



Proceeds of Crime Act 2002

2002 CHAPTER 29

PART 8

INVESTIGATIONS

CHAPTER 3

SCOTLAND

Customer information orders

397 Customer information orders

- (1) The sheriff may, on an application made to him by the appropriate person, make a customer information order if he is satisfied that each of the requirements for the making of the order is fulfilled.
- (2) In making a customer information order in relation to property subject to a civil recovery investigation the sheriff shall act in the exercise of his civil jurisdiction.
- (3) The application for a customer information order must state that—
 - (a) a person specified in the application is subject to a confiscation investigation or a money laundering investigation, or
 - (b) property specified in the application is subject to a civil recovery investigation and a person specified in the application appears to hold the property.
- (4) The application must also state that—
 - (a) the order is sought for the purposes of the investigation;
 - (b) the order is sought 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,

Status: This is the original version (as it was originally enacted).

- (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 appropriate person, 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.

398 Meaning of customer information

- (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 subsection (2) if the person is an individual;
 - (b) the matters specified in subsection (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 subsection (1)(a) are—
- (a) the account number or numbers;
 - (b) the person’s full name;
 - (c) his date of birth;
 - (d) his most recent address and any previous addresses;
 - (e) the date or dates on which he began to hold the account or accounts and, if he has ceased to hold the account or any of the accounts, the date or dates on which he did so;
 - (f) such evidence of his 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 him;
 - (h) the account number or numbers of any other account or accounts held at the financial institution to which he is a signatory and details of the person holding the other account or accounts.
- (3) The matters referred to in subsection (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 1985 (c. 6) or the Companies (Northern Ireland) Order 1986 (S.I. 1986/ 1032 (N.I. 6))

Status: This is the original version (as it was originally enacted).

- 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 1985 or the Companies (Northern Ireland) Order 1986 (S.I. 1986/1032 (N.I. 6)) 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 (c. 12) 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 its 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) The Scottish Ministers may by order provide for information of a description specified in the order—
- (a) to be customer information, or
 - (b) no longer to be customer information.
- (5) Money laundering is an act which—
- (a) constitutes an offence under section 327, 328 or 329 of this Act or section 18 of the Terrorism Act 2000 (c. 11), or
 - (b) would constitute an offence specified in paragraph (a) if done in the United Kingdom.

399 Requirements for making of customer information order

- (1) These are the requirements for the making of a customer information order.
- (2) In the case of a confiscation investigation, there must be reasonable grounds for suspecting that the person specified in the application for the order has benefited from his criminal conduct.
- (3) In the case of a civil recovery investigation, there must be reasonable grounds for suspecting that—
 - (a) the property specified in the application for the order is recoverable property or associated property;
 - (b) the person specified in the application holds all or some of the property.
- (4) In the case of a money laundering investigation, there must be reasonable grounds for suspecting that the person specified in the application for the order has committed a money laundering offence.
- (5) In the case of any investigation, 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 investigation for the purposes of which the order is sought.

- (6) In the case of any investigation 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 investigation if the information is obtained.

400 Offences

- (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 subsection (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 subsection (3) is liable—
- (a) on summary conviction, to a fine not exceeding the statutory maximum, or
 - (b) on conviction on indictment, to a fine.

401 Statements

- (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 subsection (1) does not apply—
- (a) in the case of proceedings under Part 3,
 - (b) on a prosecution for an offence under section 400(1) or (3), or
 - (c) on a prosecution for some other offence where, in giving evidence, the financial institution makes a statement inconsistent with the statement mentioned in subsection (1).
- (3) A statement may not be used by virtue of subsection (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.

402 Further provisions

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

403 Supplementary

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

- (2) Provision may be made by rules of court as to the discharge and variation of customer information orders.
- (3) Rules of court under subsection (2) relating to customer information orders—
 - (a) made in a confiscation investigation or a money laundering investigation shall, without prejudice to section 305 of the Criminal Procedure (Scotland) Act 1995 (c. 46), be made by act of adjournal;
 - (b) made in a civil recovery investigation shall, without prejudice to section 32 of the Sheriff Courts (Scotland) Act 1971 (c. 58), be made by act of sederunt.
- (4) An application to discharge or vary a customer information order may be made to the sheriff by—
 - (a) the person who applied for the order;
 - (b) any person affected by the order.
- (5) The sheriff may—
 - (a) discharge the order;
 - (b) vary the order.