Proceeds of Crime Act 2002

2002 CHAPTER 29

PART 8

INVESTIGATIONS

CHAPTER 2

ENGLAND AND WALES AND NORTHERN IRELAND

Production orders

345 Production orders

(1) A judge may, on an application made to him by an appropriate officer, make a production order if he is satisfied that each of the requirements for the making of the order is fulfilled.

(2) The application for a production order must state that—

(a) a person specified in the application is subject to a confiscation investigation or a money laundering investigation, or

(b) property specified in the application is subject to a civil recovery investigation.

(3) The application must also state that—

(a) the order is sought for the purposes of the investigation;

(b) the order is sought in relation to material, or material of a description, specified in the application;

(c) a person specified in the application appears to be in possession or control of the material.

(4) A production order is an order either—

(a) requiring the person the application for the order specifies as appearing to be in possession or control of material to produce it to an appropriate officer for him to take away, or

(b) requiring that person to give an appropriate officer access to the material,

within the period stated in the order.

(5) The period stated in a production order must be a period of seven days beginning with the day on which the order is made, unless it appears to the judge by whom the order is made that a longer or shorter period would be appropriate in the particular circumstances.

346 Requirements for making of production order

(1) These are the requirements for the making of a production order.

(2) There must be reasonable grounds for suspecting that—

(a) in the case of a confiscation investigation, the person the application for the order specifies as being subject to the investigation has benefited from his criminal conduct;

(b) in the case of a civil recovery investigation, the property the application for the order specifies as being subject to the investigation is recoverable property or associated property;

(c) in the case of a money laundering investigation, the person the application for the order specifies as being subject to the investigation has committed a money laundering offence.

(3) There must be reasonable grounds for believing that the person the application specifies as appearing to be in possession or control of the material so specified is in possession or control of it.

(4) There must be reasonable grounds for believing that the material is likely to be of substantial value (whether or not by itself) to the investigation for the purposes of which the order is sought.

(5) There must be reasonable grounds for believing that it is in the public interest for the material to be produced or for access to it to be given, having regard to—

(a) the benefit likely to accrue to the investigation if the material is obtained;

(b) the circumstances under which the person the application specifies as appearing to be in possession or control of the material holds it.

347 Order to grant entry

(1) This section applies if a judge makes a production order requiring a person to give an appropriate officer access to material on any premises.

(2) The judge may, on an application made to him by an appropriate officer and specifying the premises, make an order to grant entry in relation to the premises.

(3) An order to grant entry is an order requiring any person who appears to an appropriate officer to be entitled to grant entry to the premises to allow him to enter the premises to obtain access to the material.

348 Further provisions

(1) A production order does not require a person to produce, or give access to, privileged material.

(2) Privileged material is any material which the person would be entitled to refuse to produce on grounds of legal professional privilege in proceedings in the High Court.

(3) A production order does not require a person to produce, or give access to, excluded material.

(4) A production order has effect in spite of any restriction on the disclosure of information (however imposed).

(5) An appropriate officer may take copies of any material which is produced, or to which access is given, in compliance with a production order.

(6) Material produced in compliance with a production order may be retained for so long as it is necessary to retain it (as opposed to copies of it) in connection with the investigation for the purposes of which the order was made.

(7) But if an appropriate officer has reasonable grounds for believing that—
   (a) the material may need to be produced for the purposes of any legal proceedings, and
   (b) it might otherwise be unavailable for those purposes,

   it may be retained until the proceedings are concluded.

349 Computer information

(1) This section applies if any of the material specified in an application for a production order consists of information contained in a computer.

(2) If the order is an order requiring a person to produce the material to an appropriate officer for him to take away, it has effect as an order to produce the material in a form in which it can be taken away by him and in which it is visible and legible.

(3) If the order is an order requiring a person to give an appropriate officer access to the material, it has effect as an order to give him access to the material in a form in which it is visible and legible.

350 Government departments

(1) A production order may be made in relation to material in the possession or control of an authorised government department.

(2) An order so made may require any officer of the department (whether named in the order or not) who may for the time being be in possession or control of the material to comply with it.

(3) An order containing such a requirement must be served as if the proceedings were civil proceedings against the department.

(4) If an order contains such a requirement—
   (a) the person on whom it is served must take all reasonable steps to bring it to the attention of the officer concerned;
   (b) any other officer of the department who is in receipt of the order must also take all reasonable steps to bring it to the attention of the officer concerned.

(5) If the order is not brought to the attention of the officer concerned within the period stated in the order (in pursuance of section 345(4)) the person on whom it is served must report the reasons for the failure to—

(a) a judge entitled to exercise the jurisdiction of the Crown Court or (in Northern Ireland) a Crown Court judge, in the case of an order made for the purposes of a confiscation investigation or a money laundering investigation;

(b) a High Court judge, in the case of an order made for the purposes of a civil recovery investigation.

(6) An authorised government department is a government department, or a Northern Ireland department, which is an authorised department for the purposes of the Crown Proceedings Act 1947 (c. 44).

351 Supplementary

(1) An application for a production order or an order to grant entry may be made ex parte to a judge in chambers.

(2) Rules of court may make provision as to the practice and procedure to be followed in connection with proceedings relating to production orders and orders to grant entry.

(3) An application to discharge or vary a production order or an order to grant entry may be made to the court by—

(a) the person who applied for the order;

(b) any person affected by the order.

(4) The court—

(a) may discharge the order;

(b) may vary the order.

(5) If an accredited financial investigator, a constable or a customs officer applies for a production order or an order to grant entry, an application to discharge or vary the order need not be by the same accredited financial investigator, constable or customs officer.

(6) References to a person who applied for a production order or an order to grant entry must be construed accordingly.

(7) Production orders and orders to grant entry have effect as if they were orders of the court.

(8) Subsections (2) to (7) do not apply to orders made in England and Wales for the purposes of a civil recovery investigation.