



**Law
Commission**
Reforming the law

Sentencing law in England and Wales Legislation currently in force

Part 3.6 – Deprivation, forfeiture and destruction

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3.6 Deprivation, forfeiture and destruction

3.6.1. Deprivation

3.6.1.1. General

What is a deprivation order?

PCC(S)A 2000 s.143¹⁴²³: Powers to deprive offender of property used etc. for purposes of crime

s.143(3) - an order under this section shall operate to deprive the offender of his rights, if any, in the property to which it relates, and the property shall (if not already in their possession) be taken into the possession of the police.

Purpose of the order

R. v Highbury Corner Magistrates' Court ex. parte Di Matteo (1991) 92 Cr. App. R. 263

[The order] can serve a dual purpose...the removal from public circulation of an article which has been used to commit or facilitate the commission of an offence and as part of the punishment of the offender. (Watkins LJ, at p.268)

3.6.1.2. Making the order

Power to order: Property used for the purposes of crime

PCC(S)A 2000 s.143¹⁴²⁴: Powers to deprive offender of property used etc. for purposes of crime

s.143(1) - where a person is convicted of an offence and the court by or before which he is convicted is satisfied that any property which has been lawfully seized from him, or which was in his possession or under his control at the time when he was apprehended for the offence or when a summons in respect of it was issued—

(a) has been used for the purpose of committing, or facilitating the commission of, any offence, or

(b) was intended by him to be used for that purpose,

the court may (subject to subsection (5) below) make an order under this section in respect of that property.

s.143(8) - facilitating the commission of an offence shall be taken for the purposes of subsection (1) above to include the taking of any steps after it has been committed for the purpose of disposing of any property to which it relates or of avoiding apprehension or detection.

¹⁴²³ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1).

¹⁴²⁴ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1).

Power to order: Unlawful possession of property

PCC(S)A 2000 s.143¹⁴²⁵: Powers to deprive offender of property used etc. for purposes of crime

- s.143(2) - where a person is convicted of an offence and the offence, or an offence which the court has taken into consideration in determining his sentence, consists of unlawful possession of property which—
- (a) has been lawfully seized from him, or
 - (b) was in his possession or under his control at the time when he was apprehended for the offence of which he has been convicted or when a summons in respect of that offence was issued,
- the court may (subject to subsection (5) below) make an order under this section in respect of that property.

Considerations before making the order

PCC(S)A 2000 s.143¹⁴²⁶: Powers to deprive offender of property used etc. for purposes of crime

- s.143(5) - in considering whether to make an order under this section in respect of any property, a court shall have regard—
- (a) to the value of the property; and
 - (b) to the likely financial and other effects on the offender of the making of the order (taken together with any other order that the court contemplates making).

Motor vehicles

PCC(S)A 2000 s.143¹⁴²⁷: Powers to deprive offender of property used etc. for purposes of crime

- s.143(6) - where a person commits an offence to which this subsection applies by—
- (a) driving, attempting to drive, or being in charge of a vehicle, or
 - (b) failing to comply with a requirement made under section 7 or 7A of the Road Traffic Act 1988 (failure to provide specimen for analysis or laboratory test or to give permission for such a test) in the course of an investigation into whether the offender had committed an offence while driving, attempting to drive or being in charge of a vehicle, or
 - (c) failing, as the driver of a vehicle, to comply with subsection (2) or (3) of section 170 of the Road Traffic Act 1988 (duty to stop and give information or report accident),
- the vehicle shall be regarded for the purposes of subsection (1) above (and section 144(1)(b) below) as used for the purpose of committing the offence (and for the purpose of committing any offence of aiding, abetting, counselling or procuring the commission of the offence).

¹⁴²⁵ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1).

¹⁴²⁶ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1).

¹⁴²⁷ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1).

s.143(7) - subsection (6) above applies to—

- (a) an offence under the Road Traffic Act 1988 which is punishable with imprisonment;
- (b) an offence of manslaughter; and
- (c) an offence under section 35 of the Offences Against the Person Act 1861 (wanton and furious driving).

Immigration or asylum

UKBA 2007 s.25¹⁴²⁸: Forfeiture of detained property

s.25(1) - a court making a forfeiture order about property may order that the property be taken into the possession of the Secretary of State (and not of the police).

s.25(2) - an order may be made under subsection (1) only if the court thinks that the offence in connection with which the order is made—

- (a) related to immigration or asylum, or
- (b) was committed for a purpose connected with immigration or asylum.

s.25(3) - in subsection (1) “*forfeiture order*” means an order under—

- (a) section 143 of the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6), or
- (b) Article 11 of the Criminal Justice (Northern Ireland) Order 1994 (S.I. 1994/2795 (N.I. 15)).

3.6.1.3. Applications for proceeds of forfeited property

Power to order sums paid to person suffering loss etc.

PCC(S)A 2000 s.145¹⁴²⁹: Application of proceeds of forfeited property

s.145(1) - where a court makes an order under section 143 above in a case where:

- (a) the offender has been convicted of an offence which 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 make an order that any proceeds which arise from the disposal of the property and which do not exceed a sum specified by the court shall be paid to that person.

¹⁴²⁸ Commencement: 31 March 2008, SI 2008/309 art.3(a) and art.6.

¹⁴²⁹ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1).

Test to apply

PCC(S)A 2000 s.145¹⁴³⁰: Application of proceeds of forfeited property

s.145(2) - the court may make an order under this section only if it is satisfied that but for the inadequacy of the offender's means it would have made a compensation order under which the offender would have been required to pay compensation of an amount not less than the specified amount.

Exceptions

PCC(S)A 2000 s.145¹⁴³¹: Application of proceeds of forfeited property

s.145(3) - an order under this section has no effect:

- (a) before the end of the period specified in section 144(1)(a) above; or
- (b) if a successful application under section 1(1) of the Police (Property) Act 1897 has been made.

3.6.1.4. Particular circumstances

Cannot forfeit a house

R. v Khan [1983] 76 Cr. App. R. 29

Deprivation orders do not apply to real property.

Hire purchase agreements and property owned (partly/wholly) by others

R. v Troth [1979] 1 Cr. App. R. (S.) 341

Orders should not be made unless they are simple with no complicating factors.¹⁴³²

3.6.1.5. Interaction with other sentencing orders

No requirement for other sentence

PCC(S)A 2000 s.143¹⁴³³: Powers to deprive offender of property used etc. for purposes of crime

s.143(4) - any power conferred on a court by subsection (1) or (2) above may be exercised—

- (a) whether or not the court also deals with the offender in any other way in respect of the offence of which he has been convicted; and
- (b) without regard to any restrictions on forfeiture in any enactment contained in an Act passed before 29th July 1988.

¹⁴³⁰ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1).

¹⁴³¹ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1).

¹⁴³² The context was an order was made in respect of a lorry part-owned by the offender following his plea of guilty to the theft of coal.

¹⁴³³ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1).

3.6.1.6. Property in the possession of the police

Application of Police (Property) Act 1897

PCC(S)A 2000 s.144¹⁴³⁴: Property which is in the possession of the police by virtue of section 143

- s.144(1) - the Police (Property) Act 1897 shall apply, with the following modifications, to property which is in the possession of the police by virtue of section 143 above—
- (a) no application shall be made under section 1(1) of that Act by any claimant of the property after the end of six months from the date on which the order in respect of the property was made under section 143 above; and
 - (b) no such application shall succeed unless the claimant satisfies the court either—
 - (i) that he had not consented to the offender having possession of the property; or
 - (ii) where an order is made under subsection (1) of section 143 above, that he did not know, and had no reason to suspect, that the property was likely to be used for the purpose mentioned in that subsection.
- s.144(2) - in relation to property which is in the possession of the police by virtue of section 143 above, the power to make regulations under section 2 of the Police (Property) Act 1897 (disposal of property in cases where the owner of the property has not been ascertained and no order of a competent court has been made with respect to it) shall, subject to subsection (3) below, include power to make regulations for disposal (including disposal by vesting in the relevant authority) in cases where no application by a claimant of the property has been made within the period specified in subsection (1)(a) above or no such application has succeeded.
- s.144(3) - the regulations may not provide for the vesting in the relevant authority of property in relation to which an order has been made under section 145 below (court order as to application of proceeds of forfeited property).
- s.144(4) - nothing in subsection (2A)(a) or (3) of section 2 of the Police (Property) Act 1897 limits the power to make regulations under that section by virtue of subsection (2) above.
- s.144(5) - in this section “*relevant authority*” has the meaning given by section 2(2B) of the Police (Property) Act 1897.

Power to order delivery of property to the owner

Police (Property) Act 1897 s.1¹⁴³⁵: Power to make orders with respect to property in possession of police

- s.1(1) - where any property has come into the possession of the police in connexion with their investigation of a suspected offence a court of summary jurisdiction may, on application, either by an officer of police or by a claimant of the property, make an order for the delivery of the property to the person appearing to the magistrate or court to be the owner thereof, or, if the owner cannot be ascertained, make such order with respect to the property as to the magistrate or court may seem meet.

¹⁴³⁴ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1).

¹⁴³⁵ Commencement: 6 August 1897, the Act received Royal Assent on 6 August 1897 and it appears it came into force on the same day.

- s.1(2) - an order under this section shall not affect the right of any person to take within six months from the date of the order legal proceedings against any person in possession of property delivered by virtue of the order for the recovery of the property, but on the expiration of those six months the right shall cease.

Unclaimed property

Police (Property) Act 1897 s.2¹⁴³⁶: Power to make orders with respect to property in possession of police

- s.2(1) - a Secretary of State may make regulations for the disposal of property which has come into the possession of the police under the circumstances mentioned in this Act in cases where the owner of the property has not been ascertained and no order of a competent court has been made with respect thereto.
- s.2(2) - the regulations may authorised the sale of any such property, and the application of the proceeds of any such sale, and the application of any money of which the owner cannot be ascertained, to all or any of the following purposes:
- (a) the expenses of executing the regulations;
 - (b) the payment of reasonable compensation to any person by whom the property has been delivered into the possession of the police;
 - (c) the making of payments for the benefit of discharged prisoners or of persons dependent on prisoners or discharged prisoners; or
 - (d) such other purposes as the Secretary of State may consider expedient.
- s.2(2A) - the regulations may also provide that where, in the case of property other than money—
- (a) the property has remained in the possession of the police for a year,
 - (b) the police would under the regulations have power to sell the property,
 - (c) in the opinion of the relevant body, the property can be used for police purposes, and
 - (d) the relevant body determine, in such manner as may be prescribed by the regulations, that the property is to be retained by the relevant body,
- the relevant body is to become the owner of the property on the making of the determination or at such later time as the regulations may specify.
- s.2(2B) - the relevant body for the purposes of subsection (2A) is the local policing body.
- s.2(3) - where the property is a perishable article or its custody involves unreasonable expense or inconvenience it may be sold at any time, but the proceeds of sale shall not be disposed of until they have remained in the possession of the police for a year. In any other case the property shall not be sold until it has remained in the possession of the police for a year.
- s.2(4) - the regulations may also provide for the investment of money and for the audit of accounts.

¹⁴³⁶ Commencement: 6 August 1897, the Act received Royal Assent on 6 August 1897 and it appears it came into force on the same day.

- s.2(4A) - the regulations may also provide for the publication of determinations falling within subsection (2A)(d) above.
- s.2(5) - the regulations shall apply whether the property to which they relates has come into the possession of the police before of after the making of the regulations.
- s.2(6) - in relation to England and Wales, the power to make regulations under this section is exercisable by statutory instrument; and a statutory instrument made in the exercise of that power is subject to annulment in pursuance of a resolution of either House of Parliament.
- s.2(7) - in relation to Northern Ireland, the power to make regulations under this section is exercisable by statutory rule for the purposes of the Statutory Rules (Northern Ireland) Order 1979, and regulations made in the exercise of that power are subject to annulment in pursuance of a resolution of either House of Parliament in like manner as a statutory instrument and section 5 of the Statutory Instruments Act 1946 shall have effect accordingly.

3.6.2. Forfeiture

3.6.2.1. Drugs

Availability

MDA 1971 s.27¹⁴³⁷: Forfeiture

- s.27(3) - an offence falls within this subsection if it is an offence which is specified in—
- (a) paragraph 1 of Schedule 2 to the Proceeds of Crime Act 2002 (drug trafficking offences), or
 - (b) so far as it relates to that paragraph, paragraph 10 of that Schedule.

Power to order

MDA 1971 s.27¹⁴³⁸: Forfeiture

- s.27(1) - subject to subsection (2) below, the court by or before which a person is convicted of an offence under this Act or an offence falling within subsection (3) below or an offence to which section 1 of the Criminal Justice (Scotland) Act 1987 relates or a drug trafficking offence, as defined in Article 2(2) of the Proceeds of Crime (Northern Ireland) Order 1996 may order anything shown to the satisfaction of the court to relate to the offence, to be forfeited and either destroyed or dealt with in such other manner as the court may order.

Restriction

MDA 1971 s.27¹⁴³⁹: Forfeiture

- s.27(2) - the court shall not order anything to be forfeited under this section, where a person claiming to be the owner of or otherwise interested in it applies to be heard by the court, unless an opportunity has been given to him to show cause why the order should not be made.

Availability

- s.27(3) - an offence falls within this subsection if it is an offence which is specified in—
- (a) paragraph 1 of Schedule 2 to the Proceeds of Crime Act 2002 (drug trafficking offences), or
 - (b) so far as it relates to that paragraph, paragraph 10 of that Schedule.

¹⁴³⁷ Commencement: 1 July 1973, SI 1973/795 art.2.

¹⁴³⁸ Commencement: 1 July 1973, SI 1973/795 art.2.

¹⁴³⁹ Commencement: 1 July 1973, SI 1973/795 art.2.

3.6.2.2. Firearms

Power to order

FA 1968 s.52¹⁴⁴⁰: Forfeiture and disposal of firearms; cancellation of certificate by convicting court

s.52(1) - where a person—

- (a) is convicted of an offence under this Act (other than an offence under section 22(3) or an offence relating specifically to air weapons) or is convicted of a crime for which he is sentenced to imprisonment, or detention in a detention centre or in a young offenders' institution in Scotland or is subject to a detention and training order; or
- (b) has been ordered to enter into a recognizance to keep the peace or to be of good behaviour, a condition of which is that he shall not possess, use or carry a firearm; or
- (c) is subject to a community order containing a requirement that he shall not possess, use or carry a firearm; or
- (d) has, in Scotland, been ordained to find caution a condition of which is that he shall not possess, use or carry a firearm,

the court by or before which he is convicted, or by which the order is made, may make such order as to the forfeiture or disposal of any firearm or ammunition found in his possession as the court thinks fit and may cancel any firearm certificate or shot gun certificate held by him.

Applications by police for forfeiture etc.

FA 1968 s.52¹⁴⁴¹: Forfeiture and disposal of firearms; cancellation of certificate by convicting court

s.52(4) - a court of summary jurisdiction or, in Scotland, the sheriff may, on the application of the chief officer of police, order any firearm or ammunition seized and detained by a constable under this Act to be destroyed or otherwise disposed of.

Seizing items subject of forfeiture orders

FA 1968 s.52¹⁴⁴²: Forfeiture and disposal of firearms; cancellation of certificate by convicting court

s.52(3) - a constable may seize and detain any firearm or ammunition which may be the subject of an order for forfeiture under this section.

¹⁴⁴⁰ Commencement: 1 August 1968, FA 1968 s.60(2).

¹⁴⁴¹ Commencement: 1 August 1968, FA 1968 s.60(2).

¹⁴⁴² Commencement: 1 August 1968, FA 1968 s.60(2).

Interpretation

FA 1968 s.52¹⁴⁴³: Forfeiture and disposal of firearms; cancellation of certificate by convicting court

s.52(1A) - in subsection (1)(c) “community order” means—

- (a) a community order within the meaning of Part 12 of the Criminal Justice Act 2003, or a youth rehabilitation order within the meaning of Part 1 of the Criminal Justice and Immigration Act 2008, made in England and Wales, or
- (b) a community payback order under section 227A of the Criminal Procedure (Scotland) Act 1995 (c.46).

s.52(5) - in this section references to ammunition include references to a primer to which section 35 of the Violent Crime Reduction Act 2006 applies and to an empty cartridge case incorporating such a primer.

3.6.2.3. Offensive weapons

3.6.2.3.1 Prevention of Crime Act 1953

Power to order

PCA 1953 s.1¹⁴⁴⁴: Prohibition of the carrying of offensive weapons without lawful authority or reasonable excuse

s.1(2) - where any person is convicted of an offence under subsection (1) of this section the court may make an order for the forfeiture or disposal of any weapon in respect of which the offence was committed.

Offence

PCA 1953 s.1¹⁴⁴⁵: Prohibition of the carrying of offensive weapons without lawful authority or reasonable excuse

s.1(1) - any person who without lawful authority or reasonable excuse, the proof whereof shall lie on him, has with him in any public place any offensive weapon shall be guilty of an offence, and shall be liable—

- (a) on summary conviction, to imprisonment for a term not exceeding six months or a fine not exceeding the prescribed sum or both;
- (b) on conviction on indictment, to imprisonment for a term not exceeding four years or a fine, or both.

¹⁴⁴³ Commencement: 1 August 1968, FA 1968 s.60(2).

¹⁴⁴⁴ Commencement: 6 June 1953, PCA 1953 s.2(2).

¹⁴⁴⁵ Commencement: 6 June 1953, PCA 1953 s.2(2).

Interpretation

PCA 1953 s.1¹⁴⁴⁶: Prohibition of the carrying of offensive weapons without lawful authority or reasonable excuse

- s.1(4) - in this section “*public place*” includes any highway and any other premises or place to which at the material time the public have or are permitted to have access, whether on payment or otherwise; and “*offensive weapon*” means any article made or adapted for use for causing injury to the person, or intended by the person having it with him for such use by him or by some other person.

3.6.2.3.2 Crossbows Act 1987

CA 1987 s.6¹⁴⁴⁷: Punishments

- s.6(3) - the court by which a person is convicted of an offence under this Act may make such order as it thinks fit as to the forfeiture or disposal of any crossbow or part of a crossbow in respect of which the offence was committed.

3.6.2.3.3 Knives Act 1997

Power to make the order

KA 1997 s.6¹⁴⁴⁸: Forfeiture of knives and publications

- s.6(1) - if a person is convicted of an offence under section 1 in relation to a knife of a particular description, the court may make an order for forfeiture in respect of any knives of that description—
- (a) seized under a warrant issued under section 5; or
 - (b) in the offender's possession or under his control at the relevant time.
- s.6(2) - if a person is convicted of an offence under section 2 in relation to particular material, the court may make an order for forfeiture in respect of any publications consisting of or containing that material which—
- (a) have been seized under a warrant issued under section 5; or
 - (b) were in the offender's possession or under his control at the relevant time.
- s.6(3) - the court may make an order under subsection (1) or (2)—
- (a) whether or not it also deals with the offender in respect of the offence in any other way; and
 - (b) without regard to any restrictions on forfeiture in any enactment.
- s.6(4) - in considering whether to make an order, the court must have regard—
- (a) to the value of the property; and
 - (b) to the likely financial and other effects on the offender of the making of the order (taken together with any other order that the court contemplates making).

¹⁴⁴⁶ Commencement: 6 June 1953, PCA 1953 s.2(2).

¹⁴⁴⁷ Commencement: 15 July 1987, CA 1987 s.8(2).

¹⁴⁴⁸ Commencement: 1 September 1997, SI 1997/1906 art.2.

- s.6(5) - in this section “*relevant time*”—
- (a) in relation to a person convicted in England and Wales or Northern Ireland of an offence under section 1 or 2, means the time of his arrest for the offence or of the issue of a summons in respect of it;
 - (b) in relation to a person so convicted in Scotland, means the time of his arrest for the offence or of his being cited as an accused in respect of it.

Effect of the order

KA 1997 s.7¹⁴⁴⁹: Effect of a forfeiture order

- s.7(1) - an order under section 6 (a “forfeiture order”) operates to deprive the offender of his rights, if any, in the property to which it relates.
- s.7(2) - the property to which a forfeiture order relates must be taken into the possession of the police (if it is not already in their possession).
- s.7(3) - the court may, on an application made by a person who—
- (a) claims property to which a forfeiture order applies, but
 - (b) is not the offender from whom it was forfeited,
- make an order (a “recovery order”) for delivery of the property to the applicant if it appears to the court that he owns it.
- s.7(4) - an application to a sheriff must be made in such manner as may be prescribed by act of adjournal.
- s.7(5) - no application may be made after the end of the period of 6 months beginning with the date on which the forfeiture order was made.
- s.7(6) - no application may succeed unless the claimant satisfies the court—
- (a) that he had not consented to the offender having possession of the property; or
 - (b) that he did not know, and had no reason to suspect, that the offence was likely to be committed.
- s.7(7) - if a person has a right to recover property which is in the possession of another in pursuance of a recovery order, that right—
- (a) is not affected by the making of the recovery order at any time before the end of the period of 6 months beginning with the date on which the order is made; but
 - (b) is lost at the end of that period.
- s.7(8) - the Secretary of State may make regulations, in relation to property forfeited under this section, for disposing of the property and dealing with the proceeds in cases where—
- (a) no application has been made before the end of the period of 6 months beginning with the date on which the forfeiture order was made; or
 - (b) no such application has succeeded.
- s.7(9) - the regulations may also provide for investing money and auditing accounts.

¹⁴⁴⁹ Commencement: 1 September 1997, SI 1997/1906 art.2.

s.7(10) - in this section, “*application*” means an application under subsection (3).

SIs made under the Act

Knives (Forfeited Property) Regulations 1997 (SI 1997/1907)

1. Citation and commencement

These Regulations may be cited as the Knives (Forfeited Property) Regulations 1997 and shall come into force on 1st September 1997.

2. Interpretation

In these Regulations,

“*museum or similar institution*” means any institution which has as its purposes, or one of its purposes, the preservation and display of material of historical, aesthetic or technical interest to which the public are given access.

“*the relevant authority*” means

- (a) in relation to a police area in England and Wales, the local policing body (within the meaning of section 101(1) of the Police Act 1996);
- (c) in relation to Scotland, a police authority (within the meaning given by section 2(1), as read with section 19(9)(a), of the Police (Scotland) Act 1967 for the area for which the police force is maintained

“*the 1997 Act*” means the Knives Act 1997.

3. Property to which Regulations apply

- (1) Subject to paragraph (2) below, these Regulations apply to property which is in the possession of the police by virtue of a forfeiture order under section 6 of the 1997 Act and in respect of which—
 - (a) no application under section 7(3) of the 1997 Act has been made before the end of the period of 6 months beginning with the date on which the forfeiture order was made; or
 - (b) no such application has succeeded.
- (2) Where, within the period specified in paragraph (1) above, an application by a claimant of the property has been made under section 7(3) of the 1997 Act or the person upon whose conviction the court ordered the forfeiture of the property under section 6 of that Act has appealed against the conviction or sentence, these Regulations shall not apply to the property until that application or appeal has been determined.

4. Disposal of property

- (1) Subject to paragraph (2) below, property to which these Regulations apply shall be destroyed.
- (2) Where the relevant authority are satisfied that property to which these Regulations apply which would otherwise fall to be destroyed is of particular rarity, aesthetic quality or technical or historical interest, they may, instead of arranging for its destruction, give or sell it to a museum or similar institution.
- (3) The proceeds of disposals under these Regulations (if any) shall be paid to the relevant authority and

- (a) in relation to authorities in England and Wales shall be subject to the regulations governing the application of the proceeds of sale of property made under section 2 of the Police (Property) Act 1897; and
- (b) in relation to authorities in Scotland shall vest in the relevant authority.

Local Policing Bodies (Consequential Amendments) Regulations 2011 (SI 2011/3058)

1. Citation and commencement

- (1) These Regulations may be cited as the Local Policing Bodies (Consequential Amendments) Regulations 2011
- (2) These Regulations come into force on 16th January 2012, with the exception of regulation 21(2)(a) which comes into force on 22nd November 2012.

13. Amendments to the Knives (Forfeited Property) Regulations 1997

- (1) The Knives (Forfeited Property) Regulations 1997 are amended as follows.
- (2) In regulation 2 (interpretation), in the definition of “the relevant authority”—
 - (a) for paragraph (a), substitute—

“(a) in relation to a police area in England and Wales, the local policing body (within the meaning of section 101(1) of the Police Act 1996);”;
 - (b) omit paragraph (b).

3.6.2.4. Obscene publications

Seizing articles

OPA 1959 s.3¹⁴⁵⁰: Powers of search and seizure

- s.3(1) - if a justice of the peace is satisfied by information on oath that there is reasonable ground for suspecting that, in any premises or on any stall or vehicle, being premises or a stall or vehicle specified in the information, obscene articles are, or are from time to time, kept for publication for gain, the justice may issue a warrant under his hand empowering any constable to enter (if need be by force) and search the premises, or to search the stall or vehicle and to seize and remove any articles found therein or thereon which the constable has reason to believe to be obscene articles and to be kept for publication for gain.

Duty to make order for forfeiture

OPA 1959 s.3¹⁴⁵¹: Powers of search and seizure

- s.3(3) - subject to subsection (3A) of this section any articles seized under subsection (1) of this section shall be brought before a justice of the peace acting in the local justice area in which the articles were seized, who may thereupon issue a summons to the occupier of the premises or, as the case may be, the user of the stall or vehicle to appear on a day specified in the summons before a magistrates' court acting in that local justice area to show cause why the articles or any of them should not be forfeited;

¹⁴⁵⁰ Commencement: 29 August 1959, OPA 1959 s.5(2).

¹⁴⁵¹ Commencement: 29 August 1959, OPA 1959 s.5(2).

and if the court is satisfied, as respects any of the articles, that at the time when they were seized they were obscene articles kept for publication for gain, the court shall order those articles to be forfeited:

Provided that if the person summoned does not appear, the court shall not make an order unless service of the summons is proved. Provided also that this subsection does not apply in relation to any article seized under subsection (1) of this section which is returned to the occupier of the premises or, as the case may be, to the user of the stall or vehicle in or on which it was found.

OPA 1964 s.1¹⁴⁵²: Obscene articles intended for publication for gain

s.1(4) - where articles are seized under section 3 of the Obscene Publications Act 1959 (which provides for the seizure and forfeiture of obscene articles kept for publication for gain), and a person is convicted under section 2 of that Act of having them for publication for gain, the court on his conviction shall order the forfeiture of those articles:

Provided that an order made by virtue of this subsection (including an order so made on appeal) shall not take effect until the expiration of the ordinary time within which an appeal in the matter of the proceedings in which the order was made may be instituted or, where such an appeal is duly instituted, until the appeal is finally decided or abandoned; and for this purpose—

- (a) an application for a case to be stated or for leave to appeal shall be treated as the institution of an appeal; and
- (b) where a decision on appeal is subject to a further appeal, the appeal shall not be deemed to be finally decided until the expiration of the ordinary time within which a further appeal may be instituted or, where a further appeal is duly instituted, until the further appeal is finally decided or abandoned.

(5) References in section 3 of the Obscene Publications Act 1959 and this section to publication for gain shall apply to any publication with a view to gain, whether the gain is to accrue by way of consideration for the publication or in any other way.

Restriction on making order for forfeiture

OPA 1959 s.3¹⁴⁵³: Powers of search and seizure

s.3(3A) - without prejudice to the duty of a court to make an order for the forfeiture of an article where section 1(4) of the Obscene Publications Act 1964 applies (orders made on conviction), in a case where by virtue of subsection (3A) of section 2 of this Act proceedings under the said section 2 for having an article for publication for gain could not be instituted except by or with the consent of the Director of Public Prosecutions, no order for the forfeiture of the article shall be made under this section unless the warrant under which the article was seized was issued on an information laid by or on behalf of the Director of Public Prosecutions.

¹⁴⁵² Commencement: 31 August 1964, OPA 1964 s.3(2).

¹⁴⁵³ Commencement: 29 August 1959, OPA 1959 s.5(2).

Right to make representations as to forfeiture of items

OPA 1959 s.3¹⁴⁵⁴: Powers of search and seizure

- s.3(4) - in addition to the person summoned, any other person being the owner, author or maker of any of the articles brought before the court, or any other person through whose hands they had passed before being seized, shall be entitled to appear before the court on the day specified in the summons to show cause why they should not be forfeited.

Forfeiture order suspended until appeal period expired

OPA 1959 s.3¹⁴⁵⁵: Powers of search and seizure

- s.3(5) - where an order is made under this section for the forfeiture of any articles, any person who appeared, or was entitled to appear, to show cause against the making of the order may appeal to the Crown Court, and no such order shall take effect until the expiration of the period within which notice of appeal to the Crown Court may be given against the order, or, if before the expiration thereof notice of appeal is duly given or application is made for the statement of a case for the opinion of the High Court, until the final determination or abandonment of the proceedings on the appeal or case.

Costs where items not forfeited

OPA 1959 s.3¹⁴⁵⁶: Powers of search and seizure

- s.3(6) - if as respects any articles brought before it the court does not order forfeiture, the court may if it thinks fit order the person on whose information the warrant for the seizure of the articles was issued to pay such costs as the court thinks reasonable to any person who has appeared before the court to show cause why those articles should not be forfeited; and costs ordered to be paid under this subsection shall be enforceable as a civil debt.

Interpretation

OPA 1959 s.3¹⁴⁵⁷: Powers of search and seizure

- s.3(7) - for the purposes of this section the question whether an article is obscene shall be determined on the assumption that copies of it would be published in any manner likely having regard to the circumstances in which it was found, but in no other manner.

¹⁴⁵⁴ Commencement: 29 August 1959, OPA 1959 s.5(2).

¹⁴⁵⁵ Commencement: 29 August 1959, OPA 1959 s.5(2).

¹⁴⁵⁶ Commencement: 29 August 1959, OPA 1959 s.5(2).

¹⁴⁵⁷ Commencement: 29 August 1959, OPA 1959 s.5(2).

3.6.2.5. Forgery and counterfeiting

3.6.2.5.1 Forgery and kindred offences

Power to order forfeiture or destruction on conviction

FCA 1981 s.7¹⁴⁵⁸: Powers of search, forfeiture, etc.

- s.7(3) - subject to subsection (4) below, the court by or before which a person is convicted of an offence under this Part of this Act may order any object shown to the satisfaction of the court to relate to the offence to be forfeited and either destroyed or dealt with in such other manner as the court may order.

Owner of property objects etc.

FCA 1981 s.7¹⁴⁵⁹: Powers of search, forfeiture, etc.

- s.7(4) - the court shall not order any object to be forfeited under subsection (2) or (3) above where a person claiming to be the owner of or otherwise interested in it applies to be heard by the court, unless an opportunity has been given to him to show cause why the order should not be made.

3.6.2.5.2 Counterfeiting and kindred offences

Power to order forfeiture or destruction on conviction

FCA 1981 s.24¹⁴⁶⁰: Powers of search, forfeiture, etc.

- s.24(3) - subject to subsection (4) below, the court by or before which a person is convicted of an offence under this Part of this Act may order any thing shown to the satisfaction of the court to relate to the offence to be forfeited and either destroyed or dealt with in such other manner as the court may order.

Right to be heard

FCA 1981 s.24¹⁴⁶¹: Powers of search, forfeiture, etc.

- s.24(4) - the court shall not order any thing to be forfeited under subsection (2) or (3) above where a person claiming to be the owner of or otherwise interested in it applies to be heard by the court, unless an opportunity has been given to him to show cause why the order should not be made.

Power to direct object to be passed to authority to issue notes/coins

FCA 1981 s.24¹⁴⁶²: Powers of search, forfeiture, etc.

- s.24(5) - without prejudice to the generality of subsections (2) and (3) above, the powers conferred on the court by those subsections include power to direct that any object

¹⁴⁵⁸ Commencement: 27 October 1981, FCA 1981 s.33.

¹⁴⁵⁹ Commencement: 27 October 1981, FCA 1981 s.33.

¹⁴⁶⁰ Commencement: 27 October 1981, FCA 1981 s.33.

¹⁴⁶¹ Commencement: 27 October 1981, FCA 1981 s.33.

¹⁴⁶² Commencement: 27 October 1981, FCA 1981 s.33.

shall be passed to an authority with power to issue notes or coins or to any person authorised by such an authority to receive the object.

Scotland

FCA 1981 s.24¹⁴⁶³: Powers of search, forfeiture, etc.

s.24(6) - in the application of this section to Scotland—

- (a) in subsection (1) for the words “justice of the peace” there shall be substituted the words “justice within the meaning of section 462 of the Criminal Procedure (Scotland) Act 1975”;
- (b) in subsection (2):—
 - (i) for the words “A constable” there shall be substituted “The procurator fiscal”; and
 - (ii) for the words “a magistrates' court” there shall be substituted “the sheriff court”.

3.6.2.6. Written material (racial hatred)

Offences under sections 19, 21 and 23

Power

POA 1986 s.25¹⁴⁶⁴: Power to order forfeiture

s.25(1) - a court by or before which a person is convicted of—

- (a) an offence under section 18 relating to the display of written material, or
- (b) an offence under section 19, 21 or 23,

shall order to be forfeited any written material or recording produced to the court and shown to its satisfaction to be written material or a recording to which the offence relates.

Order suspended until appeal time limit expired

POA 1986 s.25¹⁴⁶⁵: Power to order forfeiture

s.25(2) - an order made under this section shall not take effect—

- (a) in the case of an order made in proceedings in England and Wales, until the expiry of the ordinary time within which an appeal may be instituted or, where an appeal is duly instituted, until it is finally decided or abandoned;
- (b) in the case of an order made in proceedings in Scotland, until the expiration of the time within which, by virtue of any statute, an appeal may be instituted or, where such an appeal is duly instituted, until the appeal is finally decided or abandoned.

¹⁴⁶³ Commencement: 27 October 1981, FCA 1981 s.33.

¹⁴⁶⁴ Commencement: 1 April 1987, SI 1987/198 art.2.

¹⁴⁶⁵ Commencement: 1 April 1987, SI 1987/198 art.2.

Interpretation

POA 1986 s.25¹⁴⁶⁶: Power to order forfeiture

- s.25(3) - for the purposes of subsection (2)(a)—
- (a) an application for a case stated or for leave to appeal shall be treated as the institution of an appeal, and
 - (b) where a decision on appeal is subject to a further appeal, the appeal is not finally determined until the expiry of the ordinary time within which a further appeal may be instituted or, where a further appeal is duly instituted, until the further appeal is finally decided or abandoned.
- s.25(4) - for the purposes of subsection (2)(b) the lodging of an application for a stated case or note of appeal against sentence shall be treated as the institution of an appeal.

Offences under section 29B, 29C, 29E and 29G

POA 1986 s.29I¹⁴⁶⁷: Power to order forfeiture

- s.29I(1) - a court by or before which a person is convicted of—
- (a) an offence under section 29B relating to the display of written material, or
 - (b) an offence under section 29C, 29E or 29G,
- shall order to be forfeited any written material or recording produced to the court and shown to its satisfaction to be written material or a recording to which the offence relates.
- s.29I(2) - an order made under this section shall not take effect—
- (a) until the expiry of the ordinary time within which an appeal may be instituted or, where an appeal is duly instituted, until it is finally decided or abandoned.
- s.29I(3) - for the purposes of subsection (2)(a)—
- (a) an application for a case stated or for leave to appeal shall be treated as the institution of an appeal, and
 - (b) where a decision on appeal is subject to a further appeal, the appeal is not finally determined until the expiry of the ordinary time within which a further appeal may be instituted or, where a further appeal is duly instituted, until the further appeal is finally decided or abandoned.

¹⁴⁶⁶ Commencement: 1 April 1987, SI 1987/198 art.2.

¹⁴⁶⁷ Commencement: 1 October 2007, to the extent specified in SI 2007/2490 art.2.

3.6.2.7. Magazines etc. likely to fall into the hands of children

CYP(HP)A¹⁴⁶⁸ 1955 s.1¹⁴⁶⁹: Works to which this Act Applies

- s.1 - this Act applies to any book, magazine or other like work which is of a kind likely to fall into the hands of children or young persons and consists wholly or mainly of stories told in pictures (with or without the addition of written matter), being stories portraying—
- (a) the commission of crimes; or
 - (b) acts of violence or cruelty; or
 - (c) incidents of a repulsive or horrible nature;
- in such a way that the work as a whole would tend to corrupt a child or young person into whose hands it might fall.

CYP(HP)A¹⁴⁷⁰ 1955 s.3¹⁴⁷¹: Power to search for, and dispose of, works to which this Act applies and articles for printing them

Orders for forfeiture upon conviction (suspended until expiration of appeal time limit)

- s.3(2) - the court by or before which a person is convicted of an offence under the last foregoing section with respect to a work may order any copies of that work and any plate prepared for the purpose of printing copies of that work or photographic film prepared for that purpose, being copies which have, or a plate or film which has, been found in his possession or under his control, to be forfeited:
- Provided that an order made under this subsection by a magistrate's court or, on appeal from a magistrate's court, by the Crown Court shall not take effect until the expiration of the ordinary time within which an appeal in the matter of the proceedings in which the order was made may be lodged (whether by giving notice of appeal or applying for a case to be stated for the opinion of the High Court) or, where such an appeal is duly lodged, until the appeal is finally decided or abandoned.

3.6.2.8. Immigration offences

Availability

IA 1971 s.25C¹⁴⁷²: Forfeiture of vehicle, ship or aircraft

- s.25C(1) - this section applies where a person is convicted on indictment of an offence under section 25, 25A or 25B.

¹⁴⁶⁸ Children and Young Persons (Harmful Publications) Act 1955

¹⁴⁶⁹ Commencement: 6 June 1955, CYP(HP)A 1955 s.5(4).

¹⁴⁷⁰ Children and Young Persons (Harmful Publications) Act 1955

¹⁴⁷¹ Commencement: 6 June 1955, CYP(HP)A 1955 s.5(4).

¹⁴⁷² Commencement: 10 February 2003, as inserted by NIAA 2003 s.143, SI 2003/1 art.2 and Sch.2 para.1.

Power to order

IA 1971 s.25C¹⁴⁷³: Forfeiture of vehicle, ship or aircraft

- s.25C(2) - the court may order the forfeiture of a vehicle used or intended to be used in connection with the offence if the convicted person—
- (a) owned the vehicle at the time the offence was committed,
 - (b) was at that time a director, secretary or manager of a company which owned the vehicle,
 - (c) was at that time in possession of the vehicle under a hire-purchase agreement,
 - (d) was at that time a director, secretary or manager of a company which was in possession of the vehicle under a hire-purchase agreement, or
 - (e) was driving the vehicle in the course of the commission of the offence.
- s.25C(3) - the court may order the forfeiture of a ship or aircraft used or intended to be used in connection with the offence if the convicted person—
- (a) owned the ship or aircraft at the time the offence was committed,
 - (b) was at that time a director, secretary or manager of a company which owned the ship or aircraft,
 - (c) was at that time in possession of the ship or aircraft under a hire-purchase agreement,
 - (d) was at that time a director, secretary or manager of a company which was in possession of the ship or aircraft under a hire-purchase agreement,
 - (e) was at that time a charterer of the ship or aircraft, or
 - (f) committed the offence while acting as captain of the ship or aircraft.

Limitation on forfeiture

IA 1971 s.25C¹⁴⁷⁴: Forfeiture of vehicle, ship or aircraft

- s.25C(4) - but in a case to which subsection (3)(a) or (b) does not apply, forfeiture may be ordered only—
- (a) in the case of a ship, if subsection (5) or (6) applies;
 - (b) in the case of an aircraft, if subsection (5) or (7) applies.
- s.25C(5) - this subsection applies where—
- (a) in the course of the commission of the offence, the ship or aircraft carried more than 20 illegal entrants, and
 - (b) a person who, at the time the offence was committed, owned the ship or aircraft or was a director, secretary or manager of a company which owned it, knew or ought to have known of the intention to use it in the course of the commission of an offence under section 25, 25A or 25B.
- s.25C(6) - this subsection applies where a ship's gross tonnage is less than 500 tons.

¹⁴⁷³ Commencement: 10 February 2003, as inserted by NIAA 2003 s.143, SI 2003/1 art.2 and Sch.2 para.1.

¹⁴⁷⁴ Commencement: 10 February 2003, as inserted by NIAA 2003 s.143, SI 2003/1 art.2 and Sch.2 para.1.

s.25C(7) - this subsection applies where the maximum weight at which an aircraft (which is not a hovercraft) may take off in accordance with its certificate of airworthiness is less than 5,700 kilogrammes.

Right to make representations

IA 1971 s.25C¹⁴⁷⁵: Forfeiture of vehicle, ship or aircraft

s.25C(8) - where a person who claims to have an interest in a vehicle, ship or aircraft applies to a court to make representations on the question of forfeiture, the court may not make an order under this section in respect of the ship, aircraft or vehicle unless the person has been given an opportunity to make representations.

Interpretation

IA 1971 s.25C¹⁴⁷⁶: Forfeiture of vehicle, ship or aircraft

s.25C(9) - in the case of an offence under section 25, the reference in subsection (5)(a) to an illegal entrant shall be taken to include a reference to—

- (a) an individual who seeks to enter a member State in breach of immigration law (for which purpose “member State” and “immigration law” have the meanings given by section 25(2) and (7)), and
- (b) an individual who is the victim of conduct which constitutes an offence under section 2 of the Modern Slavery Act 2015 (human trafficking)..

s.25C(10) - in the case of an offence under section 25A, the reference in subsection (5)(a) to an illegal entrant shall be taken to include a reference to—

- (a) an asylum-seeker (within the meaning of that section), and
- (b) an individual who is the victim of conduct which constitutes an offence under section 2 of the Modern Slavery Act 2015 (human trafficking)..

s.25C(11) - in the case of an offence under section 25B, the reference in subsection (5)(a) to an illegal entrant shall be taken to include a reference to an individual who is the victim of conduct which constitutes an offence under section 2 of the Modern Slavery Act 2015 (human trafficking).

Power to extend to islands

3.6.2.9. Incitement to disaffection

IDA 1934 s.3¹⁴⁷⁷: Provisions as to punishment of offences

s.3(4) - where any person is convicted of an offence under this Act, the court dealing with the case may order any documents connected with the offence to be destroyed or dealt with in such other manner as may be specified in the order, but no documents shall be destroyed before the expiration of the period within which an appeal may be lodged, and if an appeal is lodged no document shall be destroyed until after the appeal has been heard and decided.

¹⁴⁷⁵ Commencement: 10 February 2003, as inserted by NIAA 2003 s.143, SI 2003/1 art.2 and Sch.2 para.1.

¹⁴⁷⁶ Commencement: 10 February 2003, as inserted by NIAA 2003 s.143, SI 2003/1 art.2 and Sch.2 para.1.

¹⁴⁷⁷ Commencement: 16 November 1934

3.6.2.10. Terrorist cases

TA 2000 s.23¹⁴⁷⁸: Forfeiture: terrorist property offences

- s.23(1) - the court by or before which a person is convicted of an offence under any of sections 15 to 18 may make a forfeiture order in accordance with the provisions of this section.
- s.23(2) - where a person is convicted of an offence under section 15(1) or (2) or 16, the court may order the forfeiture of any money or other property which, at the time of the offence, the person had in their possession or under their control and which—
- (a) had been used for the purposes of terrorism, or
 - (b) they intended should be used, or had reasonable cause to suspect might be used, for those purposes.
- s.23(3) - where a person is convicted of an offence under section 15(3) the court may order the forfeiture of any money or other property which, at the time of the offence, the person had in their possession or under their control and which—
- (a) had been used for the purposes of terrorism, or
 - (b) which, at that time, they knew or had reasonable cause to suspect would or might be used for those purposes.
- s.23(4) - where a person is convicted of an offence under section 17 or 18 the court may order the forfeiture of any money or other property which, at the time of the offence, the person had in their possession or under their control and which—
- (a) had been used for the purposes of terrorism, or
 - (b) was, at that time, intended by them to be used for those purposes.
- s.23(5) - where a person is convicted of an offence under section 17 the court may order the forfeiture of the money or other property to which the arrangement in question related, and which—
- (a) had been used for the purposes of terrorism, or
 - (b) at the time of the offence, the person knew or had reasonable cause to suspect would or might be used for those purposes.
- s.23(5A) - where a person is convicted of an offence under section 17A the court may order the forfeiture of the amount paid under, or purportedly under, the insurance contract.
- s.23(6) - where a person is convicted of an offence under section 18 the court may order the forfeiture of the money or other property to which the arrangement in question related.
- s.23(7) - where a person is convicted of an offence under any of sections 15 to 18, the court may order the forfeiture of any money or other property which wholly or partly, and directly or indirectly, is received by any person as a payment or other reward in connection with the commission of the offence.

¹⁴⁷⁸ Commencement: A new s.23 was inserted and moved under a new heading by CTA 2008 s.34 on 18 June 2009.

TA 2000 s.23A¹⁴⁷⁹: Forfeiture: other terrorism offences and offences with a terrorist connection

- s.23A(1) - the court by or before which a person is convicted of an offence to which this section applies may order the forfeiture of any money or other property in relation to which the following conditions are met—
- (a) that it was, at the time of the offence, in the possession or control of the person convicted; and
 - (b) that—
 - (i) it had been used for the purposes of terrorism,
 - (ii) it was intended by that person that it should be used for the purposes of terrorism, or
 - (iii) the court believes that it will be used for the purposes of terrorism unless forfeited.
- s.23A(2) - this section applies to an offence under—
- (a) any of the following provisions of this Act—
 - section 54 (weapons training);
 - section 57, 58 or 58A (possessing things and collecting information for the purposes of terrorism);
 - section 59, 60 or 61 (inciting terrorism outside the United Kingdom);
 - (b) any of the following provisions of Part 1 of the Terrorism Act 2006 (c. 11)—
 - section 2 (dissemination of terrorist publications);
 - section 5 (preparation of terrorist acts);
 - section 6 (training for terrorism);
 - sections 9 to 11 (offences involving radioactive devices or materials).
- s.23A(3) - this section applies to any ancillary offence (as defined in section 94 of the Counter-Terrorism Act 2008) in relation to an offence listed in subsection (2).
- s.23A(4) - this section also applies to an offence specified in Schedule 2 to the Counter-Terrorism Act 2008 (offences where terrorist connection to be considered) as to which—
- (a) in England and Wales, the court dealing with the offence has determined, in accordance with section 30 of that Act, that the offence has a terrorist connection;
 - (b) in Scotland, it has been proved, in accordance with section 31 of that Act, that the offence has a terrorist connection.
- s.23A(5) - the Secretary of State may by order amend subsection (2).
- s.23A(6) - an order adding an offence to subsection (2) applies only in relation to offences committed after the order comes into force.

¹⁴⁷⁹ Commencement: 18 June 2009, as inserted by CTA 2008 s.35.

TA 2000 s.23B¹⁴⁸⁰: Forfeiture: supplementary provisions

- s.23B(1) - before making an order under section 23 or 23A, a court must give an opportunity to be heard to any person, other than the convicted person, who claims to be the owner or otherwise interested in anything which can be forfeited under that section.
- s.23B(2) - in considering whether to make an order under section 23 or 23A in respect of any property, a court shall have regard to—
- (a) the value of the property, and
 - (b) the likely financial and other effects on the convicted person of the making of the order (taken together with any other order that the court contemplates making).
- s.23B(3) - a court in Scotland must not make an order under section 23 or 23A except on the application of the prosecutor—
- (a) in proceedings on indictment, when the prosecutor moves for sentence, and
 - (b) in summary proceedings, before the court sentences the accused;
- and for the purposes of any appeal or review, an order under either of those sections made by a court in Scotland is a sentence.
- s.23B(4) - Schedule 4 makes further provision in relation to forfeiture orders under section 23 or 23A.

TA 2000 Sch.4: Forfeiture orders

Schedule 4 sets out provisions concerning the implementation of forfeiture orders, restraint orders pertaining to money, freezing orders abroad and insolvency. It is not set out here.

TA 2000 s.120¹⁴⁸¹: Supplementary powers of forfeiture

- s.120(1) - a court by or before which a person is convicted of an offence under a provision mentioned in column 1 of the following table may order the forfeiture of any item mentioned in column 2 in relation to that offence.

Note: There is a procedure for the forfeiture of seized cash in terrorism cases contained within the Anti-terrorism, Crime and Security Act 2001 Sch.1. It is not listed here as the order is not one made by a sentencing court.

Offence	Items liable to forfeiture
Section 54 (weapons training)	Anything that the court considers to have been in the possession of the person for purposes connected with the offence.
Section 57 (possession for terrorist purposes)	Any article that is the subject matter of the offence.
Section 58 (collection of information)	Any document or record containing information of the kind mentioned in subsection (1)(a) of that section.

¹⁴⁸⁰ Commencement: 18 June 2009, as inserted by CTA 2008 s.36.

¹⁴⁸¹ Commencement: 13 April 2006, as inserted by TA 2006 s.37(3), SI 2006/1013 art.2(2)(c).

Offence	Items liable to forfeiture
Section 58A (eliciting, publishing or communicating information about members of armed forces etc)	Any document or record containing information of the kind mentioned in subsection (1)(a) of that section.

- s.120(2) - before making an order under this section, a court must give an opportunity to be heard to any person, other than the convicted person, who claims to be the owner or otherwise interested in anything which can be forfeited under this section.
- s.120(3) - an order under this section does 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).
- s.120(4) - where a court makes an order under this section, it may also make such other provision as appears to it to be necessary for giving effect to the forfeiture, including, in particular, provision relating to the retention, handling, disposal or destruction of what is forfeited.
- s.120(5) - provision made by virtue of subsection (4) may be varied at any time by the court that made it.
- s.120(6) - the power of forfeiture under this section is in addition to any power of forfeiture under section 23A.

3.6.2.11. Trafficking

Interpretation

MSA 2015 s.13¹⁴⁸²: Interpretation of Part 1

- s.13(1) - in this Part—
- “*captain*” means master (of a ship) or commander (of an aircraft);
- “*confiscation order*” has the meaning given by section 8(8);
- “*the Human Rights Convention*” means the Convention for the Protection of Human Rights and Fundamental Freedoms agreed by the Council of Europe at Rome on 4th November 1950;
- “*land vehicle*” means any vehicle other than a ship or aircraft;
- “*ship*” includes every description of vessel (including a hovercraft) used in navigation;
- “*slavery and trafficking reparation order*” means an order made under section 8;
- “*UK national*” means—
- (a) a British citizen,
 - (b) a person who is a British subject by virtue of Part 4 of the British Nationality Act 1981 and who has a right of abode in the United Kingdom, or
 - (c) a person who is a British overseas territories citizen by virtue of a connection with Gibraltar.

¹⁴⁸² Commencement: 31 July 2015, SI 2015/1476 reg.2(a).

- s.13(2) - in sections 8 and 10, references to provisions of the Proceeds of Crime Act 2002 include references to those provisions as amended or otherwise modified by virtue of an order (whenever made) under section 97 of the Serious Organised Crime and Police Act 2005 (confiscation orders by magistrates' courts).
- s.13(3) - in sections 11 and 12, a reference to being an owner of a vehicle, ship or aircraft includes a reference to being any of a number of persons who jointly own it.

Availability

MSA 2015. s.11¹⁴⁸³: Forfeiture of land vehicle, ship or aircraft

- s.11(1) - this section applies if a person is convicted on indictment of an offence under section 2.
- s.11(5) - this subsection applies where a person who, at the time the offence was committed—
- (a) owned the ship or aircraft, or
 - (b) was a director, secretary or manager of a company which owned it,
- knew or ought to have known of the intention to use it in the course of the commission of an offence under section 2.

Power to order

MSA 2015. s.11¹⁴⁸⁴: Forfeiture of land vehicle, ship or aircraft

- s.11(2) - the court may order the forfeiture of a land vehicle used or intended to be used in connection with the offence if the convicted person—
- (a) owned the vehicle at the time the offence was committed,
 - (b) was at that time a director, secretary or manager of a company which owned the vehicle,
 - (c) was at that time in possession of the vehicle under a hire-purchase agreement,
 - (d) was at that time a director, secretary or manager of a company which was in possession of the vehicle under a hire-purchase agreement, or
 - (e) was driving the vehicle in the course of the commission of the offence.
- s.11(3) - the court may order the forfeiture of a ship or aircraft used or intended to be used in connection with the offence if the convicted person—
- (a) owned the ship or aircraft at the time the offence was committed,
 - (b) was at that time a director, secretary or manager of a company which owned the ship or aircraft,
 - (c) was at that time in possession of the ship or aircraft under a hirepurchase agreement,
 - (d) was at that time a director, secretary or manager of a company which was in possession of the ship or aircraft under a hire-purchase agreement,
 - (e) was at that time a charterer of the ship or aircraft, or
 - (f) committed the offence while acting as captain of the ship or aircraft.

¹⁴⁸³ Commencement: 31 July 2015, SI 2015/1476 reg.2(a).

¹⁴⁸⁴ Commencement: 31 July 2015, SI 2015/1476 reg.2(a).

- s.11(4) - but where subsection (3)(a) or (b) does not apply to the convicted person, forfeiture of a ship or aircraft may be ordered only if subsection (5) applies or—
- (a) in the case of a ship other than a hovercraft, its gross tonnage is less than 500 tons;
 - (b) in the case of an aircraft, the maximum weight at which it may take off in accordance with its certificate of airworthiness is less than 5,700 kilogrammes.

Person with interest in property has right to make representations

MSA 2015. s.11¹⁴⁸⁵: Forfeiture of land vehicle, ship or aircraft

- s.11(6) - where a person who claims to have an interest in a land vehicle, ship or aircraft applies to a court to make representations about its forfeiture, the court may not order its forfeiture without giving the person an opportunity to make representations.

¹⁴⁸⁵ Commencement: 31 July 2015, SI 2015/1476 reg.2(a).

3.6.3. Destruction

Note: There are powers to destroy property (such as drugs, firearms etc), the details of which are contained in section 3.6.2 above. However, there is also a general power to destroy property in the possession of the police (through seizure, the details of which are not contained in this document because it is not an order of the court in a sentencing hearing). The Police (Property) Regulations 1997 (SI 1997/1908) reg.8 sets out the power to destroy property in the possession of the police or the NCA; a Chief Officer of Police or the Director General of the NCA makes the determination.

3.6.4. Animals

3.6.4.1. Deprivation and disposal

Availability and power to order

AWA 2006 s.33¹⁴⁸⁶: Deprivation

- s.33(1) - if the person convicted of an offence under any of sections 4, 5, 6(1) and (2), 7, 8 and 9 is the owner of an animal in relation to which the offence was committed, the court by or before which he is convicted may, instead of or in addition to dealing with him in any other way, make an order depriving him of ownership of the animal and for its disposal.
- s.33(2) - where the owner of an animal is convicted of an offence under section 34(9) because ownership of the animal is in breach of a disqualification under section 34(2), the court by or before which he is convicted may, instead of or in addition to dealing with him in any other way, make an order depriving him of ownership of the animal and for its disposal.

Animal has dependent offspring

AWA 2006 s.33¹⁴⁸⁷: Deprivation

- s.33(3) - where the animal in respect of which an order under subsection (1) or (2) is made has any dependent offspring, the order may include provision depriving the person to whom it relates of ownership of the offspring and for its disposal.

Making the order

AWA 2006 s.33¹⁴⁸⁸: Deprivation

- s.33(4) - where a court makes an order under subsection (1) or (2), it may–
- (a) appoint a person to carry out, or arrange for the carrying out of, the order;
 - (b) require any person who has possession of an animal to which the order applies to deliver it up to enable the order to be carried out;
 - (c) give directions with respect to the carrying out of the order;
 - (d) confer additional powers (including power to enter premises where an animal to which the order applies is being kept) for the purpose of, or in connection with, the carrying out of the order;
 - (e) order the offender to reimburse the expenses of carrying out the order.
- s.33(5) - directions under subsection (4)(c) may–
- (a) specify the manner in which an animal is to be disposed of, or

¹⁴⁸⁶ Commencement: Wales, in force 27 March 2007, SI 2007/1030 art.2(1)(e) and England, in force 6 April 2007, SI 2007/499 art.2(2)(g).

¹⁴⁸⁷ Commencement: Wales, in force 27 March 2007, SI 2007/1030 art.2(1)(e) and England, in force 6 April 2007, SI 2007/499 art.2(2)(g).

¹⁴⁸⁸ Commencement: Wales, in force 27 March 2007, SI 2007/1030 art.2(1)(e) and England, in force 6 April 2007, SI 2007/499 art.2(2)(g).

- (b) delegate the decision about the manner in which an animal is to be disposed of to a person appointed under subsection (4)(a).

Duty to give reasons when not making an order

AWA 2006 s.33¹⁴⁸⁹: Deprivation

- s.33(6) - where a court decides not to make an order under subsection (1) or (2) in relation to an offender, it shall–
 - (a) give its reasons for the decision in open court, and
 - (b) if it is a magistrates' court, cause them to be entered in the register of its proceedings.
- s.33(7) - subsection (6) does not apply where the court makes an order under section 34(1) in relation to the offender.

Fighting offences

AWA 2006 s.33¹⁴⁹⁰: Deprivation

- s.33(8) - in subsection (1), the reference to an animal in relation to which an offence was committed includes, in the case of an offence under section 8, an animal which took part in an animal fight in relation to which the offence was committed.

Disposal

AWA 2006 s.33¹⁴⁹¹: Deprivation

- s.33(9) - in this section, references to disposing of an animal include destroying it.

Reimbursement of expenses

AWA 2006 s.44¹⁴⁹²: Orders made on conviction for reimbursement of expenses

- s.44 - where an order is made under section 33(4)(e), 36(1)(e), 37(3)(e), 38(3)(e) or 39(1), the expenses that are required by the order to be reimbursed shall not be regarded for the purposes of the Magistrates' Courts Act 1980 (c. 43) as a sum adjudged to be paid by a summary conviction, but shall be recoverable summarily as a civil debt.

¹⁴⁸⁹ Commencement: Wales, in force 27 March 2007, SI 2007/1030 art.2(1)(e) and England, in force 6 April 2007, SI 2007/499 art.2(2)(g).

¹⁴⁹⁰ Commencement: Wales, in force 27 March 2007, SI 2007/1030 art.2(1)(e) and England, in force 6 April 2007, SI 2007/499 art.2(2)(g).

¹⁴⁹¹ Commencement: Wales, in force 27 March 2007, SI 2007/1030 art.2(1)(e) and England, in force 6 April 2007, SI 2007/499 art.2(2)(g).

¹⁴⁹² Commencement: England, in force 6 April 2007, SI 2007/499 art.2(2)(g). Wales, in force 27 March 2007, SI 2007/1030 art.2(1)(e).

3.6.4.2. Forfeiture of equipment

Power to order

AWA 2006 s.40¹⁴⁹³: Forfeiture of equipment used in offences

- s.40(1) - where a person is convicted of an offence under any of sections 4, 5, 6(1) and (2), 7 and 8, the court by or before which he is convicted may order any qualifying item which is shown to the satisfaction of the court to relate to the offence to be—
- (a) forfeited, and
 - (b) destroyed or dealt with in such manner as may be specified in the order.

“Qualifying item”

AWA 2006 s.40¹⁴⁹⁴: Forfeiture of equipment used in offences

- s.40(2) - the reference in subsection (1) to any qualifying item is—
- (a) in the case of a conviction for an offence under section 4, to anything designed or adapted for causing suffering to an animal;
 - (b) in the case of a conviction for an offence under section 5, to anything designed or adapted for carrying out a prohibited procedure on an animal;
 - (c) in the case of a conviction for an offence under section 6(1) or (2), to anything designed or adapted for removing the whole or any part of a dog's tail;
 - (d) in the case of a conviction for an offence under section 7, to anything designed or adapted for administering any drug or substance to an animal;
 - (e) in the case of a conviction for an offence under section 8(1) or (2), to anything designed or adapted for use in connection with an animal fight;
 - (f) in the case of a conviction for an offence under section 8(3), to a video recording of an animal fight, including anything on or in which the recording is kept.

Owner must be given opportunity to make representations

AWA 2006 s.40¹⁴⁹⁵: Forfeiture of equipment used in offences

- s.40(3) - the court shall not order anything to be forfeited under subsection (1) if a person claiming to be the owner of it or otherwise interested in it applies to be heard by the court, unless he has been given an opportunity to show cause why the order should not be made.

¹⁴⁹³ Commencement: England, in force 6 April 2007, SI 2007/499 art.2(2)(g). Wales, in force 27 March 2007, SI 2007/1030 art.2(1)(e).

¹⁴⁹⁴ Commencement: England, in force 6 April 2007, SI 2007/499 art.2(2)(g). Wales, in force 27 March 2007, SI 2007/1030 art.2(1)(e).

¹⁴⁹⁵ Commencement: England, in force 6 April 2007, SI 2007/499 art.2(2)(g). Wales, in force 27 March 2007, SI 2007/1030 art.2(1)(e).

Interpretation

AWA 2006 s.40¹⁴⁹⁶: Forfeiture of equipment used in offences

s.40(4) - an expression used in any of paragraphs (a) to (f) of subsection (2) has the same meaning as in the provision referred to in that paragraph.

3.6.4.3. Appeals

Orders suspended until time limit for appeals has expired or appeal concluded

AWA 2006 s.41¹⁴⁹⁷: Orders under section 33, 35, 37, 38 or 40: pending appeals

s.41(1) - nothing may be done under an order under section 33, 35, 37 or 38 with respect to an animal or an order under section 40 unless–

- (a) the period for giving notice of appeal against the order has expired,
- (b) the period for giving notice of appeal against the conviction on which the order was made has expired, and
- (c) if the order or conviction is the subject of an appeal, the appeal has been determined or withdrawn.

No suspension where court orders destruction not to be delayed

AWA 2006 s.41¹⁴⁹⁸: Orders under section 33, 35, 37, 38 or 40: pending appeals

s.41(2) - subsection (1) does not apply to an order under section 37(1) if the order is the subject of a direction under subsection (5) of that section.

Effect of suspension

AWA 2006 s.41¹⁴⁹⁹: Orders under section 33, 35, 37, 38 or 40: pending appeals

s.41(3) - where the effect of an order is suspended under subsection (1)–

- (a) no requirement imposed or directions given in connection with the order shall have effect, but
- (b) the court may give directions about how any animal to which the order applies is to be dealt with during the suspension.

s.41(4) - directions under subsection (3)(b) may, in particular–

- (a) authorise the animal to be taken into possession;
- (b) authorise the removal of the animal to a place of safety;

¹⁴⁹⁶ Commencement: England, in force 6 April 2007, SI 2007/499 art.2(2)(g). Wales, in force 27 March 2007, SI 2007/1030 art.2(1)(e).

¹⁴⁹⁷ Commencement: England, in force 6 April 2007, SI 2007/499 art.2(2)(g). Wales, in force 27 March 2007, SI 2007/1030 art.2(1)(e).

¹⁴⁹⁸ Commencement: England, in force 6 April 2007, SI 2007/499 art.2(2)(g). Wales, in force 27 March 2007, SI 2007/1030 art.2(1)(e).

¹⁴⁹⁹ Commencement: England, in force 6 April 2007, SI 2007/499 art.2(2)(g). Wales, in force 27 March 2007, SI 2007/1030 art.2(1)(e).

- (c) authorise the animal to be cared for either on the premises where it was being kept when it was taken into possession or at some other place;
- (d) appoint a person to carry out, or arrange for the carrying out, of the directions;
- (e) require any person who has possession of the animal to deliver it up for the purposes of the directions;
- (f) confer additional powers (including power to enter premises where the animal is being kept) for the purpose of, or in connection with, the carrying out of the directions;
- (g) provide for the recovery of any expenses in relation to removal or care of the animal which are incurred in carrying out the directions.

Recovery of expenses

AWA 2006 s.41¹⁵⁰⁰: Orders under section 33, 35, 37, 38 or 40: pending appeals

s.41(5) - any expenses a person is directed to pay under subsection (4)(g) shall be recoverable summarily as a civil debt.

Deprivation

AWA 2006 s.41¹⁵⁰¹: Orders under section 33, 35, 37, 38 or 40: pending appeals

s.41(6) - where the effect of an order under section 33 is suspended under subsection (1) the person to whom the order relates may not sell or part with any animal to which the order applies.

Breach

AWA 2006 s.41¹⁵⁰²: Orders under section 33, 35, 37, 38 or 40: pending appeals

s.41(7) - failure to comply with subsection (6) is an offence.

¹⁵⁰⁰ Commencement: England, in force 6 April 2007, SI 2007/499 art.2(2)(g). Wales, in force 27 March 2007, SI 2007/1030 art.2(1)(e).

¹⁵⁰¹ Commencement: England, in force 6 April 2007, SI 2007/499 art.2(2)(g). Wales, in force 27 March 2007, SI 2007/1030 art.2(1)(e).

¹⁵⁰² Commencement: England, in force 6 April 2007, SI 2007/499 art.2(2)(g). Wales, in force 27 March 2007, SI 2007/1030 art.2(1)(e).