

# **SERIOUS ORGANISED CRIME AND POLICE ACT 2005**

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## **EXPLANATORY NOTES**

### **THE ACT**

#### *Commentary on Sections*

#### *Chapter 5: International Obligations*

#### *Section 95: Enforcement of overseas forfeiture orders*

210. This section amends section 9 of the Criminal Justice (International Co-operation) Act 1990 which provides for the enforcement of overseas forfeiture orders. Section 9 allows an Order in Council to be made for the enforcement of orders, made by courts outside the United Kingdom designated for this purpose, for the forfeiture of anything used (or intended for use) in connection with the commission of an offence to which that section applies. Such items are known as instrumentalities of crime. Section 9(6) sets out the scope of the offences covered by that section. The effect of the amendment is to extend the scope of section 9 to any offence. This provision extends to England, Wales, Scotland and Northern Ireland.
211. The amendment will enable the United Kingdom to give effect to international conventions requiring the enforcement of foreign orders for the forfeiture of instrumentalities in relevant offences. These conventions are the United Nations Convention against Transnational Organised Crime (UNTOC), which was agreed in 2000, and the United Nations Convention against Corruption (UNCAC), which was agreed in 2003.
212. The current Order made under section 9 (the Criminal Justice (International Co-operation) Act 1990 (Enforcement of Overseas Forfeiture Orders) Order 1991) is limited to forfeiture orders in respect of drugs offences. The United Kingdom is unable to ratify the Conventions until all legislative requirements have been met.

#### *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)*.

*These notes refer to the Serious Organised Crime and Police Act 2005 (c.15) which received Royal Assent on 7th April 2005*

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.