
STATUTORY INSTRUMENTS

2018 No. 1078

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

PART 4

Forfeiture powers: Amendments to the 2005 Order

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)(1);
 - (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)(2)).

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;

(1) 1979 c. 2.

(2) 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).

- (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.
- (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⁽³⁾.

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⁽⁴⁾;

“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.”.

⁽³⁾ Section 303Y was inserted by section 15 of the Criminal Finances Act 2017.

⁽⁴⁾ 1984 c. 60.