

2015 No. 206

PROCEEDS OF CRIME, SCOTLAND

**The Proceeds of Crime Act 2002 (External Investigations)
(Scotland) Order 2015**

<i>Made</i> - - - -	<i>11th February 2015</i>
<i>Laid before Parliament</i>	<i>16th February 2015</i>
<i>Coming into force</i> - -	<i>16th March 2015</i>

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35. Codes of Practice

At the Court at Buckingham Palace, the 11th day of February 2015

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(a), is pleased, by and with the advice of Her Privy Council, to order, and it is ordered, as follows:

Citation, commencement and extent

1. This Order—

- (a) may be cited as the Proceeds of Crime Act 2002 (External Investigations) (Scotland) Order 2015;

(a) 2002 c.29; section 445(2)(b) was amended by article 12 of, paragraphs 47 and 71 of Schedule 14 to, S.I. 2010/976, section 74 of, paragraphs 121 and 139 in Part 6 of Schedule 8 to, the Serious Crime Act 2007 (c.27), and section 15 of, paragraphs 108 and 150 in Part 2 of Schedule 8 to, the Crime and Courts Act 2013 (c.22). In accordance with section 459(7) of the Proceeds of Crime Act 2002, a copy of this Order will be laid before the Scottish Parliament.

- (b) comes into force on 16th March 2015; and
- (c) extends to Scotland only.

Interpretation

2.—(1) In this Order—

“the Act” means the Proceeds of Crime Act 2002;

“account monitoring order” has the same meaning as in article 29;

“customer information order” has the same meaning as in article 22;

“disclosure order” has the same meaning as in article 16;

“financial institution” means a person carrying on a business in the regulated sector, 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 Act or otherwise) is to continue to be treated as a financial institution for the purposes of any requirement under a customer information order or an account monitoring order to provide information which relates to a time when the person was a financial institution;

“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 advisor and their client;
- (b) communications made in connection with or in contemplation of legal proceedings and for the purposes of those proceedings,

which would be so protected;

“production order” has the same meaning as in article 6;

“search warrant” has the same meaning as in article 13;

(2) In this Order references to—

- (a) a “business in the regulated sector” must be construed in accordance with Schedule 9 to the Act;
- (b) a “constable” include references to an officer of Revenue and Customs and to an immigration officer;
- (c) “notice in writing” includes reference to notice given by electronic means;
- (d) “premises” include any place and in particular, include—
 - (i) any vehicle, vessel, aircraft or hovercraft,
 - (ii) any offshore installation within the meaning of section 12(1) of the Mineral Workings (Offshore Installations) Act 1971^(a) and any tent or moveable structure.

Scope of the Order

3.—(1) This Order has effect for the purpose of enabling the Lord Advocate and procurator fiscal to assist an external investigation by obtaining orders and warrants from the court.

(2) The powers conferred by this Order are exercisable only if the Lord Advocate believes that the external investigation relates to a criminal investigation or criminal proceedings in the country or territory of the overseas authority carrying out the external investigation.

(3) For the purpose of paragraph (2), criminal proceedings include proceedings to remove from a person the benefit of that person’s criminal conduct following that person’s conviction for an offence or offences.

(a) 1971 c.61; the definition of “offshore installation” was substituted by the Offshore Installations and Pipeline Works (Management and Administration) Regulations 1995/738.

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

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

- (a) The High Court of Judiciary in relation to applications for disclosure orders;
- (b) The sheriff in relation to applications for production orders, search warrants, customer information orders and account monitoring orders.

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

4.—(1) The Secretary of State may refer to the Lord Advocate a request for assistance in relation to an external investigation.

(2) The Lord Advocate or procurator fiscal may, on receipt of the request for assistance, act under this Order.

Offences of prejudicing an external investigation

5.—(1) This article applies if a person knows or suspects that a constable is acting (or proposing to act) in connection with an external investigation.

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

- (a) makes a disclosure which is likely to prejudice the external investigation; or
- (b) falsifies, conceals, destroys or otherwise disposes of, or causes or permits 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) the person does not know or suspect that the disclosure is likely to prejudice the external investigation;
- (b) the disclosure is made—
 - (i) in the exercise of a function under—
 - (aa) the Act; or
 - (bb) any other enactment relating to criminal conduct or benefit from criminal conduct; or
 - (ii) in compliance with a requirement imposed under or by virtue of—
 - (aa) the Act; or
 - (bb) any other enactment relating to criminal conduct or benefit from criminal conduct;
- (c) the disclosure is of a matter within section 333A(2) or (3)(a) (money laundering: tipping off) of the Act^(a) and the information on which the disclosure is based came to the person in the course of a business in the regulated sector; or
- (d) the person is 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 the person—

(a) Section 333A was inserted by regulation 3 of, and paragraphs 1 and 4 of Schedule 2 to, S.I. 2007/3398, and was amended by section 15(3) of, and paragraphs 108 and 132 in Part 2 of Schedule 8 to, the Crime and Courts Act 2013.

- (a) does not know or suspect that the documents are relevant to the external investigation; or
 - (b) does not intend to conceal any facts disclosed by the documents from any constable 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.
- (8) In this article references to enactment include an instrument made under an Act of the Scottish Parliament.

PART 1

Production orders

Production orders

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

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

- (a) article 3(2) is satisfied;
- (b) the order is sought for the purposes of the external investigation;
- (c) the order is sought in relation to material, or material of a description, specified in the application;
- (d) a person specified in the application appears to be in possession or control of the material.

(3) 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 constable for the constable to take away; or
- (b) requiring that person to give a constable access to the material,

within the period stated in the order.

(4) 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

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

(2) There must be reasonable grounds for suspecting that the application relates to an external investigation.

(3) There must be reasonable grounds for believing that—

- (a) 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;
- (b) the material is likely to be of substantial value (whether or not by itself) to the external investigation; and
- (c) it is in the public interest for the material to be produced or for access to it to be given, having regard to—
 - (i) the benefit likely to accrue to the external investigation if the material is obtained;

- (ii) 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 sheriff makes a production order requiring a person to give a constable access to material on any premises.

(2) The sheriff may, on an application made to the sheriff by the procurator fiscal 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 procurator fiscal to be entitled to grant entry to the premises to allow a constable 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, 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 constable 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 constable 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

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 requires a person to produce the material to a constable for a constable to take away, it has effect as an order to produce the material in a form in which it—

- (a) can be taken away by the constable; and
- (b) it is visible and legible.

(3) If the order requires a person to give a constable access to the material, it has effect as an order to give the constable 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) 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 6(4)) the person on whom it is served must report the reasons for the failure to a sheriff.

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

Supplementary

12.—(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 procurator fiscal;
- (b) any person affected by the order.

(3) The sheriff may—

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

PART 2

Search warrants

Search warrants

13.—(1) The sheriff may, on an application made to the sheriff by the procurator fiscal, issue a search warrant if the sheriff is satisfied—

- (a) that article 3(2) is satisfied; and
- (b) either of the requirements in paragraph (5) is fulfilled.

(2) The application must also state—

- (a) the warrant is sought for the purposes of the external investigation;
- (b) the warrant is sought in relation to the premises specified in the application;
- (c) the warrant is sought in relation to material specified in the application, or that there are reasonable grounds for believing that there is material falling within article 14(5) on the premises.

(3) A search warrant is a warrant authorising a constable—

- (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) A constable may, if necessary, use reasonable force in executing a search warrant.

(5) 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

(a) 1947 c.44.

- (b) that article 14 is satisfied in relation to the warrant.
- (6) An application for a search warrant may be made *ex parte* to a sheriff in chambers.

Requirements where production order not available

- 14.**—(1) This article is satisfied in relation to a search warrant if—
- (a) there are reasonable grounds for suspecting that the application relates to an external investigation; and
 - (b) either the first or the second set of conditions is complied with.
- (2) 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 (3).
- (3) 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 a constable is able to secure immediate access to the material.
- (4) 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 (5);
 - (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 (6) is satisfied.
- (5) Material falls within this paragraph if it cannot be identified at the time of the application but it—
- (a) relates to the person who is the subject of the external investigation; and
 - (b) is likely to be of substantial value (whether or not by itself) to the external investigation for the purposes of which the warrant is sought.
- (6) 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; and
 - (c) that the external investigation might be seriously prejudiced unless a constable arriving at the premises is able to secure immediate entry to them.

Further provisions: general

- 15.**—(1) This article applies to—
- (a) search warrants sought for the purposes of an external investigation; and
 - (b) powers of seizure under them.
- (2) A warrant may be issued subject to conditions.
- (3) A search warrant does not confer the right to seize any items subject to legal privilege.

(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 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 is visible and legible; or
- (b) from which it can readily be produced in a visible and legible form.

(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.

PART 3

Disclosure orders

Disclosure orders

16.—(1) The High Court of Justiciary, on an application made to it by the Lord Advocate, 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) the order is sought for the purposes of the external investigation; and
- (b) article 3(2) is satisfied.

(3) A disclosure order is an order authorising the Lord Advocate to give to any person the Lord Advocate considers has relevant information, notice in writing requiring the person 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 Lord Advocate 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 application relates to an external investigation.

(3) There must be reasonable grounds for believing that—

- (a) 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; and
- (b) 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 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.

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 3 of the Act;
- (b) in the case of proceedings under Part 3 of the Proceeds of Crime Act 2002 (External Requests and Orders) Order 2005(a);
- (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 393(1) or (3) of the Act;
- (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).

(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,

(a) S.I. 2005/3181.

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

Further provisions

20.—(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 Lord Advocate may take copies of any documents produced in compliance with the 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 Lord Advocate 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,

the documents 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

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

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

- (a) the Lord Advocate;
- (b) any person affected by the order.

(3) The High Court of Justiciary may—

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

PART 4

Customer information orders

Customer information orders

22.—(1) The sheriff may, on an application made to the sheriff by the procurator fiscal, make a customer information order if the sheriff 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) article 3(2) is satisfied;
- (b) the order is sought for the purposes of the external investigation;
- (c) the order is sought against the financial institution or financial institutions specified in the application.

(3) 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.

(4) 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 procurator fiscal, provide any such customer information as it has relating to the person specified in the application.

(5) A financial institution which is required to provide information under a customer information order must provide the information to a constable in such manner, and at or by such time, as that constable requires.

(6) 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 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 an unincorporated association, 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) the person’s date of birth;
- (d) the person’s 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 the person is 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^(a) 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;

(a) 2006 c.46.

- (g) its registered office, and any previous registered offices, under the Limited Liability Partnerships Act 2000^(a) 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 Act or section 18 of the Terrorism Act 2000^(b);
 - (b) constitutes an offence specified in section 415(1A) of the Act^(c); 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

- 24.**—(1) These are the requirements for the making of a customer information order.
- (2) There must be reasonable grounds for suspecting that the application relates to an external investigation.
- (3) There must be reasonable grounds for believing that—
- (a) 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; and
 - (b) 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) 2000 c.12.

(b) 2000 c.11.

(c) Section 415(1A) was inserted by section 107(4) of the Serious Organised Crime and Police Act 2005 (c.15).

- (a) in the case of proceedings under Part 3 of the Act;
 - (b) on a prosecution for an offence under article 25(1) or (3) of this Order;
 - (c) on a prosecution for an offence under section 400(1) or (3) of the Act; or
 - (d) 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)(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.

Disclosure of information

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

Supplementary

28.—(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 procurator fiscal;
- (b) any person affected by the order.

(3) The sheriff may—

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

PART 5

Account monitoring orders

Account monitoring orders

29.—(1) The sheriff may, on an application made to the sheriff by the procurator fiscal, make an account monitoring order if the sheriff 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) article 3(2) is satisfied;
- (b) the order is sought for the purposes of the external investigation;
- (c) the order is sought against the financial institution specified in the application in relation to account information of the description so specified.

(3) 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).

(4) 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.

(5) 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 a constable in the manner, and at or by the time or times, stated in the order.

(6) 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 the application relates to an external investigation.

(3) There must be reasonable grounds for believing that—

- (a) 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; and
- (b) 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 3 of the Act;
- (b) in the case of proceedings for contempt of court; or
- (c) 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)(c) 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 sheriff in chambers.

Disclosure of information

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

Supplementary

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

- (a) the procurator fiscal;
- (b) any person affected by the order.

(2) The sheriff may—

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

PART 6

Codes of Practice

Codes of Practice

35. The Code of Practice issued under the Proceeds of Crime Act 2002 (Investigations: Code of Practice) (Scotland) Order 2009^(a) applies to the powers conferred by this Order as it applies to the powers conferred by Chapter 3 of Part 8 of the Act in relation to confiscation investigations.

Richard Tilbrook
Clerk of the Privy Council

^(a) S.I. 2009/245.

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 confiscation investigation provisions in Part 8 of the 2002 Act.

Article 3 provides that the powers in this Order are only excisable where the Lord Advocate believes that the external investigation relates to a criminal investigation or criminal proceedings in the country or territory carrying out the investigation.

Article 4 provides that the Secretary of State may refer a request in relation to an external investigation to the Lord Advocate to provide assistance.

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 380 and 381 of the 2002 Act.

Article 8 provides for an order to grant entry. This broadly corresponds to section 382 of the 2002 Act. This power might be used, for example, to enable a constable 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 9 sets out further provisions regarding production orders. This broadly corresponds to section 383 of the 2002 Act.

Article 10 provides for material contained in a computer to be produced to a constable. This broadly corresponds to section 384 of the 2002 Act.

Article 11 extends the scope of a production order to cover material held by an authorised government department. This broadly corresponds to section 385 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 386 of the 2002 Act.

Article 13 provides for search warrants. This broadly corresponds to section 387 of the 2002 Act. As in articles 6 and 7, an application for a warrant may be made by the procurator fiscal. 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 satisfied.

Article 14 refers to two sets of conditions for issuing a warrant in the absence of a production order. This broadly corresponds to section 388 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 sheriff may be exercised. This broadly corresponds to sections 389 and 390 of the 2002 Act. A sheriff may make the warrant subject to such conditions as the sheriff sees fit.

Article 16 provides for disclosure orders. This broadly corresponds to section 391 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 392 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 393 of the 2002 Act. As the disclosure order obliges a person to comply with certain requirements, sanctions to compel such compliance are required.

Article 19 provides for statements in response to a disclosure order. This broadly corresponds to section 394 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 395 and 396 of the 2002 Act.

Article 22 provides for customer information orders. This broadly corresponds to section 397 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. 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 398 and 399 of the 2002 Act.

Article 25 provides for offences in relation to customer information orders. This broadly corresponds to section 400 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.

Article 26 provides for statements in response to a customer information order. This broadly corresponds to section 401 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 402 and 403 of the 2002 Act.

Article 29 provides for account monitoring orders. This broadly corresponds to section 404 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 405 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 406 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 407 and 408 of the 2002 Act.

Article 35 provides that the Codes of Practice established under the Proceeds of Crime Act 2002 (Investigations: Code of Practice) (Scotland) Order 2009 (S.I. 2009/245) applies in relation to confiscation proceedings.

An impact assessment has not been produced for this Order as no impact on the private and voluntary sectors is foreseen.

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