STATUTORY INSTRUMENTS

2018 No. 1078

PROCEEDS OF CRIME

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

Made - - - - *10th October 2018*

Laid before Parliament *17th October 2018*

Coming into force in accordance with article 1

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At the Court at Buckingham Palace, the 10th day of October 2018

Present,

The Queen's Most Excellent Majesty in Council

Her Majesty, in exercise of the powers conferred upon Her by sections 444, 445 and 459(2) of the Proceeds of Crime Act 2002(**a**), is pleased, by and with the advice of Her Privy Council, to order as follows.

PART 1

Citation, commencement, extent and interpretation

Citation and commencement

1.—(1) This Order may be cited as the Proceeds of Crime Act 2002 (External Investigations and External Orders and Requests) (Amendment) Order 2018.

(**a**) 2002 c. 29. Section 444 was amended by section 108(2) and (3) of the Serious Organised Crime and Police Act 2005 (c. 15), by paragraph 138 of Schedule 8 to the Serious Crime Act 2007 (c. 27), by paragraph 149 of Schedule 2 to the Crime and Courts Act 2013 (c. 22), by section 24(2) of the Criminal Finances Act 2017 (c. 22) and by S.I. 2010/976 and 2014/834. Section 445 was amended by paragraph 139 of Schedule 8 to the Serious Crime Act 2007, by paragraph 150 of Schedule 8 to the Crime and Courts Act 2013, by section 24(3) of, and paragraph 84 of Schedule 5 to, the Criminal Finances Act 2017, and by S.I. 2010/976 and 2014/834.

(2) This Order comes into force on 12th November 2018 except for articles 27, 28, 30 and 31 which come into force on 12th November 2019.

Extent

2.—(1) Part 1 (citation, commencement, extent and interpretation) extends to the United Kingdom.

(2) In Part 2 (external investigations: amendments to the 2013 Order)—

(a) Chapter 1 (introduction) extends to England and Wales and Scotland;

(b) Chapter 2 (external investigations: amendments for England and Wales) extends to England and Wales;

(c) Chapter 3 (external investigations: amendments for Scotland) extends to Scotland.

(3) Part 3 (external investigations (England and Wales): amendments to the 2014 Order) extends to England and Wales.

(4) Part 4 (forfeiture powers: amendments to the 2005 order) extends to England and Wales and Scotland, except for—

(a) articles 23 and 24, which extend to England and Wales;

(b) articles 25 and 26 which extend to Scotland, and

(c) article 27 which extends to the United Kingdom.

Interpretation

3. In this Order—

"the 2005 Order" means the Proceeds of Crime Act 2002 (External Requests and Orders) Order 2005(**a**);

"the 2013 Order" means the Proceeds of Crime Act 2002 (External Investigations) Order 2013(**b**);

"the 2014 Order" means the Proceeds of Crime Act 2002 (External Investigations) Order 2014(**c**).

PART 2

External investigations: amendments to the 2013 Order

CHAPTER 1

Introduction

Amendments to the 2013 Order

4. The 2013 Order is amended as provided for in Chapters 2 and 3 of this Part.

CHAPTER 2

External investigations: amendments for England and Wales

Scope of Part 1

5. In article 3 (scope of Part 1)—

(**a**) S.I. 2005/3181.
(**b**) S.I. 2013/2605 amended by S.I. 2014/834 and 2015/1751.
(**c**) S.I. 2014/1893.

(a) in paragraph (1), for "or a relevant Director" substitute ", a relevant Director or (in relation to an unexplained wealth order or an interim freezing order in England and Wales) an enforcement authority";

(b) in paragraph (2), for "or the relevant Director" substitute ", the relevant Director or (in relation to an unexplained wealth order or an interim freezing order in England and Wales) the enforcement authority";

(c) omit paragraph (5).

Action on receipt of request in relation to an external investigation

6. In article 4(1) and (2) (action on receipt of request in relation to an external investigation), for "or a relevant Director" substitute ", a relevant Director, or (in England and Wales) the FCA, the Commissioners for Her Majesty's Revenue and Customs or an enforcement authority".

Unexplained wealth orders (England and Wales)

7. After article 21 (supplementary) insert—

"**Unexplained wealth orders (England and Wales)**

21A.—(1) The High Court may, on an application made by an enforcement authority (see article 2(12) (interpretation)), make an unexplained wealth order in respect of any property if the court is satisfied that each of the requirements for making the order is fulfilled.

(2) An application for the order must—

(a) specify or describe the property in respect of which the order is sought, and

(b) specify the person in England and Wales whom the enforcement authority thinks holds the property ("the respondent").

(3) An application for an unexplained wealth order may be made without notice.

(4) An unexplained wealth order is an order requiring the respondent to provide a statement—

(a) setting out the nature and extent of the respondent's interest in the property in respect of which the order is made,

(b) explaining how the respondent obtained the property (including, in particular, how any costs incurred in obtaining it were met),

(c) where the property is held by the trustees of a settlement, setting out such details of the settlement as may be specified in the order, and

(d) setting out such other information in connection with the property as may be so specified.

(5) The order must specify—

(a) the form and manner in which the statement is to be given,

(b) the person to whom it is to be given, and

(c) the place at which it is to be given or, if it is to be given in writing, the address to which it is to be sent.

(6) The order may, in connection with requiring the respondent to provide the statement mentioned in paragraph (4), also require the respondent to produce documents of a kind specified or described in the order.

(7) The respondent must comply with the requirements imposed by an unexplained wealth order within whatever period the court may specify (and different periods may be specified in relation to different requirements).

(8) For the purposes of this article and article 21B (requirements for making of unexplained wealth order), property is held by a person if that person holds an interest in it (see also article 21G (holding of property: trusts and company arrangements etc.)).

Requirements for making of unexplained wealth order

21B.—(1) These are the requirements for the making of an unexplained wealth order in respect of any property.

(2) The High Court must be satisfied that there is reasonable cause to believe that—

(a) the respondent holds the property, and

(b) the value of the property is greater than that of the sum for the time being specified in section 362B(2)(b) of the Proceeds of Crime Act 2002(**a**) (requirements for making of unexplained wealth order).

(3) The High Court must be satisfied that there are reasonable grounds for suspecting that the known sources of the respondent's lawfully obtained income would have been insufficient for the purposes of enabling the respondent to obtain the property.

(4) The High Court must be satisfied that—

(a) the respondent is a politically exposed person, or

(b) there are reasonable grounds for suspecting that—

(i) the respondent is, or has been, involved in serious crime (whether in England and Wales or elsewhere), or

(ii) a person connected with the respondent is, or has been, so involved.

(5) It does not matter for the purposes of paragraph (2)(a)—

(a) whether or not there are other persons who also hold the property;

(b) whether the property was obtained by the respondent before or after the coming into force of this article.

(6) For the purposes of paragraph (3)—

(a) regard is to be had to any mortgage, charge or other kind of security that it is reasonable to assume was or may have been available to the respondent for the purpose of obtaining the property;

(b) it is to be assumed that the respondent obtained the property for a price equivalent to its market value;

(c) income is "lawfully obtained" if it is obtained lawfully under the laws of the country from where the income arises;

(d) "known" sources of the respondent's income are the sources of income (whether arising from employment, assets or otherwise) that are reasonably ascertainable from available information at the time of the making of the application for the order;

(e) where the property is an interest in other property comprised in a settlement, the reference to the respondent obtaining property is to be taken as if it were a reference to the respondent obtaining direct ownership of such share in the settled property as relates to, or is fairly represented by, that interest.

(7) In paragraph (4)(a), "politically exposed person" has the same meaning as for the time being specified in section 362B of the Proceeds of Crime Act 2002.

(8) For the purposes of this article—

(a) a person is involved in serious crime in England and Wales or elsewhere if the person would be so involved for the purposes of Part 1 of the Serious Crime Act

(**a**) Section 362B was inserted by section 1 of the Criminal Finances Act 2017.

2007 (see in particular section 2 of that Act)(**a**) (involvement in serious crime: England and Wales orders);

(b) section 1122 of the Corporation Tax Act 2010(**b**) ("connected" persons) applies in determining whether a person is connected with another.

(9) Where the property in respect of which the order is sought comprises more than one item of property, the reference in paragraph (2)(b) to the value of the property is to the total value of those items.

Non-compliance with an unexplained wealth order

21C.—(1) This article applies in a case where the respondent fails, without reasonable excuse, to comply with the requirements imposed by an unexplained wealth order in respect of any property before the end of the response period.

(2) For the purposes of paragraph (1) where an unexplained wealth order imposes more than one requirement on the respondent, the respondent is to be taken to have failed to comply with the requirements imposed by the order unless each of the requirements is complied with or is purported to be complied with.

(3) In the event of a failure by the respondent to comply with the requirements of an unexplained wealth order, the enforcement authority that applied for the order must inform the Secretary of State of that failure and whether an interim freezing order has effect in relation to the property (see article 21H (unexplained wealth order: application for interim freezing order)).

(4) The Secretary of State must—

(a) inform the requesting party of the non-compliance with the unexplained wealth order, and

(b) if an interim freezing order has effect in relation to the property, inform the requesting party that the interim freezing order will cease to have effect on the expiry of 28 days beginning with the day after the day with which the response period ends.

(5) In this article—

"requesting party" means the overseas authority that requested assistance with the external investigation in question;

"response period" means the period specified by the court in accordance with article 21A(7) (period specified for complying with the order).

Compliance or purported compliance with an unexplained wealth order

21D.—(1) This article applies if—

(a) before the end of the response period, the respondent complies, or purports to comply, with the requirements imposed by an unexplained wealth order in respect of any property in relation to which the order was made, and

(b) an interim freezing order has effect in relation to the property (see article 21H (unexplained wealth order: application for interim freezing order)).

(2) In this article "compliance material" means—

(a) any statement given in compliance or purported compliance with an unexplained wealth order, and

(**a**) 2007 c. 27. Section 2 of that Act was amended by paragraph 3(a) and (b) of Schedule 1 to the Serious Crime Act 2015 (c. 9).

(**b**) 2010 c. 4.

(b) any document produced in compliance, or purported compliance, with a requirement included in the order by virtue of article 21A(6) (provision of documents);

and compliance material is "provided" when it is given or produced as required by the order.

(3) The enforcement authority that has been provided with the compliance material must give the Secretary of State a copy of the compliance material, and inform the Secretary of State of the date upon which the compliance material was provided.

(4) The Secretary of State must—

(a) inform the requesting party of the compliance, or purported compliance, with the unexplained wealth order,

(b) supply the requesting party with a copy of the compliance material, and

(c) inform the requesting party that the interim freezing order will cease to have effect on the expiry of 120 days beginning with the day after the day on which the compliance material was provided to the enforcement authority.

(5) If the compliance material is not all provided at the same time, it is to be regarded as provided when the last of that material is provided.

Statements

21E.—(1) A statement made by a person in response to a requirement imposed by an unexplained wealth order may not be used in evidence against that person in criminal proceedings.

(2) Paragraph (1) does not apply—

(a) in the case of proceedings under Part 2 of the Proceeds of Crime Act 2002 (confiscation: England and Wales),

(b) in the case of proceedings under Part 2 of the Proceeds of Crime Act 2002 (External Requests and Orders) Order 2005 (giving effect in England and Wales to external requests in connection with criminal investigations or proceedings and to external orders arising from such proceedings),

(c) on a prosecution for an offence under section 5 of the Perjury Act 1911(**a**) (false statements), or

(d) on a prosecution for some other offence where, in giving evidence, the person makes a statement inconsistent with the statement mentioned in paragraph (1).

(3) A statement may not be used by virtue of paragraph (2)(d) against a person unless—

(a) evidence relating to it is adduced, or

(b) a question relating to it is asked,

by the person or on the person's behalf in proceedings arising out of the prosecution.

Disclosure of information, copying of documents etc.

21F.—(1) An unexplained wealth order has effect in spite of any restriction on the disclosure of information (however imposed).

(2) But paragraphs (1) to (5) of article 20 (further provisions: rights in connection with privileged information, questions and material) apply in relation to requirements imposed by an unexplained wealth order as they apply in relation to requirements imposed under a disclosure order.

(**a**) 1911 c. 6.

(3) The enforcement authority may take copies of any documents produced by the respondent in connection with complying with the requirements imposed by an unexplained wealth order.

(4) Documents so produced may also be retained for so long as it is necessary to retain them (as opposed to a copy of them) in connection with an external investigation in relation to the property in respect of which the unexplained wealth order is made.

(5) But if the enforcement authority has reasonable grounds to believe that the documents—

(a) may need to be produced for the purposes of any legal proceedings, and

(b) might otherwise be unavailable for those purposes,

they may be retained until the proceedings are concluded.

(6) Unless article 21D (compliance or purported compliance with an unexplained wealth order) applies, an enforcement authority which has been provided with compliance material may send the compliance material to the requesting party or to the Secretary of State for forwarding to the requesting party.

Holding of property: trusts and company arrangements etc.

21G.—(1) This article applies for the purposes of articles 21A (unexplained wealth orders) and 21B (requirements for making of unexplained wealth order).

(2) The cases in which a person ("P") is to be taken to "hold" property include where—

(a) P has effective control over the property,

(b) P is the trustee of a settlement in which the property is comprised,

(c) P is a beneficiary (whether actual or potential) in relation to such a settlement.

(3) A person is to be taken to have "effective control" over property if, from all the circumstances, it is reasonable to conclude that the person—

(a) exercises,

(b) is able to exercise, or

(c) is entitled to acquire,

direct or indirect control over the property.

(4) Where a person holds property by virtue of paragraph (2) references to the person obtaining the property are to be read accordingly.

(5) References to a person who holds or obtains property include any body corporate, whether incorporated or formed under the law of a part of the United Kingdom or in a country or territory outside the United Kingdom.".

Interim freezing orders (England and Wales)

8. After article 21G (holding of property: trusts and company arrangements etc.) (which is inserted by article 7 (unexplained wealth orders: England and Wales)) insert—

"Unexplained wealth order: application for interim freezing order

21H.—(1) This article applies where the High Court makes an unexplained wealth order in respect of any property.

(2) The court may make an interim freezing order in respect of the property if the court considers it necessary to do so for the purposes of avoiding the risk of any external order (within the meaning of section 447(2) of the Proceeds of Crime Act 2002 (interpretation)) that might subsequently be obtained being frustrated.

(3) An interim freezing order is an order that prohibits the respondent to the unexplained wealth order, and any other persons with an interest in the property, from in any way dealing with the property (subject to any exclusions under article 21J (exclusions)).

(4) An interim freezing order—

(a) may be made only on the application of the enforcement authority that applied for the unexplained wealth order to which the interim freezing order relates,

(b) may be made only in order to give effect to an external request (within the meaning of section 447(1) of the Proceeds of Crime Act 2002),

(c) must be made in the same proceedings as those in which the unexplained wealth order is made, and

(d) may be combined in one document with the unexplained wealth order.

(5) If an application for an unexplained wealth order in respect of property is made without notice, an application for an interim freezing order in respect of the property must also be made without notice.

Variation and discharge of interim freezing order

21I.—(1) The High Court may at any time vary or discharge an interim freezing order.

(2) The High Court must discharge an interim freezing order, so far as it has effect in relation to property, in each of the following two cases.

(3) The first case is where—

(a) the applicable period has ended, and

(b) a relevant application has not been made before the end of that period in relation to the property concerned.

(4) The second case is where—

(a) a relevant application has been made before the end of the applicable period in relation to the property concerned, and

(b) proceedings on the application (including on any appeal) have been determined or otherwise disposed of.

(5) The "applicable period" means—

(a) in a case where the respondent complies, or purports to comply, with the requirements imposed by an unexplained wealth order before the end of the response period, the period of 120 days beginning with the day after the day upon which the compliance material was provided to the enforcement authority ends (see article 21D(2) (provision of compliance material)), and

(b) in any other case, the period of 28 days beginning with the day after the day with which the response period ends.

(6) In calculating a period for the purposes of paragraph (5), no account is to be taken of—

(a) any Saturday or Sunday,

(b) Christmas Day,

(c) Good Friday,

(d) any day which is a bank holiday under the Banking and Financial Dealings Act 1971(**a**) in England and Wales.

(7) Before exercising the power under this article to vary or discharge an interim freezing order, the court must (as well as giving the parties to the proceedings an opportunity to be heard) give an opportunity to any person who may be affected by its decision to be heard.

(**a**) 1971 c. 80.

(8) Paragraph (7) does not apply where the court is acting as required by paragraph (2).

(9) In this article, "relevant application" means an application for—

(a) a restraint order under article 8 of the Proceeds of Crime Act 2002 (External Requests and Orders) Order 2005 (restraint orders), or

(b) a prohibition order under Part 4A of that Order (giving effect in England and Wales and Northern Ireland to external requests by means of civil proceedings).

Exclusions

21J.—(1) The power to vary an interim freezing order includes (amongst other things) power to make exclusions as follows—

(a) power to exclude property from the order, and

(b) power, otherwise than by excluding property from the order, to make exclusions from the prohibition on dealing with the property to which the order applies.

(2) Exclusions from the prohibition on dealing with the property to which the order applies (other than exclusions of property from the order) may also be made when the order is made.

(3) An exclusion may (amongst other things) make provision for the purpose of enabling any person—

(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 subject to conditions.

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

(a) is limited to reasonable legal expenses that the person has reasonably incurred or 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 article 198 of the Proceeds of Crime Act 2002 (External Requests and Orders) Order 2005 (legal expenses excluded from freezing: required conditions)) if the order had been made under article 147 of that Order (application for property freezing order).

(6) The court in deciding whether to make an exclusion for the purposes of enabling a person to meet legal expenses in respect of proceedings under this Order—

(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(**a**).

(7) If excluded property is not specified in the order it must be described in the order in general terms.

(**a**) 2012 c. 10.

Restrictions on proceedings and remedies

21K.—(1) While an interim freezing order has effect—

(a) the High Court may stay any action, execution or other legal process in respect of the property to which the order applies, and

(b) no distress may be levied, and no power to use the procedure in Schedule 12 to the Tribunals, Courts and Enforcement Act 2007(**a**) (taking control of goods) may be exercised, against the property to which the order applies except with the leave of the High Court and subject to any terms the court may impose.

(2) If a court (whether the High Court or any other court) in which proceedings are pending in respect of any property is satisfied that an interim freezing order has been applied for or made in respect of the property, it may—

(a) stay the proceedings, or

(b) allow them to continue on any terms it thinks fit.

(3) If an interim freezing order applies to a tenancy of any premises, a right of forfeiture in relation to the premises is exercisable—

(a) only with the leave of the High Court, and

(b) subject to any terms that the court may impose.

(4) The reference in paragraph (3) to a "right of forfeiture" in relation to premises is to the right of a landlord or other person to whom rent is payable to exercise a right of forfeiture by peaceable re-entry to the premises in respect of any failure by the tenant to comply with a term or condition of the tenancy.

(5) Before exercising a power conferred by this article, the court must (as well as giving the parties to any proceedings an opportunity to be heard) give an opportunity to any person who may be affected by the court's decision to be heard.

Receivers in connection with interim freezing orders

21L.—(1) This article applies where the High Court makes an interim freezing order on an application by an enforcement authority.

(2) The court may, on an application by the enforcement authority, by order appoint a receiver in respect of any property to which the interim freezing order applies.

(3) An application under paragraph (2) may be made at the same time as the application for the interim freezing order or at any time afterwards.

(4) The application may be made without notice if the circumstances of the case are such that notice of the application would give rise to a risk of any external order that might subsequently be obtained being frustrated.

(5) In its application the enforcement authority must nominate a suitably qualified person for appointment as a receiver.

(6) The person nominated may be a member of staff of the enforcement authority.

Powers of receivers appointed under article 21L

21M.—(1) If the High Court appoints a receiver under article 21L (receivers in connection with interim freezing 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;

(**a**) 2007 c. 15. Schedule 16 was amended by paragraph 10 of Schedule 1 to the Finance Act 2008 (c. 9) and by section 25(2) to (6) and paragraph 52(1)(b) and (2) of Schedule 9 to the Crime and Courts Act 2013 (c. 22).

(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) 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.

(4) 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 England and Wales 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.

(5) The court may by order require any person in respect of whose property the receiver is appointed to bring any documents relating to the property which are in the person's possession or control to a place in England and Wales specified by the receiver or to place them in the custody of the receiver.

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

(7) Paragraph (8) applies in a case where—

(a) the receiver deals with property that is not property in respect of which the receiver was appointed under article 21L, but

(b) at the time of dealing with the property the receiver believed on reasonable grounds that they were entitled to do so by virtue of being appointed under article 21L.

(8) The receiver is not liable to any person in respect of any loss or damage resulting from the receiver's dealing with the property.

(9) But paragraph (8) does not apply to the extent that the loss or damage is caused by the receiver's negligence.

Supervision of article 21L receiver and variations

21N.—(1) Any of the following persons may at any time apply to the High Court for directions as to the exercise of the functions of a receiver appointed under article 21L (receivers in connection with interim freezing orders)—

(a) the receiver;

(b) a party to the proceedings for the appointment of the receiver or the interim freezing order concerned;

(c) a person affected by an action taken by the receiver;

(d) a person who may be affected by an action proposed to be taken by the receiver.

(2) Before it gives 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 interim freezing order concerned;

(c) a person who may be interested in the application under paragraph (1).

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

(a) the appointment of a receiver under article 21L,

(b) an order under article 21M (powers of receivers appointed under article 21L), or

(c) directions under this article.

(4) Before exercising a power under paragraph (3) 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, for the order under article 21M or (as the case may be) for the directions under this article;

(c) the parties to the proceedings for the interim freezing order concerned;

(d) any person who may be affected by the court's decision.

Registration

21O. Section 362Q of the Proceeds of Crime Act 2002 (registration) applies in relation to interim freezing orders under this Order as it applies to property freezing orders under section 245A of that Act (application for property freezing order).

Compensation

21P.—(1) Where an interim freezing order in respect of any property is discharged, the person to whom the property belongs may make an application to the High Court for the payment of compensation.

(2) The application must be made within the period of three months beginning with the discharge of the interim freezing order.

(3) The court may award compensation to be paid to the applicant only if satisfied that—

(a) the applicant has suffered loss as a result of the making of the interim freezing order,

(b) there has been a serious default on the part of the enforcement authority that applied for the order, and

(c) the order would not have been made had the default not occurred.

(4) Where the court orders the payment of compensation—

(a) the compensation is payable by the enforcement authority that applied for the interim freezing order, and

(b) the amount of the compensation to be paid is the amount that the court thinks reasonable, having regard to the loss suffered and any other relevant circumstance.
".

Other amendments consequential on articles 7 and 8

9.—(1) In article 1(2) (extent of Part 1), after "only" insert ", except for articles 21A to 21P which extend to England and Wales only.".

(2) In article 2 (interpretation)—

(a) After paragraph (7) insert—

"(7A) "Settlement" (in relation to unexplained wealth orders and interim freezing orders) has the meaning given by section 620 of the Income Tax (Trading and Other Income) Act 2005(**a**).".

(**a**) 2005 c. 5. Section 620 was amended by paragraph 552 of Schedule 1 to the Income Tax Act 2007 (c. 3) and by S.I. 2012/964.

(b) After paragraph (11) insert—

"(12) For the purposes of this Part—

"enforcement authority" means (in relation to England and Wales)—

(a) the National Crime Agency;

(b) Her Majesty's Revenue and Customs;

(c) the FCA;

(d) the Director of the Serious Fraud Office, or

(e) the Director of Public Prosecutions;

"external request" has the same meaning as in article 21H (unexplained wealth order: application for interim freezing order);

"interim freezing order" has the same meaning as in article 21H;

"requesting party" has the same meaning as in article 21C(5) (non-compliance with an unexplained wealth order);

"respondent" has the same meaning as in article 21A(2)(b) (unexplained wealth orders);

"response period" has the same meaning as in article 21C(5);

"unexplained wealth order" has the same meaning as in article 21A(4).".

Extension of powers to the Financial Conduct Authority, its officers and Her Majesty's Revenue and Customs

10. In article 2 (interpretation)—

(a) for paragraph (1) substitute—

"(1) An "appropriate officer" means—

(a) an NCA officer;

(b) in England and Wales, an FCA officer;

(c) in England and Wales, an officer of Revenue and Customs;

(d) a relevant Director.";

(b) after paragraph (5) insert—

"(5A) "FCA" means the Financial Conduct Authority and "an FCA officer" is a member of the staff of the FCA.";

(c) for paragraph (11) substitute—

"(11) A "senior appropriate officer" means—

(a) in relation to an NCA officer, the Director General of the NCA or any NCA officer authorised by the Director General (whether generally or specifically) for this purpose;

(b) in relation to an FCA officer (in England and Wales), an FCA officer who is not below such grade as is designated by the Treasury for the purposes of this Order; and

(c) in relation to an officer of Revenue and Customs (in England and Wales), the Commissioners for Her Majesty's Revenue and Customs or an officer of Revenue and Customs authorised by the Commissioners (whether generally or specifically) for this purpose.".

Amendments consequential on article 10

11.—(1) In article 12 (supplementary), in paragraph (4)—

(a) for "an NCA officer" substitute "an officer of a description mentioned in paragraph (a), (b) or (c) of the meaning of appropriate officer (see article 2 (interpretation))"; and

(b) for "need not be by the same NCA officer" substitute "may be made by a different officer of the same description".

(2) In article 13 (search and seizure warrants), in paragraph (5), after "NCA officer" insert ", FCA officer (in England and Wales), officer of Revenue and Customs (in England and Wales)".

(3) In article 14 (requirements where production order not available), in paragraph (8), after "NCA officer" insert ", FCA officer (in England and Wales), officer of Revenue and Customs (in England and Wales)".

(4) In article 21 (supplementary), in paragraph (4)—

(a) for "an NCA officer" substitute "an officer of a description mentioned in paragraph (a), (b) or (c) of the meaning of appropriate officer (see article 2 (interpretation))"; and

(b) for "need not be by the same NCA officer" substitute "may be made by a different officer of the same description".

(5) In article 28 (supplementary), in paragraph (4)—

(a) for "an NCA officer" substitute "an officer of a description mentioned in paragraph (a), (b) or (c) of the meaning of appropriate officer (see article 2 (interpretation))"; and

(b) for "need not be by the same NCA officer" substitute "may be made by a different officer of the same description";

(6) In article 34 (supplementary), in paragraph (3)—

(a) for "an NCA officer" substitute "an officer of a description mentioned in paragraph (a), (b) or (c) of the meaning of appropriate officer (see article 2 (interpretation))"; and

(b) for "need not be by the same NCA officer" substitute "may be made by a different officer of the same description".

CHAPTER 3

External investigations: amendments for Scotland

Scope of Part 2

12. In article 37 (scope of Part 2)—

(a) omit paragraph (5);

(b) in paragraph (6)(a), after "disclosure orders" insert ", unexplained wealth orders and interim freezing orders,".

Unexplained wealth orders (Scotland)

13. After article 46 (supplementary) insert—

"**Unexplained wealth orders**

46A.—(1) The Court of Session may, on an application made by the Scottish Ministers, make an unexplained wealth order in respect of any property if the court is satisfied that each of the requirements for making the order is fulfilled.

(2) An application for the order must—

(a) specify or describe the property in respect of which the order is sought, and

(b) specify the person in Scotland whom the Scottish Ministers think holds the property ("the respondent").

(3) An unexplained wealth order is an order requiring the respondent to provide a statement—

(a) setting out the nature and extent of the respondent's interest in the property in respect of which the order is made,

(b) explaining how the respondent obtained the property (including, in particular, how any costs incurred in obtaining it were met),

(c) where the property is held by the trustees of a settlement, setting out such details of the settlement as may be specified in the order, and

(d) setting out such other information in connection with the property as may be so specified.

(4) The order must specify—

(a) the form and manner in which the statement is to be given,

(b) the person to whom it is to be given, and

(c) the place at which it is to be given or, if it is to be given in writing, the address to which it is to be sent.

(5) The order may, in connection with requiring the respondent to provide the statement mentioned in paragraph (3), also require the respondent to produce documents of a kind specified or described in the order.

(6) The respondent must comply with the requirements imposed by an unexplained wealth order within whatever period the court may specify (and different periods may be specified in relation to different requirements).

(7) For the purposes of this article and article 46B (requirements for making of unexplained wealth order), property is held by a person if that person holds an interest in it (see also article 46G (holding of property: trust and company arrangements etc.)).

Requirements for making of unexplained wealth order

46B.—(1) These are the requirements for the making of an unexplained wealth order in respect of any property.

(2) The Court of Session must be satisfied that there is reasonable cause to believe that—

(a) the respondent holds the property, and

(b) the value of the property is greater than that of the sum for the time being specified in section 396B(2)(b) of the Proceeds of Crime Act 2002(**a**) (requirements for making of unexplained wealth order).

(3) The Court of Session must be satisfied that there are reasonable grounds for suspecting that the known sources of the respondent's lawfully obtained income would have been insufficient for the purposes of enabling the respondent to obtain the property.

(4) The Court of Session must be satisfied that—

(a) the respondent is a politically exposed person, or

(b) there are reasonable grounds for suspecting that—

(i) the respondent is, or has been, involved in serious crime (whether in Scotland or elsewhere), or

(ii) a person connected with the respondent is, or has been, so involved.

(5) It does not matter for the purposes of paragraph (2)(a)—

(a) whether or not there are other persons who also hold the property;

(b) whether the property was obtained by the respondent before or after the coming into force of this article.

(6) For the purposes of paragraph (3)—

(a) regard is to be had to any heritable security, charge or other kind of security that it is reasonable to assume was or may have been available to the respondent for the purpose of obtaining the property;

(**a**) Section 396B was inserted by section 4 of the Criminal Finances Act 2017.

(b) it is to be assumed that the respondent obtained the property for a price equivalent to its market value;

(c) income is "lawfully obtained" if it is obtained lawfully under the laws of the country from where the income arises;

(d) "known" sources of the respondent's income are the sources of income (whether arising from employment, assets or otherwise) that are reasonably ascertainable from available information at the time of the making of the application for the order;

(e) where the property is an interest in other property comprised in a settlement, the reference to the respondent obtaining property is to be taken as if it were a reference to the respondent obtaining direct ownership of such share in the settled property as relates to, or is fairly represented by, that interest.

(7) In paragraph (4)(a), "politically exposed person" has the same meaning as for the time being specified in section 396B of the Proceeds of Crime Act 2002.

(8) For the purposes of this article—

(a) a person is involved in serious crime in Scotland or elsewhere if the person would be so involved for the purposes of Part 1 of the Serious Crime Act 2007 (see in particular section 2A of that Act) (involvement in serious crime: Scotland orders);

(b) section 1122 of the Corporation Tax Act 2010(**a**) ("connected" persons) applies in determining whether a person is connected with another.

(9) Where the property in respect of which the order is sought comprises more than one item of property, the reference in paragraph (2)(b) to the value of the property is to the total value of those items.

Non-compliance with an unexplained wealth order

46C.—(1) This article applies in a case where the respondent fails, without reasonable excuse, to comply with the requirements imposed by an unexplained wealth order in respect of any property before the end of the response period.

(2) For the purposes of paragraph (1) where an unexplained wealth order imposes more than one requirement on the respondent, the respondent is to be taken to have failed to comply with the requirements imposed by the order unless each of the requirements is complied with or is purported to be complied with.

(3) In the event of a failure by the respondent to comply with the requirements of an unexplained wealth order, the Scottish Ministers must inform the Secretary of State of that failure and whether an interim freezing order has effect in relation to the property (see article 46I (unexplained wealth order: application for interim freezing order)).

(4) The Secretary of State must—

(a) inform the requesting party of the non-compliance with the unexplained wealth order, and

(b) if an interim freezing order has effect in relation to the property, inform the requesting party that the interim freezing order will cease to have effect on the expiry of 28 days beginning with the day after the day with which the response period ends.

(5) In this article—

"requesting party" means the overseas authority that requested assistance with the external investigation in question;

"response period" means the period specified by the court in accordance with article 46A(6) (period specified for complying with the order).

(**a**) 2010 c.4.

Compliance or purported compliance with an unexplained wealth order

46D.—(1) This article applies if—

(a) before the end of the response period, the respondent complies, or purports to comply, with the requirements imposed by an unexplained wealth order in respect of any property in relation to which the order was made; and

(b) an interim freezing order has effect in relation to the property (see article 46I (unexplained wealth order: application for interim freezing order)).

(2) In this article "compliance material" means—

(a) any statement given in compliance or purported compliance with an unexplained wealth order, and

(b) any document produced in compliance, or purported compliance, with a requirement included in the order by virtue of article 46A(5) (provision of documents);

and compliance material is "provided" when it is given or produced as required by the order.

(3) The Scottish Ministers must give the Secretary of State a copy of the compliance material which has been provided, and inform the Secretary of State of the date upon which the compliance material was provided.

(4) The Secretary of State must—

(a) inform the requesting party of the compliance, or purported compliance, with the unexplained wealth order,

(b) supply the requesting party with a copy of the compliance material, and

(c) inform the requesting party that the interim freezing order will cease to have effect on the expiry of 120 days beginning with the day after the day on which the compliance material was provided to the person to whom the order required it to be given.

(5) If the compliance material is not all provided at the same time, it is to be regarded as provided when the last of that material is provided.

Statements

46E.—(1) A statement made by a person in response to a requirement imposed by an unexplained wealth order may not be used in evidence against that person in criminal proceedings.

(2) Paragraph (1) does not apply—

(a) in the case of proceedings under Part 3 of the Proceeds of Crime Act 2002 (confiscation: Scotland),

(b) in the case of proceedings under Part 3 of Proceeds of Crime Act 2002 (External Requests and Orders) Order 2005 (giving effect in Scotland to external requests in connection with criminal investigations or proceedings and to external orders arising from such proceedings),

(c) on a prosecution for perjury, or

(d) on a prosecution for some other offence where, in giving evidence, the person makes a statement inconsistent with the statement mentioned in paragraph (1).

(3) A statement may not be used by virtue of paragraph (2)(d) against a person unless—

(a) evidence relating to it is adduced, or

(b) a question relating to it is asked,

by the person or on the person's behalf in proceedings arising out of the prosecution.

Disclosure of information, copying of documents etc.

46F.—(1) An unexplained wealth order does not confer the right to require a person to answer any question, provide any information or produce any document which the person would be entitled to refuse to answer, provide or produce on the grounds of legal privilege.

(2) An unexplained wealth order has effect in spite of any restriction on the disclosure of information (however imposed).

(3) The Scottish Ministers may take copies of any documents produced by the respondent in connection with complying with such a requirement.

(4) Documents so produced may also be retained for so long as it is necessary to retain them (as opposed to a copy of them) in connection with an external investigation in relation to the property in respect of which the unexplained wealth order is made.

(5) But if the Scottish Ministers have reasonable grounds to believe that the documents—

(a) may need to be produced for the purposes of any legal proceedings, and

(b) might otherwise be unavailable for those purposes,

they may be retained until the proceedings are concluded.

(6) Unless article 46D (compliance or purported compliance with an unexplained wealth order) applies, an enforcement authority which has been provided with compliance material may send the compliance material to the requesting party or to the Secretary of State for forwarding to the requesting party.

Holding of property: trusts and company arrangements etc.

46G.—(1) This article applies for the purposes of articles 46A (unexplained wealth orders) and 46B (requirements for making of unexplained wealth order).

(2) The cases in which a person ("P") is to be taken to "hold" property include where—

(a) P has effective control over the property;

(b) P is the trustee of a settlement in which the property is comprised;

(c) P is a beneficiary (whether actual or potential) in relation to such a settlement.

(3) A person is to be taken to have "effective control" over property if, from all the circumstances, it is reasonable to conclude that the person—

(a) exercises,

(b) is able to exercise, or

(c) is entitled to acquire,

direct or indirect control over the property.

(4) Where a person holds property by virtue of paragraph (2) references to the person obtaining the property are to be read accordingly.

(5) References to a person who holds or obtains property include any body corporate, whether incorporated or formed under the law of a part of the United Kingdom or in a country or territory outside the United Kingdom.

Supplementary

46H.—(1) An application for an unexplained wealth order may be made without notice.

(2) Provision may be made by rules of court as to the discharge and variation of unexplained wealth orders.

(3) An application to discharge or vary an unexplained wealth order may be made to the Court of Session by—

(a) the Scottish Ministers, or

(b) any person affected by the order.

(4) The Court of Session may—

(a) discharge the order, or

(b) vary the order.".

Interim freezing orders (Scotland)

14. After article 46H (supplementary) of the 2013 Order (which is inserted by article 13 (unexplained wealth orders: Scotland)) insert—

"Unexplained wealth order: application for interim freezing order

46I.—(1) This article applies where the Court of Session makes an unexplained wealth order in respect of any property.

(2) The court may make an interim freezing order in respect of the property if the court considers it necessary to do so for the purposes of avoiding the risk of any external order (within the meaning of section 447(2) of the Proceeds of Crime Act 2002 (interpretation)) that might subsequently be obtained being frustrated.

(3) An interim freezing order is an order that prohibits the respondent to the unexplained wealth order, and any other persons with an interest in the property, from in any way dealing with the property (subject to any exclusions under article 46K (exclusions)).

(4) An interim freezing order—

(a) may be made only on the application of the Scottish Ministers;

(b) may be made only in order to give effect to an external request (within the meaning of section 447(1) of the Proceeds of Crime Act 2002);

(c) must be made in the same proceedings as those in which the unexplained wealth order is made, and

(d) may be combined in one document with the unexplained wealth order.

(5) If an application for an unexplained wealth order in respect of property is made without notice, an application for an interim freezing order in respect of the property must also be made without notice.

Variation and discharge of interim freezing order

46J.—(1) The Court of Session may at any time vary or discharge an interim freezing order.

(2) The Court of Session must discharge an interim freezing order, so far as it has effect in relation to property, in each of the following two cases.

(3) The first case is where—

(a) the applicable period has ended, and

(b) a relevant application has not been made before the end of that period in relation to the property concerned.

(4) The second case is where—

(a) a relevant application has been made before the end of the applicable period in relation to the property concerned, and

(b) proceedings on the application (including on any appeal) have been determined or otherwise disposed of.

(5) The "applicable period" means—

(a) in a case where the respondent complies, or purports to comply, with the requirements imposed by an unexplained wealth order before the end of the response period, the period of 120 days beginning with the day after the day upon

which the compliance material was provided to the enforcement authority (see article 46D(2) (provision of compliance material), and

(b) in any other case, the period of 28 days beginning with the day after the day with which the response period ends.

(6) In calculating the period of 48 hours for the purposes of paragraph (5), no account is to be taken of—

(a) any Saturday or Sunday,

(b) Christmas Day,

(c) Good Friday,

(d) any day which is a bank holiday under the Banking and Financial Dealings Act 1971 in Scotland.

(7) Before exercising the power under this article to vary or discharge an interim freezing order, the court must (as well as giving the parties to the proceedings an opportunity to be heard) give an opportunity to any person who may be affected by its decision to be heard.

(8) Paragraph (7) does not apply where the court is acting as required by paragraph (2).

(9) In this article, "relevant application" means an application for—

(a) a restraint order under article 58 of the Proceeds of Crime Act 2002 (External Requests and Orders) Order 2005 (restraint orders), or

(b) a prohibition order under Part 4B of that Order (giving effect in Scotland to external requests by means of civil proceedings).

Exclusions

46K.—(1) The power to vary an interim freezing order includes (amongst other things) power to make exclusions as follows—

(a) power to exclude property from the order, and

(b) power, otherwise than by excluding property from the order, to make exclusions from the prohibition on dealing with the property to which the order applies.

(2) Exclusions from the prohibition on dealing with the property to which the order applies (other than exclusions of property from the order) may also be made when the order is made.

(3) An exclusion may (amongst other things) make provision for the purpose of enabling any person—

(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 subject to conditions.

(5) An exclusion may not be made for the purpose of enabling any person to meet any legal expenses in respect of proceedings under this Part.

(6) If excluded property is not specified in the order it must be described in the order in general terms.

Restrictions on proceedings and remedies

46L.—(1) While an interim freezing order has effect the Court of Session may sist any action, execution or other legal process in respect of the property to the order applies.

(2) If a court (whether the Court of Session or any other court) in which proceedings are pending in respect of any property is satisfied that an interim freezing order has been applied for or made in respect of the property, it may—

(a) sist the proceedings, or

(b) allow them to continue on any terms it thinks fit.

(3) Before exercising a power conferred by this article, the court must (as well as giving the parties to any proceedings an opportunity to be heard) give an opportunity to any person who may be affected by the court's decision to be heard.

Arrestment of property affected by interim freezing order

46M.—(1) On the application of the Scottish Ministers the Court of Session may, in relation to moveable property to which an interim freezing order applies (whether generally or to such of it as is specified in the application), grant warrant for arrestment.

(2) An application under paragraph (1) may be made at the same time as the application for the interim freezing order or at any time afterwards.

(3) A warrant for arrestment may be granted only if the property would be arrestable if the person entitled to it were a debtor.

(4) A warrant under paragraph (1) has effect as if granted on the dependence of an action for debt at the instance of the Scottish Ministers against the person and may be executed, recalled, loosed or restricted accordingly.

(5) An arrestment executed under this article ceases to have effect when, or in so far as, the interim freezing order ceases to apply in respect of the property in relation to which the warrant for arrestment was granted.

(6) If an arrestment ceases to have effect to any extent by virtue of paragraph (5), the Scottish Ministers must apply to the Court of Session for an order recalling or, as the case may be, restricting the arrestment.

Inhibition of property affected by interim freezing order

46N.—(1) On the application of the Scottish Ministers, the Court of Session may, in relation to the property mentioned in paragraph (2), grant warrant for inhibition against any person specified in an interim freezing order.

(2) The property is heritable property situated in Scotland to which the interim freezing order applies (whether generally or to such of it as is specified in the application).

(3) The warrant for inhibition—

(a) has effect as if granted on the dependence of an action for debt by the Scottish Ministers against the person and may be executed, recalled, loosed or restricted accordingly, and

(b) has the effect of letters of inhibition and must forthwith be registered by the Scottish Ministers in the register of inhibitions and adjudications.

(4) Section 155 of the Titles to Land Consolidation (Scotland) Act 1868(**a**) (effective date of inhibition) applies in relation to an inhibition for which warrant is granted under paragraph (1) as it applies to an inhibition by separate letters or contained in a summons.

(5) An inhibition executed under this section ceases to have effect when, or in so far as, the interim freezing order ceases to apply in respect of the property in relation to which the warrant for inhibition was granted.

(6) If an inhibition ceases to have effect to any extent by virtue of paragraph (5), the Scottish ministers must—

(a) apply for the recall or, as the case may be, the restriction of the inhibition, and

(b) ensure that the recall or restriction is reflected in the register of inhibitions and adjudications.

(**a**) 1868 c. 101 (31 & 32 Vict). Section 155 was amended by section 98(1) and (2) of the Criminal Justice (Scotland) Act 1995 (c. 20), and by section 149 of the Bankruptcy & Diligence etc. (Scotland) Act 2007 (asp 3).

Receivers in connection with interim freezing orders

46O.—(1) This article applies where the Court of Session makes an interim freezing order on an application by the Scottish Ministers.

(2) The Court of Session may, on an application by the Scottish Ministers, by order appoint a receiver in respect of any property to which the interim freezing order applies.

(3) An application under paragraph (2) may be made at the same time as the application for the interim freezing order or at any time afterwards.

(4) The application may be made without notice if the circumstances of the case are such that notice of the application would give rise to a risk of any external order that might subsequently be obtained being frustrated.

(5) In its application the Scottish Ministers must nominate a suitably qualified person for appointment as a receiver.

(6) The person nominated may be a member of staff of the Scottish Ministers.

Powers of receivers appointed under article 46O

46P.—(1) If the Court of Session appoints a receiver under article 46O (receivers in connection with interim freezing orders), the court may act under this article on the application of the Scottish Ministers.

(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).

(3) 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.

(4) 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.

(5) The court may by order require any person in respect of whose property the 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 receiver or to place them in the custody of the receiver.

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

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

(8) Paragraph (9) applies in a case where—

(a) the receiver deals with property that is not property in respect of which the receiver was appointed under article 46O, but

(b) at the time of dealing with the property the receiver believed on reasonable grounds that they were entitled to do so by virtue of being appointed under article 46O.

(9) The receiver is not liable to any person in respect of any loss or damage resulting from the receiver's dealing with the property.

(10) But paragraph (9) does not apply to the extent that the loss or damage is caused by the receiver's negligence.

Supervision of article 46O receiver and variations

46Q.—(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 46O (receivers in connection with interim freezing orders)—

(a) the receiver;

(b) a party to the proceedings for the appointment of the receiver or the interim freezing order concerned;

(c) a person affected by an action taken by the receiver;

(d) a person who may be affected by an action proposed to be taken by the receiver.

(2) Before it gives 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 interim freezing order concerned;

(c) a person who may be interested in the application under paragraph (1).

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

(a) the appointment of a receiver under article 46O,

(b) an order under article 46P (powers of receivers appointed under article 46O), or

(c) directions under this article.

(4) Before exercising a power under paragraph (3) 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, for the order under article 46O or (as the case may be) for the directions under this article;

(c) the parties to the proceedings for the interim freezing order concerned;

(d) any person who may be affected by the court's decision.

Compensation

46R.—(1) Where an interim freezing order in respect of any property is recalled, the person to whom the property belongs may make an application to the Court of Session for the payment of compensation.

(2) The application must be made within the period of three months beginning with the recall of the interim freezing order.

(3) The court may award compensation to be paid to the applicant only if satisfied that—

(a) the applicant has suffered loss as a result of the making of the interim freezing order,

(b) there has been a serious default on the part of the Scottish Ministers in applying for the order, and

(c) the order would not have been made had the default not occurred.

(4) Where the court orders the payment of compensation—

(a) the compensation is payable by the Scottish Ministers, and

(b) the amount of the compensation to be paid is the amount that the court thinks reasonable, having regard to the loss suffered and any other relevant circumstance. ".

Amendments consequential on Articles 13 and 14

15. In article 36 (interpretation of Part 2), after paragraph (8) insert—

"(9) "Settlement" (in relation to unexplained wealth orders and interim freezing orders) has the meaning given by section 620 of the Income Tax (Trading and Other Income) Act 2005.

(10) For the purposes of this Part—

"external request" has the same meaning as in article 46I (unexplained wealth order: application for interim freezing order);

"interim freezing order" has the same meaning as in article 46I;

"requesting party" has the same meaning as in article 46C(5) (non-compliance with an unexplained wealth order);

"respondent" has the same meaning as in article 46A(2)(b) (unexplained wealth orders);

"response period" has the same meaning as in article 46C(5);

"unexplained wealth order" has the same meaning as in article 46A (unexplained wealth orders: Scotland).".

PART 3

External investigations (England and Wales): Amendments to the 2014 Order

Amendments to the 2014 Order

16. The 2014 Order is amended as follows.

Extension of powers to officers of the Serious Fraud Office

17. In article 2 (interpretation)—

(a) in paragraph (1)—

(i) in the definition of "appropriate officer", after "constable" insert ", an SFO officer (in England and Wales)";

(ii) in the definition of "senior appropriate officer", after paragraph (aa) insert—

"(ab) the Director of the Serious Fraud Office (in England and Wales);";

(b) after the definition of "senior NCA officer", insert—

""SFO" means the Serious Fraud Office and "SFO officer" means a member of staff of the Serious Fraud Office.".

Scope of the 2014 Order

18. In article 3 (scope of the Order)—

(a) in paragraph (1), after "the Crown Court" insert ", or by enabling an enforcement authority to obtain unexplained wealth orders and interim freezing orders from the High Court in England and Wales.";

(b) omit paragraph (4).

Action on receipt of request in relation to an external investigation

19. In article 4(1) and (2) (action on receipt of request in relation to an external investigation), after "Her Majesty's Revenue and Customs" in each place where it occurs insert ", or (in relation to unexplained wealth orders and interim freezing orders) an enforcement authority,".

Unexplained wealth orders

20. After article 34 (supplementary) insert—

"Part 5A

Unexplained wealth orders (England and Wales)

Unexplained wealth orders (England and Wales)

34A.—(1) The High Court may, on an application made by an enforcement authority (see article 2 (interpretation)), make an unexplained wealth order in respect of any property if the court is satisfied that each of the requirements for making the order is fulfilled.

(2) An application for the order must—

(a) specify or describe the property in respect of which the order is sought, and

(b) specify the person in England and Wales whom the enforcement authority thinks holds the property ("the respondent").

(3) An application for an unexplained wealth order may be made without notice.

(4) An unexplained wealth order is an order requiring the respondent to provide a statement—

(a) setting out the nature and extent of the respondent's interest in the property in respect of which the order is made,

(b) explaining how the respondent obtained the property (including, in particular, how any costs incurred in obtaining it were met),

(c) where the property is held by the trustees of a settlement, setting out such details of the settlement as may be specified in the order, and

(d) setting out such other information in connection with the property as may be so specified.

(5) The order must specify—

(a) the form and manner in which the statement is to be given,

(b) the person to whom it is to be given, and

(c) the place at which it is to be given or, if it is to be given in writing, the address to which it is to be sent.

(6) The order may, in connection with requiring the respondent to provide the statement mentioned in paragraph (4), also require the respondent to produce documents of a kind specified or described in the order.

(7) The respondent must comply with the requirements imposed by an unexplained wealth order within whatever period the court may specify (and different periods may be specified in relation to different requirements).

(8) For the purposes of this article and article 34B (requirements for making of unexplained wealth order), property is held by a person if that person holds an interest in it (see also article 34G (holding of property: trusts and company arrangements etc.)).

Requirements for making of unexplained wealth order

34B.—(1) These are the requirements for the making of an unexplained wealth order in respect of any property.

(2) The High Court must be satisfied that there is reasonable cause to believe that—

(a) the respondent holds the property, and

(b) the value of the property is greater than that of the sum for the time being specified in section 362B(2)(b) of the Proceeds of Crime Act 2002 (requirements for making of unexplained wealth order).

(3) The High Court must be satisfied that there are reasonable grounds for suspecting that the known sources of the respondent's lawfully obtained income would have been insufficient for the purposes of enabling the respondent to obtain the property.

(4) The High Court must be satisfied that—

(a) the respondent is a politically exposed person, or

(b) there are reasonable grounds for suspecting that—

(i) the respondent is, or has been, involved in serious crime (whether in England and Wales or elsewhere), or

(ii) a person connected with the respondent is, or has been, so involved.

(5) It does not matter for the purposes of paragraph (2)(a)—

(a) whether or not there are other persons who also hold the property;

(b) whether the property was obtained by the respondent before or after the coming into force of this article.

(6) For the purposes of paragraph (3)—

(a) regard is to be had to any mortgage, charge or other kind of security that it is reasonable to assume was or may have been available to the respondent for the purpose of obtaining the property;

(b) it is to be assumed that the respondent obtained the property for a price equivalent to its market value;

(c) income is "lawfully obtained" if it is obtained lawfully under the laws of the country from where the income arises;

(d) "known" sources of the respondent's income are the sources of income (whether arising from employment, assets or otherwise) that are reasonably ascertainable from available information at the time of the making of the application for the order;

(e) where the property is an interest in other property comprised in a settlement, the reference to the respondent obtaining property is to be taken as if it were a reference to the respondent obtaining direct ownership of such share in the settled property as relates to, or is fairly represented by that interest.

(7) In paragraph (4)(a), "politically exposed person" has the same meaning as for the time being specified in section 362B of the Proceeds of Crime Act 2002.

(8) For the purposes of this article—

(a) a person is involved in serious crime in England and Wales or elsewhere if the person would be so involved for the purposes of Part 1 of the Serious Crime Act 2007 (see in particular section 2 of that Act) (involvement in serious crime: England and Wales orders);

(b) section 1122 of the Corporation Tax Act 2010 ("connected" persons) applies in determining whether a person is connected with another.

(9) Where the property in respect of which the order is sought comprises more than one item of property, the reference in paragraph (2)(b) to the value of the property is to the total value of those items.

Non-compliance with an unexplained wealth order

34C.—(1) This article applies in a case where the respondent fails, without reasonable excuse, to comply with the requirements imposed by an unexplained wealth order in respect of any property before the end of the response period.

(2) For the purposes of paragraph (1) where an unexplained wealth order imposes more than one requirement on the respondent, the respondent is to be taken to have failed to comply with the requirements imposed by the order unless each of the requirements is complied with or is purported to be complied with.

(3) In the event of a failure by the respondent to comply with the requirements of an unexplained wealth order, the enforcement authority that applied for the order must inform the Secretary of State of that failure and whether an interim freezing order has effect in relation to the property (see article 34H (unexplained wealth order: application for interim freezing order)).

(4) The Secretary of State must—

(a) inform the requesting party of the non-compliance with the unexplained wealth order, and

(b) if an interim freezing order has effect in relation to the property, inform the requesting party that the interim freezing order will cease to have effect on the expiry of 28 days beginning with the day after the day with which the response period ends.

(5) In this article—

"requesting party" means the overseas authority that requested assistance with the external investigation in question;

"response period" means the period specified by the court in accordance with article 34A(7) (period specified for complying with the order).

Compliance or purported compliance with an unexplained wealth order

34D.—(1) This article applies if—

(a) before the end of the response period, the respondent complies, or purports to comply, with the requirements imposed by an unexplained wealth order in respect of any property in relation to which the order was made, and

(b) an interim freezing order has effect in relation to the property (see article 34H (unexplained wealth order: application for interim freezing order)).

(2) In this article "compliance material" means—

(a) any statement given in compliance or purported compliance with an unexplained wealth order, and

(b) any document produced in compliance, or purported compliance, with a requirement included in the order by virtue of article 34A(6) (provision of documents);

and compliance material is "provided" when it is given or produced as required by the order.

(3) The enforcement authority that has been provided with the compliance material must give the Secretary of State a copy of the compliance material, and inform the Secretary of State of the date upon which the compliance material was provided.

(4) The Secretary of State must—

(a) inform the requesting party of the compliance, or purported compliance, with the unexplained wealth order,

(b) supply the requesting party with a copy of the compliance material, and

(c) inform the requesting party that the interim freezing order will cease to have effect on the expiry of 120 days beginning with the day after the day on which the compliance material was provided to the enforcement authority.

(5) If the compliance material is not all provided at the same time, it is to be regarded as provided when the last of that material is provided.

Statements

34E.—(1) A statement made by a person in response to a requirement imposed by an unexplained wealth order may not be used in evidence against that person in criminal proceedings.

(2) Paragraph (1) does not apply—

(a) in the case of proceedings under Part 2 of the Proceeds of Crime Act 2002 (confiscation: England and Wales),

(b) in the case of proceedings under Part 2 of the Proceeds of Crime Act 2002 (External Requests and Orders) Order 2005 (giving effect in England and Wales to external requests in connection with criminal investigations or proceedings and to external orders arising from such proceedings),

(c) on a prosecution for an offence under section 5 of the Perjury Act 1911 (false statements), or

(d) on a prosecution for some other offence where, in giving evidence, the person makes a statement inconsistent with the statement mentioned in paragraph (1).

(3) A statement may not be used by virtue of paragraph (2)(d) against a person unless—

(a) evidence relating to it is adduced, or

(b) a question relating to it is asked,

by the person or on the person's behalf in proceedings arising out of the prosecution.

Disclosure of information, copying of documents etc.

34F.—(1) An unexplained wealth order has effect in spite of any restriction on the disclosure of information (however imposed).

(2) But paragraphs (1) to (5) of article 20 (further provisions: rights in connection with privileged information, questions and material) apply in relation to requirements imposed by an unexplained wealth order as they apply in relation to requirements imposed under a disclosure order.

(3) The enforcement authority may take copies of any documents produced by the respondent in connection with complying with the requirements imposed by an unexplained wealth order.

(4) Documents so produced may also be retained for so long as it is necessary to retain them (as opposed to a copy of them) in connection with an external investigation in relation to the property in respect of which the unexplained wealth order is made.

(5) But if the enforcement authority has reasonable grounds to believe that the documents—

(a) may need to be produced for the purposes of any legal proceedings, and

(b) might otherwise be unavailable for those purposes,

they may be retained until the proceedings are concluded.

(6) Unless article 34D (compliance or purported compliance with an unexplained wealth order) applies, an enforcement authority which has been provided with compliance material may send the compliance material to the requesting party or to the Secretary of State for forwarding to the requesting party.

Holding of property: trusts and company arrangements etc.

34G.—(1) This article applies for the purposes of articles 34A (unexplained wealth orders) and 34B (requirements for making of unexplained wealth order).

(2) The cases in which a person ("P") is to be taken to "hold" property include where—

(a) P has effective control over the property,

(b) P is the trustee of a settlement in which the property is comprised,

(c) P is a beneficiary (whether actual or potential) in relation to such a settlement.

(3) A person is to be taken to have "effective control" over property if, from all the circumstances, it is reasonable to conclude that the person—

(a) exercises,

(b) is able to exercise, or

(c) is entitled to acquire,

direct or indirect control over the property.

(4) Where a person holds property by virtue of paragraph (2) references to the person obtaining the property are to be read accordingly.

(5) References to a person who holds or obtains property include any body corporate, whether incorporated or formed under the law of a part of the United Kingdom or in a country or territory outside the United Kingdom.

Unexplained wealth order: application for interim freezing order

34H.—(1) This article applies where the High Court makes an unexplained wealth order in respect of any property.

(2) The court may make an interim freezing order in respect of the property if the court considers it necessary to do so for the purposes of avoiding the risk of any external order (within the meaning of section 447(2) of the Proceeds of Crime Act 2002 (interpretation)) that might subsequently be obtained being frustrated.

(3) An interim freezing order is an order that prohibits the respondent to the unexplained wealth order, and any other persons with an interest in the property, from in any way dealing with the property (subject to any exclusions under article 34J (exclusions)).

(4) An interim freezing order—

(a) may be made only on the application of the enforcement authority that applied for the unexplained wealth order to which the interim freezing order relates,

(b) may be made only in order to give effect to an external request (within the meaning of section 447(1) of the Proceeds of Crime Act 2002),

(c) must be made in the same proceedings as those in which the unexplained wealth order is made, and

(d) may be combined in one document with the unexplained wealth order.

(5) If an application for an unexplained wealth order in respect of property is made without notice, an application for an interim freezing order in respect of the property must also be made without notice.

Variation and discharge of interim freezing order

34I.—(1) The High Court may at any time vary or discharge an interim freezing order.

(2) The High Court must discharge an interim freezing order, so far as it has effect in relation to property, in each of the following two cases.

(3) The first case is where—

(a) the applicable period has ended, and

(b) a relevant application has not been made before the end of that period in relation to the property concerned.

(4) The second case is where—

(a) a relevant application has been made before the end of the applicable period in relation to the property concerned, and

(b) proceedings on the application (including on any appeal) have been determined or otherwise disposed of.

(5) The "applicable period" means—

(a) in a case where the respondent complies, or purports to comply, with the requirements imposed by an unexplained wealth order before the end of the response period, the period of 120 days beginning with the day after the day upon which the compliance material was provided to the enforcement authority (see article 34D(2) (provision of compliance material), and

(b) in any other case, the period of 28 days beginning with the day after the day with which the response period ends.

(6) In calculating a period for the purposes of paragraph (5), no account is to be taken of—

(a) any Saturday or Sunday,

(b) Christmas Day,

(c) Good Friday,

(d) any day which is a bank holiday under the Banking and Financial Dealings Act 1971 in England and Wales.

(7) Before exercising the power under this article to vary or discharge an interim freezing order, the court must (as well as giving the parties to the proceedings an opportunity to be heard) give an opportunity to any person who may be affected by its decision to be heard.

(8) Paragraph (7) does not apply where the court is acting as required by paragraph (2).

(9) In this article, "relevant application" means an application for—

(a) a restraint order under article 8 of the Proceeds of Crime Act 2002 (External Requests and Orders) Order 2005 (restraint orders), or

(b) a prohibition order under Part 4A of that Order (giving effect in England and Wales and Northern Ireland to external requests by means of civil proceedings).

Exclusions

34J.—(1) The power to vary an interim freezing order includes (amongst other things) power to make exclusions as follows—

(a) power to exclude property from the order, and

(b) power, otherwise than by excluding property from the order, to make exclusions from the prohibition on dealing with the property to which the order applies.

(2) Exclusions from the prohibition on dealing with the property to which the order applies (other than exclusions of property from the order) may also be made when the order is made.

(3) An exclusion may (amongst other things) make provision for the purpose of enabling any person—

(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 subject to conditions.

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

(a) is limited to reasonable legal expenses that the person has reasonably incurred or 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 article 198 of the Proceeds of Crime Act 2002 (External Requests and Orders) Order 2005 (legal expenses excluded from freezing: required conditions)) if the order had been made under article 147 of that Order (application for property freezing order).

(6) The court in deciding whether to make an exclusion for the purposes of enabling a person to meet legal expenses in respect of proceedings under this Order—

(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) If excluded property is not specified in the order it must be described in the order in general terms.

Restrictions on proceedings and remedies

34K.—(1) While an interim freezing order has effect—

(a) the High Court may stay any action, execution or other legal process in respect of the property to which the order applies, and

(b) no distress may be levied, and no power to use the procedure in Schedule 12 to the Tribunals, Courts and Enforcement Act 2007 (taking control of goods) may be exercised, against the property to which the order applies except with the leave of the High Court and subject to any terms the court may impose.

(2) If a court (whether the High Court or any other court) in which proceedings are pending in respect of any property is satisfied that an interim freezing order has been applied for or made in respect of the property, it may—

(a) stay the proceedings, or

(b) allow them to continue on any terms it thinks fit.

(3) If an interim freezing order applies to a tenancy of any premises, a right of forfeiture in relation to the premises is exercisable—

(a) only with the leave of the High Court, and

(b) subject to any terms that the court may impose.

(4) The reference in paragraph (3) to a "right of forfeiture" in relation to premises is to the right of a landlord or other person to whom rent is payable to exercise a right of forfeiture by peaceable re-entry to the premises in respect of any failure by the tenant to comply with a term or condition of the tenancy.

(5) Before exercising a power conferred by this article, the court must (as well as giving the parties to any proceedings an opportunity to be heard) give an opportunity to any person who may be affected by the court's decision to be heard.

Receivers in connection with interim freezing orders

34L.—(1) This article applies where the High Court makes an interim freezing order on an application by an enforcement authority.

(2) The court may, on an application by the enforcement authority, by order appoint a receiver in respect of any property to which the interim freezing order applies.

(3) An application under paragraph (2) may be made at the same time as the application for the interim freezing order or at any time afterwards.

(4) The application may be made without notice if the circumstances of the case are such that notice of the application would give rise to a risk of any external order that might subsequently be obtained being frustrated.

(5) In its application the enforcement authority must nominate a suitably qualified person for appointment as a receiver.

(6) The person nominated may be a member of staff of the enforcement authority.

Powers of receivers appointed under article 34L

34M.—(1) If the High Court appoints a receiver under article 34L (receivers in connection with interim freezing 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).

(3) 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.

(4) 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 England and Wales 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.

(5) The court may by order require any person in respect of whose property the receiver is appointed to bring any documents relating to the property which are in the person's possession or control to a place in England and Wales specified by the receiver or to place them in the custody of the receiver.

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

(7) Paragraph (8) applies in a case where—

(a) the receiver deals with property that is not property in respect of which the receiver was appointed under article 34L, but

(b) at the time of dealing with the property the receiver believed on reasonable grounds that they were entitled to do so by virtue of being appointed under article 34L.

(8) The receiver is not liable to any person in respect of any loss or damage resulting from the receiver's dealing with the property.

(9) But paragraph (8) does not apply to the extent that the loss or damage is caused by the receiver's negligence.

Supervision of article 34L receiver and variations

34N.—(1) Any of the following persons may at any time apply to the High Court for directions as to the exercise of the functions of a receiver appointed under article 34L (receivers in connection with interim freezing orders)—

(a) the receiver;

(b) a party to the proceedings for the appointment of the receiver or the interim freezing order concerned;

(c) a person affected by an action taken by the receiver;

(d) a person who may be affected by an action proposed to be taken by the receiver.

(2) Before it gives 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 interim freezing order concerned;

(c) a person who may be interested in the application under paragraph (1).

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

(a) the appointment of a receiver under article 34L,

(b) an order under article 34M (powers of receivers appointed under article 34L), or

(c) directions under this article.

(4) Before exercising a power under paragraph (3) 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, for the order under article 34M or (as the case may be) for the directions under this article;

(c) the parties to the proceedings for the interim freezing order concerned;

(d) any person who may be affected by the court's decision.

Registration

34O. Section 362Q of the Proceeds of Crime Act 2002 (registration) applies in relation to interim freezing orders under this Order as it applies to property freezing orders under section 245A of that Act (application for property freezing order).

Compensation

34P.—(1) Where an interim freezing order in respect of any property is discharged, the person to whom the property belongs may make an application to the High Court for the payment of compensation.

(2) The application must be made within the period of three months beginning with the discharge of the interim freezing order.

(3) The court may award compensation to be paid to the applicant only if satisfied that—

(a) the applicant has suffered loss as a result of the making of the interim freezing order,

(b) there has been a serious default on the part of the enforcement authority that applied for the order, and

(c) the order would not have been made had the default not occurred.

(4) Where the court orders the payment of compensation—

(a) the compensation is payable by the enforcement authority that applied for the interim freezing order, and

(b) the amount of the compensation to be paid is the amount that the court thinks reasonable, having regard to the loss suffered and any other relevant circumstance. ".

Amendments consequential on article 20

21.—(1) In article 1(c) (extent), after "Northern Ireland" insert ", except for Part 5A (unexplained wealth orders (England and Wales)) which extends to England and Wales only.".

(2) In article 2 (interpretation) in the appropriate place insert—

""enforcement authority" (in relation to Part 5A (unexplained wealth orders (England and Wales))) means—

(a) the National Crime Agency;

(b) Her Majesty's Revenue and Customs;

(c) the Financial Conduct Authority;

(d) the Director of the Serious Fraud Office, or

(e) the Director of Public Prosecutions;";

""external order" has the same meaning as in article 34H (unexplained wealth order: application for interim freezing order);";

""interim freezing order" has the same meaning as in article 34H;";

""requesting party" has the same meaning as in article 34C(5) (non-compliance with an unexplained wealth order);";

""respondent" has the same meaning as in article 34A(2)(b) (unexplained wealth orders);";

""response period" has the same meaning as in article 34C(5);";

""settlement" (in relation to Part 5A) has the meaning given by section 620 of the Income Tax (Trading and Other Income) Act 2005;";

""unexplained wealth order" has the same meaning as in article 34A.".

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(**a**)".

(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(**b**) 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.".

(**a**) Articles 213L and 213Z7 were inserted by Part 4 of this Order.
(**b**) 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)(**a**);

(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(**b**)).

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;

(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.

(**a**) 1979 c. 2.

(**b**) 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).

(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) 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(**a**).

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(**b**);

"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—

(**a**) Section 303Y was inserted by section 15 of the Criminal Finances Act 2017.
(**b**) 1984 c. 60.

"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(6)) 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 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(**a**);

"building society" has the same meaning as in the Building Societies Act 1986(**b**);

"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(**c**);

"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**) Section 303Z7 was inserted by section 16 of the Criminal Finances Act 2017.
(**b**) 1986 c. 53.
(**c**) Section 303Z8 was inserted by section 16 of the Criminal Finances Act 2017.

(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.

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).
".

Richard Tilbrook
Clerk of the Privy Council

EXPLANATORY NOTE

(This note is not part of the Order)

This Order makes provision under section 444 of the Proceeds of Crime Act 2002 ("the 2002 Act") which corresponds to Parts 2 to 5 of the 2002 Act for the purpose of giving effect to "external requests" and "external orders". This Order also makes provision under section 445 of the 2002 Act for investigative orders (equivalent to those in Part 8 of the 2002 Act) to be made in

support of an "external investigation". The terms "external request", "external order" and "external investigation" are defined in section 447 of the 2002 Act, and in summary refer to:

- requests from an overseas state to prohibit dealing with property which is suspected to derive from criminal conduct ("external requests");
- orders for the recovery of specified property or sums of money which derive form criminal conduct ("external orders"), and
- investigations into whether property has been obtained as a result of or in connection with criminal conduct, or the extent or whereabouts of such property, and investigations into whether a money laundering offence has been committed ("external investigations").

Part 1 of this Order makes general provisions, including that this Order comes into force on 12th November 2018, apart from articles 27, 28, 30 and 31, which come into force on 12th November 2019 in order to allow time for court rules to be amended. Parts 2 to 4 of this Order amend the three principal orders made under sections 444 and 445 of the 2002 Act, and (among other things) insert provisions into those orders which are equivalent to the amendments made to the 2002 Act by the Criminal Finances Act 2017 (c. 22) ("the 2017 Act").

Part 2 of this Order amends the Proceeds of Crime Act 2002 (External Investigations) Order 2013 (S.I. 2013/2605) ("the 2013 Order") under which orders can be made in the civil courts for the purpose of assisting with external investigations. Chapter 2 of Part 2 of this Order extends to England and Wales, and articles 7 and 8 insert provisions equivalent to sections 362A to 362I and 362J to 362T of the 2002 Act, which relate to unexplained wealth orders ("UWOs") and interim freezing orders ("IFOs") respectively (the sections providing for UWOs and IFOs were inserted into the 2002 Act by sections 1 and 2 of the 2017 Act). UWOs may be made by the High Court in England and Wales where the respondent is a politically exposed person (see section 362B of the 2002 Act) or has been involved in serious crime, and can be made if the court is satisfied that the known sources of the respondent's lawfully obtained income would be insufficient for the purposes of enabling him to obtain specified property. UWOs require the respondent to provide a statement (or documents and information) explaining how that specified property was obtained.

Articles 5 and 9 make minor and technical amendments relating to the provisions inserted by articles 7 and 8. As a result of these amendments, when a request for assistance with an external investigation has been referred to an "enforcement authority" (as defined in the provision inserted by article 9 of this Order), that authority can decide to seek a UWO or an IFO in furtherance of the request.

Articles 6, 10 and 11 change the definition of "appropriate officer" to include officers of the Financial Conduct Authority and Her Majesty's Revenue and Customs. The effect is that those officers are now able to obtain orders and warrants under the procedure in the 2013 Order. These amendments are equivalent to those made to the 2002 Act by sections 18 to 20 of the 2017 Act, ensuring that officers from those organisations can exercise the same powers in respect of external matters as they could for a domestic matter under the 2002 Act.

Chapter 3 of Part 2 of this Order make amendments to Part 2 of the 2013 Order (which extends to Scotland), and insert provisions equivalent to sections 396A to 396S of the 2002 Act (as inserted by sections 4 and 5 of the 2017 Act). These measures make UWOs and IFOs available in the Court of Session in Scotland, and the amendments made by this Order ensure that these orders can also be obtained in Scotland in response to an external investigation.

Part 3 of this Order extends to England and Wales, and amends the Proceeds of Crime Act 2002 (External Investigations) Order 2014 ("the 2014 Order") which applies to criminal investigations. Article 20 inserts provisions equivalent to the UWO and the IFO measures in the 2002 Act into the 2014 Order, and articles 18, 19 and 21 make minor and technical amendments to the 2014 Order to support the provision made by article 20. Article 17 extends the powers available in the 2014 Order to officers of the Serious Fraud Office ("SFO officers"), and is equivalent to the amendments to the 2002 Act made by section 17 of the 2017 Act (and the associated minor and technical provisions in Schedule 5 to that Act). This ensures that SFO officers can exercise the same range of powers for an external investigation as they could exercise in a domestic matter.

Part 4 of this Order amends the Proceeds of Crime Act 2002 (External Requests and Orders) Order 2005 ("the 2005 Order"), which provides the framework for giving effect to external requests and external orders. The 2005 Order provides that the Secretary of State can refer an external request to law enforcement agencies, who are then able to take measures to freeze the property (such as obtaining a restraint order or a prohibition order). The Secretary of State may also refer an external order to a law enforcement agency, who can then obtain an order from the Crown Court to give effect to the external order (if it derives from a criminal conviction) or take proceedings in the High Court to obtain a recovery order (if it is a civil matter).

Articles 23 and 24 of this Order extend to England and Wales only, and make amendments to Part 2 of the 2005 Order, which relates to giving effect to external requests in connection with criminal investigations or proceedings, and to external orders arising from such proceedings. Specifically, the amendments will allow SFO officers to apply for restraint orders and for orders for the recovery of property in the Crown Court, under the procedure in Part 2 of the 2005 Order.

Articles 25 and 26 of this Order extend to Scotland only, and insert (respectively) new articles 141ZHA to 141ZHC and 166A to 166C into Part 5 of the 2005 Order, which contains the procedure for giving effect to external requests and orders by means of civil procedure. The amendments made by articles 25 and 26 relate to prohibition orders and prohibitory property orders obtained in the Court of Session. A prohibition order prevents any person from dealing with property, and can be obtained where the property is identified in an external request. A prohibitory property order can be obtained where an enforcement authority may take proceedings for a recovery order, and prevents any person from dealing with property where there is a good arguable case that the property derives from unlawful conduct. The amendments made by article 25 allow the Court of Session to make an order appointing receivers to manage any property subject to a prohibition order, for the purposes of an external request and the amendments made by article 26 allow prohibitory property orders to be made by the Court of Session where the enforcement authority is giving effect to an external order. These amendments are equivalent (with modifications) to sections 255G to 255I of the 2002 Act (those sections were inserted by section 23(1) and (2) of the Serious Crime Act 2015 (c. 9)).

Article 29 amends the definition of "enforcement authority" for the purposes of Chapter 5 of the 2005 Order. The effect of the amendment is that the Financial Conduct Authority and Her Majesty's Revenue and Customs are defined as enforcement authorities, meaning that they can exercise the procedure in Part 5 of the 2005 Order in order to give effect to external requests and orders via civil proceedings (this is equivalent to the amendments made by sections 18 to 20 of the 2017 Act, as set out above).

Articles 27 and 28 make minor and technical amendments to the 2005 Order to support the provisions inserted by articles 30 and 31 of this Order. Article 30 inserts a new Part 5A into the 2005 Order, which allows HMRC officers, constables and SFO officers to give effect to external orders by seizing certain listed items of recoverable property and seeking their forfeiture in the magistrates' court in England and Wales, or the Sheriff's court in Scotland. "Listed items" are defined by reference to section 303B(1) of the 2002 Act, and include precious metals, precious stones and artistic works. The new Part 5A is equivalent to the provisions in Chapter 3A of Part 5 of the 2002 Act, which was inserted by section 15 of the 2017 Act. The provisions inserted by article 30 include a power to search for, seize and detain property, and to apply to the magistrates' court and the sheriff's court for forfeiture. They also include a procedure to deal with jointly owned assets, including allowing the magistrates' court to refer complex cases to the High Court.

Article 31 inserts a new Part 5B into the 2005 Order, which allows HMRC Officers, constables and SFO officers to give effect to external requests and external orders by applying for an account freezing order in respect of money held in a bank or building society account, and then to apply to the magistrates' court and the sheriff's court for the forfeiture of money subject to an account freezing order. Part 5B is equivalent to Chapter 3B of Part 5 of the 2005 Act, which was inserted by section 16 of the 2017 Act.

A full impact assessment has not been produced for this instrument as no, or no significant, impact on the private, voluntary or public sectors is foreseen.

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