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STATUTORY INSTRUMENTS

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**2013 No. 2605**

**PROCEEDS OF CRIME**

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

<i>Made</i>	- - - -	<i>9th October 2013</i>
<i>Laid before Parliament</i>		<i>16th October 2013</i>
<i>Coming into force</i>	- -	<i>11th November 2013</i>

At the Court at Buckingham Palace, the 9th day of October 2013

Present,

The Queen's Most Excellent Majesty in Council

Her Majesty, in exercise of the powers conferred upon Her by sections 445 and 459(2) of the Proceeds of Crime Act 2002<sup>(1)</sup>, is pleased, by and with the advice of Her Privy Council, to order, and it is ordered, as follows.

**GENERAL**

**1.—**(1) This Order may be cited as the Proceeds of Crime Act 2002 (External Investigations) Order 2013 and shall come into force on 11th November 2013.

(2) Part 1 extends to England and Wales and Northern Ireland only.

(3) Part 2 extends to Scotland only.

**PART 1**

**Interpretation**

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

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<sup>(1)</sup> 2002 c. 29; section 445(2)(b) was amended by paragraphs 47 and 71, of Schedule 14 to the Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2010 ([S.I. 2010/976](#)) and paragraphs 121 and 139 in Part 6 of Schedule 8, to the Serious Crime Act 2007 (c. 27).

(2) “Document”, “excluded material” and “premises” have the same meanings as in the Police and Criminal Evidence Act 1984<sup>(2)</sup> or (in relation to Northern Ireland) the Police and Criminal Evidence (Northern Ireland) Order 1989<sup>(3)</sup>.

(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<sup>(4)</sup> 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,

(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.

## 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—

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(2) 1984 c. 60.

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

(4) 2002 c. 29.

- (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.

#### **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.

#### **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(5),

- (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.
- (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.

### **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.

### **Requirements for making of production order**

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

(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.

### **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.

### **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
- (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.

### **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.

### **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(6).

### **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.

### **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—

- (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.

### **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 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.

#### **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.

(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.

### **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.

### **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.

## 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.

## 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>(7)</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>(8)</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>(9)</sup> or Article 10 of the Perjury (Northern Ireland) Order 1979<sup>(10)</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).

(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.

<sup>(7)</sup> 2002 c. 29.

<sup>(8)</sup> S.I. 2005/3181.

<sup>(9)</sup> 1911 c. 6.

<sup>(10)</sup> S.I. 1979/1714 (N.I. 19).

### **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.

### **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,
- (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.

### **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.

### **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>(11)</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>(12)</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,
  - (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>(13)</sup> or section 18 of the Terrorism Act 2000<sup>(14)</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.

#### **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.

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<sup>(11)</sup> 2006 c. 46.

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

<sup>(13)</sup> 2002 c. 29.

<sup>(14)</sup> 2000 c. 11.

(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.

### **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.

(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.

### **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<sup>(15)</sup>,
- (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.

### **Disclosure of information**

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

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(15) [S.I. 2005/3181](#).

## **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.

## **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.

(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.

### **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.

### **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>(16)</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>(17)</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,

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

### **Applications**

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

### **Disclosure of information**

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

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<sup>(16)</sup> 2002 c. 29.

<sup>(17)</sup> S.I. 2005/3181.



## 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.

## 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<sup>(18)</sup> 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<sup>(19)</sup> 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.

# PART 2

## Interpretation

**36.**—(1) References to a “constable” include references to an officer of Revenue and Customs and to an immigration officer.

(2) “Legal privilege” means protection in legal proceedings from disclosure by virtue of any rule of law relating to the confidentiality of communications; and “items subject to legal privilege” are—

- (a) communications between a professional legal adviser and their client, or
- (b) communications made in connection with or in contemplation of legal proceedings and for the purposes of those proceedings,

which would be so protected.

(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<sup>(20)</sup> or otherwise) is to continue to be treated as financial institution for the purposes of any requirement under—

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<sup>(18)</sup> S.I. 2008/946.

<sup>(19)</sup> S.I. 2008/1978.

<sup>(20)</sup> 2002 c. 29.

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

(7) References to “premises” include any place and, in particular, include—

- (a) any vehicle, vessel, aircraft or hovercraft,
- (b) any offshore installation within the meaning of section 1 of the Mineral Workings (Offshore Installations) Act 1971<sup>(21)</sup> and any tent or moveable structure.

(8) “Proper person” means the Scottish Ministers or a person named by them.

## Scope of Part 2

**37.—**(1) This Part has effect for the purpose of enabling the Scottish Ministers to assist in an external investigation by obtaining orders and warrants from the court.

(2) The powers conferred by this Part are exercisable in relation to property only if the Scottish Ministers believe paragraph (3) applies in relation to—

- (a) the country or territory of the overseas authority carrying out the external investigation, and
- (b) Scotland.

(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 against a person are taken to be concluded if—

- (a) a plea of guilty is recorded against the person,
- (b) the person is acquitted,
- (c) the person is pardoned,
- (d) the proceedings against the person are deserted simpliciter,
- (e) the person is convicted and does not appeal against the conviction before the expiry of the time period allowed for such an appeal,
- (f) the proceedings are deserted pro loco et tempore for any reason and no further trial diet is appointed,
- (g) the indictment or complaint falls or is for any other reason not brought to trial, the diet is not continued, adjourned or postponed and no further proceedings are in contemplation.

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

(6) In this article, references to the court are to—

- (a) the Court of Session in relation to applications for disclosure orders,

(21) 1971 c. 61.

- (b) the sheriff in relation to applications for production orders, search warrants, customer information orders and account monitoring orders.

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

**38.**—(1) The Secretary of State may refer to the Scottish Ministers a request for assistance in relation to an external investigation.

- (2) The Scottish Ministers may on receipt of the request for assistance act under this Part.

### **Offences of prejudicing external investigation**

**39.**—(1) This article applies if a person knows or suspects that a proper person 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(22),
- (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.

- (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 a proper person 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 twelve 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.

### **Production Orders**

**40.**—(1) The sheriff may, on an application made to the sheriff by the Scottish Ministers, make a production order if the sheriff is satisfied that each of the requirements for the making of the order is fulfilled.

(2) In making a production order the sheriff shall act in exercise of the sheriff's civil jurisdiction.

(3) 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 37(2) is met in respect of the property.

(4) 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.

(5) 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 a proper person for the proper person to take away, or
- (b) requiring that person to give a proper person access to the material,

within the period stated in the order.

(6) 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 sheriff that a longer or shorter period would be appropriate in the particular circumstances.

### **Requirements for making of production order**

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

(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.

### **Order to grant entry**

**42.**—(1) This article applies if a sheriff makes a production order requiring a person to give a proper person access to material on premises.

(2) The sheriff may, on any application made to the sheriff by the Scottish Ministers 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 the Scottish Ministers to be entitled to grant entry to the premises to allow a proper person to enter the premises to obtain access to the material.

### **Further provisions**

**43.**—(1) A production order does not require a person to produce, or give access to, any items subject to legal privilege.

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

(3) A proper person may take copies of any material which is produced, or to which access is given, in compliance with a production order.

(4) 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.

(5) But if a proper person 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.

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

### **Computer information**

**44.**—(1) This article applies if any 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 a proper person for a proper person 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 proper person and in which it is visible and legible.

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

### **Government departments**

**45.**—(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) 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.

(4) If the order is not brought to the attention of the officer concerned within the period stated in the order (in pursuance of article 40(5)) the person on whom it is served must report the reasons for the failure to the sheriff exercising a civil jurisdiction.

(5) An “authorised government department” includes a government department which is an authorised department for the purposes of the Crown Proceedings Act 1947<sup>(23)</sup> and the Scottish Administration.

### **Supplementary**

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

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

- (a) the Scottish Ministers,
- (b) any person affected by the order.

(3) The sheriff may—

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

### **Search warrants**

**47.**—(1) The sheriff may, on an application made to the sheriff by the Scottish Ministers, issue a search warrant if the sheriff is satisfied—

- (a) that property specified in the application is subject to an external investigation,
- (b) the condition in article 37(2) is met in respect of the property, and
- (c) either of the requirements in paragraph (6) is fulfilled

(2) In issuing a search warrant the sheriff shall act in exercise of the sheriff’s civil jurisdiction.

(3) 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 48(6) on the premises.

(4) A search warrant is a warrant authorising a proper person—

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

(5) A proper person may, if necessary, use reasonable force in executing a search warrant.

(6) The requirements for the issue of a search warrant are—

- (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 48 is satisfied in relation to the warrant.

(7) An application for a search warrant may be made ex parte to a sheriff in chambers.

### **Requirements where production order not available**

**48.**—(1) This article is satisfied in relation to a search warrant if—

(23) 1947 c. 44.

- (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 access to material or to grant entry to the premises,
  - (c) that the external investigation might be seriously prejudiced unless a proper 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 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 a proper person arriving at the premises is able to secure immediate entry to them.

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

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

- (2) A search warrant does not confer the right to seize any items subject to legal privilege.
- (3) A warrant may be issued subject to conditions.
- (4) A warrant continues in force until the end of the period of one month starting with the day on which it is issued.
- (5) A warrant authorises the person executing it 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 a proper 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.
- (6) A warrant may include provision authorising the person executing 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.
- (7) Copies may be taken of any material seized under a warrant.
- (8) 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.
- (9) But if the Scottish Ministers have 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.
- (10) Material seized under a warrant must be sent to the Secretary of State for forwarding to the overseas authority that made the request for assistance.

### **Disclosure orders**

- 50.**—(1) The Court of Session, on an application made to it by the Scottish Ministers, may make a disclosure order if it 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 37(2) is met in respect of the property.
  - (3) A disclosure order is an order authorising the Scottish Ministers to give to any person the Scottish Ministers consider 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 Scottish Ministers consider 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.



## Requirements for making of disclosure order

**51.**—(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.

## Offences

**52.**—(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 twelve 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.

## Statements

**53.**—(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 3 of the Proceeds of Crime Act 2002<sup>(24)</sup>,
- (b) in the case of proceedings under Part 3 of the Proceeds of Crime Act 2002 (External Requests and Orders) Order 2005<sup>(25)</sup>,
- (c) on a prosecution for an offence under article 52(1) or (3) of this Order,
- (d) on a prosecution for an offence under section 393(1) or (3) of the Proceeds of Crime Act 2002,
- (e) on a prosecution for perjury, 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).

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<sup>(24)</sup> 2002 c. 29.

<sup>(25)</sup> S.I. 2005/3181.

- (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.

### **Further provisions**

**54.**—(1) A disclosure order does not confer the right to require a person to answer any question, provide any information or produce any document which they would be entitled to refuse to answer, provide or produce on grounds of legal privilege.

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

(3) The Scottish Ministers may take copies of any documents produced in compliance with a requirement to produce them which is imposed under a disclosure order.

(4) 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.

(5) But if the Scottish Ministers have 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.

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

### **Supplementary**

**55.**—(1) An application for a disclosure order may be made ex parte to a judge of the Court of Session in chambers.

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

- (a) the Scottish Ministers,
- (b) any person affected by the order.

(3) The court may—

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

### **Customer information orders**

**56.**—(1) The sheriff may, on an application made to the sheriff by the Scottish Ministers, make a customer information order if the sheriff is satisfied that each of the requirements for the making of the order is fulfilled.

(2) In making a customer information order the sheriff shall act in the sheriff's civil jurisdiction.

(3) 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 37(2) is met in respect of the property, and
- (c) a person specified in the application appears to hold the property.

(4) The application must also state that the order is sought—

- (a) for the purposes of the external investigation,
  - (b) against the financial institution or financial institutions specified in the application.
- (5) 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.
- (6) 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 the Scottish Ministers, provide any such customer information as it has relating to the person specified in the application.
- (7) A financial institution which is required to provide information under a customer information order must provide the information to a proper person in such manner, and at or by such time, as that person requires.
- (8) 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.

### **Meaning of customer information**

**57.**—(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 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,
  - (b) the person’s full name,
  - (c) their date of birth,
  - (d) their most recent address and any previous addresses,
  - (e) 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) such evidence of identity as was obtained by the financial institution under or for the purposes of any legislation relating to money laundering,
  - (g) 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,
  - (h) 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,
  - (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>(26)</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>(27)</sup> or anything similar under corresponding legislation of any country or territory outside Great Britain,
  - (h) 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,
  - (i) such evidence of identity as was obtained by the financial institution under or for the purposes of any legislation relating to money laundering,
  - (j) 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>(28)</sup> or section 18 of the Terrorism Act 2000<sup>(29)</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.

### **Requirements for making of customer information order**

- 58.**—(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.

### **Offences**

- 59.**—(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.

<sup>(26)</sup> 2006 c. 46.

<sup>(27)</sup> 2000 c. 12.

<sup>(28)</sup> 2002 c. 29.

<sup>(29)</sup> 2000 c. 11.

(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.

### Statements

**60.**—(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 3 of the Proceeds of Crime Act 2002,
- (b) in the case of proceedings under Part 3 of the Proceeds of Crime Act 2002 (External Requests and Orders) Order 2005<sup>(30)</sup>,
- (c) on a prosecution for an offence under article 59(1) or (3) of this Order,
- (d) on a prosecution for an offence under section 400(1) or (3) of the Proceeds of Crime Act 2002, or
- (e) 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)(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.

### Further Provisions

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

### Supplementary

**62.**—(1) An application for a customer information order may be made ex parte to a sheriff in chambers.

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

- (a) the Scottish Ministers,
- (b) any person affected by the order.

(3) The sheriff may—

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

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<sup>(30)</sup> S.I. 2005/3181.

### Account monitoring orders

**63.**—(1) The sheriff may, on an application made to the sheriff by the Scottish Ministers, make an account monitoring order if the sheriff is satisfied that each of the requirements for the making of the order is fulfilled.

(2) In making an account monitoring order the sheriff shall act in exercise of the sheriff's civil jurisdiction.

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

- (a) the property specified in the application is subject to an external investigation,
- (b) the condition in article 37(2) is met in respect of the property, and
- (c) a person specified in the application appears to hold the property.

(4) The application must also state that the order is sought—

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

(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) 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.

(7) 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 the proper person in the manner, and at or by the time or times, stated in the order.

(8) 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.

### Requirements for making an account monitoring order

**64.**—(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.

## Statements

**65.**—(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 3 of the Proceeds of Crime Act 2002,
- (b) in the case of proceedings under Part 3 of the Proceeds of Crime Act 2002 (External Requests and Orders) Order 2005<sup>(31)</sup>,
- (c) in the case of proceedings for contempt of court, or
- (d) on 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,

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

## Further provisions

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

## Supplementary

**67.**—(1) An application for an account monitoring order may be made ex parte to a sheriff in chambers.

(2) An application to discharge or vary an account monitoring order may be made to the sheriff by—

- (a) the Scottish Ministers,
- (b) any person affected by the order.

(3) The sheriff may—

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

## Jurisdiction of sheriff

**68.**—(1) A sheriff may grant a production order, search warrant, customer information order or account monitoring order under this Part in relation to property situated in any area of Scotland notwithstanding that it is outside the area of that sheriff.

(2) Any such order or warrant may, without being backed or endorsed by another sheriff, be executed throughout Scotland in the same way as it is executed within the sheriffdom of the sheriff who granted it.

(3) This article is without prejudice to any existing rule of law.

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(31) [S.I. 2005/3181](#).

## **Code of Practice**

**69.** The Code of Practice issued under the Proceeds of Crime Act 2002 (Investigations: Code of Practice)(Scotland) Order 2009<sup>(32)</sup> shall apply to the powers conferred by this Part as it applies to powers conferred by Chapter 3 of Part 8 of the Proceeds of Crime Act 2002<sup>(33)</sup> in relation to civil recovery proceedings.

## **Performance of functions of Scottish Ministers by constables in Scotland**

**70.**—(1) In Scotland, a constable engaged in temporary service with the Scottish Ministers in connection with their functions under this Part may perform functions, other than those specified in paragraph (2), on behalf of Scottish Ministers.

(2) The specified functions are the functions conferred on the Scottish Ministers by—

- (a) article 40(1) (production orders),
- (b) article 42(2) (entry orders),
- (c) article 46(2) (supplementary to production and entry orders),
- (d) article 47(1) (search warrants),
- (e) article 50(1) (disclosure orders),
- (f) article 55(2) (supplementary to disclosure orders),
- (g) article 56(1) (customer information orders),
- (h) article 62(2) (supplementary to customer information orders),
- (i) article 63(1) (account monitoring orders),
- (j) article 67(2) (supplementary to account monitoring orders).

*Richard Tilbrook*  
Clerk of the Privy Council

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<sup>(32)</sup> S.I. 2009/245.

<sup>(33)</sup> 2002 c. 29.



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## EXPLANATORY NOTE

*(This note is not part of the Order)*

This Order makes provision to assist an external investigation, within the meaning of section 447(3) of the Proceeds of Crime Act 2002 (c. 29) (“the 2002 Act”), by obtaining orders and warrants from the court. The provisions correspond (subject to specified modifications) to the civil recovery investigation provisions in Part 8 of the 2002 Act. Overseas requests to investigate that are criminal in nature will continue to be dealt with through the provisions in the Crime (International Co-operation) Act 2003 (c. 32). This Order extends to England and Wales, Scotland and Northern Ireland.

Articles 3 and 4 provide that the Secretary of State may refer a request in relation to an external investigation to the Director General of NCA or a relevant Director to provide assistance. The external investigation will concern property only where a criminal investigation in connection with the property has not begun, or a criminal investigation in connection with the property has begun but it is unlikely criminal proceedings will be brought, or criminal proceedings brought in connection with the property have been concluded without an order having been made in relation to the property.

Article 5 provides for offences of prejudicing an external investigation. This broadly corresponds to section 342 of the 2002 Act. The article makes it an offence to prejudice an external investigation by making a disclosure about it or by tampering with evidence relevant to the external investigation.

Articles 6 and 7 provide for production orders. These broadly correspond to sections 345 and 346 of the 2002 Act. An application for a production order may be made by an appropriate officer; article 2(1) provides the meaning for an appropriate officer.

Article 8 provides for an order to grant entry. This broadly corresponds to section 347 of the 2002 Act. This power might be used, for example, to enable an appropriate officer to be granted entry to a building in circumstances where a production order had been made in respect of material in a particular office in that building.

Article 11 extends the scope of a production order to cover material held by an authorised government department. This broadly corresponds to section 350 of the 2002 Act.

Article 12 provides that an application for a production order or an order to grant entry may be made without notice to the other party. This broadly corresponds to section 351 of the 2002 Act.

Article 13 provides for search and seizure warrants. This broadly corresponds to section 352 of the 2002 Act. As in articles 6 and 7 an application for a warrant may be made by an appropriate officer. A warrant may be issued if a production order has been made and not complied with and there are reasonable grounds for believing that the material specified in the warrant is on the premises, or the requirements of article 14 are met.

Article 14 refers to two sets of conditions for issuing a warrant in the absence of a production order. This broadly corresponds to section 353 of the 2002 Act. The first set of conditions might be satisfied, for example, where the person who owns the material is abroad and therefore it is not possible to communicate with that person. In such circumstances, it is clear that a production order in respect of that person would have no effect. The second set of conditions might be satisfied where it is impossible to describe the material for the purposes of a production order and access will not be gained without a warrant.

Article 15 sets out provisions regarding how and when a warrant issued by a High Court judge may be exercised. This broadly corresponds to sections 354 and 356 of the 2002 Act. A High Court judge may make the warrant subject to such conditions as the judge sees fit.

Article 16 provides for disclosure orders. This broadly corresponds to section 357 of the 2002 Act. Unlike the other orders covered by this Order, which have to be applied for separately on each occasion, once a disclosure order has been made there is a continuing power of investigation. A person may require that evidence of the authority to exercise disclosure powers is provided. Where this happens, it is envisaged that a copy of the disclosure order will be given to the person.

Article 17 provides for the requirements for the making of a disclosure order. This broadly corresponds to section 358 of the 2002 Act. Owing to the necessarily invasive nature of the disclosure order, it is not anticipated that disclosure orders will be sought unless other powers, such as production orders, have already been sought or would demonstrably not suffice to enable the required information to be obtained.

Article 18 provides for offences in relation to disclosure orders. This broadly corresponds to section 359 of the 2002 Act. As the disclosure order obliges a person to comply with certain requirements, sanctions to compel such compliance are required. There is a maximum penalty of six months imprisonment and/or a level 5 fine for non-compliance and two years imprisonment and/or an unlimited fine for knowingly or recklessly making a false or misleading statement.

Article 19 provides for statements in response to a disclosure order. This broadly corresponds to section 360 of the 2002 Act. The article prevents a statement obtained under compulsion from a person from being used to incriminate them in this jurisdiction (subject to exceptions).

Articles 20 and 21 set out further provisions regarding disclosure orders. These broadly correspond to sections 361 and 362 of the 2002 Act.

Article 22 provides for customer information orders. This broadly corresponds to section 363 of the 2002 Act. A customer information order requires all (or a targeted sample of) banks and other financial institutions to provide details of any accounts held by a person who appears to hold property that is subject to an external investigation. Article 28(6) requires in certain circumstances the prior authorisation of a senior appropriate officer before an appropriate officer can make an initial or variation application for a customer information order. An appropriate officer who is also a senior appropriate officer can apply for the order and variations themselves without requiring further and separate authorisation. As with disclosure orders, a person may require the person serving a notice given under the order to demonstrate that they have the authority they claim. Again, it is envisaged that a copy of the original customer information order will be provided.

Articles 23 and 24 set out the definition of “customer information” for individuals and for companies and partnerships and the requirements for the making of such an order. These broadly correspond to sections 364 and 365 of the 2002 Act.

Article 25 provides for offences in relation to customer information orders. This broadly corresponds to section 366 of the 2002 Act. As with the disclosure order, there are two offences connected with customer information orders. As the sanctions are directed at non-complaint institutions rather than an individual they are solely financial. The maximum penalties are a level 5 fine for non-compliance and an unlimited fine for knowingly or recklessly making a false or misleading statement.

Article 26 provides for statements in response to a customer information order. This broadly corresponds to section 367 of the 2002 Act. Like the disclosure order, a customer information order requires an institution to divulge information. This article sets out the standard conditions on the use of such information to prevent information obtained under compulsion from being used in this jurisdiction against the financial institution in criminal proceedings against it (subject to certain exceptions).

Articles 27 and 28 set out further provisions in relation to customer information orders. These broadly correspond to sections 368 and 369 of the 2002 Act.

Article 29 provides for account monitoring orders. This broadly corresponds to section 370 of the 2002 Act. An account monitoring order requires a financial institution to provide specified information in relation to an account (for example, details of all transactions passing through the

account) during a specified period up to a maximum of 90 days. The information would normally be provided in the form of a bank statement.

Article 30 sets out the requirements for the making of an account monitoring order. This broadly corresponds to section 371 of the 2002 Act. It is anticipated that it will need to be shown that an account monitoring order lasting over a period of time (rather than a one-off production order) is necessary.

Article 31 provides for statements in response to an account monitoring order. This broadly corresponds to section 372 of the 2002 Act. As with the disclosure order and customer information order, an account monitoring order compels an institution to divulge information. Similar to the provisions for disclosure orders and customer information orders, this article sets out the standard conditions on the use of such information to prevent self-incriminatory information being used as evidence in criminal proceedings in this jurisdiction against the financial institution (subject to certain exceptions).

Articles 32 to 34 set out further provisions relating to account monitoring orders. These broadly correspond to sections 373 to 375 of the 2002 Act.

Articles 36 to 69 make equivalent provision for Scotland to that in articles 2 to 35 for England and Wales and Northern Ireland.

Article 70 sets out the functions that seconded constables in Scotland cannot exercise on behalf of Scottish Ministers. This corresponds to section 411 of the 2002 Act.