



Proceeds of Crime Act 2002

2002 CHAPTER 29

PART 8

INVESTIGATIONS

CHAPTER 1

INTRODUCTION

341 Investigations

- (1) For the purposes of this Part a confiscation investigation is an investigation into—
 - (a) whether a person has benefited from his criminal conduct, or
 - (b) the extent or whereabouts of his benefit from his criminal conduct.
- (2) For the purposes of this Part a civil recovery investigation is an investigation into—
 - (a) whether property is recoverable property or associated property,
 - (b) who holds the property, or
 - (c) its extent or whereabouts.
- (3) But an investigation is not a civil recovery investigation if—
 - (a) proceedings for a recovery order have been started in respect of the property in question,
 - (b) an interim receiving order applies to the property in question,
 - (c) an interim administration order applies to the property in question, or
 - (d) the property in question is detained under section 295.
- (4) For the purposes of this Part a money laundering investigation is an investigation into whether a person has committed a money laundering offence.

342 Offences of prejudicing investigation

- (1) This section applies if a person knows or suspects that an appropriate officer or (in Scotland) a proper person is acting (or proposing to act) in connection with a confiscation investigation, a civil recovery investigation or a money laundering investigation which is being or is about to be conducted.
- (2) The person commits an offence if—
 - (a) he makes a disclosure which is likely to prejudice the investigation, or
 - (b) he falsifies, conceals, destroys or otherwise disposes of, or causes or permits the falsification, concealment, destruction or disposal of, documents which are relevant to the investigation.
- (3) A person does not commit an offence under subsection (2)(a) if—
 - (a) he does not know or suspect that the disclosure is likely to prejudice the investigation,
 - (b) the disclosure is made in the exercise of a function under this Act 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 this Act, or
 - (c) he is a professional legal adviser and the disclosure falls within subsection (4).
- (4) A disclosure falls within this subsection 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 subsection (4) if it is made with the intention of furthering a criminal purpose.
- (6) A person does not commit an offence under subsection (2)(b) if—
 - (a) he does not know or suspect that the documents are relevant to the investigation, or
 - (b) he does not intend to conceal any facts disclosed by the documents from any appropriate officer or (in Scotland) proper person carrying out the investigation.
- (7) A person guilty of an offence under subsection (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.
- (8) For the purposes of this section—
 - (a) “appropriate officer” must be construed in accordance with section 378;
 - (b) “proper person” must be construed in accordance with section 412.

CHAPTER 2

ENGLAND AND WALES AND NORTHERN IRELAND

Judges and courts

343 Judges

- (1) In this Chapter references to a judge in relation to an application must be construed in accordance with this section.
- (2) In relation to an application for the purposes of a confiscation investigation or a money laundering investigation a judge is—
 - (a) in England and Wales, a judge entitled to exercise the jurisdiction of the Crown Court;
 - (b) in Northern Ireland, a Crown Court judge.
- (3) In relation to an application for the purposes of a civil recovery investigation a judge is a judge of the High Court.

344 Courts

In this Chapter references to the court are to—

- (a) the Crown Court, in relation to an order for the purposes of a confiscation investigation or a money laundering investigation;
- (b) the High Court, in relation to an order for the purposes of a civil recovery investigation.

Production orders

345 Production orders

- (1) A judge may, on an application made to him by an appropriate officer, make a production order if he 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) 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.
- (3) The application must also state that—
 - (a) the order is sought for the purposes of the 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—

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- (a) requiring the person the application for the order specifies as appearing to be in possession or control of material to produce it to an appropriate officer for him 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 judge by whom the order is made that a longer or shorter period would be appropriate in the particular circumstances.

346 Requirements for making of production order

- (1) These are the requirements for the making of a production order.
- (2) There must be reasonable grounds for suspecting that—
 - (a) in the case of a confiscation investigation, the person the application for the order specifies as being subject to the investigation has benefited from his criminal conduct;
 - (b) in the case of a civil recovery investigation, the property the application for the order specifies as being subject to the investigation is recoverable property or associated property;
 - (c) in the case of a money laundering investigation, the person the application for the order specifies as being subject to the investigation has committed a money laundering offence.
- (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 investigation for the purposes of which the order is sought.
- (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 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.

347 Order to grant entry

- (1) This section applies if a judge makes a production order requiring a person to give an appropriate officer access to material on any premises.
- (2) The judge may, on an application made to him 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 him to enter the premises to obtain access to the material.

348 Further provisions

- (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 investigation for the purposes of which the order was made.
- (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.

349 Computer information

- (1) This section 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 him to take away, it has effect as an order to produce the material in a form in which it can be taken away by him 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 him access to the material in a form in which it is visible and legible.

350 Government departments

- (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;

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- (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 section 345(4)) the person on whom it is served must report the reasons for the failure to—
 - (a) a judge entitled to exercise the jurisdiction of the Crown Court or (in Northern Ireland) a Crown Court judge, in the case of an order made for the purposes of a confiscation investigation or a money laundering investigation;
 - (b) a High Court judge, in the case of an order made for the purposes of a civil recovery investigation.
- (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 (c. 44).

351 Supplementary

- (1) An application for a production order or an order to grant entry may be made ex parte to a judge in chambers.
- (2) Rules of court may make provision as to the practice and procedure to be followed in connection with proceedings relating to production orders and orders to grant entry.
- (3) An application to discharge or vary a production order or an order to grant entry may be made to the court by—
 - (a) the person who applied for the order;
 - (b) any person affected by the order.
- (4) The court—
 - (a) may discharge the order;
 - (b) may vary the order.
- (5) If an accredited financial investigator, a constable or a customs 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 accredited financial investigator, constable or customs officer.
- (6) References to a person who applied for a production order or an order to grant entry must be construed accordingly.
- (7) Production orders and orders to grant entry have effect as if they were orders of the court.
- (8) Subsections (2) to (7) do not apply to orders made in England and Wales for the purposes of a civil recovery investigation.

Search and seizure warrants

352 Search and seizure warrants

- (1) A judge may, on an application made to him by an appropriate officer, issue a search and seizure warrant if he is satisfied that either of the requirements for the issuing of the warrant is fulfilled.

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- (2) The application for a search and seizure warrant 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.
- (3) The application must also state—
 - (a) that the warrant is sought for the purposes of the investigation;
 - (b) that the warrant is sought in relation to the premises specified in the application;
 - (c) that 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 section 353(6), (7) or (8) on the premises.
- (4) 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 investigation for the purposes of which the application is made.
- (5) An appropriate person is—
 - (a) a constable or a customs officer, if the warrant is sought for the purposes of a confiscation investigation or a money laundering investigation;
 - (b) a named member of the staff of the Agency, if the warrant is sought for the purposes of a civil recovery investigation.
- (6) 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 section 353 is satisfied in relation to the warrant.

353 Requirements where production order not available

- (1) This section is satisfied in relation to a search and seizure warrant if—
 - (a) subsection (2) applies, and
 - (b) either the first or the second set of conditions is complied with.
- (2) This subsection applies if there are reasonable grounds for suspecting that—
 - (a) in the case of a confiscation investigation, the person specified in the application for the warrant has benefited from his criminal conduct;
 - (b) in the case of a civil recovery investigation, the property specified in the application for the warrant is recoverable property or associated property;
 - (c) in the case of a money laundering investigation, the person specified in the application for the warrant has committed a money laundering offence.
- (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 investigation for the purposes of which the warrant is sought,

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- (b) it is in the public interest for the material to be obtained, having regard to the benefit likely to accrue to the 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 subsection (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 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 subsection (6), (7) or (8),
 - (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 investigation if the material is obtained, and
 - (c) any one or more of the requirements in subsection (9) is met.
- (6) In the case of a confiscation investigation, material falls within this subsection if it cannot be identified at the time of the application but it—
- (a) relates to the person specified in the application, the question whether he has benefited from his criminal conduct or any question as to the extent or whereabouts of his benefit from his criminal conduct, and
 - (b) is likely to be of substantial value (whether or not by itself) to the investigation for the purposes of which the warrant is sought.
- (7) In the case of a civil recovery investigation, material falls within this subsection 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 recoverable property or associated property, 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 recoverable property, 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 investigation for the purposes of which the warrant is sought.
- (8) In the case of a money laundering investigation, material falls within this subsection if it cannot be identified at the time of the application but it—
- (a) relates to the person specified in the application or the question whether he has committed a money laundering offence, and
 - (b) is likely to be of substantial value (whether or not by itself) to the investigation for the purposes of which the warrant is sought.
- (9) 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;

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- (c) that the investigation might be seriously prejudiced unless an appropriate person arriving at the premises is able to secure immediate entry to them.
- (10) An appropriate person is—
- (a) a constable or a customs officer, if the warrant is sought for the purposes of a confiscation investigation or a money laundering investigation;
 - (b) a member of the staff of the Agency, if the warrant is sought for the purposes of a civil recovery investigation.

354 Further provisions: general

- (1) A search and seizure warrant does not confer the right to seize privileged material.
- (2) 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.
- (3) A search and seizure warrant does not confer the right to seize excluded material.

355 Further provisions: confiscation and money laundering

- (1) This section applies to—
 - (a) search and seizure warrants sought for the purposes of a confiscation investigation or a money laundering investigation, and
 - (b) powers of seizure under them.
- (2) In relation to such warrants and powers, the Secretary of State may make an order which applies the provisions to which subsections (3) and (4) apply subject to any specified modifications.
- (3) This subsection applies to the following provisions of the Police and Criminal Evidence Act 1984 (c. 60)—
 - (a) section 15 (search warrants -safeguards);
 - (b) section 16 (execution of warrants);
 - (c) section 21 (access and copying);
 - (d) section 22 (retention).
- (4) This subsection applies to the following provisions of the Police and Criminal Evidence (Northern Ireland) Order 1989 (S.I. 1989/1341 (N.I. 12))—
 - (a) Article 17 (search warrants -safeguards);
 - (b) Article 18 (execution of warrants);
 - (c) Article 23 (access and copying);
 - (d) Article 24 (retention).

356 Further provisions: civil recovery

- (1) This section applies to search and seizure warrants sought for the purposes of civil recovery investigations.
- (2) An application for a warrant may be made ex parte to a judge in chambers.
- (3) A warrant may be issued subject to conditions.

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- (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 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 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) If—
 - (a) the Director gives written authority for members of staff of the Agency to accompany the person a warrant names when executing it, and
 - (b) a warrant is issued,
 the authorised members have the same powers under it as the person it names.
- (7) 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.
- (8) Copies may be taken of any material seized under a warrant.
- (9) 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 investigation for the purposes of which the warrant was issued.
- (10) But if the Director 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.

Disclosure orders

357 Disclosure orders

- (1) A judge may, on an application made to him by the Director, make a disclosure order if he is satisfied that each of the requirements for the making of the order is fulfilled.
- (2) No application for a disclosure order may be made in relation to a money laundering investigation.
- (3) The application for a disclosure order must state that—
 - (a) a person specified in the application is subject to a confiscation investigation which is being carried out by the Director and the order is sought for the purposes of the investigation, or
 - (b) property specified in the application is subject to a civil recovery investigation and the order is sought for the purposes of the investigation.
- (4) A disclosure order is an order authorising the Director to give to any person the Director considers has relevant information notice in writing requiring him to do, with

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respect to any matter relevant to the investigation for the purposes of which the order is sought, 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.
- (5) Relevant information is information (whether or not contained in a document) which the Director considers to be relevant to the investigation.
- (6) 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 him.

358 Requirements for making of disclosure order

- (1) These are the requirements for the making of a disclosure order.
- (2) There must be reasonable grounds for suspecting that—
 - (a) in the case of a confiscation investigation, the person specified in the application for the order has benefited from his criminal conduct;
 - (b) in the case of a civil recovery investigation, the property specified in the application for the order is recoverable property or associated property.
- (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 investigation for the purposes of which the order is sought.
- (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 investigation if the information is obtained.

359 Offences

- (1) A person commits an offence if without reasonable excuse he fails to comply with a requirement imposed on him under a disclosure order.
- (2) A person guilty of an offence under subsection (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 him under a disclosure order, he—
 - (a) makes a statement which he 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 person guilty of an offence under subsection (3) is liable—

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- (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.

360 Statements

- (1) A statement made by a person in response to a requirement imposed on him under a disclosure order may not be used in evidence against him in criminal proceedings.
- (2) But subsection (1) does not apply—
 - (a) in the case of proceedings under Part 2 or 4,
 - (b) on a prosecution for an offence under section 359(1) or (3),
 - (c) on a prosecution for an offence under section 5 of the Perjury Act 1911 (c. 6) or Article 10 of the Perjury (Northern Ireland) Order 1979 (S.I. 1979/1714 (N.I. 19)) (false statements), or
 - (d) on a prosecution for some other offence where, in giving evidence, the person makes a statement inconsistent with the statement mentioned in subsection (1).
- (3) A statement may not be used by virtue of subsection (2)(d) against a person unless—
 - (a) evidence relating to it is adduced, or
 - (b) a question relating to it is asked,by him or on his behalf in the proceedings arising out of the prosecution.

361 Further provisions

- (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 a client of his.
- (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) The Director 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 investigation for the purposes of which the order was made.

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- (9) But if the Director 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.

362 Supplementary

- (1) An application for a disclosure order may be made ex parte to a judge in chambers.
- (2) Rules of court may make provision as to the practice and procedure to be followed in connection with proceedings relating to disclosure orders.
- (3) An application to discharge or vary a disclosure order may be made to the court by—
 - (a) the Director;
 - (b) any person affected by the order.
- (4) The court—
 - (a) may discharge the order;
 - (b) may vary the order.
- (5) Subsections (2) to (4) do not apply to orders made in England and Wales for the purposes of a civil recovery investigation.

Customer information orders

363 Customer information orders

- (1) A judge may, on an application made to him by an appropriate officer, make a customer information order if he 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) 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.
- (3) 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.
- (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.

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- (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.

364 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)) 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

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- (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 Secretary of State 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.

365 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.

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366 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.

367 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 2 or 4,
 - (b) on a prosecution for an offence under section 366(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.

368 Disclosure of information

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

369 Supplementary

- (1) An application for a customer information order may be made ex parte to a judge in chambers.
- (2) Rules of court may make provision as to the practice and procedure to be followed in connection with proceedings relating to customer information orders.
- (3) An application to discharge or vary a customer information order may be made to the court by—

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- (a) the person who applied for the order;
 - (b) any person affected by the order.
- (4) The court—
- (a) may discharge the order;
 - (b) may vary the order.
- (5) If an accredited financial investigator, a constable or a customs officer applies for a customer information order, an application to discharge or vary the order need not be by the same accredited financial investigator, constable or customs officer.
- (6) References to a person who applied for a customer information order must be construed accordingly.
- (7) An accredited financial investigator, a constable or a customs officer may not make an application for a customer information order or an application to vary such an order unless he is a senior appropriate officer or he is authorised to do so by a senior appropriate officer.
- (8) Subsections (2) to (6) do not apply to orders made in England and Wales for the purposes of a civil recovery investigation.

Account monitoring orders

370 Account monitoring orders

- (1) A judge may, on an application made to him by an appropriate officer, make an account monitoring order if he 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) 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.
- (3) 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 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

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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.

371 Requirements for making of account monitoring order

- (1) These are the requirements for the making of an account monitoring 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 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 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 account information to be provided, having regard to the benefit likely to accrue to the investigation if the information is obtained.

372 Statements

- (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 subsection (1) does not apply—
- (a) in the case of proceedings under Part 2 or 4,
 - (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 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.

373 Applications

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

374 Disclosure of information

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

375 Supplementary

- (1) Rules of court may make provision as to the practice and procedure to be followed in connection with proceedings relating to account monitoring orders.
- (2) An application to discharge or vary an account monitoring order may be made to the court by—
 - (a) the person who applied for the order;
 - (b) any person affected by the order.
- (3) The court—
 - (a) may discharge the order;
 - (b) may vary the order.
- (4) If an accredited financial investigator, a constable or a customs officer applies for an account monitoring order, an application to discharge or vary the order need not be by the same accredited financial investigator, constable or customs officer.
- (5) References to a person who applied for an account monitoring order must be construed accordingly.
- (6) Account monitoring orders have effect as if they were orders of the court.
- (7) This section does not apply to orders made in England and Wales for the purposes of a civil recovery investigation.

Evidence overseas

376 Evidence overseas

- (1) This section applies if the Director is carrying out a confiscation investigation.
- (2) A judge on the application of the Director or a person subject to the investigation may issue a letter of request if he thinks that there is evidence in a country or territory outside the United Kingdom—
 - (a) that such a person has benefited from his criminal conduct, or
 - (b) of the extent or whereabouts of that person's benefit from his criminal conduct.
- (3) The Director may issue a letter of request if he thinks that there is evidence in a country or territory outside the United Kingdom—
 - (a) that a person subject to the investigation has benefited from his criminal conduct, or
 - (b) of the extent or whereabouts of that person's benefit from his criminal conduct.

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- (4) A letter of request is a letter requesting assistance in obtaining outside the United Kingdom such evidence as is specified in the letter for use in the investigation.
- (5) The person issuing a letter of request must send it to the Secretary of State.
- (6) If the Secretary of State believes it is appropriate to do so he may forward a letter received under subsection (5)—
 - (a) to a court or tribunal which is specified in the letter and which exercises jurisdiction in the place where the evidence is to be obtained, or
 - (b) to an authority recognised by the government of the country or territory concerned as the appropriate authority for receiving letters of request.
- (7) But in a case of urgency the person issuing the letter of request may send it directly to the court or tribunal mentioned in subsection (6)(a).
- (8) Evidence obtained in pursuance of a letter of request must not be used—
 - (a) by any person other than the Director or a person subject to the investigation;
 - (b) for any purpose other than that for which it is obtained.
- (9) Subsection (8) does not apply if the authority mentioned in subsection (6)(b) consents to the use.
- (10) Evidence includes documents and other articles.
- (11) Rules of court may make provision as to the practice and procedure to be followed in connection with proceedings relating to the issue of letters of request by a judge under this section.

Code of practice

377 Code of practice

- (1) The Secretary of State must prepare a code of practice as to the exercise by all of the following of functions they have under this Chapter—
 - (a) the Director;
 - (b) members of the staff of the Agency;
 - (c) accredited financial investigators;
 - (d) constables;
 - (e) customs officers.
- (2) After preparing a draft of the code the Secretary of State—
 - (a) must publish the draft;
 - (b) must consider any representations made to him about the draft;
 - (c) may amend the draft accordingly.
- (3) After the Secretary of State has proceeded under subsection (2) he must lay the code before Parliament.
- (4) When he has done so the Secretary of State may bring the code into operation on such day as he may appoint by order.

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- (5) A person specified in subsection (1)(a) to (e) must comply with a code of practice which is in operation under this section in the exercise of any function he has under this Chapter.
- (6) If such a person fails to comply with any provision of such a code of practice he is not by reason only of that failure liable in any criminal or civil proceedings.
- (7) But the code of practice is admissible in evidence in such proceedings and a court may take account of any failure to comply with its provisions in determining any question in the proceedings.
- (8) The Secretary of State may from time to time revise a code previously brought into operation under this section; and the preceding provisions of this section apply to a revised code as they apply to the code as first prepared.
- (9) The following provisions do not apply to an appropriate officer in the exercise of any function he has under this Chapter—
 - (a) section 67(9) of the Police and Criminal Evidence Act 1984 (c. 60) (application of codes of practice under that Act to persons other than police officers);
 - (b) Article 66(8) of the Police and Criminal Evidence (Northern Ireland) Order 1989 (S.I. 1989/1341 (N.I. 12)) (which makes similar provision for Northern Ireland).

Interpretation

378 Officers

- (1) In relation to a confiscation investigation these are appropriate officers—
 - (a) the Director;
 - (b) an accredited financial investigator;
 - (c) a constable;
 - (d) a customs officer.
- (2) In relation to a confiscation investigation these are senior appropriate officers—
 - (a) the Director;
 - (b) a police officer who is not below the rank of superintendent;
 - (c) a customs officer who is not below such grade as is designated by the Commissioners of Customs and Excise as equivalent to that rank;
 - (d) an accredited financial investigator who falls within a description specified in an order made for the purposes of this paragraph by the Secretary of State under section 453.
- (3) In relation to a civil recovery investigation the Director (and only the Director) is—
 - (a) an appropriate officer;
 - (b) a senior appropriate officer.
- (4) In relation to a money laundering investigation these are appropriate officers—
 - (a) an accredited financial investigator;
 - (b) a constable;
 - (c) a customs officer.

- (5) For the purposes of section 342, in relation to a money laundering investigation a person authorised for the purposes of money laundering investigations by the Director General of the National Criminal Intelligence Service is also an appropriate officer.
- (6) In relation to a money laundering investigation these are senior appropriate officers—
- (a) a police officer who is not below the rank of superintendent;
 - (b) a customs officer who is not below such grade as is designated by the Commissioners of Customs and Excise as equivalent to that rank;
 - (c) an accredited financial investigator who falls within a description specified in an order made for the purposes of this paragraph by the Secretary of State under section 453.
- (7) But a person is not an appropriate officer or a senior appropriate officer in relation to a money laundering investigation if he is—
- (a) a member of the staff of the Agency, or
 - (b) a person providing services under arrangements made by the Director.

379 Miscellaneous

“Document”, “excluded material” and “premises” have the same meanings as in the Police and Criminal Evidence Act 1984 (c. 60) or (in relation to Northern Ireland) the Police and Criminal Evidence (Northern Ireland) Order 1989 (S.I. 1989/1341 (N.I. 12)).

CHAPTER 3

SCOTLAND

Production orders

380 Production orders

- (1) The sheriff may, on an application made to him by the appropriate person, make a production order if he is satisfied that each of the requirements for the making of the order is fulfilled.
- (2) In making a production 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 production 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.
- (4) The application must also state that—
 - (a) the order is sought for the purposes of the 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 material to produce it to a proper person for him 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.

381 Requirements for making of production order

- (1) These are the requirements for the making of a production order.
- (2) There must be reasonable grounds for suspecting that—
 - (a) in the case of a confiscation investigation, the person the application for the order specifies as being subject to the investigation has benefited from his criminal conduct;
 - (b) in the case of a civil recovery investigation, the property the application for the order specifies as being subject to the investigation is recoverable property or associated property;
 - (c) in the case of a money laundering investigation, the person the application for the order specifies as being subject to the investigation has committed a money laundering offence.
- (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 investigation for the purposes of which the order is sought.
- (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 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.

382 Order to grant entry

- (1) This section applies if a sheriff makes a production order requiring a person to give a proper person access to material on any premises.
- (2) The sheriff may, on an application made to him by the appropriate person 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 appropriate person to be entitled to grant entry to the premises to allow a proper person to enter the premises to obtain access to the material.

383 Further provisions

- (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 investigation for the purposes of which the order was made.
- (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.

384 Computer information

- (1) This section 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 a proper person for him to take away, it has effect as an order to produce the material in a form in which it can be taken away by him 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 him access to the material in a form in which it is visible and legible.

385 Government departments

- (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 section 380(5)) the person on whom it is served must report the reasons for the failure to—
 - (a) the sheriff in the case of an order made for the purposes of a confiscation investigation or a money laundering investigation;

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- (b) the sheriff exercising a civil jurisdiction in the case of an order made for the purposes of a civil recovery investigation.
- (5) In this section, “authorised government department” includes a government department which is an authorised department for the purposes of the Crown Proceedings Act 1947 (c. 44) and the Scottish Administration.

386 Supplementary

- (1) An application for a production order or an order to grant entry 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 production orders and orders to grant entry.
- (3) Rules of court under subsection (2) relating to production orders and orders to grant entry—
 - (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 production order or an order to grant entry 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.

Search warrants

387 Search warrants

- (1) The sheriff may, on an application made to him by the appropriate person, issue a search warrant if he is satisfied that either of the requirements for the issuing of the warrant is fulfilled.
- (2) In issuing a search warrant 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 search warrant 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.
- (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 and which is likely to be of substantial value (whether or not by itself) to the investigation for the purposes of which the application is made.
- (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
 - (b) that section 388 is satisfied in relation to the warrant.
- (6) An application for a search warrant may be made ex parte to a sheriff in chambers.

388 Requirements where production order not available

- (1) This section is satisfied in relation to a search warrant if—
- (a) subsection (2) applies, and
 - (b) either the first or the second set of conditions is complied with.
- (2) This subsection applies if there are reasonable grounds for suspecting that—
- (a) in the case of a confiscation investigation, the person specified in the application for the warrant has benefited from his criminal conduct;
 - (b) in the case of a civil recovery investigation, the property specified in the application for the warrant is recoverable property or associated property;
 - (c) in the case of a money laundering investigation, the person specified in the application for the warrant has committed a money laundering offence.
- (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 investigation for the purposes of which the warrant is sought,
 - (b) it is in the public interest for the material to be obtained, having regard to the benefit likely to accrue to the 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 subsection (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 the material or to grant entry to the premises on which the material is situated;
 - (c) that the 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 subsection (6), (7) or (8),
 - (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 investigation if the material is obtained, and
 - (c) any one or more of the requirements in subsection (9) is met.

- (6) In the case of a confiscation investigation, material falls within this subsection if it cannot be identified at the time of the application but it—
- (a) relates to the person specified in the application, the question whether he has benefited from his criminal conduct or any question as to the extent or whereabouts of his benefit from his criminal conduct, and
 - (b) is likely to be of substantial value (whether or not by itself) to the investigation for the purposes of which the warrant is sought.
- (7) In the case of a civil recovery investigation, material falls within this subsection 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 recoverable property or associated property, 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 recoverable property, 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 investigation for the purposes of which the warrant is sought.
- (8) In the case of a money laundering investigation, material falls within this subsection if it cannot be identified at the time of the application but it—
- (a) relates to the person specified in the application or the question whether he has committed a money laundering offence, and
 - (b) is likely to be of substantial value (whether or not by itself) to the investigation for the purposes of which the warrant is sought.
- (9) 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 investigation might be seriously prejudiced unless a proper person arriving at the premises is able to secure immediate entry to them.

389 Further provisions: general

A search warrant does not confer the right to seize any items subject to legal privilege.

390 Further provisions: confiscation, civil recovery and money laundering

- (1) This section applies to search warrants sought for the purposes of confiscation investigations, civil recovery investigations or money laundering investigations.
- (2) A warrant continues in force until the end of the period of one month starting with the day on which it is issued.
- (3) 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 proper person believes relates to any matter relevant to the investigation, to be produced in a form—
- (a) in which it can be taken away, and
 - (b) in which it is visible and legible.

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

- (4) Copies may be taken of any material seized under a warrant.
- (5) A warrant issued in relation to a civil recovery investigation may be issued subject to conditions.
- (6) A warrant issued in relation to a civil recovery investigation 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) Material seized under a warrant issued in relation to a civil recovery investigation may be retained for so long as it is necessary to retain it (as opposed to copies of it) in connection with the investigation for the purposes of which the warrant was issued.
- (8) 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.

Disclosure orders

391 Disclosure orders

- (1) The High Court of Justiciary, on an application made to it by the Lord Advocate in relation to confiscation investigations, or the Court of Session, on an application made to it by the Scottish Ministers in relation to civil recovery investigations, may make a disclosure order if it is satisfied that each of the requirements for the making of the order is fulfilled.
- (2) No application for a disclosure order may be made in relation to a money laundering investigation.
- (3) The application for a disclosure order must state that—
 - (a) a person specified in the application is subject to a confiscation investigation and the order is sought for the purposes of the investigation, or
 - (b) property specified in the application is subject to a civil recovery investigation and the order is sought for the purposes of the investigation.
- (4) A disclosure order is an order authorising the Lord Advocate or the Scottish Ministers to give to any person the Lord Advocate considers or the Scottish Ministers consider has relevant information, notice in writing requiring him to do, with respect to any matter relevant to the investigation for the purposes of which the order is sought, 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.

- (5) Relevant information is information (whether or not contained in a document) which the Lord Advocate considers or the Scottish Ministers consider to be relevant to the investigation.
- (6) 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 him.

392 Requirements for making of disclosure order

- (1) These are the requirements for the making of a disclosure order.
- (2) There must be reasonable grounds for suspecting that—
 - (a) in the case of a confiscation investigation, the person specified in the application for the order has benefited from his criminal conduct;
 - (b) in the case of a civil recovery investigation, the property specified in the application for the order is recoverable property or associated property.
- (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 investigation for the purposes of which the order is sought.
- (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 investigation if the information is obtained.

393 Offences

- (1) A person commits an offence if without reasonable excuse he fails to comply with a requirement imposed on him under a disclosure order.
- (2) A person guilty of an offence under subsection (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 him under a disclosure order, he—
 - (a) makes a statement which he 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 person guilty of an offence under subsection (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.

394 Statements

- (1) A statement made by a person in response to a requirement imposed on him under a disclosure order may not be used in evidence against him 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 393(1) or (3),
 - (c) on a prosecution for perjury, or
 - (d) on a prosecution for some other offence where, in giving evidence, the person makes a statement inconsistent with the statement mentioned in subsection (1).
- (3) A statement may not be used by virtue of subsection (2)(d) against a person unless—
 - (a) evidence relating to it is adduced, or
 - (b) a question relating to it is asked,by him or on his behalf in the proceedings arising out of the prosecution.

395 Further provisions

- (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 he 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 and 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 investigation for the purposes of which the order was made.
- (5) But if the Lord Advocate has, or 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.

396 Supplementary

- (1) An application for a disclosure order may be made *ex parte* to—
 - (a) in the case of an order made in a confiscation investigation, a judge of the High Court of Justiciary;
 - (b) in the case of an order made in a civil recovery investigation, a judge of the Court of Session,in chambers.
- (2) Provision may be made by rules of court as to the discharge and variation of disclosure orders.

- (3) Rules of court under subsection (2) relating to disclosure orders—
 - (a) made in a confiscation 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 5 of the Court of Session Act 1988 (c. 36), be made by act of sederunt.
- (4) An application to discharge or vary a disclosure order may be made to a judge of the court which made the order by—
 - (a) the Lord Advocate or the Scottish Ministers;
 - (b) any person affected by the order.
- (5) The court may—
 - (a) discharge the order;
 - (b) vary the order.

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,
 - (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)) 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;

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- (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.

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- (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.

Account monitoring orders

404 Account monitoring orders

- (1) The sheriff may, on an application made to him by the appropriate person, make an account monitoring order if he is satisfied that each of the requirements for the making of the order is fulfilled.
- (2) In making an account monitoring 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 an account monitoring 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 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.

405 Requirements for making of account monitoring order

- (1) These are the requirements for the making of an account monitoring order.

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

- (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 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 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 account information to be provided, having regard to the benefit likely to accrue to the investigation if the information is obtained.

406 Statements

- (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 subsection (1) does not apply—
 - (a) in the case of proceedings under Part 3;
 - (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 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.

407 Further provisions

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

408 Supplementary

- (1) An application for an account monitoring 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 account monitoring orders.
- (3) Rules of court under subsection (2) relating to account monitoring 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 an account monitoring 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.

General

409 Jurisdiction of sheriff

- (1) A sheriff may grant a production order, search warrant, customer information order or account monitoring order under this Act 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 may be executed within the sheriffdom of the sheriff who granted it.
- (3) This section is without prejudice to any existing rule of law or to any other provision of this Act.

410 Code of practice

- (1) The Scottish Ministers must prepare a code of practice as to the exercise by proper persons of functions they have under this Chapter.
- (2) After preparing a draft of the code the Scottish Ministers—
 - (a) must publish the draft;
 - (b) must consider any representations made to them about the draft;
 - (c) may amend the draft accordingly.
- (3) After the Scottish Ministers have proceeded under subsection (2) they must lay the code before the Scottish Parliament.
- (4) When they have done so, the Scottish Ministers may bring the code into operation on such day as they may appoint by order.
- (5) A proper person must comply with a code of practice which is in operation under this section in the exercise of any function he has under this Chapter.

- (6) If a proper person fails to comply with any provision of a code of practice issued under this section he is not by reason only of that failure liable in any criminal or civil proceedings.
- (7) But the code of practice is admissible in evidence in such proceedings and a court may take account of any failure to comply with its provisions in determining any questions in the proceedings.
- (8) The Scottish Ministers may from time to time revise a code previously brought into operation under this section; and the preceding provisions of this section apply to a revised code as they apply to the code as first prepared.

411 Performance of functions of Scottish Ministers by constables in Scotland

- (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 subsection (2), on behalf of the Scottish Ministers.
- (2) The specified functions are the functions conferred on the Scottish Ministers by—
 - (a) section 380(1) (production orders),
 - (b) section 382(2) (entry orders),
 - (c) section 386(4) (supplementary to production and entry orders),
 - (d) section 387(1) (search warrants),
 - (e) section 391(1) (disclosure orders),
 - (f) section 396(4) (supplementary to disclosure orders),
 - (g) section 397(1) (customer information orders),
 - (h) section 403(4) (supplementary to customer information orders),
 - (i) section 404(1) (account monitoring orders),
 - (j) section 408(4) (supplementary to account monitoring orders).

412 Interpretation

In this Chapter, unless the context otherwise requires—

“appropriate person” means—

- (a) the procurator fiscal, in relation to a confiscation investigation or a money laundering investigation,
- (b) the Scottish Ministers, in relation to a civil recovery investigation;

references to a “constable” include references to a customs and excise officer;

“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 his 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.

“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 (c. 61) and any tent or movable structure;
“proper person” means—
 - (a) a constable, in relation to a confiscation investigation or a money laundering investigation;
 - (b) the Scottish Ministers or a person named by them, in relation to a civil recovery investigation.

CHAPTER 4

INTERPRETATION

413 Criminal conduct

- (1) Criminal conduct is conduct which—
 - (a) constitutes an offence in any part of the United Kingdom, or
 - (b) would constitute an offence in any part of the United Kingdom if it occurred there.
- (2) A person benefits from conduct if he obtains property or a pecuniary advantage as a result of or in connection with the conduct.
- (3) References to property or a pecuniary advantage obtained in connection with conduct include references to property or a pecuniary advantage obtained in both that connection and some other.
- (4) If a person benefits from conduct his benefit is the property or pecuniary advantage obtained as a result of or in connection with the conduct.
- (5) It is immaterial—
 - (a) whether conduct occurred before or after the passing of this Act, and
 - (b) whether property or a pecuniary advantage constituting a benefit from conduct was obtained before or after the passing of this Act.

414 Property

- (1) Property is all property wherever situated and includes—
 - (a) money;
 - (b) all forms of property, real or personal, heritable or moveable;
 - (c) things in action and other intangible or incorporeal property.
- (2) “Recoverable property” and “associated property” have the same meanings as in Part 5.
- (3) The following rules apply in relation to property—
 - (a) property is obtained by a person if he obtains an interest in it;
 - (b) references to an interest, in relation to land in England and Wales or Northern Ireland, are to any legal estate or equitable interest or power;

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- (c) references to an interest, in relation to land in Scotland, are to any estate, interest, servitude or other heritable right in or over land, including a heritable security;
- (d) references to an interest, in relation to property other than land, include references to a right (including a right to possession).

415 Money laundering offences

- (1) An offence under section 327, 328 or 329 is a money laundering offence.
- (2) Each of the following is a money laundering offence—
 - (a) an attempt, conspiracy or incitement to commit an offence specified in subsection (1);
 - (b) aiding, abetting, counselling or procuring the commission of an offence specified in subsection (1).

416 Other interpretative provisions

- (1) These expressions are to be construed in accordance with these provisions of this Part—
 - civil recovery investigation: section 341(2) and (3)
 - confiscation investigation: section 341(1)
 - money laundering investigation: section 341(4)
- (2) In the application of this Part to England and Wales and Northern Ireland, these expressions are to be construed in accordance with these provisions of this Part—
 - account information: section 370(4)
 - account monitoring order: section 370(6)
 - appropriate officer: section 378
 - customer information: section 364
 - customer information order: section 363(5)
 - disclosure order: section 357(4)
 - document: section 379
 - order to grant entry: section 347(3)
 - production order: section 345(4)
 - search and seizure warrant: section 352(4)
 - senior appropriate officer: section 378.
- (3) In the application of this Part to Scotland, these expressions are to be construed in accordance with these provisions of this Part—
 - account information: section 404(5)
 - account monitoring order: section 404(7)
 - customer information: section 398
 - customer information order: section 397(6)
 - disclosure order: section 391(4)
 - production order: section 380(5)
 - proper person: section 412
 - search warrant: section 387(4).

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- (4) “Financial institution” means a person carrying on a business in the regulated sector.
- (5) But a person who ceases to carry on a business in the regulated sector (whether by virtue of paragraph 5 of Schedule 9 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.
- (6) References to a business in the regulated sector must be construed in accordance with Schedule 9.
- (7) “Recovery order”, “interim receiving order” and “interim administration order” have the same meanings as in Part 5.
- (8) References to notice in writing include references to notice given by electronic means.
- (9) This section and sections 413 to 415 apply for the purposes of this Part.