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STATUTORY INSTRUMENTS

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**2018 No. 1078**

**The Proceeds of Crime Act 2002 (External Investigations and External Orders and Requests) (Amendment) Order 2018**

**PART 4**

**Forfeiture powers: Amendments to the 2005 Order**

**Introduction**

**22.** The 2005 Order is amended as follows.

**Extension of powers to the Serious Fraud Office: appropriate approval**

**23.** In article 17F(3) (appropriate approval), after sub-paragraph (b) insert—

“(ba) in relation to the exercise of a power by an SFO officer, the Director of the Serious Fraud Office;”.

**Extension of powers to the Serious Fraud Office: definition of “appropriate officer”**

**24.** In article 55 (other interpretation)—

(a) in the definition of “appropriate officer”—

(i) in paragraph (b), omit “or”; and

(ii) after paragraph (b), insert—

“(ba) an SFO officer; or”;

(b) after the definition of “relevant seizure power”, insert—

““SFO officer” means a member of staff of the Serious Fraud Office.”.

**Appointment of receivers in connection with prohibition orders - external investigations (Scotland)**

**25.** After article 141ZH (inhibition of property affected by prohibition order), insert—

**“Receivers in connection with prohibition orders**

**141ZHA.**—(1) Paragraph (2) applies if—

(a) the Court of Session makes a prohibition order on an application by an enforcement authority, and

(b) the authority applies to the court to proceed under paragraph (2) (whether as part of the application for the prohibition order or at any time afterwards).

(2) The Court of Session may by order appoint a receiver in respect of any property to which the prohibition order applies.

(3) An application for an order under this article may be made by a without notice application to a judge of the Court of Session.

(4) In its application for an order under this article, the enforcement authority must nominate a suitably qualified person for appointment as a receiver.

(5) Such a person may be a member of staff of the enforcement authority.

### **Powers of receivers appointed under article 141ZHA**

**141ZHB.**—(1) If the Court of Session appoints a receiver under article 141ZHA (receivers in connection with prohibition orders) on an application by an enforcement authority, the court may act under this article on the application of the authority.

(2) The court may by order authorise or require the receiver—

- (a) to manage any property in respect of which the receiver is appointed,
- (b) to take any other steps the court thinks appropriate in connection with the management of any such property (including securing the detention, custody or preservation of the property in order to manage it),
- (c) to realise so much of the property as is necessary to meet the receiver’s remuneration and expenses.

(3) Paragraph (2)(c) does not apply in relation to the remuneration of the receiver if the receiver is a member of the staff of the enforcement authority (but it does apply in relation to such remuneration if the receiver is a person providing services under arrangements made by the enforcement authority).

(4) Managing property includes—

- (a) selling or otherwise disposing of assets comprised in the property which are perishable or which ought to be disposed of before their value diminishes,
- (b) where the property comprises assets of a trade or business, carrying on, or arranging for another to carry on, the trade or business,
- (c) incurring capital expenditure in respect of the property.

(5) The court may by order require any person in respect of whose property the receiver is appointed—

- (a) to bring the property to a place in Scotland specified by the receiver or to place it in the custody of the receiver (if, in either case, the person is able to do so),
- (b) to do anything the person is reasonably required to do by the receiver for the preservation of the property,
- (c) to bring any documents relating to the property which are in their possession or control to a place in Scotland specified by the receiver or to place them in the custody of the receiver.

(6) In paragraph (5)(c) “document” means anything in which information of any description is recorded.

(7) Any prohibition on dealing with property imposed by a prohibition order does not prevent a person from complying with any requirements imposed by virtue of this article.

(8) If—

- (a) the receiver deals with any property which is not property in respect of which the receiver is appointed under article 141ZHA, and

- (b) at the time of dealing with the property the receiver believes on reasonable grounds that they are entitled to do so by virtue of being appointed under article 141ZHA,

the receiver is not liable to any person in respect of any loss or damage resulting from the receiver dealing with the property except so far as the loss or damage is caused by the receiver's negligence.

### **Supervision of receiver and variations**

**141ZHC.**—(1) Any of the following persons may at any time apply to the Court of Session for directions as to the exercise of the functions of a receiver appointed under article 141ZHA (receivers in connection with prohibition orders)—

- (a) the receiver,
- (b) any party to the proceedings for the appointment of the receiver or the prohibition order concerned,
- (c) any person affected by any action taken by the receiver,
- (d) any person who may be affected by any action proposed to be taken by the receiver.

(2) Before giving any directions under paragraph (1), the court must give an opportunity to be heard to—

- (a) the receiver,
- (b) the parties to the proceedings for the appointment of the receiver and for the prohibition order concerned,
- (c) any person who may be interested in the application under paragraph (1).

(3) The court may at any time vary or recall—

- (a) an order appointing a receiver,
- (b) any order under article 141ZHB (powers of receivers appointed under article 141ZHA), or
- (c) any directions under this article.

(4) Before exercising any power under paragraph (3), the court must give an opportunity to be heard to—

- (a) the receiver,
- (b) the parties to the proceedings for—
  - (i) the appointment of the receiver,
  - (ii) the order under article 141ZHB, and
  - (iii) (as the case may be) the directions under this article,
- (c) the parties to the proceedings for the prohibition order concerned,
- (d) any person who may be affected by the court's decision.”.

### **Appointment of receivers in connection with prohibitory property orders - external orders (Scotland)**

**26.** After article 166 (inhibition of property affected by prohibitory property order), insert—

### **“Receivers in connection with prohibitory property orders**

**166A.**—(1) Paragraph (2) applies if—

- (a) the Court of Session makes a prohibitory property order on an application by an enforcement authority, and
- (b) the authority applies to the court to proceed under paragraph (2) (whether as part of the application for the prohibitory property order or at any time afterwards).

(2) The Court of Session may by order appoint a person (a “PPO receiver”) in respect of any property to which the prohibitory property order applies.

(3) An application for an order under this article may be made without notice if the circumstances are such that notice of the application would prejudice any right of the enforcement authority to obtain a recovery order in respect of any property.

(4) In its application for an order under this article, the enforcement authority must nominate a suitably qualified person for appointment as a PPO receiver.

(5) Such a person may be a member of staff of the enforcement authority.

(6) The enforcement authority may apply a sum received by it under article 191(2) (applying realised proceeds) in making payment of the remuneration and expenses of a PPO receiver appointed under this article.

(7) Paragraph (6) does not apply in relation to the remuneration of a PPO receiver who is a member of the staff of the enforcement authority (but it does apply in relation to such remuneration if the PPO receiver is a person providing services under arrangements made by the enforcement authority).

### **Powers of receivers appointed under article 166A**

**166B.**—(1) If the Court of Session appoints a PPO receiver under article 166A (receivers in connection with prohibitory property orders) on an application by an enforcement authority, the court may act under this article on the application of the authority.

(2) The court may by order authorise or require the PPO receiver—

- (a) to exercise any of the powers mentioned in paragraph 5 of Schedule 2 (management powers) in relation to any property in respect of which the PPO receiver is appointed,
- (b) to take any other steps the court thinks appropriate in connection with the management of any such property (including securing the detention, custody or preservation of the property in order to manage it).

(3) The court may by order require any person in respect of whose property the PPO receiver is appointed—

- (a) to bring the property to a place in Scotland specified by the PPO receiver or to place it in the custody of the PPO receiver (if, in either case, the person is able to do so),
- (b) to do anything the person is reasonably required to do by the PPO receiver for the preservation of the property.

(4) The court may by order require any person in respect of whose property the PPO receiver is appointed to bring any documents relating to the property which are in the person’s possession or control to a place in Scotland specified by the PPO receiver or to place them in the custody of the PPO receiver.

(5) In paragraph (4) “document” means anything in which information of any description is recorded.

(6) Any prohibition on dealing with property imposed by a prohibitory property order does not prevent a person from complying with any requirements imposed by virtue of this article.

(7) If—

- (a) the PPO receiver deals with any property which is not property in respect of which the PPO receiver is appointed under article 166A, and
- (b) at the time of dealing with the property the PPO receiver believes on reasonable grounds that they are entitled to do so by virtue of being appointed under article 166A,

the PPO receiver is not liable to any person in respect of any loss or damage resulting from the PPO receiver dealing with the property except so far as the loss or damage is caused by the PPO receiver's negligence.

### **Supervision of PPO receiver and variations**

**166C.**—(1) Any of the following persons may at any time apply to the Court of Session for directions as to the exercise of the functions of a PPO receiver—

- (a) the PPO receiver,
- (b) any party to the proceedings for the appointment of the PPO receiver or the prohibitory property order concerned,
- (c) any person affected by any action taken by the PPO receiver,
- (d) any person who may be affected by any action proposed to be taken by the PPO receiver.

(2) Before giving any directions under paragraph (1), the court must give an opportunity to be heard to—

- (a) the PPO receiver,
- (b) the parties to the proceedings for the appointment of the PPO receiver and for the prohibitory property order concerned,
- (c) any person who may be interested in the application under paragraph (1).

(3) The court may at any time vary or recall—

- (a) an order appointing a PPO receiver,
- (b) any order under article 166B (powers of receivers appointed under article 166A), or
- (c) any directions under this article.

(4) Before exercising any power under paragraph (3), the court must give an opportunity to be heard to—

- (a) the PPO receiver,
- (b) the parties to the proceedings for—
  - (i) the appointment of the PPO receiver,
  - (ii) the order under article 166B, or
  - (iii) (as the case may be) the directions under this article,
- (c) the parties to the proceedings for the prohibitory property order concerned,
- (d) any person who may be affected by the court's decision.”.

### **Limit on recovery: property subject to forfeiture orders**

27. In article 189 (limit on recovery)—

(a) after paragraph 6, insert—

“(6A) If—

(a) recoverable property is forfeited in pursuance of a forfeiture notice under section 297A of the Act or (in England or Wales) under an account forfeiture notice under section 303Z9, and

(b) the enforcement authority subsequently seeks a recovery order in respect of related property,

the notice is to be treated for the purposes of this article as if it were a recovery order obtained by the enforcement authority in respect of the forfeited property.”

(b) In paragraph (7)—

(i) in each place where it occurs, after “section 298” insert “, or (in England and Wales or Scotland) 303O, 303R or 303Z14,”; and

(ii) in sub-paragraph (a), after “of the Act” insert “or (in England and Wales or Scotland) under articles 213L or 213Z7(1)”.

(c) after paragraph (7), insert—

“(7A) This paragraph applies if (in England and Wales or Scotland)—

(a) an order is made for the forfeiture of recoverable property under—

(i) section 303Q of the Act instead of an order being made under section 303O of the Act, or

(ii) article 213N(2) instead of article 213L, and

(b) the enforcement authority subsequently seeks a recovery order in respect of related property.

(7B) If paragraph (7A) applies—

(a) if the order was made under section 303Q of the Act, it is to be treated for the purposes of this article as if it were a recovery order obtained by the enforcement authority in respect of the property that was the forfeitable property in relation to the order under section 303Q of the Act;

(b) if the order was made under article 213N, it is to be treated for the purposes of this article as if it were a recovery order obtained by the enforcement authority in respect of the property that was the forfeitable property in relation to the order under article 213N.”

### **Insolvency: restriction on applications for account freezing orders**

28. In article 208 (insolvency), after paragraph (1) insert—

“(1A) An application for the making of an account freezing order under article 213Z1 (application for account freezing order) in respect of an account in which is held money to which paragraph (2) applies, or an application under article 213Z4 (variation and setting aside of account freezing order) for the extension of the period specified in such an order, may not be made unless the appropriate court gives leave.”

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(1) Articles 213L and 213Z7 were inserted by Part 4 of this Order.

(2) Article 213N was inserted by Part 4 of the Order.

### **“Enforcement authority”**

**29.** In article 213(1) (general interpretation), in the definition of “enforcement authority”, for paragraph (a) substitute—

- “(a) in relation to England and Wales, means the Financial Conduct Authority, Her Majesty’s Revenue and Customs, the National Crime Agency, the Director of Public Prosecutions or the Director of the Serious Fraud Office,”.

### **Forfeiture of certain personal (or moveable) property**

**30.** After article 213 (general interpretation), insert—

## **“Part 5A**

**Giving effect in England and Wales and Scotland to external orders  
by means of the forfeiture of certain personal (or moveable) property**

### **Chapter 1**

#### **Introduction**

#### **Action to give effect to an external order**

**213A.**—(1) The Secretary of State may forward an external order to—

- (a) the Chief Constable of a police force in England and Wales or the Chief Constable of the Police Service of Scotland;
- (b) the Commissioners for Her Majesty’s Revenue and Customs;
- (c) the Director of the Serious Fraud Office;
- (d) the Director of the National Crime Agency.

(2) This Part has effect for the purpose of enabling the search for, seizure, detention and forfeiture of listed assets of property (within the meaning of article 213B (“listed asset”)) in civil proceedings before—

- (a) in England and Wales, the magistrates’ court or the High Court; or
- (b) in Scotland, the Sheriff Court or (if the Sheriff Court has transferred an application under article 213O (associated and joint property: default of agreement)) the Court of Session,

for the purpose of giving effect to an external order.

(3) The powers conferred by this Part are exercisable in relation to any listed asset whether or not proceedings have been brought in the country from which the external order was sent for criminal conduct (within the meaning of section 447(8) of the Act (interpretation)) in connection with the property.

### **Chapter 2**

#### **Search, Seizure, Detention and Forfeiture of Listed Assets**

#### **“Listed asset”**

**213B.**—(1) In this Part, a “listed asset” has the same meaning as specified for the time being in section 303B(1) of the Act.

## Searches

**213C.**—(1) If a relevant officer is lawfully on any premises and has reasonable grounds for suspecting that there is on the premises a seizable listed asset, the relevant officer may search for the listed asset there.

- (2) The powers conferred by paragraph (5) are exercisable by a relevant officer if—
- (a) the relevant officer has reasonable grounds for suspecting that there is a seizable listed asset in a vehicle,
  - (b) it appears to the officer that the vehicle is under the control of a person (the suspect) who is in or in the vicinity of the vehicle, and
  - (c) the vehicle is in a place falling within paragraph (3).

(3) The places referred to in paragraph (2)(c) are—

- (a) a place to which, at the time of the proposed exercise of the powers, the public or any section of the public has access, on payment or otherwise, as of right or by virtue of express or implied permission, and
- (b) any other place to which at that time people have ready access but which is not a dwelling.

(4) But if the vehicle is in a garden or yard or other land occupied with and used for the purposes of a dwelling, the relevant officer may exercise the powers conferred by paragraph (5) only if the relevant officer has reasonable grounds for believing—

- (a) that the suspect does not reside in the dwelling, and
- (b) that the vehicle is not in the place in question with the express or implied permission of a person who resides in the dwelling.

(5) The powers conferred by this paragraph are—

- (a) power to require the suspect to permit entry to the vehicle;
- (b) power to require the suspect to permit a search of the vehicle.

(6) If a relevant officer has reasonable grounds for suspecting that a person (the suspect) is carrying a seizable listed asset, the relevant officer may require the suspect—

- (a) to permit a search of any article the suspect has with him or her;
- (b) to permit a search of the suspect's person.

(7) The powers conferred by paragraphs (5) and (6) are exercisable only so far as the relevant officer thinks it necessary or expedient.

(8) A relevant officer may—

- (a) in exercising powers conferred by paragraph (5), detain the vehicle for so long as is necessary for their exercise;
- (b) in exercising powers conferred by paragraph (6)(b), detain the suspect for so long as is necessary for their exercise.

(9) In this Part, a “relevant officer” means—

- (a) an officer of Revenue and Customs,
- (b) a constable, or
- (c) an SFO officer.

(10) For the purposes of this article a listed asset is a seizable listed asset if—

- (a) it falls within the description specified in an external order which has been forwarded in accordance with article 213A (action to give effect to an external order),



- (b) all or part of it is recoverable property, and
- (c) the value of the asset, or the part of it that falls within paragraph (b), is not less than the minimum value (“minimum value” is defined in article 213V).

(11) Where a power conferred by this article is being exercised in respect of more than one seizable listed asset, this article is to apply as if the value of each asset or (as the case may be) part of an asset was equal to the aggregate value of all of those assets or parts.

### **Searches: supplemental provision**

**213D.**—(1) The powers conferred by article 213C (searches)—

- (a) are exercisable only so far as reasonably required for the purpose of finding a listed asset;
- (b) include the power to carry out (or arrange for the carrying out of) tests on anything found during the course of the search for the purpose of establishing whether it is a listed asset;
- (c) are exercisable by an officer of Revenue and Customs only if the officer has reasonable grounds for suspecting that the property in question was obtained as a result of or in connection with criminal conduct that relates to an assigned matter (within the meaning of the Customs and Excise Management Act 1979)(3);
- (d) are exercisable by an SFO officer only in relation to the following—
  - (i) premises in England or Wales (in the case of article 213C(1));
  - (ii) vehicles and suspects in England or Wales (in the case of article 213C(5) and (8)(a));
  - (iii) suspects in England or Wales (in the case of article 213C(6) and (8)(b)).

(2) Article 213C does not require a person to submit to an intimate search or strip search (within the meaning of section 164 of the Customs and Excise Management Act 1979)(4)).

### **Prior Approval**

**213E.**—(1) The powers conferred by article 213C (searches) may be exercised only with the appropriate approval unless, in the circumstances, it is not practicable to obtain that approval before exercising the power.

(2) The appropriate approval means the approval of a judicial officer or (if that is not practicable in any case) the approval of a senior officer.

- (3) A judicial officer means—
  - (a) in relation to England and Wales, a justice of the peace;
  - (b) in relation to Scotland, the sheriff.
- (4) A senior officer means—
  - (a) in relation to the exercise of a power by an officer of Revenue and Customs, such an officer of a rank designated by the Commissioners for Her Majesty’s Revenue and Customs as equivalent to that of a senior police officer;
  - (b) in relation to the exercise of a power by a constable, a senior police officer;
  - (c) in relation to the exercise of a power by an SFO officer, the Director of the Serious Fraud Office;

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(3) 1979 c. 2.

(4) Section 164 was amended by Part 2 of Schedule 4 to the Finance Act 1984 (c. 43) and section 10 of the Finance Act 1988 (c. 39).

- (d) in relation to the exercise of a power by a National Crime Agency officer, the Director General of the National Crime Agency or any other National Crime Agency officer authorised by the Director General (whether generally or specifically) for this purpose.
- (5) A senior police officer means a police officer of at least the rank of inspector.
- (6) If the powers are exercised without the approval of a judicial officer in a case where no property is seized by virtue of article 213H (seizure of listed assets) the relevant officer who exercised the power must give a written report to the appointed person.
- (7) A report under paragraph (6) must give particulars of the circumstances which led the relevant officer to believe that—
  - (a) the powers were exercisable, and
  - (b) it was not practicable to obtain the approval of a judicial officer.
- (8) In this article and article 213F (report on exercise of powers), the appointed person means—
  - (a) in relation to England and Wales, a person appointed by the Secretary of State;
  - (b) in relation to Scotland, a person appointed by the Scottish Ministers.
- (9) The appointed person must not be a person employed under or for the purposes of a government department or of the Scottish Administration; and the terms and conditions of the person's appointment, including any remuneration or expenses to be paid to the person, are to be determined by the person making the appointment.

### **Report on exercise of powers**

- 213F.**—(1) As soon as possible after the end of each financial year, the appointed person must prepare a report for that year.
- (2) “Financial year” means—
    - (a) the period beginning with the day on which this article comes into force and ending with the next 31 March (which is the first financial year), and
    - (b) each subsequent period of 12 months beginning with 1 April.
  - (3) The report must give the appointed person's opinion as to the circumstances and manner in which the powers conferred by article 213C (searches) are being exercised in cases where the relevant officer who exercised them is required to give a report under article 213E(6) (report to appointed person).
  - (4) The report may include any recommendations which the appointed person considers appropriate.
  - (5) The appointed person must send a copy of the report to whichever of the Secretary of State or the Scottish Ministers appointed the person.
  - (6) The Secretary of State must lay a copy of any report the Secretary of State receives under this article before Parliament and arrange for it to be published.
  - (7) The Scottish Ministers must lay a copy of any report they receive under this article before the Scottish Parliament and arrange for it to be published.

### **Codes of Practice**

- 213G.** A Code of Practice made under section 303G of the Act (code of practice: Secretary of State), or a Code of Practice made under section 303H of the Act (code of

practice: Scotland) applies to the powers conferred by article 213C (searches) as it applies to the powers conferred by section 303C of the Act (searches).

### **Seizure of listed assets**

**213H.**—(1) A relevant officer may seize any item of property if the relevant officer has reasonable grounds for suspecting that—

- (a) it falls within the description specified in an external order which has been forwarded in accordance with article 213A (action to give effect to external order),
- (b) it is a listed asset,
- (c) it is recoverable property, and
- (d) the value of it is not less than the minimum value.

(2) Where the powers conferred by this article are being exercised by a relevant officer in respect of more than one item of property, this article is to apply as if the value of each item was equal to the aggregate value of all of those items.

(3) The references in paragraph (2) to the value of an item are to be read as including references to the value of part of an item where the power conferred by paragraph (1) is being exercised.

(4) This article does not authorise the seizure by an SFO officer of an item of property found in Scotland.

### **Detention of seized property**

**213I.**—(1) Subject to paragraphs (2) and (3), property seized under article 213H (seizure of listed assets) may be detained.

(2) Property may not be detained under paragraph (1) beyond the end of the period of 7 days beginning with the date upon which the property was seized.

(3) Paragraphs (1) and (2) authorise the detention of property only for so long as a relevant officer continues to have reasonable grounds for suspicion in relation to that property as described in article 213H(1).

(4) In calculating a period of days for the purposes of this article, no account shall be taken of—

- (a) any Saturday or Sunday,
- (b) Christmas Day,
- (c) Good Friday,
- (d) any day that is a bank holiday under the Banking and Financial Dealings Act 1971 in England and Wales, or
- (e) any day prescribed under section 8(2) of the Criminal Procedure (Scotland) Act 1995 as a court holiday in a sheriff court in the sheriff court district within which the property is seized.

### **Testing and safekeeping of property seized under article 213H**

**213J.**—(1) A relevant officer may carry out (or arrange for the carrying out of) tests on any item of property seized under article 213H (seizure of listed assets) for the purpose of establishing whether it is a listed asset.

(2) A relevant officer must arrange for any item of property seized under article 213H to be safely stored throughout the period during which it is detained under this Part.

### **Release of detained property**

**213K.**—(1) This article applies while any property is detained under article 213I (detention of seized property).

(2) A magistrates' court or (in Scotland) the sheriff may direct the release of the whole or any part of the property if the following condition is met.

(3) The condition is that the court or sheriff is satisfied, on an application by the person from whom the property was seized, that the conditions in article 213I for the detention of the property are no longer met in relation to the property to be released.

(4) A relevant officer or (in Scotland) a procurator fiscal may, after notifying the magistrates' court or sheriff under whose order property is being detained, release the whole or any part of it if satisfied that the detention of the property to be released is no longer justified.

### **Forfeiture**

**213L.**—(1) While property is detained under this Part and the detention period has not expired, an application may be made by a person specified in paragraph (3) to the court for—

- (a) the registration of the external order specifying the property seized under article 213H (seizure of listed assets), and
- (b) the forfeiture of the whole or any part of the property specified in that external order.

(2) In this article, “the court” means—

- (a) in England and Wales, a magistrates' court;
- (b) in Scotland, the sheriff court.

(3) The persons referred to in paragraph (1) are—

- (a) in England and Wales, the Commissioners for Her Majesty's Revenue and Customs, a constable or an SFO officer, or
- (b) in Scotland, the Scottish Ministers.

(4) In paragraph (1), “the detention period” means the period specified in article 213I(2) (detention of seized property).

(5) If an application is made under paragraph (1), the court must decide to give effect to the external order by registering it and ordering the forfeiture of the property or any part of it if it determines that—

- (a) the property is a listed asset, and
- (b) what is to be forfeited is recoverable property.

(6) In making such a determination the court must have regard to—

- (a) the definitions in subsections (2), (4), (5), (6) to (8) and (10) of section 447 of the Act (interpretation), and
- (b) articles 202 to 207 (recoverable property).

(7) An order under paragraph (5) made by a magistrates' court may provide for payment under article 213R (proceeds of realisation) of reasonable legal expenses that a person has reasonably incurred, or may reasonably incur, in respect of—

- (a) the proceedings in which the order is made, or
- (b) any related proceedings under this Part.

(8) A sum in respect of a relevant item of expenditure is not payable under article 213R in pursuance of provision under paragraph (7) unless—

- (a) the person who applied for the order under paragraph (5) agrees to its payment, or
- (b) the court has assessed the amount allowed in respect of that item and the sum is paid in respect of the assessed amount.

(9) For the purposes of paragraph (8)—

- (a) a “relevant item of expenditure” is an item of expenditure to which regulations under section 286B of the Act would apply if the order under paragraph (5) had instead been a recovery order;
- (b) an amount is “allowed” in respect of a relevant item of expenditure if it would have been allowed by those regulations.

(10) Paragraph (5) ceases to apply on the transfer of an application made under this article in accordance with article 213O(1)(a) or (b) (associated and joint property: default of agreement).

(11) Where an application for the forfeiture of any property is made under this article, the property is to be detained (and may not be released under any power conferred by this Part) until any proceedings in pursuance of the application (including any proceedings on appeal) are concluded.

(12) Where the property to which the application relates is being detained under this Part as part of an item of property, having been seized under article 213H(2) (seizure of listed assets), paragraph (11) is to be read as if it required the continued detention of the whole of the item of property.

### **Associated and joint property**

**213M.**—(1) Articles 213N (agreements about associated and joint property) and 213O (associated and joint property: default of agreement) apply if—

- (a) an application is made under article 213L (forfeiture) in respect of property detained under this Part,
- (b) the court or (in Scotland) the sheriff is satisfied that the property is a listed asset falling within the description specified in an enforcement order which has been forwarded in accordance with article 213A (action to give effect to an external order),
- (c) the court or sheriff is satisfied that all or part of the property is recoverable property, and
- (d) there exists property that is associated with the property in relation to which the court or sheriff is satisfied as mentioned in subparagraph (c).

(2) Articles 213N and 213O also apply in England and Wales if—

- (a) an application is made under article 213L in respect of property detained under this Part,
- (b) the court is satisfied that the property is a listed asset,
- (c) the court is satisfied that all or part of the property is recoverable property, and
- (d) the property in relation to which the court is satisfied as mentioned in subparagraph (c) belongs to joint tenants and one of the tenants is an excepted joint owner.

(3) In this article, and in articles 213N and 213O, “associated property” means property of any of the following descriptions that is not itself the forfeitable property—

- (a) any interest in the forfeitable property;
- (b) any other interest in the property in which the forfeitable property subsists;
- (c) if the forfeitable property is a tenancy in common, the tenancy of the other tenant;
- (d) if (in Scotland) the forfeitable property is owned in common, the interest of the other owner;
- (e) if the forfeitable property is part of a larger property, but not a separate part, the remainder of that property.

References to property being associated with forfeitable property are to be read accordingly.

(4) In this article, and in articles 213N and 213O, the “forfeitable property” means the property in relation to which the court or sheriff is satisfied as mentioned in paragraph (1) (c) or (2)(c) (as the case may be).

### **Agreements about associated and joint property**

**213N.**—(1) Where—

- (a) this article applies, and
- (b) the person who applied for the order under article 213L (forfeiture) (on the one hand) and the person who holds the associated property or who is the excepted joint owner (on the other hand) agree,

the magistrates’ court or sheriff may, instead of making an order under article 213L(5), make an order requiring the person who holds the associated property or who is the excepted joint owner to make a payment to a person identified in the order.

(2) The amount of the payment is (subject to paragraph (3)) to be the amount which the persons referred to in paragraph (1)(b) agree represents—

- (a) in a case where this article applies by virtue of article 213M(1) (associated and joint property), the value of the forfeitable property;
- (b) in a case where this article applies by virtue of article 213M(2), the value of the forfeitable property less the value of the excepted joint owner’s share.

(3) The amount of the payment may be reduced if the person who applied for the order under article 213L agrees that the other party to the agreement has suffered loss as a result of the seizure of the forfeitable property and any associated property under article 213H (seizure of listed assets) and its subsequent detention.

(4) The reduction that is permissible by virtue of paragraph (3) is such amount as the parties to the agreement agree is reasonable, having regard to the loss suffered and any other relevant circumstances.

(5) An order under paragraph (1) may, so far as required for giving effect to the agreement, include provision for vesting, creating or extinguishing any interest in property.

(6) An order under paragraph (1) made by a magistrates’ court may provide for payment under paragraph (12) of reasonable legal expenses that a person has reasonably incurred, or may reasonably incur, in respect of—

- (a) the proceedings in which the order is made, or
- (b) any related proceedings under this Part.

(7) A sum in respect of a relevant item of expenditure is not payable under paragraph (12) in pursuance of provision under paragraph (6) unless—

- (a) the person who applied for the order under article 213L agrees to its payment, or

- (b) the court has assessed the amount allowed in respect of that item and the sum is paid in respect of the assessed amount.
- (8) For the purposes of paragraph (7)—
  - (a) a “relevant item of expenditure” is an item of expenditure to which regulations under section 286B of the Act would apply if the order under paragraph (1) had instead been a recovery order;
  - (b) an amount is “allowed” in respect of a relevant item of expenditure if it would have been allowed by those regulations.
- (9) For the purposes of article 205 (recoverable property: general exceptions), on the making of an order under paragraph (1), the forfeitable property is to be treated as if it had been forfeited.
- (10) If there is more than one item of associated property or more than one excepted joint owner, the total amount to be paid under paragraph (1), and the part of that amount which is to be provided by each person who holds any such associated property or who is an excepted joint owner, is to be agreed between both (or all) of them and the person who applied for the order under article 213L.
- (11) If the person who applied for the order under article 213L was a constable or an SFO officer, that person may enter into an agreement for the purposes of any provision of this article only if the person is a senior officer (within the meaning of article 213E (prior approval)) or is authorised to do so by a senior officer.
- (12) An amount received under an order under paragraph (1) must be applied as follows—
  - (a) first, it must be applied in making any payment of legal expenses which, after giving effect to paragraph (7), are payable under this paragraph in pursuance of provision under paragraph (6);
  - (b) second, it must be applied in payment or reimbursement of any reasonable costs incurred in storing or insuring the forfeitable property and any associated property whilst detained under this Part;
  - (c) third, it must be paid—
    - (i) if the order was made by a magistrates’ court, into the Consolidated Fund;
    - (ii) if the order was made by the sheriff, into the Scottish Consolidated Fund.

### **Associated and joint property: default of agreement**

- 213O.**—(1) Where this article applies and there is no agreement under article 213N (agreements about associated and joint property), the magistrates’ court or sheriff—
- (a) must transfer the application made under article 213L (forfeiture) to the relevant court if satisfied that the value of the forfeitable property and any associated property is £10,000 or more;
  - (b) may transfer the application made under article 213L to the relevant court if satisfied that the value of the forfeitable property and any associated property is less than £10,000.
- (2) The “relevant court” is—
- (a) the High Court, where the application under article 213L was made to a magistrates’ court;
  - (b) the Court of Session, where the application under article 213L was made to the sheriff.

(3) Where (under paragraph (1)(a) or (b)) an application made under article 213L is transferred to the relevant court, the relevant court may order the forfeiture of the property to which the application relates, or any part of that property, if satisfied that—

- (a) the property is a listed asset, and
- (b) what is to be forfeited is recoverable property.

(4) An order under paragraph (3) made by the High Court may include provision of the type that may be included in an order under article 213L(5) made by a magistrates' court by virtue of article 213L(7).

(5) If provision is included in an order of the High Court by virtue of paragraph (4) of this article, article 213L(7) and (8) apply with the necessary modifications.

(6) The relevant court may, as well as making an order under paragraph (3), make an order—

- (a) providing for the forfeiture of the associated property or (as the case may be) for the excepted joint owner's interest to be extinguished, or
- (b) providing for the excepted joint owner's interest to be severed.

(7) Where (under paragraph (1)(b)) the magistrates' court or sheriff decides not to transfer an application made under article 213L to the relevant court, the magistrates' court or sheriff may, as well as making an order under article 213L(5), make an order—

- (a) providing for the forfeiture of the associated property or (as the case may be) for the excepted joint owner's interest to be extinguished, or
- (b) providing for the excepted joint owner's interest to be severed.

(8) An order under paragraph (6) or (7) may be made only if the relevant court, the magistrates' court or the sheriff (as the case may be) thinks it just and equitable to do so.

(9) An order under paragraph (6) or (7) must provide for the payment of an amount to the person who holds the associated property or who is an excepted joint owner.

(10) In making an order under paragraph (6) or (7), and including provision in it by virtue of paragraph (9), the relevant court, the magistrates' court or the sheriff (as the case may be) must have regard to—

- (a) the rights of any person who holds the associated property or who is an excepted joint owner and the value to that person of that property or (as the case may be) of that person's share (including any value that cannot be assessed in terms of money), and
- (b) the interest of the person who applied for the order under article 213L in realising the value of the forfeitable property.

(11) If the relevant court, the magistrates' court or the sheriff (as the case may be) is satisfied that—

- (a) the person who holds the associated property or who is an excepted joint owner has suffered loss as a result of the seizure of the forfeitable property and any associated property under article 213H (seizure of listed assets) and its subsequent detention, and
- (b) the circumstances are exceptional,

an order under paragraph (6) or (7) may require the payment of compensation to that person.

(12) The amount of compensation to be paid by virtue of paragraph (11) is the amount the relevant court, the magistrates' court or the sheriff (as the case may be) thinks reasonable, having regard to the loss suffered and any other relevant circumstances.



(13) Compensation to be paid by virtue of paragraph (11) is to be paid in the same way that compensation is to be paid under article 213T (compensation).

### **Articles 213L to 213O: appeals**

**213P.**—(1) Any party to proceedings for an order for the forfeiture of property under article 213L (forfeiture) may appeal against—

- (a) the making of an order under article 213L;
- (b) the making of an order under article 213O(7) (associated and joint property: default of agreement);
- (c) a decision not to make an order under article 213L unless the reason that no order was made is that an order was instead made under article 213N (agreements about associated and joint property);
- (d) a decision not to make an order under article 213O(7).

Paragraphs (c) and (d) do not apply if the application for the order under article 213L was transferred in accordance with article 213O(1)(a) or (b).

(2) Where an order under article 213N is made by a magistrates' court, any party to the proceedings for the order (including any party to the proceedings under article 213L that preceded the making of the order) may appeal against a decision to include, or not to include, provision in the order under paragraph (6) of article 213N.

(3) An appeal under this article lies—

- (a) in relation to England and Wales, to the Crown Court;
- (b) in relation to Scotland, to the Sheriff Appeal Court.

(4) An appeal under this article must be made before the end of the period of 30 days starting with the day on which the court makes the order or decision.

(5) The court hearing the appeal may make any order it thinks appropriate.

(6) If the court upholds an appeal against an order forfeiting property, it may order the release of the whole or any part of the property.

### **Realisation of forfeited property**

**213Q.**—(1) If property is forfeited under article 213L (forfeiture) or 213O (associated and joint property: default of agreement), a relevant officer must realise the property or make arrangements for its realisation.

(2) But the property is not to be realised—

- (a) before the end of the period within which an appeal may be made (whether under article 213P (articles 213L to 213O: appeals) or otherwise), or
- (b) if an appeal is made within that period, before the appeal is determined or otherwise disposed of.

(3) The realisation of property under paragraph (1) must be carried out, so far as practicable, in the manner best calculated to maximise the amount obtained for the property.

### **Proceeds of realisation**

**213R.**—(1) The proceeds of property realised under article 213Q (realisation of forfeited property) must be applied as follows—

- (a) first, they must be applied in making any payment required to be made by virtue of article 213O(9) (payments to the person who holds the associated property or who is an excepted joint owner);
- (b) second, they must be applied in making any payment of legal expenses which, after giving effect to article 213L(8) (forfeiture) (including as applied by article 213O(5) (associated and joint property: default of agreement)), are payable under this paragraph in pursuance of provision under article 213L(7) or, as the case may be, 213O(4);
- (c) third, they must be applied in payment or reimbursement of any reasonable costs incurred in storing or insuring the property whilst detained under this Part and in realising the property;
- (d) fourth, they must be applied in payment of the amount payable under the external order.

(2) If what is realised under article 213Q represents part only of an item of property seized under article 213H (seizure of listed assets) and detained under this Part, the reference in paragraph (1)(c) to costs incurred in storing or insuring the property is to be read as a reference to costs incurred in storing or insuring the whole of the item of property.

#### **Victims and other owners**

**213S.**—(1) A person who claims that any property detained under this Part, or any part of it, belongs to him or her may apply for the property or part to be released.

(2) An application under paragraph (1) is to be made—

- (a) in England and Wales, to a magistrates' court;
- (b) in Scotland, to the sheriff.

(3) The application may be made in the course of proceedings under article 213L (forfeiture) or at any other time.

(4) The court or sheriff may order the property to which the application relates to be released to the applicant if it appears to the court or sheriff that—

- (a) the applicant was deprived of the property to which the application relates, or of property which it represents, by unlawful conduct (within the meaning of section 241 of the Act),
- (b) the property the applicant was deprived of was not, immediately before the applicant was deprived of it, recoverable property, and
- (c) the property belongs to the applicant.

(5) If paragraph (6) applies, the court or sheriff may order the property to which the application relates to be released to the applicant or to the person from whom it was seized.

(6) This paragraph applies where—

- (a) the applicant is not the person from whom the property to which the application relates was seized,
- (b) it appears to the court or sheriff that that property belongs to the applicant,
- (c) the court or sheriff is satisfied that the release condition is met in relation to that property, and
- (d) no objection to the making of an order under paragraph (5) has been made by the person from whom that property was seized.

(7) The release condition is met—

- (a) in relation to property detained under article 213I (detention of seized property), if the conditions in article 213I for the detention of the property are no longer met, and
- (b) in relation to property detained under article 213L, if the court or sheriff decides not to make an order under that article in relation to the property.

### **Compensation**

**213T.**—(1) If no order under article 213L (forfeiture), 213N (agreements about associated and joint property) or 213O (associated and joint property: default of agreement) is made in respect of any property detained under this Part, the person to whom the property belongs or from whom it was seized may make an application for compensation.

(2) An application under paragraph (1) is to be made—

- (a) in England and Wales, to a magistrates' court;
- (b) in Scotland, to the sheriff.

(3) If the court or sheriff is satisfied that the applicant has suffered loss as a result of the detention of the property and that the circumstances are exceptional, the court or sheriff may order compensation to be paid to the applicant.

(4) The amount of compensation to be paid is the amount the court or sheriff thinks reasonable, having regard to the loss suffered and any other relevant circumstances.

(5) If the property was seized by an officer of Revenue and Customs, the compensation is to be paid by the Commissioners for Her Majesty's Revenue and Customs.

(6) If the property was seized by a constable, the compensation is to be paid as follows—

- (a) in the case of a constable of a police force in England and Wales, it is to be paid out of the police fund from which the expenses of the police force are met;
- (b) in the case of a constable of the Police Service of Scotland, it is to be paid by the Scottish Police Authority.

(7) If the property was seized by an SFO officer, the compensation is to be paid by the Director of the Serious Fraud Office.

(8) If the property was seized by a National Crime Agency officer, the compensation is to be paid by the National Crime Agency.

(9) If an order under article 213L, 213N or 213O is made in respect only of a part of any property detained under this Part, this article has effect in relation to the other part.

### **Powers for prosecutors to appear in proceedings**

**213U.**—(1) The Director of Public Prosecutions may appear for a constable under this Part if the Director—

- (a) is asked by, or on behalf of, a constable to do so, and
- (b) considers it appropriate to do so.

(2) The Director of Public Prosecutions may appear for the Commissioners for Her Majesty's Revenue and Customs or an officer of Revenue and Customs in proceedings under this Part if the Director—

- (a) is asked by, or on behalf of, the Commissioners for Her Majesty's Revenue and Customs or (as the case may be) an officer of Revenue and Customs to do so, and
- (b) considers it appropriate to do so.

(3) The Directors may charge fees for the provision of services under this article.

### **“The minimum value”**

**213V.** For the purposes of this Part, “the minimum value” means the sum for the time being specified in section 303Y of the Act<sup>(5)</sup>.

### **Interpretation**

**213W.** In this Part—

“excepted joint owner” has the meaning given by article 181(4) (associated and joint property);

“forfeiture order” means an order made under article 213L(5) for the forfeiture of listed assets;

“interest” includes any right (including a right to possession of the property);

“premises” has the same meaning as in the Police and Criminal Evidence Act 1984<sup>(6)</sup>;

“recoverable property” is to be read in accordance with articles 202 to 207 (recoverable property);

“relevant officer” has the meaning given by article 213C(9) (searches);

“share”, in relation to an excepted joint owner, has the meaning given by article 181(4);

“value” means market value.”.

### **Freezing and forfeiture of money held in bank and building society accounts**

**31.** After article 213W (interpretation) (which is inserted by article 30 of this Order (forfeiture of certain personal (or moveable) property)), insert—

## **“Part 5B**

### **Giving effect in England and Wales and Scotland to external requests and orders by means of the freezing and forfeiture of money held in bank and building society accounts**

#### **Chapter 1**

#### **Introduction**

### **General**

**213X.**—(1) This Part has effect for the purpose of enabling the freezing and forfeiture of money held in bank and building society accounts (within the meaning of article 213Z1<sup>(6)</sup>) in civil proceedings before—

(a) in England and Wales, the magistrates’ court; or

(b) in Scotland, the Sheriff’s Court,

for the purpose of giving effect to external requests and external orders.

(2) The powers conferred by this Part are exercisable in relation to money held in an account maintained with a bank or building society whether or not proceedings have been

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<sup>(5)</sup> Section 303Y was inserted by section 15 of the Criminal Finances Act 2017.

<sup>(6)</sup> 1984 c. 60.

brought in the country from which the external order was sent for criminal conduct (within the meaning of section 447(8) of the Act (interpretation)) in connection with the property.

(3) For the purposes of this Part the amount of any money held in an account maintained with a bank or building society in a currency other than sterling must be taken to be its sterling equivalent, calculated in accordance with the prevailing rate of exchange.

#### **Action on receipt of an external request**

**213Y.** The Secretary of State may refer an external request to prohibit dealing with money held in an account maintained with a bank or building society to—

- (a) the Chief Constable of a police force in England and Wales or the Chief Constable of the Police Service of Scotland;
- (b) the Commissioners for Her Majesty's Revenue and Customs;
- (c) the Director of the Serious Fraud Office;
- (d) the Director of the National Crime Agency.

#### **Action to give effect to an external order**

**213Z.** The Secretary of State may forward an external order in relation to money held in an account maintained with a bank or building society to—

- (a) the Chief Constable of a police force in England and Wales or the Chief Constable of the Police Service of Scotland;
- (b) the Commissioners for Her Majesty's Revenue and Customs;
- (c) the Director of the Serious Fraud Office;
- (d) the Director of the National Crime Agency.

### Chapter 2

#### Freezing and Forfeiture of Money Held in Bank and Building Society Accounts

#### **Application for account freezing order**

**213Z1.**—(1) This article applies if—

- (a) the Secretary of State has referred an external request or an external order to an enforcement officer in accordance with articles 213Y (action on receipt of an external request) or 213Z (action to give effect to an external order), and
- (b) the enforcement officer has reasonable grounds for suspecting that money held in the account specified in that external order is recoverable property.

(2) Where this article applies (but subject to article 213Z2) (restrictions on making of application under article 213Z1) the enforcement officer may apply to the relevant court for an account freezing order in relation to the account in which the money is held.

(3) For the purposes of this Part—

- (a) an account freezing order is an order that, subject to any exclusions (see article 213Z5 (exclusions)), prohibits each person by or for whom the account to which the order applies is operated from making withdrawals or payments from the account;
- (b) an account is operated by or for a person if the person is an account holder or a signatory or identified as a beneficiary in relation to the account.

(4) An application for an account freezing order may be made without notice if the circumstances of the case are such that notice of the application would prejudice the taking of any steps under this Part to forfeit money that is recoverable property.

(5) The money referred to in paragraph (1) may be all or part of the credit balance of the account.

(6) In this Part—

“bank” has the same meaning as in section 303Z7 of the Act<sup>(7)</sup>;

“building society” has the same meaning as in the Building Societies Act 1986<sup>(8)</sup>;

“enforcement officer” means—

- (a) an officer of Revenue and Customs,
- (b) a constable, or
- (c) an SFO officer;

“the minimum amount” is the sum for the time being specified in section 303Z8 of the Act<sup>(9)</sup>;

“relevant court”—

- (a) in England and Wales, means a magistrates’ court,
- (b) in Scotland, means the sheriff.

### **Restrictions on making of application under article 213Z1**

**213Z2.**—(1) The power to apply for an account freezing order is not exercisable if the money in relation to which the enforcement officer’s suspicion exists is less in amount than the minimum amount.

(2) An enforcement officer may not apply for an account freezing order unless the officer is a senior officer or is authorised to do so by a senior officer.

(3) The power to apply for an account freezing order is not exercisable by an SFO officer in relation to an account maintained with a branch of a bank or building society that is in Scotland.

(4) For the purposes of this Part, a “senior officer” is—

- (a) an officer of Revenue and Customs of a rank designated by the Commissioners for Her Majesty’s Revenue and Customs as equivalent to that of a senior police officer,
- (b) a senior police officer,
- (c) the Director of the Serious Fraud Office, or
- (d) the Director General of the National Crime Agency or any other National Crime Agency officer authorised by the Director General (whether generally or specifically) for this purpose.

(5) In paragraph (4), a “senior police officer” means a police officer of at least the rank of inspector.

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<sup>(7)</sup> Section 303Z7 was inserted by section 16 of the Criminal Finances Act 2017.

<sup>(8)</sup> 1986 c. 53.

<sup>(9)</sup> Section 303Z8 was inserted by section 16 of the Criminal Finances Act 2017.

### **Making of account freezing order**

**213Z3.**—(1) This article applies where an application for an account freezing order is made under article 213Z1 (application for account freezing order) in relation to an account.

(2) The relevant court may make the order if satisfied that there are reasonable grounds for suspecting that money held in the account (whether all or part of the credit balance of the account is recoverable property.

(3) An account freezing order ceases to have effect at the end of the period specified in the order (which may be varied under article 213Z4 (variation and setting aside of account freezing order)) unless it ceases to have effect at an earlier or later time in accordance with the provision made by articles 213Z7(8) to (10) (forfeiture order) and 213Z8 (continuation of account freezing order pending appeal).

(4) The period specified by the relevant court for the purposes of paragraph (3) (whether when the order is first made or on a variation under article 213Z4) may not exceed the period of 2 years, starting with the day on which the account freezing order is (or was) made.

(5) An account freezing order must provide for notice to be given to persons affected by the order.

### **Variation and setting aside of account freezing order**

**213Z4.**—(1) The relevant court may at any time vary or set aside an account freezing order on an application made by—

- (a) an enforcement officer, or
- (b) any person affected by the order.

(2) But an enforcement officer may not make an application under paragraph (1) unless the officer is a senior officer or is authorised to do so by a senior officer.

(3) Before varying or setting aside an account freezing order the court must (as well as giving the parties to the proceedings an opportunity to be heard) give such an opportunity to any person who may be affected by its decision.

(4) In relation to Scotland, the references in this article to setting aside an order are to be read as references to recalling it.

### **Exclusions**

**213Z5.**—(1) The power to vary an account freezing order includes (amongst other things) power to make exclusions from the prohibition on making withdrawals or payments from the account to which the order applies.

(2) Exclusions from the prohibition may also be made when the order is made.

(3) An exclusion may (amongst other things) make provision for the purpose of enabling a person by or for whom the account is operated—

- (a) to meet the person's reasonable living expenses, or
- (b) to carry on any trade, business, profession or occupation.

(4) An exclusion may be made subject to conditions.

(5) Where a magistrates' court exercises the power to make an exclusion for the purpose of enabling a person to meet legal expenses that the person has incurred, or may incur, in respect of proceedings under this Part, it must ensure that the exclusion—

- (a) is limited to reasonable legal expenses that the person has reasonably incurred or that the person reasonably incurs,

- (b) specifies the total amount that may be released for legal expenses in pursuance of the exclusion, and
  - (c) is made subject to the same conditions as would be the required conditions (see section 286A of the Act) (legal expenses excluded from freezing: required conditions) if the order had been made under section 245A of the Act (application for property freezing order) (in addition to any conditions imposed under paragraph (4)).
- (6) A magistrates' court, in deciding whether to make an exclusion for the purpose of enabling a person to meet legal expenses in respect of proceedings under this Part—
- (a) must have regard to the desirability of the person being represented in any proceedings under this Part in which the person is a participant, and
  - (b) must disregard the possibility that legal representation of the person in any such proceedings might, were an exclusion not made, be made available under arrangements made for the purposes of Part 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012.
- (7) The sheriff's power to make exclusions may not be exercised for the purpose of enabling any person to meet any legal expenses in respect of proceedings under this Part.
- (8) The power to make exclusions must, subject to paragraph (6), be exercised with a view to ensuring, so far as practicable, that there is not undue prejudice to the taking of any steps under this Part to forfeit money that is recoverable property.

### **Restriction on proceedings and remedies**

**213Z6.**—(1) If a court in which proceedings are pending in respect of an account maintained with a bank or building society is satisfied that an account freezing order has been applied for or made in respect of the account, it may either stay the proceedings or allow them to continue on any terms it thinks fit.

(2) Before exercising the power conferred by paragraph (1), the court must (as well as giving the parties to any of the proceedings concerned an opportunity to be heard) give an opportunity to any person who may be affected by its decision to be heard.

(3) In relation to Scotland, the reference in paragraph (1) to staying the proceedings is to be read as a reference to sisting the proceedings.

### **Forfeiture order**

**213Z7.**—(1) This article applies while an account freezing order has effect.

(2) In this article the account to which the account freezing order applies is “the frozen account”.

(3) An application for the forfeiture of money held in the frozen account (whether all or part of the credit balance of the account) may be made—

- (a) to a magistrates' court by a person specified in paragraph (4), or
- (b) to the sheriff by the Scottish Ministers.

(4) The persons referred to in paragraph (3)(a) are—

- (a) the Commissioners for Her Majesty's Revenue and Customs,
- (b) a constable, or
- (c) an SFO officer.



(5) An application under paragraph (3) may only be made for the purpose of giving effect to an external order which is for the recovery of a specified sum of money in the frozen account.

(6) The court or sheriff may order the forfeiture of the money or any part of it if satisfied that the money referred to in paragraph (5) or part is recoverable property.

(7) But in the case of recoverable property which belongs to joint tenants, one of whom is an excepted joint owner, an order by a magistrates' court may not apply to so much of it as the court thinks is attributable to the excepted joint owner's share.

(8) Where an application is made under paragraph (3), the account freezing order is to continue to have effect until the time referred to in paragraph (9)(b) or (10).

(9) Where money held in a frozen account is ordered to be forfeited under paragraph (6)

—

(a) the bank or building society with which the frozen account is maintained must transfer that amount of money into an interest-bearing account nominated by an enforcement officer, and

(b) immediately after the transfer has been made the account freezing order made in relation to the frozen account ceases to have effect.

(10) Where, other than by the making of an order under paragraph (6), an application under paragraph (3) is determined or otherwise disposed of, the account freezing order ceases to have effect immediately after that determination or other disposal.

(11) Paragraphs (9)(b) and (10) are subject to article 213Z8 (continuation of account freezing order pending appeal).

### **Continuation of account freezing order pending appeal**

**213Z8.**—(1) This article applies where, on an application under paragraph (3) of article 213Z7(forfeiture order) in relation to an account to which an account freezing order applies, the court or sheriff decides—

(a) to make an order under paragraph (6) of that article in relation to part only of the money to which the application related, or

(b) not to make an order under paragraph (6) of that article.

(2) The person who made the application under article 213Z7(3) may apply without notice to the court or sheriff that made the decision referred to in paragraph (1)(a) or (b) for an order that the account freezing order is to continue to have effect.

(3) Where the court or sheriff makes an order under paragraph (2) the account freezing order is to continue to have effect until—

(a) the end of the period of 7 days starting with the making of the order under paragraph (2), or

(b) if within that period of 7 days an appeal is brought under article 213Z9 (appeal against decision under article 213Z7) against the decision referred to in paragraph (1)(a) or (b), the time when the appeal is determined or otherwise disposed of.

(4) In calculating a period of days for the purposes of this article no account is to be taken of—

(a) any Saturday or Sunday,

(b) Christmas Day,

(c) Good Friday, or

- (d) any day that is a bank holiday under the Banking and Financial Dealings Act 1971 in the part of the United Kingdom in which the account freezing order was made.

### **Appeal against decision under article 213Z7**

**213Z9.**—(1) Any party to proceedings for an order for the forfeiture of money under article 213Z7 (forfeiture order) who is aggrieved by an order under that article or by the decision of the court not to make such an order may appeal—

- (a) from an order or decision of a magistrates' court in England and Wales, to the Crown Court;
- (b) from an order or decision of the sheriff, to the Sheriff Appeal Court.

(2) An appeal under paragraph (1) must be made before the end of the period of 30 days starting with the day on which the court makes the order or decision.

(3) The court hearing the appeal may make any order it thinks appropriate.

(4) If the court upholds an appeal against an order forfeiting the money, it may order the release of the whole or any part of the money.

(5) Where money is released by virtue of paragraph (4), there must be added to the money on its release any interest accrued on it whilst in the account referred to in article 213Z7(9)(a) (forfeiture order).

### **Application of money forfeited under account forfeiture order**

**213Z10.**—(1) Money forfeited by an order under article 213Z7 (forfeiture order), and any interest accrued on it whilst in the account referred to in paragraph of that article is to be applied in payment of the amount payable under the external order.

(2) But it is not to be paid in—

- (a) before the end of the period within which an appeal under article 213Z9 (appeal against decision under article 213Z7) may be made, or
- (b) if a person appeals under that article, before the appeal is determined or otherwise disposed of.

### **Compensation**

**213Z11.**—(1) This article applies if—

- (a) an account freezing order is made, and
- (b) none of the money held in the account to which the order applies is forfeited in pursuance of an order under article 213Z7 (forfeiture order).

(2) Where this article applies a person by or for whom the account to which the account freezing order applies is operated may make an application to the relevant court for compensation.

(3) If the relevant court is satisfied that the applicant has suffered loss as a result of the making of the account freezing order and that the circumstances are exceptional, the relevant court may order compensation to be paid to the applicant.

(4) The amount of compensation to be paid is the amount the relevant court thinks reasonable, having regard to the loss suffered and any other relevant circumstances.

(5) If the account freezing order was applied for by an officer of Revenue and Customs, the compensation is to be paid by the Commissioners for Her Majesty's Revenue and Customs.

(6) If the account freezing order was applied for by a constable, the compensation is to be paid as follows—

- (a) in the case of a constable of a police force in England and Wales, it is to be paid out of the police fund from which the expenses of the police force are met;
- (b) in the case of a constable of the Police Service of Scotland, it is to be paid by the Scottish Police Authority.

(7) If the account freezing order was applied for by an SFO officer, the compensation is to be paid by the Director of the Serious Fraud Office.

(8) If the account freezing order was applied for by a National Crime Agency officer, the compensation is to be paid by the National Crime Agency.

### **Powers for prosecutors to appear in proceedings**

**213Z12.**—(1) The Director of Public Prosecutions may appear for a constable in proceedings under this Part if the Director—

- (a) is asked by, or on behalf of, a constable to do so, and
- (b) considers it appropriate to do so.

(2) The Director of Public Prosecutions may appear for the Commissioners for Her Majesty’s Revenue and Customs or an officer of Revenue and Customs in proceedings under this Part if the Director—

- (a) is asked by, or on behalf of, the Commissioners for Her Majesty’s Revenue and Customs or (as the case may be) an officer of Revenue and Customs to do so, and
- (b) considers it appropriate to do so.

(3) The Directors may charge fees for the provision of services under this article.

### **Interpretation**

**213Z13.** In this Part—

“account forfeiture order” means an order made under article 213Z7(6) (forfeiture order) for the forfeiture of money in a bank or building society account;

“account freezing order” has the meaning given in article 213Z1(3)(a) (application for account freezing order);

“bank” has the meaning given in article 213Z1(6);

“building society” has the meaning given in article 213Z1(6);

“enforcement officer” has the meaning given in article 213Z1(6);

“excepted joint owner” has the meaning given by article 181(4) (associated and joint property);

“the minimum amount” has the meaning given by article 213Z1(6);

“recoverable property” is to be read in accordance with articles 202 to 207 (recoverable property);

“relevant court” has the meaning given in article 213Z1(6);

“share”, in relation to an excepted joint owner, has the meaning given by article 181(4).”.