

SCHEDULES

SCHEDULE 11

Section 39

SCHEDULE TO BE INSERTED INTO THE PROTECTION OF CHILDREN ACT 1978

Commencement Information

II Sch. 11 in force at 1.4.2008 by S.I. 2008/790, art. 2(c)

“SCHEDULE

FORFEITURE OF INDECENT PHOTOGRAPHS OF CHILDREN

Application of Schedule

- 1 (1) This Schedule applies where—
 - (a) property which has been lawfully seized in England and Wales is in the custody of a constable,
 - (b) ignoring this Schedule, there is no legitimate reason for the constable to retain custody of the property,
 - (c) the constable is satisfied that there are reasonable grounds for believing that the property is or is likely to be forfeitable property, and
 - (d) ignoring this Schedule, the constable is not aware of any person who has a legitimate reason for possessing the property or any readily separable part of it.
- (2) The following property is “forfeitable property”—
 - (a) any indecent photograph or pseudo-photograph of a child;
 - (b) any property which it is not reasonably practicable to separate from any property within paragraph (a).
- (3) For the purposes of this paragraph—
 - (a) a part of any property is a “readily separable part” of the property if, in all the circumstances, it is reasonably practicable for it to be separated from the remainder of that property, and
 - (b) it is reasonably practicable for a part of any property to be separated from the remainder if it is reasonably practicable to separate it without prejudicing the remainder of the property or another part of it.
- (4) The circumstances mentioned in sub-paragraph (3)(a) include the time and costs involved in separating the property.

Possession pending forfeiture

- 2 (1) The property must be retained in the custody of a constable until it is returned or otherwise disposed of in accordance with this Schedule.

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- (2) Nothing in the Police (Property) Act 1897 (property seized in the investigation of an offence) applies to property held under this Schedule.

The relevant officer

- 3 “The relevant officer”, in relation to any property, is the constable who for the time being has custody of the property.

Notice of intended forfeiture

- 4 (1) The relevant officer must give notice of the intended forfeiture of the property (“notice of intended forfeiture”) to—
- (a) every person whom he believes to have been the owner of the property, or one of its owners, at the time of the seizure of the property,
 - (b) where the property was seized from premises, every person whom the relevant officer believes to have been an occupier of the premises at that time, and
 - (c) where the property was seized as a result of a search of any person, that person.
- (2) The notice of intended forfeiture must set out—
- (a) a description of the property, and
 - (b) how a person may give a notice of claim under this Schedule and the period within which such a notice must be given.
- (3) The notice of intended forfeiture may be given to a person only by—
- (a) delivering it to him personally,
 - (b) addressing it to him and leaving it for him at the appropriate address, or
 - (c) addressing it to him and sending it to him at that address by post.
- (4) But a notice given in accordance with sub-paragraph (1)(b) may, where it is not practicable to give the notice in accordance with sub-paragraph (3), be given by—
- (a) addressing it to “the occupier” of those premises, without naming him, and
 - (b) leaving it for him at those premises or sending it to him at those premises by post.
- (5) Property may be treated or condemned as forfeited under this Schedule only if—
- (a) the requirements of this paragraph have been complied with in the case of the property, or
 - (b) it was not reasonably practicable for them to be complied with.
- (6) In this paragraph “the appropriate address”, in relation to a person, means—
- (a) in the case of a body corporate, its registered or principal office in the United Kingdom;
 - (b) in the case of a firm, the principal office of the partnership;
 - (c) in the case of an unincorporated body or association, the principal office of the body or association;
 - (d) in any other case, his usual or last known place of residence in the United Kingdom or his last known place of business in the United Kingdom.
- (7) In the case of—
- (a) a company registered outside the United Kingdom,
 - (b) a firm carrying on business outside the United Kingdom, or

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(c) an unincorporated body or association with offices outside the United Kingdom,
the references in this paragraph to its principal office include references to its principal office within the United Kingdom (if any).

Notice of claim

- 5 (1) A person claiming that he has a legitimate reason for possessing the property or a part of it may give notice of his claim to a constable at any police station in the police area in which the property was seized.
- (2) Oral notice is not sufficient for these purposes.
- 6 (1) A notice of claim may not be given more than one month after—
- (a) the date of the giving of the notice of intended forfeiture, or
 - (b) if no such notice has been given, the date on which the property began to be retained under this Schedule (see paragraph 2).
- (2) A notice of claim must specify—
- (a) the name and address of the claimant;
 - (b) a description of the property, or part of it, in respect of which the claim is made;
 - (c) in the case of a claimant who is outside the United Kingdom, the name and address of a solicitor in the United Kingdom who is authorised to accept service, and to act, on behalf of the claimant.
- (3) Service upon a solicitor so specified is to be taken to be service on the claimant for the purposes of any proceedings by virtue of this Schedule.
- (4) In a case in which notice of intended forfeiture was given to different persons on different days, the reference in this paragraph to the day on which that notice was given is a reference—
- (a) in relation to a person to whom notice of intended forfeiture was given, to the day on which that notice was given to that person, and
 - (b) in relation to any other person, to the day on which notice of intended forfeiture was given to the last person to be given such a notice.

Automatic forfeiture in a case where no claim is made

- 7 (1) If the property is unclaimed it is treated as forfeited.
- (2) The property is “unclaimed” if, by the end of the period for the giving of a notice of claim—
- (a) no such notice has been given in relation to it or any part of it, or
 - (b) the requirements of paragraphs 5 and 6 have not been complied with in relation to the only notice or notices of claim that have been given.
- (3) Sub-paragraph (1) applies in relation to a readily separable part of the property as it applies in relation to the property, and for this purpose sub-paragraph (2) applies as if references to the property were to the part.
- (4) In this paragraph “readily separable part” has the meaning given by paragraph 1.

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Decision whether to take court proceedings to condemn property as forfeited

- 8 (1) Where a notice of claim in respect of the property, or a part of it, is duly given in accordance with paragraphs 5 and 6, the relevant officer must decide whether to take proceedings to ask the court to condemn the property or a part of it as forfeited.
- (2) The decision whether to take such proceedings must be made as soon as reasonably practicable after the giving of the notice of claim.

Return of property if no forfeiture proceedings

- 9 (1) This paragraph applies if, in a case in which a notice of claim has been given, the relevant officer decides—
- (a) not to take proceedings for condemnation of the property, or
 - (b) not to take proceedings for condemnation of a part of the property.
- (2) The relevant officer must return the property or part to the person who appears to him to have a legitimate reason for possessing the property or, if there is more than one such person, to one of those persons.
- (3) Any property required to be returned in accordance with sub-paragraph (2) must be returned as soon as reasonably practicable after the decision not to take proceedings for condemnation.

Forfeiture proceedings

- 10 (1) This paragraph applies if, in a case in which a notice of claim has been given, the relevant officer decides to take proceedings for condemnation of the property or a part of it (“the relevant property”).
- (2) The court must condemn the relevant property if it is satisfied—
- (a) that the relevant property is forfeitable property, and
 - (b) that no-one who has given a notice of claim has a legitimate reason for possessing the relevant property.

This is subject to sub-paragraphs (5) and (7).

- (3) If the court is not satisfied that the relevant property is forfeitable property, the court must order its return to the person who appears to the court to have a legitimate reason for possessing it or, if there is more than one such person, to one of those persons.
- (4) If the court is satisfied—
- (a) that the relevant property is forfeitable property, and
 - (b) that a person who has given a notice of claim has a legitimate reason for possessing the relevant property, or that more than one such person has such a reason,
- the court must order the return of the relevant property to that person or, as the case may be, to one of those persons.
- (5) Where the court is satisfied that any part of the relevant property is a separable part, sub-paragraphs (2) to (4) apply separately in relation to each separable part of the relevant property as if references to the relevant property were references to the separable part.
- (6) For this purpose a part of any property is a “separable part” of the property if—
- (a) it can be separated from the remainder of that property, and

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- (b) where a person has a legitimate reason for possessing the remainder of that property or any part of it, the separation will not prejudice the remainder or part.
- (7) Where the court is satisfied—
 - (a) that a person who has given a notice of claim has a legitimate reason for possessing part of the relevant property, and
 - (b) that, although the part is not a separable part within the meaning given by sub-paragraph (6), it can be separated from the remainder of the relevant property, the court may order the return of that part to that person.
- (8) Sub-paragraph (7) does not apply to any property required to be returned to a person under sub-paragraph (4).

Supplementary orders

- 11 (1) Where the court condemns property under paragraph 10(2)—
 - (a) it may order the relevant officer to take such steps in relation to the property or any part of it as it thinks appropriate, and
 - (b) where it orders a step to be taken, it may make that order conditional on specified costs relating to the taking of that step being paid by a specified person within a specified period.
- (2) A court order under paragraph 10(3), (4), (5) or (7) requiring the return of a part of the relevant property to a person may be made conditional on specified costs relating to the separation of the part from the remainder of the relevant property being paid by that person within a specified period.
- (3) Where the court makes an order under paragraph 10(7) for the return of a part of the relevant property—
 - (a) it may order the relevant officer to take such steps as it thinks appropriate in relation to any property which will be prejudiced by the separation of that part, and
 - (b) where it orders a step to be taken, it may make that order conditional on specified costs relating to the taking of that step being paid by a specified person within a specified period.
- (4) For the purposes of this paragraph “specified” means specified in, or determined in accordance with, the court order.

Supplementary provision about forfeiture proceedings

- 12 Proceedings by virtue of this Schedule are civil proceedings and may be instituted in a magistrates' court which has jurisdiction in relation to the place where the property to which the proceedings relate was seized.
- 13 (1) Either party may appeal against the decision of the magistrates' court to the Crown Court.
- (2) This paragraph does not affect any right to require the statement of a case for the opinion of the High Court.
- 14 Where an appeal has been made (whether by case stated or otherwise) against the decision of the magistrates' court in proceedings by virtue of this Schedule in relation

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to property, the property is to be left in the custody of a constable pending the final determination of the matter.

Effect of forfeiture

- 15 Where property is treated or condemned as forfeited under this Schedule the forfeiture is to be treated as having taken effect as from the time of the seizure.

Disposal of property which is not returned

- 16 (1) This paragraph applies where any property is required to be returned to a person under this Schedule.
- (2) If—
- (a) the property is (without having been returned) still in the custody of the relevant officer after the end of the period of 12 months beginning with the day on which the requirement to return it arose, and
 - (b) it is not practicable to dispose of it by returning it immediately to the person to whom it is required to be returned,
- the relevant officer may dispose of it in any manner he thinks fit.
- 17 (1) This paragraph applies where any property would be required to be returned to a person under this Schedule but for a failure to satisfy a condition imposed by virtue of paragraph 11(2) (return of property conditional on payment of costs within specified period).
- (2) The relevant officer may dispose of the property in any manner he thinks fit.

Provisions as to proof

- 18 In proceedings under this Schedule, the fact, form and manner of the seizure are to be taken, without further evidence and unless the contrary is shown, to have been as set forth in the process.
- 19 In proceedings, the condemnation by a court of property as forfeited under this Schedule may be proved by the production of either—
- (a) the order of condemnation, or
 - (b) a certified copy of the order purporting to be signed by an officer of the court by which the order was made or granted.

Saving for owner's rights

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

Interpretation

- 21 (1) In this Schedule—
- “the court” is to be construed in accordance with paragraph 12;
 - “forfeitable property” is to be construed in accordance with paragraph 1(2);

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“premises” has the same meaning as in the Police and Criminal Evidence Act 1984 (see section 23 of that Act); and

“the relevant officer” is to be construed in accordance with paragraph 3.

- (2) For the purposes of this Schedule the circumstances in which a person (“P”) has a legitimate reason for possessing an indecent photograph of a child (“C”) include where—
- (a) the photograph was of C aged 16 or over,
 - (b) one or both of the following sub-paragraphs apply—
 - (i) P and C are married, are civil partners of each other or are living together as partners in an enduring family relationship,
 - (ii) P and C were married, were civil partners of each other or were so living together at the time P obtained the photograph,
 - (c) the photograph shows C alone or with P, but does not show any other person,
 - (d) C has consented to the photograph being in P's possession (and that consent has not been withdrawn), and
 - (e) P owns, or is authorised (directly or indirectly) by the owner, to possess the photograph.”

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