

SERIOUS ORGANISED CRIME AND POLICE ACT 2005

EXPLANATORY NOTES

THE ACT

Commentary on Sections

Chapter 5: International Obligations

Section 96: Mutual assistance in freezing property or evidence

213. *Subsections (1) and (2)* enable the Secretary of State or Scottish Ministers to make an order that provides for the implementation of any obligations of the UK resulting from the Council Framework Decision of July 2003 on the execution in the European Union of orders freezing property or evidence.
214. Under *subsection (3)* the Secretary of State may make any provision that may be made by Act of Parliament subject to the following exceptions. The first exception is in respect of a provision falling within the legislative competence of the Scottish Parliament (*subsection (5)*); the second exception is in respect of something falling within *subsection (7)*. Under *subsection (4)*, the Scottish Ministers may include anything that falls within the legislative competence of the Scottish Parliament (see also *subsection (6)*), but not something falling within *subsection (7)*.
215. *Subsection (7)* restricts the powers conferred upon the Secretary of State and the Scottish Ministers in *subsection (1)*, by excluding the power to:
- a) make any provisions that impose or increase taxation,
 - b) make any provisions that take effect from a date that precedes the making of the instrument containing the provisions,
 - c) confer any power to legislate by means of orders, rules, regulations or other subordinate instrument, other than rules of procedure for a court or tribunal, and
 - d) create offences.
216. *Subsection (8)* qualifies the exclusion in *subsection (7)(c)* restricting the power to legislate.