



# Crime (International Co-operation) Act 2003

## 2003 CHAPTER 32

### PART 1

#### MUTUAL ASSISTANCE IN CRIMINAL MATTERS

### CHAPTER 4

#### INFORMATION ABOUT BANKING TRANSACTIONS

*Requests for information about banking transactions in England and Wales and Northern Ireland for use abroad*

## **32 Customer information**

- (1) This section applies where the Secretary of State receives a request from an authority mentioned in subsection (2) for customer information to be obtained in relation to a person who appears to him to be subject to an investigation in a participating country into serious criminal conduct.
- (2) The authority referred to in subsection (1) is the authority in that country which appears to the Secretary of State to have the function of making requests of the kind to which this section applies.
- (3) The Secretary of State may—
  - (a) direct a senior police officer to apply, or arrange for a constable to apply, for a customer information order,
  - (b) direct a senior customs officer to apply, or arrange for a customs officer to apply, for such an order.
- (4) A customer information order is an order made by a judge that a financial institution specified in the application for the order must, on being required to do so by notice in

*Status: Point in time view as at 01/11/2006.*

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writing given by the applicant for the order, provide any such customer information as it has relating to the person specified in the application.

- (5) A financial institution which is required to provide information under a customer information order must provide the information to the applicant for the order in such manner, and at or by such time, as the applicant requires.
- (6) Section 364 of the Proceeds of Crime Act 2002 (c. 29) (meaning of customer information), except subsections (2)(f) and (3)(i), has effect for the purposes of this section as if this section were included in Chapter 2 of Part 8 of that Act.
- (7) A customer information order has effect in spite of any restriction on the disclosure of information (however imposed).
- (8) Customer information obtained in pursuance of a customer information order is to be given to the Secretary of State and sent by him to the authority which made the request.

#### Commencement Information

**I1** [S. 32](#) in force at 1.11.2006 by [S.I. 2006/2811](#), [art. 2](#)

### 33 Making, varying or discharging customer information orders

- (1) A judge may make a customer information order, on an application made to him pursuant to a direction under section 32(3), if he is satisfied that—
  - (a) the person specified in the application is subject to an investigation in the country in question,
  - (b) the investigation concerns conduct which is serious criminal conduct,
  - (c) the conduct constitutes an offence in England and Wales or (as the case may be) Northern Ireland, or would do were it to occur there, and
  - (d) the order is sought for the purposes of the investigation.
- (2) The application may be made ex parte to a judge in chambers.
- (3) The application may specify—
  - (a) all financial institutions,
  - (b) a particular description, or particular descriptions, of financial institutions, or
  - (c) a particular financial institution or particular financial institutions.
- (4) The court may discharge or vary a customer information order on an application made by—
  - (a) the person who applied for the order,
  - (b) a senior police officer,
  - (c) a constable authorised by a senior police officer to make the application,
  - (d) a senior customs officer,
  - (e) a customs officer authorised by a senior customs officer to make the application.

#### Commencement Information

**I2** [S. 33](#) in force at 1.11.2006 by [S.I. 2006/2811](#), [art. 2](#)

*Status: Point in time view as at 01/11/2006.*

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## 34 Offences

- (1) A financial institution is guilty of an offence if without reasonable excuse it fails to comply with a requirement imposed on it under a customer information order.
- (2) A financial institution guilty of an offence under subsection (1) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (3) A financial institution is guilty of an offence if, in purported compliance with a customer information order, it—
  - (a) makes a statement which it knows to be false or misleading in a material particular, or
  - (b) recklessly makes a statement which is false or misleading in a material particular.
- (4) A financial institution guilty of an offence under subsection (3) is liable—
  - (a) on summary conviction, to a fine not exceeding the statutory maximum, or
  - (b) on conviction on indictment, to a fine.

### Commencement Information

I3 S. 34 in force at 1.11.2006 by S.I. 2006/2811, art. 2

## 35 Account information

- (1) This section applies where the Secretary of State receives a request from an authority mentioned in subsection (2) for account information to be obtained in relation to an investigation in a participating country into criminal conduct.
- (2) The authority referred to in subsection (1) is the authority in that country which appears to the Secretary of State to have the function of making requests of the kind to which this section applies.
- (3) The Secretary of State may—
  - (a) direct a senior police officer to apply, or arrange for a constable to apply, for an account monitoring order,
  - (b) direct a senior customs officer to apply, or arrange for a customs officer to apply, for such an order.
- (4) An account monitoring order is an order made by a judge that a financial institution specified in the application for the order must, for the period stated in the order, provide account information of the description specified in the order to the applicant in the manner, and at or by the time or times, stated in the order.
- (5) Account information is information relating to an account or accounts held at the financial institution specified in the application by the person so specified (whether solely or jointly with another).
- (6) An account monitoring order has effect in spite of any restriction on the disclosure of information (however imposed).
- (7) Account information obtained in pursuance of an account monitoring order is to be given to the Secretary of State and sent by him to the authority which made the request.

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#### Commencement Information

**I4** S. 35 in force at 1.11.2006 by S.I. 2006/2811, art. 2

### 36 Making, varying or discharging account monitoring orders

- (1) A judge may make an account monitoring order, on an application made to him in pursuance of a direction under section 35(3), if he is satisfied that—
  - (a) there is an investigation in the country in question into criminal conduct, and
  - (b) the order is sought for the purposes of the investigation.
- (2) The application may be made ex parte to a judge in chambers.
- (3) The application may specify information relating to—
  - (a) all accounts held by the person specified in the application for the order at the financial institution so specified,
  - (b) a particular description, or particular descriptions, of accounts so held, or
  - (c) a particular account, or particular accounts, so held.
- (4) The court may discharge or vary an account monitoring order on an application made by—
  - (a) the person who applied for the order,
  - (b) a senior police officer,
  - (c) a constable authorised by a senior police officer to make the application,
  - (d) a senior customs officer,
  - (e) a customs officer authorised by a senior customs officer to make the application.
- (5) Account monitoring orders have effect as if they were orders of the court.

#### Commencement Information

**I5** S. 36 in force at 1.11.2006 by S.I. 2006/2811, art. 2

*Requests for information about banking transactions in Scotland for use abroad*

### 37 Customer information

- (1) This section applies where the Lord Advocate receives a request from an authority mentioned in subsection (2) for customer information to be obtained in relation to a person who appears to him to be subject to an investigation in a participating country into serious criminal conduct.
- (2) The authority referred to in subsection (1) is the authority in that country which appears to the Lord Advocate to have the function of making requests of the kind to which this section applies.
- (3) The Lord Advocate may direct a procurator fiscal to apply for a customer information order.

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- (4) A customer information order is an order made by a sheriff that a financial institution specified in the application for the order must, on being required to do so by notice in writing given by the applicant for the order, provide any such customer information as it has relating to the person specified in the application.
- (5) A financial institution which is required to provide information under a customer information order must provide the information to the applicant for the order in such manner, and at or by such time, as the applicant requires.
- (6) Section 398 of the Proceeds of Crime Act 2002 (c. 29) (meaning of customer information), except subsections (2)(f) and (3)(i), has effect for the purposes of this section as if this section were included in Chapter 3 of Part 8 of that Act.
- (7) A customer information order has effect in spite of any restriction on the disclosure of information (however imposed).
- (8) Customer information obtained in pursuance of a customer information order is to be given to the Lord Advocate and sent by him to the authority which made the request.

#### Commencement Information

**I6** [S. 37](#) in force at 11.6.2006 by [S.S.I. 2006/281, art. 2](#)

### 38 Making, varying or discharging customer information orders

- (1) A sheriff may make a customer information order, on an application made to him pursuant to a direction under section 37(3), if he is satisfied that—
  - (a) the person specified in the application is subject to an investigation in the country in question,
  - (b) the investigation concerns conduct which is serious criminal conduct,
  - (c) the conduct constitutes an offence in Scotland, or would do were it to occur in Scotland, and
  - (d) the order is sought for the purposes of the investigation.
- (2) The application may be made ex parte to a sheriff in chambers.
- (3) The application may specify—
  - (a) all financial institutions,
  - (b) a particular description, or particular descriptions, of financial institutions, or
  - (c) a particular financial institution or particular financial institutions.
- (4) The court may discharge or vary a customer information order on an application made by the procurator fiscal.
- (5) Section 409 of the Proceeds of Crime Act 2002 (jurisdiction of sheriff) has effect for the purposes of this section as if this section were included in Chapter 3 of Part 8 of that Act.

#### Commencement Information

**I7** [S. 38](#) in force at 11.6.2006 by [S.S.I. 2006/281, art. 2](#)

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### 39 Offences

- (1) A financial institution is guilty of an offence if without reasonable excuse it fails to comply with a requirement imposed on it under a customer information order.
- (2) A financial institution guilty of an offence under subsection (1) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (3) A financial institution is guilty of an offence if, in purported compliance with a customer information order, it—
  - (a) makes a statement which it knows to be false or misleading in a material particular, or
  - (b) recklessly makes a statement which is false or misleading in a material particular.
- (4) A financial institution guilty of an offence under subsection (3) is liable—
  - (a) on summary conviction, to a fine not exceeding the statutory maximum, or
  - (b) on conviction on indictment, to a fine.

#### Commencement Information

**18** S. 39 in force at 11.6.2006 by S.S.I. 2006/281, art. 2

### 40 Account information

- (1) This section applies where the Lord Advocate receives a request from an authority mentioned in subsection (2) for account information to be obtained in relation to an investigation in a participating country into criminal conduct.
- (2) The authority referred to in subsection (1) is the authority in that country which appears to the Lord Advocate to have the function of making requests of the kind to which this section applies.
- (3) The Lord Advocate may direct a procurator fiscal to apply for an account monitoring order.
- (4) An account monitoring order is an order made by a sheriff that a financial institution specified in the application for the order must, for the period stated in the order, provide account information of the description specified in the order to the applicant in the manner, and at or by the time or times, stated in the order.
- (5) Account information is information relating to an account or accounts held at the financial institution specified in the application by the person so specified (whether solely or jointly with another).
- (6) An account monitoring order has effect in spite of any restriction on the disclosure of information (however imposed).
- (7) Account information obtained in pursuance of an account monitoring order is to be given to the Lord Advocate and sent by him to the authority which made the request.

#### Commencement Information

**19** S. 40 in force at 11.6.2006 by S.S.I. 2006/281, art. 2

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## 41 Making, varying or discharging account monitoring orders

- (1) A sheriff may make an account monitoring order, on an application made to him in pursuance of a direction under section 40(3), if he is satisfied that—
  - (a) there is an investigation in the country in question into criminal conduct, and
  - (b) the order is sought for the purposes of the investigation.
- (2) The application may be made ex parte to a sheriff in chambers.
- (3) The application may specify information relating to—
  - (a) all accounts held by the person specified in the application for the order at the financial institution so specified,
  - (b) a particular description, or particular descriptions, of accounts so held, or
  - (c) a particular account, or particular accounts, so held.
- (4) The court may discharge or vary an account monitoring order on an application made by the procurator fiscal.
- (5) Section 409 of the Proceeds of Crime Act 2002 (c. 29) (jurisdiction of sheriff) has effect for the purposes of this section as if this section were included in Chapter 3 of Part 8 of that Act.

### Commencement Information

**I10** S. 41 in force at 11.6.2006 by S.S.I. 2006/281, art. 2

### *Disclosure of information*

## 42 Offence of disclosure

- (1) This section applies where—
  - (a) a financial institution is specified in a customer information order or account monitoring order made in any part of the United Kingdom, or
  - (b) the Secretary of State or the Lord Advocate receives a request under section 13 for evidence to be obtained from a financial institution in connection with the investigation of an offence in reliance on Article 2 (requests for information on banking transactions) of the 2001 Protocol.
- (2) If the institution, or an employee of the institution, discloses any of the following information, the institution or (as the case may be) the employee is guilty of an offence.
- (3) That information is—
  - (a) that the request to obtain customer information or account information, or the request mentioned in subsection (1)(b), has been received,
  - (b) that the investigation to which the request relates is being carried out, or
  - (c) that, in pursuance of the request, information has been given to the authority which made the request.
- (4) An institution guilty of an offence under this section is liable—
  - (a) on summary conviction, to a fine not exceeding the statutory maximum,
  - (b) on conviction on indictment, to a fine.

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- (5) Any other person guilty of an offence under this section is liable—
- (a) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum, or to both,
  - (b) on conviction on indictment, to imprisonment for a term not exceeding five years or to a fine, or to both.

#### **Commencement Information**

**III** S. 42 in force at 1.11.2006 by S.I. 2006/2811, art. 2

### *Requests for information about banking transactions for use in UK*

#### **43 Information about a person's bank account**

- (1) If it appears to a judicial authority in the United Kingdom, on an application made by a prosecuting authority, that—
- (a) a person is subject to an investigation in the United Kingdom into serious criminal conduct,
  - (b) the person holds, or may hold, an account at a bank which is situated in a participating country, and
  - (c) the information which the applicant seeks to obtain is likely to be of substantial value for the purposes of the investigation,
- the judicial authority may request assistance under this section.
- (2) The judicial authorities are—
- (a) in relation to England and Wales, any judge or justice of the peace,
  - (b) in relation to Scotland, any sheriff,
  - (c) in relation to Northern Ireland, any judge or resident magistrate.
- (3) If it appears to a prosecuting authority mentioned in subsection (4) that paragraphs (a) to (c) of subsection (1) are met, the authority may itself request assistance under this section.
- (4) The prosecuting authorities are—
- (a) in relation to England and Wales and Northern Ireland, a prosecuting authority designated by an order made by the Secretary of State,
  - (b) in relation to Scotland, the Lord Advocate or a procurator fiscal.
- (5) The assistance that may be requested under this section is any assistance in obtaining from a participating country one or more of the following—
- (a) information as to whether the person in question holds any accounts at any banks situated in the participating country,
  - (b) details of any such accounts,
  - (c) details of transactions carried out in any period specified in the request in respect of any such accounts.
- (6) A request for assistance under this section must—
- (a) state the grounds on which the authority making the request thinks that the person in question may hold any account at a bank which is situated in a participating country and (if possible) specify the bank or banks in question,



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- (b) state the grounds on which the authority making the request considers that the information sought to be obtained is likely to be of substantial value for the purposes of the investigation, and
  - (c) include any information which may facilitate compliance with the request.
- (7) For the purposes of this section, a person holds an account if—
- (a) the account is in his name or is held for his benefit, or
  - (b) he has a power of attorney in respect of the account.

In relation to Scotland, a power of attorney includes a factory and commission.

#### Commencement Information

**112** S. 43 in force at 1.11.2006 by S.I. 2006/2811, art. 3

## 44 Monitoring banking transactions

- (1) If it appears to a judicial authority in the United Kingdom, on an application made by a prosecuting authority, that the information which the applicant seeks to obtain is relevant to an investigation in the United Kingdom into criminal conduct, the judicial authority may request assistance under this section.
- (2) The judicial authorities are—
  - (a) in relation to England and Wales, any judge or justice of the peace,
  - (b) in relation to Scotland, any sheriff,
  - (c) in relation to Northern Ireland, any judge or resident magistrate.
- (3) If it appears to a prosecuting authority mentioned in subsection (4) that the information which it seeks to obtain is relevant to an investigation into criminal conduct, the authority may itself request assistance under this section.
- (4) The prosecuting authorities are—
  - (a) in relation to England and Wales and Northern Ireland, a prosecuting authority designated by an order made by the Secretary of State,
  - (b) in relation to Scotland, the Lord Advocate or a procurator fiscal.
- (5) The assistance that may be requested under this section is any assistance in obtaining from a participating country details of transactions to be carried out in any period specified in the request in respect of any accounts at banks situated in that country.

#### Commencement Information

**113** S. 44 in force at 1.11.2006 by S.I. 2006/2811, art. 3

## 45 Sending requests for assistance

- (1) A request for assistance under section 43 or 44, other than one to which subsection (3) or (4) applies, is to be sent to the Secretary of State for forwarding—
  - (a) to a court specified in the request and exercising jurisdiction in the place where the information is to be obtained, or

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- (b) to any authority recognised by the participating country in question as the appropriate authority for receiving requests for assistance of the kind to which this section applies.
- (2) But in cases of urgency the request may be sent to a court referred to in subsection (1) (a).
- (3) Such a request for assistance by the Lord Advocate is to be sent to a court or authority mentioned in subsection (1)(a) or (b).
- (4) Such a request for assistance by a sheriff or a procurator fiscal is to be sent to such a court or authority, or to the Lord Advocate for forwarding to such a court or authority.

#### **Commencement Information**

**I14** S. 45 in force at 1.11.2006 by S.I. 2006/2811, art. 3

### *General*

## **46 Interpretation of Chapter 4**

- (1) In this Chapter—
  - “the court” means the Crown Court or, in Scotland, the sheriff,
  - “senior police officer” means a police officer who is not below the rank of superintendent and “senior customs officer” means a customs officer who is not below the grade designated by the Commissioners of Customs and Excise as equivalent to that rank.
- (2) The following provisions apply for the purposes of this Chapter.
- (3) Serious criminal conduct means conduct which constitutes—
  - (a) an offence to which paragraph 3 of Article 1 (request for information on bank accounts) of the 2001 Protocol applies, or
  - (b) an offence specified in an order made by the Secretary of State or, in relation to Scotland, the Scottish Ministers for the purpose of giving effect to any decision of the Council of the European Union under paragraph 6 of that Article.
- (4) A financial institution—
  - (a) means a person who is carrying on business in the regulated sector, and
  - (b) in relation to a customer information order or an account monitoring order, includes a person who was carrying on business in the regulated sector at a time which is the time to which any requirement for him to provide information under the order is to relate.

“Business in the regulated sector” is to be interpreted in accordance with Schedule 9 to the Proceeds of Crime Act 2002 (c. 29).
- (5) A judge means—
  - (a) in relation to England and Wales, a judge entitled to exercise the jurisdiction of the Crown Court,
  - (b) in relation to Northern Ireland, a Crown Court judge.

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**Commencement Information**

**I15** S. 46 in force at 1.11.2006 by S.I. 2006/2811, art. 3

**Status:**

Point in time view as at 01/11/2006.

**Changes to legislation:**

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