falls to be dealt with in accordance with paragraph 47(3), the relevant officer may—
- (a) deduct allowable forfeiture expenses from that money;
  - (b) retain so much of that property as he considers necessary for the purpose of realising it and deducting allowable forfeiture expenses from the proceeds of realisation.
- (2) Where property is delivered up in pursuance of paragraph 47(3) and the relevant officer has not made provision under sub-paragraph (1) for all the allowable forfeiture expenses then—
- (a) a person who has incurred allowable forfeiture expenses for which provision has not been made shall have a claim to their value in the insolvency proceedings, and
  - (b) the expenses in question shall be treated for the purposes of the insolvency proceedings as if they were expenses of those proceedings.
- (3) In this paragraph “allowable forfeiture expenses”—
- (a) means expenses incurred in relation to the forfeited property by the relevant officer,
  - (b) means expenses incurred in relation to the forfeited property by a receiver, administrator or other person appointed by the relevant officer,
  - (c) means expenses incurred in relation to the forfeited property by any person appointed or directed to deal with any property under paragraph 16, and
  - (d) includes sums paid or required to be paid under paragraph 2(1)(d), 16(1)(c) or 30(1)(d).

*Protection of insolvency practitioners*

- 51 (1) This paragraph applies where an insolvency practitioner seizes or disposes of property which is subject to a forfeiture order or a restraint order and—
- (a) he reasonably believes that he is entitled to do so in the exercise of his functions, and
  - (b) he would be so entitled if the property were not subject to a forfeiture order or a restraint order.

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- (2) The insolvency practitioner shall not be liable to any person in respect of any loss or damage resulting from the seizure or disposal except in so far as the loss or damage is caused by his negligence.
- (3) The insolvency practitioner shall have a lien on the property seized or the proceeds of its sale—
  - (a) for such of his expenses as were incurred in connection with the insolvency proceedings in relation to which the seizure or disposal purported to take place, and
  - (b) for so much of his remuneration as may be reasonably assigned for his acting in connection with those proceedings.
- (4) Sub-paragraphs (1) to (3) are without prejudice to the generality of any provision contained in the <sup>M23</sup>Insolvency Act 1986 or the Bankruptcy (Scotland) Act [<sup>F73</sup>2016] or any other Act or the <sup>M24</sup>Insolvency (Northern Ireland) Order 1989.
- (5) In this paragraph “insolvency practitioner”, in any part of the United Kingdom, means a person acting as an insolvency practitioner in that or any other part of the United Kingdom.
- (6) For the purpose of sub-paragraph (5) any question whether a person is acting as an insolvency practitioner in England and Wales or in Scotland shall be determined in accordance with section 388 of the <sup>M25</sup>Insolvency Act 1986, except that—
  - (a) the reference in section 388(2)(a) to a permanent or interim trustee in the sequestration of a debtor’s estate shall be taken to include a reference to a trustee in sequestration,
  - (b) section 388(5) shall be disregarded, and
  - (c) the expression shall also include the Official Receiver acting as receiver or manager of property.
- (7) For the purpose of sub-paragraph (5) any question whether a person is acting as an insolvency practitioner in Northern Ireland shall be determined in accordance with Article 3 of the <sup>M26</sup>Insolvency (Northern Ireland) Order 1989, except that—
  - (a) Article 3(5) shall be disregarded, and
  - (b) the expression shall also include the Official Receiver acting as receiver or manager of property.

#### Textual Amendments

**F73** Word in Sch. 4 para. 51(4) substituted (30.11.2016) by [The Bankruptcy \(Scotland\) Act 2016 \(Consequential Provisions and Modifications\) Order 2016 \(S.I. 2016/1034\)](#), art. 1, **Sch. 1 para. 21(3)**

#### Marginal Citations

**M23** 1986 c. 45.

**M24** S.I. 1989/2405 (N.I. 19).

**M25** 1986 c. 45.

**M26** S.I. 1989/2405 (N.I. 19).

*Status: Point in time view as at 31/01/2018.*

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*Insolvency practitioners in the Islands and designated countries*

- 52 (1) An order may be made under this paragraph to secure that an Islands or external insolvency practitioner has the same rights under this Part of this Schedule in relation to—
- (a) property situated in England and Wales,
  - (b) property situated in Scotland, or
  - (c) property situated in Northern Ireland,
- as he would have if he were an insolvency practitioner in that part of the United Kingdom.
- (2) The Secretary of State may make an order—
- (a) under sub-paragraph (1)(a) with the concurrence of the Lord Chancellor;
  - (b) under sub-paragraph (1)(b).
- (3) An order under sub-paragraph (1)(c)—
- (a) may be made by the Department of Enterprise, Trade and Investment in Northern Ireland,
  - (b) shall be a statutory rule for the purposes of the <sup>M27</sup>Statutory Rules (Northern Ireland) Order 1979, and
  - (c) shall be subject to negative resolution within the meaning of section 41(6) of the <sup>M28</sup>Interpretation (Northern Ireland) Act 1954.
- (4) An order under this paragraph may, in particular, include—
- (a) provision which modifies the rights under this Part of this Schedule which are to be conferred under the order;
  - (b) provision as to the manner in which the rights conferred under the order are to be exercised;
  - (c) provision as to the conditions subject to which those rights are to be exercised, including the obtaining of leave from a court;
  - (d) provision for empowering a court granting such leave to impose such conditions as it thinks fit.
- (5) An order under this paragraph may make different provision for different purposes.
- (6) In this paragraph—
- “Islands or external insolvency practitioner” means a person exercising under the insolvency law of a relevant country or territory functions corresponding to those exercised by insolvency practitioners under the insolvency law of any part of the United Kingdom,
- “insolvency law” has the same meaning as in section 426(10) of the <sup>M29</sup>Insolvency Act 1986, except that the reference to a relevant country or territory shall be construed in accordance with this paragraph, and
- “relevant country or territory” means—
- (a) any of the Channel Islands,
  - (b) the Isle of Man, or
  - (c) any country or territory designated as mentioned in paragraph 14, 28 or 44.



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#### Marginal Citations

**M27** S.I. 1979/1573 (N.I. 12).

**M28** 1954 c. 33 (N.I.).

**M29** 1986 c. 45.

#### Interpretation

- 53 (1) In this Part of this Schedule (other than in paragraph 51) “insolvency practitioner” means a person acting in any qualifying insolvency proceedings in any part of the United Kingdom as—
- (a) a liquidator of a company or partnership,
  - (b) a trustee in bankruptcy,
  - (c) the [<sup>F74</sup>trustee or interim trustee in the sequestration of a] debtor’s estate,
  - (d) an administrator of the insolvent estate of a deceased person, or
  - (e) a receiver or manager of any property.
- (2) In this Part of this Schedule “qualifying insolvency proceedings” means—
- (a) any proceedings under the <sup>M30</sup>Insolvency Act 1986 or the <sup>M31</sup>Insolvency (Northern Ireland) Order 1989 for the winding up of a company or an unregistered company and includes any voluntary winding up of a company under Part IV of that Act or Part V of that Order,
  - (b) any proceedings in England and Wales or Northern Ireland under or by virtue of section 420 of the <sup>M32</sup>Insolvency Act 1986 or Article 364 of the <sup>M33</sup>Insolvency (Northern Ireland) Order 1989 for the winding up of an insolvent partnership,
  - (c) any proceedings in bankruptcy or, in Scotland, any sequestration of a debtor’s estate, or
  - (d) any proceedings in England and Wales or in Northern Ireland under or by virtue of section 421 of the <sup>M34</sup>Insolvency Act 1986 or Article 365 of the <sup>M35</sup>Insolvency (Northern Ireland) Order 1989 in relation to the insolvent estate of a deceased person.
- (3) In this Part of this Schedule “the relevant officer” means in England and Wales and in Northern Ireland—
- (a) where the forfeiture order in question is made by a court in England and Wales, the proper officer within the meaning given in paragraph 4,
  - (b) where the forfeiture order in question is made by a court in Northern Ireland, the proper officer within the meaning given in paragraph 32, and
  - (c) in any other case, the appropriate officer of the High Court.
- (4) In this Part of this Schedule “the relevant officer” means in Scotland—
- (a) where the forfeiture order in question is made by a court in Scotland, the clerk of the court,
  - (b) in any other case, the Principal Clerk of Session and Justiciary.
- (5) In this Part of this Schedule references to the proceeds of sale or realisation of property are references to the proceeds after deduction of the costs of sale or realisation.

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#### **Textual Amendments**

**F74** Words in Sch. 4 para. 53(1)(c) substituted (30.11.2016) by [The Bankruptcy \(Scotland\) Act 2016 \(Consequential Provisions and Modifications\) Order 2016 \(S.I. 2016/1034\)](#), art. 1, **Sch. 1 para. 21(4)**

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#### **Marginal Citations**

**M30** 1986 c. 45.

**M31** S.I. 1989/2405 (N.I. 19).

**M32** 1986 c. 45.

**M33** S.I. 1989/2405 (N.I. 19).

**M34** 1986 c. 45.

**M35** S.I. 1989/2405 (N.I. 19).

**Status:**

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**Changes to legislation:**

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