



Serious Organised Crime and Police Act 2005

2005 CHAPTER 15

PART 2

INVESTIGATIONS, PROSECUTIONS, PROCEEDINGS AND PROCEEDS OF CRIME

CHAPTER 6

PROCEEDS OF CRIME

97 Confiscation orders by magistrates' courts

- (1) The Secretary of State may by order make such provision as he considers appropriate for or in connection with enabling confiscation orders under—
 - (a) Part 2 of the Proceeds of Crime Act 2002 (c. 29) (confiscation: England and Wales),^{F1}...
 - ^{F2}(b)
to be made by magistrates' courts in England and Wales^{F3}....
- ^{F4}(1A) The Department of Justice in Northern Ireland may by order make such provision as the Department considers appropriate for or in connection with enabling confiscation orders under Part 4 of the 2002 Act (confiscation: Northern Ireland) to be made by magistrates' courts in Northern Ireland.]
- (2) But an order under subsection (1) [^{F5}or (1A)] may not enable such a confiscation order to be made by any magistrates' court in respect of an amount exceeding £10,000.
- (3) An order under subsection (1) [^{F5}or (1A)] may amend, repeal, revoke or otherwise modify any provision of Part 2 or 4 of the 2002 Act [^{F6}(as the case may be)] or any other enactment relating to, or to things done under or for the purposes of, [^{F7}that Part (or any provision of that Part)].

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Textual Amendments

- F1** Word in s. 97(1) omitted (12.4.2010) by virtue of [The Northern Ireland Act 1998 \(Devolution of Policing and Justice Functions\) Order 2010 \(S.I. 2010/976\)](#), art. 1(2), **Sch. 15 para. 23(2)(a)** (with arts. 28-31)
- F2** S. 97(1)(b) omitted (12.4.2010) by virtue of [The Northern Ireland Act 1998 \(Devolution of Policing and Justice Functions\) Order 2010 \(S.I. 2010/976\)](#), art. 1(2), **Sch. 15 para. 23(2)(b)** (with arts. 28-31)
- F3** Words in s. 97(1) omitted (12.4.2010) by virtue of [The Northern Ireland Act 1998 \(Devolution of Policing and Justice Functions\) Order 2010 \(S.I. 2010/976\)](#), art. 1(2), **Sch. 15 para. 23(2)(c)** (with arts. 28-31)
- F4** S. 97(1A) inserted (12.4.2010) by [The Northern Ireland Act 1998 \(Devolution of Policing and Justice Functions\) Order 2010 \(S.I. 2010/976\)](#), art. 1(2), **Sch. 15 para. 23(3)** (with arts. 28-31)
- F5** Words in s. 97(2)(3) inserted (12.4.2010) by [The Northern Ireland Act 1998 \(Devolution of Policing and Justice Functions\) Order 2010 \(S.I. 2010/976\)](#), art. 1(2), **Sch. 15 para. 23(4)** (with arts. 28-31)
- F6** Words in s. 97(3) inserted (12.4.2010) by [The Northern Ireland Act 1998 \(Devolution of Policing and Justice Functions\) Order 2010 \(S.I. 2010/976\)](#), art. 1(2), **Sch. 15 para. 23(5)(a)** (with arts. 28-31)
- F7** Words in s. 97(3) substituted (12.4.2010) by [The Northern Ireland Act 1998 \(Devolution of Policing and Justice Functions\) Order 2010 \(S.I. 2010/976\)](#), art. 1(2), **Sch. 15 para. 23(5)(b)** (with arts. 28-31)

Commencement Information

- I1** S. 97 in force at 1.7.2005 by [S.I. 2005/1521](#), **art. 3(1)(a)**

98 Civil recovery: freezing orders

- (1) In the Proceeds of Crime Act 2002 (c. 29), after section 245 insert—

“Property freezing orders (England and Wales and Northern Ireland)

245A Application for property freezing order

- (1) Where the enforcement authority may take proceedings for a recovery order in the High Court, the authority may apply to the court for a property freezing order (whether before or after starting the proceedings).
- (2) A property freezing order is an order that—
 - (a) specifies or describes the property to which it applies, and
 - (b) subject to any exclusions (see section 245C(1)(b) and (2)), prohibits any person to whose property the order applies from in any way dealing with the property.
- (3) An application for a property freezing order may be made without notice if the circumstances are such that notice of the application would prejudice any right of the enforcement authority to obtain a recovery order in respect of any property.
- (4) The court may make a property freezing order on an application if it is satisfied that the condition in subsection (5) is met and, where applicable, that the condition in subsection (6) is met.
- (5) The first condition is that there is a good arguable case—
 - (a) that the property to which the application for the order relates is or includes recoverable property, and

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- (b) that, if any of it is not recoverable property, it is associated property.
- (6) The second condition is that, if—
- (a) the property to which the application for the order relates includes property alleged to be associated property, and
 - (b) the enforcement authority has not established the identity of the person who holds it,
- the authority has taken all reasonable steps to do so.

245B Variation and setting aside of order

- (1) The court may at any time vary or set aside a property freezing order.
- (2) If the court makes an interim receiving order that applies to all of the property to which a property freezing order applies, it must set aside the property freezing order.
- (3) If the court makes an interim receiving order that applies to some but not all of the property to which a property freezing order applies, it must vary the property freezing order so as to exclude any property to which the interim receiving order applies.
- (4) If the court decides that any property to which a property freezing order applies is neither recoverable property nor associated property, it must vary the order so as to exclude the property.
- (5) Before exercising power under this Chapter to vary or set aside a property freezing order, the court must (as well as giving the parties to the proceedings an opportunity to be heard) give such an opportunity to any person who may be affected by its decision.
- (6) Subsection (5) does not apply where the court is acting as required by subsection (2) or (3).

245C Exclusions

- (1) The power to vary a property freezing order includes (in particular) power to make exclusions as follows—
 - (a) power to exclude property from the order, and
 - (b) power, otherwise than by excluding property from the order, to make exclusions from the prohibition on dealing with the property to which the order applies.
- (2) Exclusions from the prohibition on dealing with the property to which the order applies (other than exclusions of property from the order) may also be made when the order is made.
- (3) An exclusion may, in particular, make provision for the purpose of enabling any person—
 - (a) to meet his reasonable living expenses, or
 - (b) to carry on any trade, business, profession or occupation.
- (4) An exclusion may be made subject to conditions.

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- (5) Where the court exercises the power to make an exclusion for the purpose of enabling a person to meet legal expenses that he has incurred, or may incur, in respect of proceedings under this Part, it must ensure that the exclusion—
 - (a) is limited to reasonable legal expenses that the person has reasonably incurred or that he reasonably incurs,
 - (b) specifies the total amount that may be released for legal expenses in pursuance of the exclusion, and
 - (c) is made subject to the required conditions (see section 286A) in addition to any conditions imposed under subsection (4).
- (6) The court, in deciding whether to make an exclusion for the purpose of enabling a person to meet legal expenses of his in respect of proceedings under this Part—
 - (a) must have regard (in particular) to the desirability of the person being represented in any proceedings under this Part in which he is a participant, and
 - (b) must, where the person is the respondent, disregard the possibility that legal representation of the person in any such proceedings might, were an exclusion not made, be funded by the Legal Services Commission or the Northern Ireland Legal Services Commission.
- (7) If excluded property is not specified in the order it must be described in the order in general terms.
- (8) The power to make exclusions must, subject to subsection (6), be exercised with a view to ensuring, so far as practicable, that the satisfaction of any right of the enforcement authority to recover the property obtained through unlawful conduct is not unduly prejudiced.
- (9) Subsection (8) does not apply where the court is acting as required by section 245B(3) or (4).

245D Restriction on proceedings and remedies

- (1) While a property freezing order has effect—
 - (a) the court may stay any action, execution or other legal process in respect of the property to which the order applies, and
 - (b) no distress may be levied against the property to which the order applies except with the leave of the court and subject to any terms the court may impose.
- (2) If a court (whether the High Court or any other court) in which proceedings are pending in respect of any property is satisfied that a property freezing order has been applied for or made in respect of the property, it may either stay the proceedings or allow them to continue on any terms it thinks fit.
- (3) If a property freezing order applies to a tenancy of any premises, no landlord or other person to whom rent is payable may exercise the right of forfeiture by peaceable re-entry in relation to the premises in respect of any failure by the tenant to comply with any term or condition of the tenancy, except with the leave of the court and subject to any terms the court may impose.

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(4) Before exercising any power conferred by this section, the court must (as well as giving the parties to any of the proceedings concerned an opportunity to be heard) give such an opportunity to any person who may be affected by the court's decision.”

(2) In the Proceeds of Crime Act 2002 (c. 29), after section 255 insert—

“Prohibitory property orders (Scotland)

255A Application for prohibitory property order

- (1) Where the enforcement authority may take proceedings for a recovery order in the Court of Session, the authority may apply to the court for a prohibitory property order (whether before or after starting the proceedings).
- (2) A prohibitory property order is an order that—
 - (a) specifies or describes the property to which it applies, and
 - (b) subject to any exclusions (see section 255C(1)(b) and (2)), prohibits any person to whose property the order applies from in any way dealing with the property.
- (3) An application for a prohibitory property order may be made without notice if the circumstances are such that notice of the application would prejudice any right of the enforcement authority to obtain a recovery order in respect of any property.
- (4) The court may make a prohibitory property order on an application if it is satisfied that the condition in subsection (5) is met and, where applicable, that the condition in subsection (6) is met.
- (5) The first condition is that there is a good arguable case—
 - (a) that the property to which the application for the order relates is or includes recoverable property, and
 - (b) that, if any of it is not recoverable property, it is associated property.
- (6) The second condition is that, if—
 - (a) the property to which the application for the order relates includes property alleged to be associated property, and
 - (b) the enforcement authority has not established the identity of the person who holds it,the authority has taken all reasonable steps to do so.

255B Variation and recall of prohibitory property order

- (1) The court may at any time vary or recall a prohibitory property order.
- (2) If the court makes an interim administration order that applies to all of the property to which a prohibitory property order applies, it must recall the prohibitory property order.
- (3) If the court makes an interim administration order that applies to some but not all of the property to which a prohibitory property order applies, it must

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vary the prohibitory property order so as to exclude any property to which the interim administration order applies.

- (4) If the court decides that any property to which a prohibitory property order applies is neither recoverable property nor associated property, it must vary the order so as to exclude the property.
- (5) Before exercising power under this Chapter to vary or recall a prohibitory property order, the court must (as well as giving the parties to the proceedings an opportunity to be heard) give such an opportunity to any person who may be affected by its decision.
- (6) Subsection (5) does not apply where the court is acting as required by subsection (2) or (3).

255C Exclusions

- (1) The power to vary a prohibitory property order includes (in particular) power to make exclusions as follows—
 - (a) power to exclude property from the order, and
 - (b) power, otherwise than by excluding property from the order, to make exclusions from the prohibition on dealing with the property to which the order applies.
- (2) Exclusions from the prohibition on dealing with the property to which the order applies (other than exclusions of property from the order) may also be made when the order is made.
- (3) An exclusion may, in particular, make provision for the purpose of enabling any person—
 - (a) to meet his reasonable living expenses, or
 - (b) to carry on any trade, business, profession or occupation.
- (4) An exclusion may be made subject to conditions.
- (5) An exclusion may not be made for the purpose of enabling any person to meet any legal expenses in respect of proceedings under this Part.
- (6) If excluded property is not specified in the order it must be described in the order in general terms.
- (7) The power to make exclusions must be exercised with a view to ensuring, so far as practicable, that the satisfaction of any right of the enforcement authority to recover the property obtained through unlawful conduct is not unduly prejudiced.
- (8) Subsection (7) does not apply where the court is acting as required by section 255B(3) or (4).

255D Restriction on proceedings and remedies

- (1) While a prohibitory property order has effect the court may sist any action, execution or other legal process in respect of the property to which the order applies.

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- (2) If a court (whether the Court of Session or any other court) in which proceedings are pending in respect of any property is satisfied that a prohibitory property order has been applied for or made in respect of the property, it may either sist the proceedings or allow them to continue on any terms it thinks fit.
- (3) Before exercising any power conferred by this section, the court must (as well as giving the parties to any of the proceedings concerned an opportunity to be heard) give such an opportunity to any person who may be affected by the court's decision.

255E Arrestment of property affected by prohibitory property order

- (1) On the application of the enforcement authority the Court of Session may, in relation to moveable recoverable property to which a prohibitory property order applies (whether generally or to such of it as is specified in the application), grant warrant for arrestment.
- (2) An application under subsection (1) may be made at the same time as the application for the prohibitory property order or at any time thereafter.
- (3) Such a warrant for arrestment may be granted only if the property would be arrestable if the person entitled to it were a debtor.
- (4) A warrant under subsection (1) has effect as if granted on the dependence of an action for debt at the instance of the enforcement authority against the person and may be executed, recalled, loosed or restricted accordingly.
- (5) An arrestment executed under this section ceases to have effect when, or in so far as, the prohibitory property order ceases to apply in respect of the property in relation to which the warrant for arrestment was granted.
- (6) If an arrestment ceases to have effect to any extent by virtue of subsection (5) the enforcement authority must apply to the Court of Session for an order recalling or, as the case may be, restricting the arrestment.

255F Inhibition of property affected by prohibitory property order

- (1) On the application of the enforcement authority, the Court of Session may, in relation to the property mentioned in subsection (2), grant warrant for inhibition against any person specified in a prohibitory property order.
- (2) That property is heritable property situated in Scotland to which the prohibitory property order applies (whether generally or to such of it as is specified in the application).
- (3) The warrant for inhibition—
 - (a) has effect as if granted on the dependence of an action for debt by the enforcement authority against the person and may be executed, recalled, loosed or restricted accordingly, and
 - (b) has the effect of letters of inhibition and must forthwith be registered by the enforcement authority in the register of inhibitions and adjudications.

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- (4) Section 155 of the Titles to Land Consolidation (Scotland) Act 1868 (c. 101) (effective date of inhibition) applies in relation to an inhibition for which warrant is granted under subsection (1) as it applies to an inhibition by separate letters or contained in a summons.
- (5) An inhibition executed under this section ceases to have effect when, or in so far as, the prohibitory property order ceases to apply in respect of the property in relation to which the warrant for inhibition was granted.
- (6) If an inhibition ceases to have effect to any extent by virtue of subsection (5) the enforcement authority must—
 - (a) apply for the recall or, as the case may be, the restriction of the inhibition, and
 - (b) ensure that the recall or restriction is reflected in the register of inhibitions and adjudications.”

Commencement Information

- I2** S. 98(1) in force at 1.1.2006 by S.I. 2005/3136, art. 3(a)
I3 S. 98(2) in force at 1.1.2006 by S.I. 2005/3136, art. 2(a)

99 Civil recovery: interim receivers' expenses etc.

- (1) The Proceeds of Crime Act 2002 (c. 29) is amended as follows.
- (2) In section 280 (civil recovery orders: applying realised proceeds), after subsection (2) insert—
 - “(3) The Director may apply a sum received by him under subsection (2) in making payment of the remuneration and expenses of—
 - (a) the trustee, or
 - (b) any interim receiver appointed in, or in anticipation of, the proceedings for the recovery order.
 - (4) Subsection (3)(a) does not apply in relation to the remuneration of the trustee if the trustee is a member of the staff of the Agency.”
- (3) In section 284 (payment of interim administrator or trustee (Scotland))—
 - (a) the existing words become subsection (1), and
 - (b) after that subsection insert—
 - “(2) The Scottish Ministers may apply a sum received by them under section 280(2) in making payment of such fees or expenses.
 - (3) Subsection (2) does not apply in relation to the fees of a trustee for civil recovery if the trustee is a member of their staff.”

^{F8}(4)

Textual Amendments

- F8** S. 99(4) repealed (1.4.2008) by [Serious Crime Act 2007 \(c. 27\)](#), s. 94(1), [Sch. 14](#); S.I. 2008/755, art. 2(1)(d) (with arts. 3-14)

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Commencement Information

- I4** S. 99(1)(4) in force at 1.7.2005 by [S.I. 2005/1521](#), [art. 3\(1\)\(b\)](#)
I5 S. 99(2)(3) in force at 1.7.2005 by [S.I. 2005/1521](#), [art. 2\(1\)\(b\)](#)

100 Detention of seized cash: meaning of “48 hours”

- (1) In the Proceeds of Crime Act 2002 (c. 29), Chapter 3 of Part 5 (civil recovery of cash in summary proceedings) is amended as follows.
- (2) In section 295 (detention of seized cash, initially for 48 hours), after subsection (1) insert—
- “(1A) The period of 48 hours mentioned in subsection (1) is to be calculated in accordance with subsection (1B).
- (1B) In calculating a period of 48 hours in accordance with this subsection, no account shall be taken of—
- (a) any Saturday or Sunday,
 - (b) Christmas Day,
 - (c) Good Friday,
 - (d) any day that is a bank holiday under the Banking and Financial Dealings Act 1971 in the part of the United Kingdom within which the cash is seized, or
 - (e) any day prescribed under section 8(2) of the Criminal Procedure (Scotland) Act 1995 as a court holiday in a sheriff court in the sheriff court district within which the cash is seized.”
- (3) In sections 290(6), 296(1) and 302(2), after “48 hours” insert “ (calculated in accordance with section 295(1B)) ”.

Commencement Information

- I6** S. 100 in force at 1.7.2005 by [S.I. 2005/1521](#), [art. 2\(1\)\(c\)](#)

101 Appeal in proceedings for forfeiture of cash

- (1) For section 299 of the Proceeds of Crime Act 2002 (appeal against forfeiture of cash) substitute—

“299 Appeal against decision under section 298

- (1) Any party to proceedings for an order for the forfeiture of cash under section 298 who is aggrieved by an order under that section or by the decision of the court not to make such an order may appeal—
- (a) in relation to England and Wales, to the Crown Court;
 - (b) in relation to Scotland, to the Sheriff Principal;
 - (c) in relation to Northern Ireland, to a county court.
- (2) An appeal under subsection (1) must be made before the end of the period of 30 days starting with the day on which the court makes the order or decision.

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- (3) The court hearing the appeal may make any order it thinks appropriate.
 - (4) If the court upholds an appeal against an order forfeiting the cash, it may order the release of the cash.”
- (2) This section does not apply to a decision of a court not to order the forfeiture of cash under section 298 of that Act taken before this section comes into force.

Commencement Information

I7 S. 101 in force at 1.7.2005 by S.I. 2005/1521, art. 2(1)(d) (with art. 2(2))

102 Money laundering: defence where overseas conduct is legal under local law

- (1) In the Proceeds of Crime Act 2002 (c. 29), Part 7 (money laundering) is amended as follows.
- (2) In section 327 (concealing etc.), after subsection (2) insert—
- “(2A) Nor does a person commit an offence under subsection (1) if—
- (a) he knows, or believes on reasonable grounds, that the relevant criminal conduct occurred in a particular country or territory outside the United Kingdom, and
 - (b) the relevant criminal conduct—
 - (i) was not, at the time it occurred, unlawful under the criminal law then applying in that country or territory, and
 - (ii) is not of a description prescribed by an order made by the Secretary of State.
- (2B) In subsection (2A) “the relevant criminal conduct” is the criminal conduct by reference to which the property concerned is criminal property.”
- (3) In section 328 (arrangements), after subsection (2) insert—
- “(3) Nor does a person commit an offence under subsection (1) if—
- (a) he knows, or believes on reasonable grounds, that the relevant criminal conduct occurred in a particular country or territory outside the United Kingdom, and
 - (b) the relevant criminal conduct—
 - (i) was not, at the time it occurred, unlawful under the criminal law then applying in that country or territory, and
 - (ii) is not of a description prescribed by an order made by the Secretary of State.
- (4) In subsection (3) “the relevant criminal conduct” is the criminal conduct by reference to which the property concerned is criminal property.”
- (4) In section 329 (acquisition, use and possession), after subsection (2) insert—
- “(2A) Nor does a person commit an offence under subsection (1) if—
- (a) he knows, or believes on reasonable grounds, that the relevant criminal conduct occurred in a particular country or territory outside the United Kingdom, and

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- (b) the relevant criminal conduct—
 - (i) was not, at the time it occurred, unlawful under the criminal law then applying in that country or territory, and
 - (ii) is not of a description prescribed by an order made by the Secretary of State.
- (2B) In subsection (2A) “the relevant criminal conduct” is the criminal conduct by reference to which the property concerned is criminal property.”
- (5) In section 330 (failure to disclose: regulated sector), after subsection (7) insert—
 - “(7A) Nor does a person commit an offence under this section if—
 - (a) he knows, or believes on reasonable grounds, that the money laundering is occurring in a particular country or territory outside the United Kingdom, and
 - (b) the money laundering—
 - (i) is not unlawful under the criminal law applying in that country or territory, and
 - (ii) is not of a description prescribed in an order made by the Secretary of State.”
- (6) In section 331 (failure to disclose: nominated officers in the regulated sector), after subsection (6) insert—
 - “(6A) Nor does a person commit an offence under this section if—
 - (a) he knows, or believes on reasonable grounds, that the money laundering is occurring in a particular country or territory outside the United Kingdom, and
 - (b) the money laundering—
 - (i) is not unlawful under the criminal law applying in that country or territory, and
 - (ii) is not of a description prescribed in an order made by the Secretary of State.”
- (7) In section 332 (failure to disclose: other nominated officers), after subsection (6) insert—
 - “(7) Nor does a person commit an offence under this section if—
 - (a) he knows, or believes on reasonable grounds, that the money laundering is occurring in a particular country or territory outside the United Kingdom, and
 - (b) the money laundering—
 - (i) is not unlawful under the criminal law applying in that country or territory, and
 - (ii) is not of a description prescribed in an order made by the Secretary of State.”

Commencement Information

18 S. 102 in force at 15.5.2006 by S.I. 2006/1085, art. 3

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103 Money laundering: threshold amounts

- (1) The Proceeds of Crime Act 2002 (c. 29) is amended as follows.
- (2) In section 327 (concealing etc.), after subsection (2B) (which is inserted by section 102 of this Act) insert—
 - “(2C) A deposit-taking body that does an act mentioned in paragraph (c) or (d) of subsection (1) does not commit an offence under that subsection if—
 - (a) it does the act in operating an account maintained with it, and
 - (b) the value of the criminal property concerned is less than the threshold amount determined under section 339A for the act.”
- (3) In section 328 (arrangements), after subsection (4) (which is inserted by section 102 of this Act) insert—
 - “(5) A deposit-taking body that does an act mentioned in subsection (1) does not commit an offence under that subsection if—
 - (a) it does the act in operating an account maintained with it, and
 - (b) the arrangement facilitates the acquisition, retention, use or control of criminal property of a value that is less than the threshold amount determined under section 339A for the act.”
- (4) In section 329 (acquisition, use and possession), after subsection (2B) (which is inserted by section 102 of this Act) insert—
 - “(2C) A deposit-taking body that does an act mentioned in subsection (1) does not commit an offence under that subsection if—
 - (a) it does the act in operating an account maintained with it, and
 - (b) the value of the criminal property concerned is less than the threshold amount determined under section 339A for the act.”
- (5) In Part 7 (money laundering), after section 339 insert—

“Threshold amounts

339A Threshold amounts

- (1) This section applies for the purposes of sections 327(2C), 328(5) and 329(2C).
- (2) The threshold amount for acts done by a deposit-taking body in operating an account is £250 unless a higher amount is specified under the following provisions of this section (in which event it is that higher amount).
- (3) An officer of Revenue and Customs, or a constable, may specify the threshold amount for acts done by a deposit-taking body in operating an account—
 - (a) when he gives consent, or gives notice refusing consent, to the deposit-taking body's doing of an act mentioned in section 327(1), 328(1) or 329(1) in opening, or operating, the account or a related account, or
 - (b) on a request from the deposit-taking body.
- (4) Where the threshold amount for acts done in operating an account is specified under subsection (3) or this subsection, an officer of Revenue and Customs,

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or a constable, may vary the amount (whether on a request from the deposit-taking body or otherwise) by specifying a different amount.

- (5) Different threshold amounts may be specified under subsections (3) and (4) for different acts done in operating the same account.
 - (6) The amount specified under subsection (3) or (4) as the threshold amount for acts done in operating an account must, when specified, not be less than the amount specified in subsection (2).
 - (7) The Secretary of State may by order vary the amount for the time being specified in subsection (2).
 - (8) For the purposes of this section, an account is related to another if each is maintained with the same deposit-taking body and there is a person who, in relation to each account, is the person or one of the persons entitled to instruct the body as respects the operation of the account.”
- (6) In section 340 (interpretation of Part 7), after subsection (13) insert—
- “(14) “Deposit-taking body” means—
- (a) a business which engages in the activity of accepting deposits, or
 - (b) the National Savings Bank.”
- (7) In section 459(4)(a) and (6)(a) (provision for certain orders to be subject to affirmative procedure), after “309,” insert “ 339A(7), ”.

Commencement Information

I9 S. 103 in force at 1.7.2005 by S.I. 2005/1521, art. 3(1)(c)

104 Money laundering: disclosures to identify persons and property

- (1) In the Proceeds of Crime Act 2002 (c. 29), Part 7 (money laundering) is amended as follows.
- (2) In section 330(1) (regulated sector: failure to disclose: offence committed if three conditions satisfied), for “each of the following three conditions is satisfied” substitute “ the conditions in subsections (2) to (4) are satisfied ”.
- (3) For section 330(4) to (6) (the required disclosure) substitute—

“(3A) The third condition is—

 - (a) that he can identify the other person mentioned in subsection (2) or the whereabouts of any of the laundered property, or
 - (b) that he believes, or it is reasonable to expect him to believe, that the information or other matter mentioned in subsection (3) will or may assist in identifying that other person or the whereabouts of any of the laundered property.
- (4) The fourth condition is that he does not make the required disclosure to—
 - (a) a nominated officer, or
 - (b) a person authorised for the purposes of this Part by the Director General of the Serious Organised Crime Agency,

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as soon as is practicable after the information or other matter mentioned in subsection (3) comes to him.

- (5) The required disclosure is a disclosure of—
- (a) the identity of the other person mentioned in subsection (2), if he knows it,
 - (b) the whereabouts of the laundered property, so far as he knows it, and
 - (c) the information or other matter mentioned in subsection (3).

(5A) The laundered property is the property forming the subject-matter of the money laundering that he knows or suspects, or has reasonable grounds for knowing or suspecting, that other person to be engaged in.

- (6) But he does not commit an offence under this section if—
- (a) he has a reasonable excuse for not making the required disclosure,
 - (b) he is a professional legal adviser and—
 - (i) if he knows either of the things mentioned in subsection (5)(a) and (b), he knows the thing because of information or other matter that came to him in privileged circumstances, or
 - (ii) the information or other matter mentioned in subsection (3) came to him in privileged circumstances, or
 - (c) subsection (7) applies to him.”

(4) For section 331(4) to (6) (failure to disclose: nominated officers in the regulated sector: the required disclosure) substitute—

- “(3A) The third condition is—
- (a) that he knows the identity of the other person mentioned in subsection (2), or the whereabouts of any of the laundered property, in consequence of a disclosure made under section 330,
 - (b) that that other person, or the whereabouts of any of the laundered property, can be identified from the information or other matter mentioned in subsection (3), or
 - (c) that he believes, or it is reasonable to expect him to believe, that the information or other matter will or may assist in identifying that other person or the whereabouts of any of the laundered property.

(4) The fourth condition is that he does not make the required disclosure to a person authorised for the purposes of this Part by the Director General of the Serious Organised Crime Agency as soon as is practicable after the information or other matter mentioned in subsection (3) comes to him.

- (5) The required disclosure is a disclosure of—
- (a) the identity of the other person mentioned in subsection (2), if disclosed to him under section 330,
 - (b) the whereabouts of the laundered property, so far as disclosed to him under section 330, and
 - (c) the information or other matter mentioned in subsection (3).

(5A) The laundered property is the property forming the subject-matter of the money laundering that he knows or suspects, or has reasonable grounds for knowing or suspecting, that other person to be engaged in.

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- (6) But he does not commit an offence under this section if he has a reasonable excuse for not making the required disclosure.”
- (5) In section 332(3) (failure to disclose: other nominated officers: the second condition), for “section 337 or 338” substitute “ the applicable section ”.
- (6) For section 332(4) to (6) (the required disclosure) substitute—
- “(3A) The third condition is—
- (a) that he knows the identity of the other person mentioned in subsection (2), or the whereabouts of any of the laundered property, in consequence of a disclosure made under the applicable section,
 - (b) that that other person, or the whereabouts of any of the laundered property, can be identified from the information or other matter mentioned in subsection (3), or
 - (c) that he believes, or it is reasonable to expect him to believe, that the information or other matter will or may assist in identifying that other person or the whereabouts of any of the laundered property.
- (4) The fourth condition is that he does not make the required disclosure to a person authorised for the purposes of this Part by the Director General of the Serious Organised Crime Agency as soon as is practicable after the information or other matter mentioned in subsection (3) comes to him.
- (5) The required disclosure is a disclosure of—
- (a) the identity of the other person mentioned in subsection (2), if disclosed to him under the applicable section,
 - (b) the whereabouts of the laundered property, so far as disclosed to him under the applicable section, and
 - (c) the information or other matter mentioned in subsection (3).
- (5A) The laundered property is the property forming the subject-matter of the money laundering that he knows or suspects that other person to be engaged in.
- (5B) The applicable section is section 337 or, as the case may be, section 338.
- (6) But he does not commit an offence under this section if he has a reasonable excuse for not making the required disclosure.”
- (7) In section 337 (protected disclosures), after subsection (4) insert—
- “(4A) Where a disclosure consists of a disclosure protected under subsection (1) and a disclosure of either or both of—
- (a) the identity of the other person mentioned in subsection (3), and
 - (b) the whereabouts of property forming the subject-matter of the money laundering that the discloser knows or suspects, or has reasonable grounds for knowing or suspecting, that other person to be engaged in,
- the disclosure of the thing mentioned in paragraph (a) or (b) (as well as the disclosure protected under subsection (1)) is not to be taken to breach any restriction on the disclosure of information (however imposed).”

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Commencement Information

I10 S. 104 in force at 1.7.2005 by S.I. 2005/1521, art. 3(1)(c) (with art. 3(4))

105 Money laundering: form and manner of disclosures

- (1) In the Proceeds of Crime Act 2002 (c. 29), Part 7 (money laundering) is amended as follows.
- (2) In each of sections 330(9)(b), 337(5)(b) and 338(5)(b) (disclosure to nominated officer is ineffective if employer's procedures not followed), omit “and in accordance with the procedure established by the employer for the purpose”.
- (3) In section 334 (penalties), after subsection (2) insert—
 - “(3) A person guilty of an offence under section 339(1A) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.”
- (4) In section 338(1) (authorised disclosures), omit paragraph (b) (disclosure must be made in prescribed form and manner) but not the “and” at the end.
- (5) In section 339 (form and manner of disclosures), for subsections (2) and (3) substitute—
 - “(1A) A person commits an offence if he makes a disclosure under section 330, 331, 332 or 338 otherwise than in the form prescribed under subsection (1) or otherwise than in the manner so prescribed.
 - (1B) But a person does not commit an offence under subsection (1A) if he has a reasonable excuse for making the disclosure otherwise than in the form prescribed under subsection (1) or (as the case may be) otherwise than in the manner so prescribed.
 - (2) The power under subsection (1) to prescribe the form in which a disclosure must be made includes power to provide for the form to include a request to a person making a disclosure that the person provide information specified or described in the form if he has not provided it in making the disclosure.
 - (3) Where under subsection (2) a request is included in a form prescribed under subsection (1), the form must—
 - (a) state that there is no obligation to comply with the request, and
 - (b) explain the protection conferred by subsection (4) on a person who complies with the request.”

Commencement Information

I11 S. 105 in force at 1.7.2005 by S.I. 2005/1521, art. 3(1)(c)

106 Money laundering: miscellaneous amendments

- (1) In the Proceeds of Crime Act 2002, Part 7 (money laundering) is amended as follows.
- (2) In section 330 (regulated sector: failure to disclose), after subsection (9) insert—

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- “(9A) But a disclosure which satisfies paragraphs (a) and (b) of subsection (9) is not to be taken as a disclosure to a nominated officer if the person making the disclosure—
- (a) is a professional legal adviser,
 - (b) makes it for the purpose of obtaining advice about making a disclosure under this section, and
 - (c) does not intend it to be a disclosure under this section.”
- (3) In section 337(5)(a) (disclosure to person nominated to receive disclosures under section 337), after “disclosures under” insert “ section 330 or ”.
- (4) In section 338(1)(c) (first or second condition must be satisfied for disclosure to be authorised), for “or second” substitute “ , second or third ”.
- (5) In section 338 (authorised disclosures), after subsection (2) insert—
- “(2A) The second condition is that—
- (a) the disclosure is made while the alleged offender is doing the prohibited act,
 - (b) he began to do the act at a time when, because he did not then know or suspect that the property constituted or represented a person's benefit from criminal conduct, the act was not a prohibited act, and
 - (c) the disclosure is made on his own initiative and as soon as is practicable after he first knows or suspects that the property constitutes or represents a person's benefit from criminal conduct.”
- (6) In section 338(3) (the second condition), for “second” substitute “ third ”.

Commencement Information

112 S. 106 in force at 1.7.2005 by S.I. 2005/1521, art. 3(1)(c)

107 Money laundering offences

- (1) The Proceeds of Crime Act 2002 (c. 29) is amended as follows.
- (2) In section 364 (meaning of customer information) in subsection (5)—
- (a) after paragraph (a) insert—
 - “(aa) constitutes an offence specified in section 415(1A) of this Act,”;
 - (b) in paragraph (b) after “paragraph (a)” insert “ or (aa) ”.
- (3) In section 398 (meaning of customer information: Scotland) in subsection (5)—
- (a) after paragraph (a) insert—
 - “(aa) constitutes an offence specified in section 415(1A) of this Act,”;
 - (b) in paragraph (b) after “paragraph (a)” insert “ or (aa) ”.
- (4) In section 415 (money laundering offences) after subsection (1) insert—
- “(1A) Each of the following is a money laundering offence—

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- (a) an offence under section 93A, 93B or 93C of the Criminal Justice Act 1988;
- (b) an offence under section 49, 50 or 51 of the Drug Trafficking Act 1994;
- (c) an offence under section 37 or 38 of the Criminal Law (Consolidation) (Scotland) Act 1995;
- (d) an offence under article 45, 46 or 47 of the Proceeds of Crime (Northern Ireland) Order 1996.”

Commencement Information

I13 S. 107 in force at 1.7.2005 by S.I. 2005/1521, art. 2(1)(e)

108 International co-operation

- (1) Part 11 of the Proceeds of Crime Act 2002 (c. 29) (co-operation) is amended as follows.
- (2) In section 444 (external requests and orders), for subsection (3)(a) (Order under the section may include provision about the functions of the Secretary of State, the Lord Advocate, the Scottish Ministers and the Director of the Assets Recovery Agency) substitute—
 - “(a) provision about the functions of any of the listed persons in relation to external requests and orders;”.
- (3) In that section, after subsection (3) insert—
 - “(4) For the purposes of subsection (3)(a) “the listed persons” are—
 - (a) the Secretary of State;
 - (b) the Lord Advocate;
 - (c) the Scottish Ministers;
 - (d) the Director;
 - (e) the Director of Public Prosecutions;
 - (f) the Director of Public Prosecutions for Northern Ireland;
 - (g) the Director of the Serious Fraud Office; and
 - (h) the Director of Revenue and Customs Prosecutions.”
- (4) In section 447(3) (meaning of “external investigation”), after paragraph (a) insert—
 - “(aa) the extent or whereabouts of property obtained as a result of or in connection with criminal conduct, or”.

Commencement Information

I14 S. 108 in force at 1.7.2005 by S.I. 2005/1521, art. 3(1)(d)

109 Minor and consequential amendments relating to Chapter 6

Schedule 6, which contains minor and consequential amendments relating to provisions of this Chapter, has effect.

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Commencement Information

- I15** S. 109 in force at 1.8.2005 for specified purposes by S.I. 2005/2026, **art. 2(a)**
- I16** S. 109 in force at 1.1.2006 for specified purposes by S.I. 2005/3136, **art. 2(c)**
- I17** S. 109 in force at 1.1.2006 in so far as not already in force by S.I. 2005/3136, **art. 3(b)**

Status:

Point in time view as at 14/03/2012.

Changes to legislation:

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