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## STATUTORY INSTRUMENTS

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# 2013 No. 2605

## The Proceeds of Crime Act 2002 (External Investigations) Order 2013

PROSPECTIVE

### PART 1

#### Interpretation

2.—(1) An “appropriate officer” means an NCA officer or a relevant Director.

(2) “Document”, “excluded material” and “premises” have the same meanings as in the Police and Criminal Evidence Act 1984(1) or (in relation to Northern Ireland) the Police and Criminal Evidence (Northern Ireland) Order 1989(2).

(3) “Financial institution” means a person carrying on a business in the regulated sector.

(4) But a person who ceases to carry on a business in the regulated sector (whether by virtue of paragraph 5 of Schedule 9 to the Proceeds of Crime Act 2002(3) or otherwise) is to continue to be treated as a financial institution for the purposes of any requirement under—

- (a) a customer information order, or
- (b) an account monitoring order,

to provide information which relates to a time when the person was a financial institution.

(5) References in this Part to a business in the regulated sector must be construed in accordance with Schedule 9 to the Proceeds of Crime Act 2002.

(6) “NCA” means National Crime Agency.

(7) A “relevant Director”—

- (a) in relation to England and Wales, means the Director of Public Prosecutions, the Director of Revenue and Customs Prosecutions or the Director of the Serious Fraud Office; and
- (b) in relation to Northern Ireland, means the Director of the Serious Fraud Office or the Director of Public Prosecutions for Northern Ireland.

(8) For the purposes of this Part—

- (a) anything which the Director of Public Prosecutions, or the Director of Revenue and Customs Prosecutions, or the Director of the Serious Fraud Office, is authorised or required to do under, or in relation to, this Part may be done by a member of their staff if the member of staff is authorised by the Director concerned (generally or specifically) for that purpose,

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(1) 1984 c. 60.

(2) S.I. 1989/1341 (N.I. 12).

(3) 2002 c. 29.

*Status: This version of this part contains provisions that are prospective.*

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(b) anything which a relevant Director, or a member of their staff, is authorised or required to do under, or in relation to, this Part may be done by a person providing services under arrangements made by the relevant Director if the person is authorised by the relevant Director (whether generally or specifically) for that purpose.

(9) But paragraph (8)(b) does not apply to the functions of the Director of Public Prosecutions for Northern Ireland.

(10) References to notice in writing include references to notice given by electronic means.

(11) A “senior appropriate officer” means—

- (a) the Director General of NCA, or
- (b) any NCA officer authorised by the Director General (whether generally or specifically) for this purpose.

#### Commencement Information

**II** Art. 2 in force at 11.11.2013, see [art. 1\(1\)](#)

#### Scope of Part 1

**3.—(1)** This Part has effect for the purpose of enabling the Director General of NCA or a relevant Director to assist an external investigation by obtaining orders and warrants from the High Court.

(2) The powers conferred by this Part are exercisable in relation to property only if the Director General of NCA or the relevant Director believes paragraph (3) applies in relation to—

- (a) the country or territory of the overseas authority carrying out the external investigation, and
- (b) England and Wales or (if the powers are to be exercised in Northern Ireland) Northern Ireland.

(3) This paragraph applies if—

- (a) a criminal investigation in connection with the property has not begun,
- (b) a criminal investigation in connection with the property has begun but it is unlikely criminal proceedings will be brought, or
- (c) criminal proceedings brought in connection with the property have been concluded without an order having been made in relation to the property.

(4) Criminal proceedings have been concluded when—

- (a) the person against whom the criminal proceedings are brought is acquitted,
- (b) the person against whom the criminal proceedings are brought is pardoned,
- (c) the person against whom the criminal proceedings are brought is convicted and sentenced,
- (d) the person against whom the criminal proceedings are brought is convicted and the conviction is quashed,
- (e) the criminal proceedings are discontinued, or
- (f) any jury is discharged without a finding otherwise than in circumstances where the criminal proceedings are continued without a jury.

(5) This Part does not apply to an external investigation into whether a money laundering offence has been committed.

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#### Commencement Information

**I2** Art. 3 in force at 11.11.2013, see [art. 1\(1\)](#)

#### Action on receipt of request in relation to an external investigation

**4.—(1)** The Secretary of State may refer to the Director General of NCA or a relevant Director a request for assistance in relation to an external investigation.

**(2)** The Director General of NCA or a relevant Director may on receipt of the request for assistance act under this Part.

#### Commencement Information

**I3** Art. 4 in force at 11.11.2013, see [art. 1\(1\)](#)

#### Offences of prejudicing external investigation

**5.—(1)** This article applies if a person knows or suspects that an appropriate officer is acting (or proposing to act) under this Part in connection with an external investigation.

**(2)** A person commits an offence if—

- (a)** they make a disclosure which is likely to prejudice the external investigation, or
- (b)** they falsify, conceal, destroy or otherwise dispose of, or cause or permit the falsification, concealment, destruction or disposal of, documents which are relevant to the external investigation.

**(3)** A person does not commit an offence under paragraph (2)(a) if—

- (a)** they do not know or suspect that the disclosure is likely to prejudice the external investigation,
- (b)** the disclosure is made pursuant to this Part,
- (c)** the disclosure is made pursuant to the Proceeds of Crime Act 2002 (External Requests and Orders) Order 2005(4),
- (d)** the disclosure is made in the exercise of a function under the Proceeds of Crime Act 2002 or any other enactment relating to criminal conduct or benefit from criminal conduct or in compliance with a requirement imposed under or by virtue of the Proceeds of Crime Act 2002,
- (e)** the disclosure is of a matter within section 333A(2) or (3)(a) (money laundering: tipping off) of the Proceeds of Crime Act 2002 and the information on which the disclosure is based came to the person in the course of a business in the regulated sector, or
- (f)** they are a professional legal adviser and the disclosure falls within paragraph (4).

**(4)** A disclosure falls within this paragraph if it is a disclosure—

- (a)** to (or to a representative of) a client of the professional legal adviser in connection with the giving by the adviser of legal advice to the client, or
- (b)** to any person in connection with legal proceedings or contemplated legal proceedings.

**(5)** But a disclosure does not fall within paragraph (4) if it is made with the intention of furthering a criminal purpose.

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- (6) A person does not commit an offence under paragraph (2)(b) if—
- (a) they do not know or suspect that the documents are relevant to the external investigation, or
  - (b) they do not intend to conceal any facts disclosed by the documents from any appropriate officer acting in connection with the external investigation.
- (7) A person guilty of an offence under paragraph (2) 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, or
  - (b) on conviction on indictment, to imprisonment for a term not exceeding five years or to a fine or to both.

#### Commencement Information

**I4** Art. 5 in force at 11.11.2013, see [art. 1\(1\)](#)

#### Production orders

**6.—(1)** A High Court judge may, on an application made to them by an appropriate officer, make a production order if the judge 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 property specified in the application is subject to an external investigation and the condition in article 3(2) is met in respect of the property.

(3) The application must also state that—

- (a) the order is sought for the purposes of the external 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 the material to produce it to an appropriate officer for the appropriate officer 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 High Court judge by whom the order is made that a longer or shorter period would be appropriate in the particular circumstances.

#### Commencement Information

**I5** Art. 6 in force at 11.11.2013, see [art. 1\(1\)](#)

#### Requirements for making of production order

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

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(2) There must be reasonable grounds for suspecting that the property the application for the order specifies as being subject to the external investigation is property obtained as a result of or in connection with criminal conduct.

(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 external investigation.

(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 external 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.

#### Commencement Information

**I6** Art. 7 in force at 11.11.2013, see [art. 1\(1\)](#)

### Order to grant entry

**8.—(1)** This article applies if a High Court judge makes a production order requiring a person to give an appropriate officer access to material on any premises.

(2) The High Court judge may, on an application made to them 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 the appropriate officer to enter the premises to obtain access to the material.

#### Commencement Information

**I7** Art. 8 in force at 11.11.2013, see [art. 1\(1\)](#)

### Further provisions

**9.—(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 external investigation.

(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

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(b) it might otherwise be unavailable for those purposes, it may be retained until the proceedings are concluded.

(8) Material produced in compliance with a production order may be sent to the overseas authority which made the request for assistance or to the Secretary of State for forwarding to that overseas authority.

#### Commencement Information

**18** Art. 9 in force at 11.11.2013, see [art. 1\(1\)](#)

#### Computer information

**10.**—(1) This article 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 the appropriate officer to take away, it has effect as an order to produce the material in a form in which it can be taken away by the appropriate officer 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 the appropriate officer access to the material in a form in which it is visible and legible.

#### Commencement Information

**19** Art. 10 in force at 11.11.2013, see [art. 1\(1\)](#)

#### Government departments

**11.**—(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 article 6(4)) the person on whom it is served must report the reasons for the failure to a High Court judge.

(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<sup>(5)</sup>.

(5) 1947 c. 44.

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### Commencement Information

**110** Art. 11 in force at 11.11.2013, see [art. 1\(1\)](#)

### Supplementary

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

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

- (a) the person who applied for the order,
- (b) any person affected by the order.

(3) The High Court—

- (a) may discharge the order,
- (b) may vary the order.

(4) If an NCA 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 NCA officer.

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

(6) Production orders and orders to grant entry have effect as if they were orders of the High Court.

(7) Paragraphs (2) to (6) do not apply to orders made in England and Wales.

### Commencement Information

**111** Art. 12 in force at 11.11.2013, see [art. 1\(1\)](#)

### Search and seizure warrants

**13.**—(1) A High Court judge may, on an application made to them by an appropriate officer, issue a search and seizure warrant if the judge is satisfied—

- (a) that property specified in the application is subject to an external investigation,
- (b) the condition in article 3(2) is met in respect of the property, and
- (c) either of the requirements in paragraph (4) is fulfilled.

(2) The application must also state that the warrant is sought —

- (a) for the purposes of the external investigation,
- (b) in relation to the premises specified in the application,
- (c) in relation to material specified in the application, or that there are reasonable grounds for believing that there is material falling within article 14(6) on the premises.

(3) A search and seizure warrant is a warrant authorising an appropriate person—

- (a) to enter and search the premises specified in the application for the warrant, and
- (b) to seize and retain any material found there which is likely to be of substantial value (whether or not by itself) to the external investigation.

(4) The requirements for the issue of a search and seizure warrant are—



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- (a) that a production order made in relation to material has not been complied with and there are reasonable grounds for believing that the material is on the premises specified in the application for the warrant, or
  - (b) that article 14 is satisfied in relation to the warrant.
- (5) An “appropriate person” is an NCA officer or a member of the staff of the relevant Director.

#### Commencement Information

**I12** Art. 13 in force at 11.11.2013, see [art. 1\(1\)](#)

#### Requirements where production order not available

- 14.**—(1) This article is satisfied in relation to a search and seizure warrant if—
- (a) paragraph (2) applies, and
  - (b) either the first or the second set of conditions is complied with.
- (2) This paragraph applies if there are reasonable grounds for suspecting that the property specified in the application for the warrant is property obtained as a result of or in connection with criminal conduct.
- (3) The first set of conditions is that there are reasonable grounds for believing that—
- (a) any material on the premises specified in the application for the warrant is likely to be of substantial value (whether or not by itself) to the external investigation,
  - (b) it is in the public interest for the material to be obtained, having regard to the benefit likely to accrue to the external investigation if the material is obtained, and
  - (c) it would not be appropriate to make a production order for any one or more of the reasons in paragraph (4).
- (4) The reasons are—
- (a) that it is not practicable to communicate with any person against whom the production order could be made,
  - (b) that it is not practicable to communicate with any person who would be required to comply with an order to grant entry to the premises,
  - (c) that the external investigation might be seriously prejudiced unless an appropriate person is able to secure immediate access to the material.
- (5) The second set of conditions is that—
- (a) there are reasonable grounds for believing that there is material on the premises specified in the application for the warrant and that the material falls within paragraph (6),
  - (b) there are reasonable grounds for believing that it is in the public interest for the material to be obtained, having regard to the benefit likely to accrue to the external investigation if the material is obtained, and
  - (c) any one or more of the requirements in paragraph (7) is met.
- (6) Material falls within this paragraph if it cannot be identified at the time of the application but it—
- (a) relates to the property specified in the application, the question whether it is property obtained as a result of or in connection with criminal conduct, the question as to who holds any such property, any question as to whether the person who appears to hold any such property holds other property which is property obtained as a result of or in



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connection with criminal conduct, or any question as to the extent or whereabouts of any property mentioned in this paragraph, and

(b) is likely to be of substantial value (whether or not by itself) to the external investigation.

(7) The requirements are—

(a) that it is not practicable to communicate with any person entitled to grant entry to the premises,

(b) that entry to the premises will not be granted unless a warrant is produced,

(c) that the external investigation might be seriously prejudiced unless an appropriate person arriving at the premises is able to secure immediate entry to them.

(8) An “appropriate person” is an NCA officer or a member of the staff of the relevant Director.

#### **Commencement Information**

**I13** Art. 14 in force at 11.11.2013, see [art. 1\(1\)](#)

#### **Further provisions: general**

**15.**—(1) This article applies to search and seizure warrants sought for the purposes of an external investigation.

(2) An application for a warrant may be made ex parte to a High Court judge in chambers.

(3) A warrant may be issued subject to conditions.

(4) A search and seizure warrant does not confer the right to seize privileged material.

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

(6) A search and seizure warrant does not confer the right to seize excluded material.

(7) A warrant continues in force until the end of the period of one month starting with the day on which it is issued.

(8) A warrant authorises the person it names to require any information which is held in a computer and is accessible from the premises specified in the application for the warrant, and which the named person believes relates to any matter relevant to the external investigation, to be produced in a form—

(a) in which it can be taken away, and

(b) in which it is visible and legible.

(9) A warrant may include provision authorising a person who is exercising powers under it to do other things which—

(a) are specified in the warrant, and

(b) need to be done in order to give effect to it.

(10) Copies may be taken of any material seized under a warrant.

(11) Material seized under a warrant may be retained for so long as it is necessary to retain it (as opposed to copies of it) in connection with the external investigation.

(12) But if the 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.

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(13) Material seized under a warrant may be sent to the overseas authority which made the request for assistance or to the Secretary of State for forwarding to that overseas authority.

#### Commencement Information

**I14** Art. 15 in force at 11.11.2013, see [art. 1\(1\)](#)

#### Disclosure orders

**16.—(1)** A High Court judge may, on an application made to them by an appropriate officer, make a disclosure order if the judge is satisfied that each of the requirements for the making of the order is fulfilled.

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

- (a) property specified in the application is subject to an external investigation,
- (b) the order is sought for the purposes of the investigation, and
- (c) the condition in article 3(2) is met in respect of the property.

(3) A disclosure order is an order authorising an appropriate officer to give to any person the appropriate officer considers has relevant information notice in writing requiring them to do, with respect to any matter relevant to the external investigation, any or all of the following—

- (a) answer questions, either at a time specified in the notice or at once, at a place so specified,
- (b) provide information specified in the notice, by a time and in a manner so specified,
- (c) produce documents, or documents of a description, specified in the notice, either at or by a time so specified or at once, and in a manner so specified.

(4) Relevant information is information (whether or not contained in a document) which the appropriate officer concerned considers to be relevant to the external investigation.

(5) A person is not bound to comply with a requirement imposed by a notice given under a disclosure order unless evidence of authority to give the notice is produced to them.

#### Commencement Information

**I15** Art. 16 in force at 11.11.2013, see [art. 1\(1\)](#)

#### Requirements for making of disclosure order

**17.—(1)** These are the requirements for the making of a disclosure order.

(2) There must be reasonable grounds for suspecting that the property specified in the application for the order is property obtained as a result of or in connection with criminal conduct.

(3) There must be reasonable grounds for believing that information which may be provided in compliance with a requirement imposed under the order is likely to be of substantial value (whether or not by itself) to the external investigation.

(4) There must be reasonable grounds for believing that it is in the public interest for the information to be provided, having regard to the benefit likely to accrue to the external investigation if the information is obtained.

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### Commencement Information

**I16** Art. 17 in force at 11.11.2013, see [art. 1\(1\)](#)

### Offences

**18.—(1)** A person commits an offence if without reasonable excuse they fail to comply with a requirement imposed on them under a disclosure order.

(2) A person guilty of an offence under paragraph (1) is liable on summary conviction to—

- (a) imprisonment for a term not exceeding six months,
- (b) a fine not exceeding level 5 on the standard scale, or
- (c) both.

(3) A person commits an offence if, in purported compliance with a requirement imposed on them under a disclosure order, they—

- (a) make a statement which they know to be false or misleading in a material particular, or
- (b) recklessly make a statement which is false or misleading in a material particular.

(4) A person guilty of an offence under paragraph (3) 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, or
- (b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both.

### Commencement Information

**I17** Art. 18 in force at 11.11.2013, see [art. 1\(1\)](#)

### Statements

**19.—(1)** A statement made by a person in response to a requirement imposed on them under a disclosure order may not be used in evidence against them in criminal proceedings.

(2) But paragraph (1) does not apply—

- (a) in the case of proceedings under Part 2 or 4 of the Proceeds of Crime Act 2002<sup>(6)</sup>,
- (b) in the case of proceedings under Part 2 or 4 of the Proceeds of Crime Act 2002 (External Requests and Orders) Order 2005<sup>(7)</sup>,
- (c) on a prosecution for an offence under article 18(1) or (3) of this Order,
- (d) on a prosecution for an offence under section 359(1) or (3) of the Proceeds of Crime Act 2002,
- (e) on a prosecution for an offence under section 5 of the Perjury Act 1911<sup>(8)</sup> or Article 10 of the Perjury (Northern Ireland) Order 1979<sup>(9)</sup> (false statements), or
- (f) on a prosecution for some other offence where, in giving evidence, the person makes a statement inconsistent with the statement mentioned in paragraph (1).

<sup>(6)</sup> 2002 c. 29.

<sup>(7)</sup> S.I. 2005/3181.

<sup>(8)</sup> 1911 c. 6.

<sup>(9)</sup> S.I. 1979/1714 (N.I. 19).

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- (3) A statement may not be used by virtue of paragraph (2)(f) against a person unless—
- (a) evidence relating to it is adduced, or
  - (b) a question relating to it is asked,

by them or on their behalf in the proceedings arising out of the prosecution.

#### Commencement Information

**I18** Art. 19 in force at 11.11.2013, see [art. 1\(1\)](#)

#### Further provisions

**20.**—(1) A disclosure order does not confer the right to require a person to answer any privileged question, provide any privileged information or produce any privileged document, except that a lawyer may be required to provide the name and address of their client.

(2) A privileged question is a question which the person would be entitled to refuse to answer on grounds of legal professional privilege in proceedings in the High Court.

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

(4) 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.

(5) A disclosure order does not confer the right to require a person to produce excluded material.

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

(7) An appropriate officer may take copies of any documents produced in compliance with a requirement to produce them which is imposed under a disclosure order.

(8) Documents so produced may be retained for so long as it is necessary to retain them (as opposed to a copy of them) in connection with the external investigation.

(9) But if an appropriate officer has reasonable grounds for believing that—

- (a) the documents may need to be produced for the purposes of any legal proceedings, and
- (b) they might otherwise be unavailable for those purposes,

they may be retained until the proceedings are concluded.

(10) Material produced in compliance with a disclosure order may be sent to the overseas authority which made the request for assistance or to the Secretary of State for forwarding to that overseas authority.

#### Commencement Information

**I19** Art. 20 in force at 11.11.2013, see [art. 1\(1\)](#)

#### Supplementary

**21.**—(1) An application for a disclosure order may be made ex parte to a High Court judge in chambers.

(2) An application to discharge or vary a disclosure order may be made to the High Court by—

- (a) the person who applied for the order,

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- (b) any person affected by the order.
- (3) The High Court—
  - (a) may discharge the order,
  - (b) may vary the order.
- (4) If an NCA officer applies for a disclosure order, an application to discharge or vary the order need not be by the same NCA officer.
- (5) References to a person who applied for a disclosure order must be construed accordingly.
- (6) Paragraphs (2) to (5) do not apply to orders made in England and Wales.

#### Commencement Information

**I20** Art. 21 in force at 11.11.2013, see [art. 1\(1\)](#)

#### Customer information orders

**22.**—(1) A High Court judge may, on an application made to them by an appropriate officer, make a customer information order if the judge is satisfied that each of the requirements for the making of the order is fulfilled.

- (2) The application for a customer information order must state that—
  - (a) the property specified in the application is subject to an external investigation,
  - (b) the condition in article 3(2) is met in respect of the property, and
  - (c) a person specified in the application appears to hold the property.
- (3) The application must also state that—
  - (a) the order is sought for the purposes of the external investigation,
  - (b) the order is sought against the financial institution or financial institutions specified in the application.
- (4) An application for a customer information order 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.
- (5) A customer information order is an order that a financial institution covered by the application for the order must, on being required to do so by notice in writing given by an appropriate officer, provide any such customer information as it has relating to the person specified in the application.
- (6) A financial institution which is required to provide information under a customer information order must provide the information to an appropriate officer in such manner, and at or by such time, as an appropriate officer requires.
- (7) If a financial institution on which a requirement is imposed by a notice given under a customer information order requires the production of evidence of authority to give the notice, it is not bound to comply with the requirement unless evidence of the authority has been produced to it.

#### Commencement Information

**I21** Art. 22 in force at 11.11.2013, see [art. 1\(1\)](#)

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### Meaning of customer information

**23.—(1)** “Customer information”, in relation to a person and a financial institution, is information whether the person holds, or has held, an account or accounts or any safe deposit box at the financial institution (whether solely or jointly with another) and (if so) information as to—

- (a) the matters specified in paragraph (2) if the person is an individual,
  - (b) the matters specified in paragraph (3) if the person is a company or limited liability partnership or a similar body incorporated or otherwise established outside the United Kingdom.
- (2) The matters referred to in paragraph (1)(a) are—
- (a) the account number or numbers or the number of any safe deposit box,
  - (b) the person’s full name,
  - (c) their date of birth,
  - (d) their most recent address and any previous addresses,
  - (e) in the case of an account or accounts, the date or dates on which they began to hold the account or accounts and, if they have ceased to hold the account or any of the accounts, the date or dates on which they did so,
  - (f) in the case of any safe deposit box, the date on which the box was made available to them and if the box has ceased to be available to them the date on which it so ceased,
  - (g) such evidence of identity as was obtained by the financial institution under or for the purposes of any legislation relating to money laundering,
  - (h) the full name, date of birth and most recent address, and any previous addresses, of any person who holds, or has held, an account at the financial institution jointly with them,
  - (i) the account number or numbers of any other account or accounts held at the financial institution to which they are a signatory and details of the person holding the other account or accounts.
- (3) The matters referred to in paragraph (1)(b) are—
- (a) the account number or numbers or the number of any safe deposit box,
  - (b) the person’s full name,
  - (c) a description of any business which the person carries on,
  - (d) the country or territory in which it is incorporated or otherwise established and any number allocated to it under the Companies Act 2006<sup>(10)</sup> or corresponding legislation of any country or territory outside the United Kingdom,
  - (e) any number assigned to it for the purposes of value added tax in the United Kingdom,
  - (f) its registered office, and any previous registered offices, under the Companies Act 2006 (or corresponding earlier legislation) or anything similar under corresponding legislation of any country or territory outside the United Kingdom,
  - (g) its registered office, and any previous registered offices, under the Limited Liability Partnerships Act 2000<sup>(11)</sup> or anything similar under corresponding legislation of any country or territory outside Great Britain,
  - (h) in the case of an account or accounts, the date or dates on which it began to hold the account or accounts and, if it has ceased to hold the account or any of the accounts, the date or dates on which it did so,

<sup>(10)</sup> 2006 c. 46.

<sup>(11)</sup> 2000 c. 12.

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- (i) in the case of any safe deposit box, the date on which the box was made available to it and if the box has ceased to be available to it the date on which it so ceased,
  - (j) such evidence of identity as was obtained by the financial institution under or for the purposes of any legislation relating to money laundering,
  - (k) the full name, date of birth and most recent address and any previous addresses of any person who is a signatory to the account or any of the accounts.
- (4) Money laundering is an act which—
- (a) constitutes an offence under section 327, 328 or 329 of the Proceeds of Crime Act 2002<sup>(12)</sup> or section 18 of the Terrorism Act 2000<sup>(13)</sup>,
  - (b) constitutes an offence specified in section 415(1A) of the Proceeds of Crime Act 2002, or
  - (c) would constitute an offence specified in paragraph (a) or (b) if done in the United Kingdom.
- (5) A “safe deposit box” includes any procedure under which a financial institution provides a facility to hold items for safe keeping on behalf of another person.

#### Commencement Information

**I22** Art. 23 in force at 11.11.2013, see [art. 1\(1\)](#)

#### Requirements for making of customer information order

- 24.**—(1) These are the requirements for the making of a customer information order.
- (2) There must be reasonable grounds for suspecting that—
- (a) the property specified in the application for the order is property obtained as a result of or in connection with criminal conduct,
  - (b) the person specified in the application holds all or some of the property.
- (3) There must be reasonable grounds for believing that customer information which may be provided in compliance with the order is likely to be of substantial value (whether or not by itself) to the external investigation.
- (4) There must be reasonable grounds for believing that it is in the public interest for the customer information to be provided, having regard to the benefit likely to accrue to the external investigation if the information is obtained.

#### Commencement Information

**I23** Art. 24 in force at 11.11.2013, see [art. 1\(1\)](#)

#### Offences

- 25.**—(1) A financial institution commits 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 paragraph (1) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(12) 2002 c. 29.

(13) 2000 c. 11.



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(3) A financial institution commits 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 paragraph (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

**I24** Art. 25 in force at 11.11.2013, see [art. 1\(1\)](#)

#### Statements

**26.**—(1) A statement made by a financial institution in response to a customer information order may not be used in evidence against it in criminal proceedings.

- (2) But paragraph (1) does not apply—
- (a) in the case of proceedings under Part 2 or 4 of the Proceeds of Crime Act 2002,
  - (b) in the case of proceedings under Part 2 or 4 of the Proceeds of Crime Act 2002 (External Requests and Orders) Order 2005(14),
  - (c) on a prosecution for an offence under article 25(1) or (3) of this Order,
  - (d) on a prosecution for an offence under section 366(1) or (3) of the Proceeds of Crime Act 2002, or
  - (e) on a prosecution for some other offence where, in giving evidence, the financial institution makes a statement inconsistent with the statement mentioned in paragraph (1).
- (3) A statement may not be used by virtue of paragraph (2)(e) against a financial institution unless—
- (a) evidence relating to it is adduced, or
  - (b) a question relating to it is asked,

by or on behalf of the financial institution in the proceedings arising out of the prosecution.

#### Commencement Information

**I25** Art. 26 in force at 11.11.2013, see [art. 1\(1\)](#)

#### Disclosure of information

**27.** A customer information order has effect in spite of any restriction on the disclosure of information (however imposed).

#### Commencement Information

**I26** Art. 27 in force at 11.11.2013, see [art. 1\(1\)](#)

## Supplementary

**28.**—(1) An application for a customer information order may be made ex parte to a High Court judge in chambers.

(2) An application to discharge or vary a customer information order may be made to the High Court by—

- (a) the person who applied for the order,
- (b) any person affected by the order.

(3) The High Court—

- (a) may discharge the order,
- (b) may vary the order.

(4) If an NCA officer applies for a customer information order, an application to discharge or vary the order need not be by the same NCA officer.

(5) References to a person who applied for a customer information order must be construed accordingly.

(6) An NCA officer may not make an application for a customer information order or an application to vary such an order unless they are a senior appropriate officer or they are authorised to do so by a senior appropriate officer.

(7) Paragraphs (2) to (5) do not apply to orders made in England and Wales.

### Commencement Information

**I27** Art. 28 in force at 11.11.2013, see [art. 1\(1\)](#)

## Account monitoring orders

**29.**—(1) A High Court judge may, on an application made to them by an appropriate officer, make an account monitoring order if the judge is satisfied that each of the requirements for the making of the order is fulfilled.

(2) The application for an account monitoring order must state that—

- (a) property specified in the application is subject to an external investigation,
- (b) the condition in article 3(2) is met in respect of the property, and
- (c) a person specified in the application appears to hold the property.

(3) The application must also state that—

- (a) the order is sought for the purposes of the external investigation,
- (b) the order is sought against the financial institution specified in the application in relation to account information of the description so specified.

(4) 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).

(5) The application for an account monitoring order 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.

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(6) An account monitoring order is an order that the 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 an appropriate officer in the manner, and at or by the time or times, stated in the order.

(7) The period stated in an account monitoring order must not exceed the period of 90 days beginning with the day on which the order is made.

#### Commencement Information

**I28** Art. 29 in force at 11.11.2013, see [art. 1\(1\)](#)

#### Requirements for making of account monitoring order

**30.**—(1) These are the requirements for the making of an account monitoring order.

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

- (a) the property specified in the application for the order is property obtained as a result of or in connection with criminal conduct,
- (b) the person specified in the application holds all or some of the property.

(3) There must be reasonable grounds for believing that account information which may be provided in compliance with the order is likely to be of substantial value (whether or not by itself) to the external investigation.

(4) There must be reasonable grounds for believing that it is in the public interest for the account information to be provided, having regard to the benefit likely to accrue to the external investigation if the information is obtained.

#### Commencement Information

**I29** Art. 30 in force at 11.11.2013, see [art. 1\(1\)](#)

#### Statements

**31.**—(1) A statement made by a financial institution in response to an account monitoring order may not be used in evidence against it in criminal proceedings.

(2) But paragraph (1) does not apply—

- (a) in the case of proceedings under Part 2 or 4 of the Proceeds of Crime Act 2002<sup>(15)</sup>,
- (b) in the case of proceedings under Part 2 or 4 of the Proceeds of Crime Act 2002 (External Requests and Orders) Order 2005<sup>(16)</sup>,
- (c) in the case of proceedings for contempt of court, or
- (d) on a prosecution for an offence where, in giving evidence, the financial institution makes a statement inconsistent with the statement mentioned in paragraph (1).

(3) A statement may not be used by virtue of paragraph (2)(d) against a financial institution unless—

- (a) evidence relating to it is adduced, or
- (b) a question relating to it is asked,

<sup>(15)</sup> 2002 c. 29.

<sup>(16)</sup> S.I. 2005/3181.

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by or on behalf of the financial institution in the proceedings arising out of the prosecution.

**Commencement Information**

**I30** Art. 31 in force at 11.11.2013, see [art. 1\(1\)](#)

**Applications**

**32.** An application for an account monitoring order may be made ex parte to a High Court judge in chambers.

**Commencement Information**

**I31** Art. 32 in force at 11.11.2013, see [art. 1\(1\)](#)

**Disclosure of information**

**33.** An account monitoring order has effect in spite of any restriction on the disclosure of information (however imposed).

**Commencement Information**

**I32** Art. 33 in force at 11.11.2013, see [art. 1\(1\)](#)

**Supplementary**

**34.—(1)** An application to discharge or vary an account monitoring order may be made to the High Court by—

- (a) the person who applied for the order,
- (b) any person affected by the order.

(2) The High Court—

- (a) may discharge the order,
- (b) may vary the order.

(3) If an NCA officer applies for an account monitoring order, an application to discharge or vary the order need not be by the same NCA officer.

(4) References to a person who applied for an account monitoring order must be construed accordingly.

(5) Account monitoring orders have effect as if they were orders of the High Court.

(6) This article does not apply to orders made in England and Wales.

**Commencement Information**

**I33** Art. 34 in force at 11.11.2013, see [art. 1\(1\)](#)

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### Codes of Practice

**35.**—(1) The Code of Practice issued under the Proceeds of Crime Act 2002 (Investigations in England, Wales and Northern Ireland: Code of Practice) Order 2008(**17**) shall apply to the powers conferred by this Part as it applies to the powers conferred by Chapter 2 of Part 8 of the Proceeds of Crime Act 2002 in relation to civil recovery investigations.

(2) The Code of Practice issued under the Proceeds of Crime Act 2002 (Investigative Powers of Prosecutors in England, Wales and Northern Ireland: Code of Practice) Order 2008(**18**) shall apply to the powers conferred by this Part as it applies to the powers conferred by Chapter 2 of Part 8 of the Proceeds of Crime Act 2002 in relation to civil recovery investigations.

### Commencement Information

**I34** Art. 35 in force at 11.11.2013, see [art. 1\(1\)](#)

(17) S.I. 2008/946.

(18) S.I. 2008/1978.

**Status:**

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**Changes to legislation:**

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**Changes and effects yet to be applied to the whole Instrument associated Parts and Chapters:**

Whole provisions yet to be inserted into this Instrument (including any effects on those provisions):

- Pt. A1 heading substituted for Pt. heading by S.I. 2021/638 art. 37(1)
- art. 2(1)(b) words omitted by S.I. 2021/638 art. 39(a)
- art. 2(1)(c) words omitted by S.I. 2021/638 art. 39(a)
- art. 2(5A) inserted by S.I. 2018/1078 art. 10(b)
- art. 2(7A) inserted by S.I. 2018/1078 art. 9(2)(a)
- art. 2(11)(c) words omitted by S.I. 2021/638 art. 39(b)
- art. 2(12) inserted by S.I. 2018/1078 art. 9(2)(b)
- art. 2(12) words omitted by S.I. 2021/638 art. 39(c)(i)
- art. 2(12) words substituted by S.I. 2021/638 art. 39(c)(ii)
- art. 14(6A) inserted by S.I. 2015/1751 art. 7(4)
- art. 21A-21G inserted by S.I. 2018/1078 art. 7
- art. 21A heading words omitted by S.I. 2021/638 art. 44(a)
- art. 21A(2) words omitted by S.I. 2021/638 art. 44(b)
- art. 21B(4)(b)(i) words substituted by S.I. 2021/638 art. 45(a)
- art. 21B(8)(a) words omitted by S.I. 2021/638 art. 45(b)(iii)
- art. 21B(8)(a) words substituted by S.I. 2021/638 art. 45(b)(i)
- art. 21B(8)(a) words substituted by S.I. 2021/638 art. 45(b)(ii)
- art. 21E(2)(a) words inserted by S.I. 2021/638 art. 46(a)(ii)
- art. 21E(2)(a) words substituted by S.I. 2021/638 art. 46(a)(i)
- art. 21E(2)(b) words inserted by S.I. 2021/638 art. 46(a)(ii)
- art. 21E(2)(b) words substituted by S.I. 2021/638 art. 46(a)(i)
- art. 21E(2)(c) words inserted by S.I. 2021/638 art. 46(b)
- art. 21I(6)(d) words substituted by S.I. 2021/638 art. 48(a)
- art. 21I(9)(a) words inserted by S.I. 2021/638 art. 48(b)
- art. 21J(6)(b)(i)(ii) substituted for words in art. 21J(6)(b) by S.I. 2021/638 art. 49
- art. 21M(4)(a) words substituted by S.I. 2021/638 art. 50
- art. 21M(5) words substituted by S.I. 2021/638 art. 50
- art. 21GA inserted by S.I. 2021/638 art. 47
- art. 36(9)(10) inserted by S.I. 2018/1078 art. 15
- art. 46A-46H inserted by S.I. 2018/1078 art. 13
- art. 46B(4)(b)(i) words substituted by S.I. 2021/638 art. 51(a)
- art. 46B(8)(a) words omitted by S.I. 2021/638 art. 51(b)(iii)
- art. 46B(8)(a) words substituted by S.I. 2021/638 art. 51(b)(i)
- art. 46B(8)(a) words substituted by S.I. 2021/638 art. 51(b)(ii)
- art. 46I-46R inserted by S.I. 2018/1078 art. 14
- art. 48(6A) inserted by S.I. 2015/1751 art. 19(4)
- art. 57(2)(ea) inserted by 2020 c. 29 Sch. 3 para. 4(3)(c)
- art. 57(3)(ha) inserted by 2020 c. 29 Sch. 3 para. 4(4)(c)
- art. 57(5) inserted by 2020 c. 29 Sch. 3 para. 4(5)