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STATUTORY INSTRUMENTS

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**2013 No. 2605**

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

PART 2

**Interpretation**

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

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

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

which would be so protected.

(3) “Financial institution” means a person carrying on a business in the regulated sector.

(4) But a person who ceases to carry on a business in the regulated sector (whether by virtue of paragraph 5 of Schedule 9 to the Proceeds of Crime Act 2002<sup>(1)</sup> or otherwise) is to continue to be treated as financial institution for the purposes of any requirement under—

- (a) a customer information order, or
- (b) an account monitoring order,

to provide information which relates to a time when the person was a financial institution.

(5) References in this Part to a business in the regulated sector must be construed in accordance with Schedule 9 to the Proceeds of Crime Act 2002.

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

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

- (a) any vehicle, vessel, aircraft or hovercraft,
- (b) any offshore installation within the meaning of section 1 of the Mineral Workings (Offshore Installations) Act 1971<sup>(2)</sup> and any tent or moveable structure.

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

**Scope of Part 2**

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

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(1) 2002 c. 29.  
(2) 1971 c. 61.

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

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

(3) This paragraph applies if—

- (a) a criminal investigation in connection with the property has not begun,
- (b) a criminal investigation in connection with the property has begun but it is unlikely criminal proceedings will be brought, or
- (c) criminal proceedings brought in connection with the property have been concluded without an order having been made in relation to the property.

(4) Criminal proceedings against a person are taken to be concluded if—

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

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

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

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

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

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

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

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

**39.**—(1) This article applies if a person knows or suspects that a proper person is acting (or proposing to act) under this Part in connection with an external investigation.

(2) A person commits an offence if—

- (a) they make a disclosure which is likely to prejudice the external investigation, or
- (b) they falsify, conceal, destroy or otherwise dispose of, or cause or permit the falsification, concealment, destruction or disposal of, documents which are relevant to the external investigation.

(3) A person does not commit an offence under paragraph (2)(a) if—

- (a) they do not know or suspect that the disclosure is likely to prejudice the external investigation,
  - (b) the disclosure is made pursuant to this Part,
  - (c) the disclosure is made pursuant to the Proceeds of Crime Act 2002 (External Requests and Orders) Order 2005(3),
  - (d) the disclosure is made in the exercise of a function under the Proceeds of Crime Act 2002 or any other enactment relating to criminal conduct or benefit from criminal conduct or in compliance with a requirement imposed under or by virtue of the Proceeds of Crime Act 2002,
  - (e) the disclosure is of a matter within section 333A(2) or (3)(a) (money laundering: tipping off) of the Proceeds of Crime Act 2002 and the information on which the disclosure is based came to the person in the course of a business in the regulated sector, or
  - (f) they are a professional legal adviser and the disclosure falls within paragraph (4).
- (4) A disclosure falls within this paragraph if it is a disclosure—
- (a) to (or to a representative of) a client of the professional legal adviser in connection with the giving by the adviser of legal advice to the client, or
  - (b) to any person in connection with legal proceedings or contemplated legal proceedings.
- (5) But a disclosure does not fall within paragraph (4) if it is made with the intention of furthering a criminal purpose.
- (6) A person does not commit an offence under paragraph (2)(b) if—
- (a) they do not know or suspect that the documents are relevant to the external investigation, or
  - (b) they do not intend to conceal any facts disclosed by the documents from a proper person acting in connection with the external investigation.
- (7) A person guilty of an offence under paragraph (2) is liable—
- (a) on summary conviction, to imprisonment for a term not exceeding twelve months or to a fine not exceeding the statutory maximum or to both, or
  - (b) on conviction on indictment, to imprisonment for a term not exceeding five years or to a fine or to both.

### **Production Orders**

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

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

(3) The application for a production order must state that property specified in the application is subject to an external investigation and the condition in article 37(2) is met in respect of the property.

(4) The application must also state that—

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

(5) A production order is an order either—

- (a) requiring the person the application for the order specifies as appearing to be in possession or control of the material to produce it to a proper person for the proper person to take away, or
- (b) requiring that person to give a proper person access to the material,

within the period stated in the order.

(6) The period stated in a production order must be a period of seven days beginning with the day on which the order is made, unless it appears to the sheriff that a longer or shorter period would be appropriate in the particular circumstances.

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

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

(2) There must be reasonable grounds for suspecting that the property the application for the order specifies as being subject to the external investigation is property obtained as a result of or in connection with criminal conduct.

(3) There must be reasonable grounds for believing that the person the application specifies as appearing to be in possession or control of the material so specified is in possession or control of it.

(4) There must be reasonable grounds for believing that the material is likely to be of substantial value (whether or not by itself) to the external investigation.

(5) There must be reasonable grounds for believing that it is in the public interest for the material to be produced or for access to it to be given, having regard to—

- (a) the benefit likely to accrue to the external investigation if the material is obtained,
- (b) the circumstances under which the person the application specifies as appearing to be in possession or control of the material holds it.

### **Order to grant entry**

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

(2) The sheriff may, on any application made to the sheriff by the Scottish Ministers and specifying the premises, make an order to grant entry in relation to the premises.

(3) An order to grant entry is an order requiring any person who appears to the Scottish Ministers to be entitled to grant entry to the premises to allow a proper person to enter the premises to obtain access to the material.

### **Further provisions**

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

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

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

(4) Material produced in compliance with a production order may be retained for so long as it is necessary to retain it (as opposed to copies of it) in connection with the external investigation.

(5) But if a proper person has reasonable grounds for believing that—

- (a) the material may need to be produced for the purposes of any legal proceedings, and
- (b) it might otherwise be unavailable for those purposes,

it may be retained until the proceedings are concluded.

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

### **Computer information**

**44.**—(1) This article applies if any material specified in an application for a production order consists of information contained in a computer.

(2) If the order is an order requiring a person to produce the material to a proper person for a proper person to take away, it has effect as an order to produce the material in a form in which it can be taken away by the proper person and in which it is visible and legible.

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

### **Government departments**

**45.**—(1) A production order may be made in relation to material in the possession or control of an authorised government department.

(2) An order so made may require any officer of the department (whether named in the order or not) who may for the time being be in possession or control of the material to comply with it.

(3) If an order contains such a requirement—

(a) the person on whom it is served must take all reasonable steps to bring it to the attention of the officer concerned,

(b) any other officer of the department who is in receipt of the order must also take all reasonable steps to bring it to the attention of the officer concerned.

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

(5) An “authorised government department” includes a government department which is an authorised department for the purposes of the Crown Proceedings Act 1947(4) and the Scottish Administration.

### **Supplementary**

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

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

(a) the Scottish Ministers,

(b) any person affected by the order.

(3) The sheriff may—

(a) discharge the order,

(b) vary the order.

## Search warrants

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

- (a) that property specified in the application is subject to an external investigation,
  - (b) the condition in article 37(2) is met in respect of the property, and
  - (c) either of the requirements in paragraph (6) is fulfilled
- (2) In issuing a search warrant the sheriff shall act in exercise of the sheriff's civil jurisdiction.
- (3) The application must also state that the warrant is sought—
- (a) for the purposes of the external investigation,
  - (b) in relation to the premises specified in the application,
  - (c) in relation to material specified in the application, or that there are reasonable grounds for believing that there is material falling within article 48(6) on the premises.
- (4) A search warrant is a warrant authorising a proper person—
- (a) to enter and search the premises specified in the application for the warrant, and
  - (b) to seize and retain any material specified in the warrant which is found there which is likely to be of substantial value (whether or not by itself) to the external investigation.
- (5) A proper person may, if necessary, use reasonable force in executing a search warrant.
- (6) The requirements for the issue of a search warrant are—
- (a) that a production order made in relation to material has not been complied with and there are reasonable grounds for believing that the material is on the premises specified in the application for the warrant, or
  - (b) that article 48 is satisfied in relation to the warrant.
- (7) An application for a search warrant may be made ex parte to a sheriff in chambers.

## Requirements where production order not available

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

- (a) paragraph (2) applies, and
  - (b) either the first or the second set of conditions is complied with.
- (2) This paragraph applies if there are reasonable grounds for suspecting that the property specified in the application for the warrant is property obtained as a result of or in connection with criminal conduct.
- (3) The first set of conditions is that there are reasonable grounds for believing that—
- (a) any material on the premises specified in the application for the warrant is likely to be of substantial value (whether or not by itself) to the external investigation,
  - (b) it is in the public interest for the material to be obtained, having regard to the benefit likely to accrue to the external investigation if the material is obtained, and
  - (c) it would not be appropriate to make a production order for any one or more of the reasons in paragraph (4).
- (4) The reasons are—
- (a) that it is not practicable to communicate with any person against whom the production order could be made,
  - (b) that it is not practicable to communicate with any person who would be required to comply with an order to grant access to material or to grant entry to the premises,

- (c) that the external investigation might be seriously prejudiced unless a proper person is able to secure immediate access to the material.
- (5) The second set of conditions is that—
  - (a) there are reasonable grounds for believing that there is material on the premises specified in the application for the warrant and that the material falls within paragraph (6),
  - (b) there are reasonable grounds for believing that it is in the public interest for the material to be obtained, having regard to the benefit likely to accrue to the external investigation if the material is obtained, and
  - (c) any one or more of the requirements in paragraph (7) is met.
- (6) Material falls within this paragraph if it cannot be identified at the time of the application but it—
  - (a) relates to the property specified in the application, the question whether it is property obtained as a result of or in connection with criminal conduct, the question as to who holds any such property, any question as to whether the person who appears to hold any such property holds other property which is property obtained as a result of or in connection with criminal conduct, or any question as to the extent or whereabouts of any property mentioned in this paragraph, and
  - (b) is likely to be of substantial value (whether or not by itself) to the external investigation.
- (7) The requirements are—
  - (a) that it is not practicable to communicate with any person entitled to grant entry to the premises,
  - (b) that entry to the premises will not be granted unless a warrant is produced,
  - (c) that the external investigation might be seriously prejudiced unless a proper person arriving at the premises is able to secure immediate entry to them.

**Further provisions: general**

- 49.**—(1) This article applies to search warrants sought for the purposes of an external investigation.
- (2) A search warrant does not confer the right to seize any items subject to legal privilege.
  - (3) A warrant may be issued subject to conditions.
  - (4) A warrant continues in force until the end of the period of one month starting with the day on which it is issued.
  - (5) A warrant authorises the person executing it to require any information which is held in a computer and is accessible from the premises specified in the application for the warrant, and which a proper person believes relates to any matter relevant to the external investigation, to be produced in a form—
    - (a) in which it can be taken away, and
    - (b) in which it is visible and legible.
  - (6) A warrant may include provision authorising the person executing it to do other things which—
    - (a) are specified in the warrant, and
    - (b) need to be done in order to give effect to it.
  - (7) Copies may be taken of any material seized under a warrant.
  - (8) Material seized under a warrant may be retained for so long as it is necessary to retain it (as opposed to copies of it) in connection with the external investigation.

- (9) But if the Scottish Ministers have reasonable grounds for believing that—
- (a) the material may need to be produced for the purposes of any legal proceedings, and
  - (b) it might otherwise be unavailable for those purposes,

it may be retained until the proceedings are concluded.

(10) Material seized under a warrant must be sent to the Secretary of State for forwarding to the overseas authority that made the request for assistance.

### **Disclosure orders**

**50.**—(1) The Court of Session, on an application made to it by the Scottish Ministers, may make a disclosure order if it is satisfied that each of the requirements for the making of the order is fulfilled.

- (2) The application for a disclosure order must state that—
- (a) property specified in the application is subject to an external investigation,
  - (b) the order is sought for the purposes of the investigation, and
  - (c) the condition in article 37(2) is met in respect of the property.

(3) A disclosure order is an order authorising the Scottish Ministers to give to any person the Scottish Ministers consider has relevant information notice in writing requiring them to do, with respect to any matter relevant to the external investigation, any or all of the following—

- (a) answer questions, either at a time specified in the notice or at once, at a place so specified,
- (b) provide information specified in the notice, by a time and in a manner so specified,
- (c) produce documents, or documents of a description, specified in the notice, either at or by a time so specified or at once, and in a manner so specified.

(4) Relevant information is information (whether or not contained in a document) which the Scottish Ministers consider to be relevant to the external investigation.

(5) A person is not bound to comply with a requirement imposed by a notice given under a disclosure order unless evidence of authority to give the notice is produced to them.

### **Requirements for making of disclosure order**

**51.**—(1) These are the requirements for the making of a disclosure order.

(2) There must be reasonable grounds for suspecting that the property specified in the application for the order is property obtained as a result of or in connection with criminal conduct.

(3) There must be reasonable grounds for believing that information which may be provided in compliance with a requirement imposed under the order is likely to be of substantial value (whether or not by itself) to the external investigation.

(4) There must be reasonable grounds for believing that it is in the public interest for the information to be provided, having regard to the benefit likely to accrue to the external investigation if the information is obtained.

### **Offences**

**52.**—(1) A person commits an offence if without reasonable excuse they fail to comply with a requirement imposed on them under a disclosure order.

- (2) A person guilty of an offence under paragraph (1) is liable on summary conviction to—
- (a) imprisonment for a term not exceeding six months,
  - (b) a fine not exceeding level 5 on the standard scale, or



- (c) both.
- (3) A person commits an offence if, in purported compliance with a requirement imposed on them under a disclosure order, they—
  - (a) make a statement which they know to be false or misleading in a material particular, or
  - (b) recklessly make a statement which is false or misleading in a material particular.
- (4) A person guilty of an offence under paragraph (3) is liable—
  - (a) on summary conviction, to imprisonment for a term not exceeding twelve months or to a fine not exceeding the statutory maximum or to both, or
  - (b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both.

### Statements

**53.**—(1) A statement made by a person in response to a requirement imposed on them under a disclosure order may not be used in evidence against them in criminal proceedings.

- (2) But paragraph (1) does not apply—
  - (a) in the case of proceedings under Part 3 of the Proceeds of Crime Act 2002<sup>(5)</sup>,
  - (b) in the case of proceedings under Part 3 of the Proceeds of Crime Act 2002 (External Requests and Orders) Order 2005<sup>(6)</sup>,
  - (c) on a prosecution for an offence under article 52(1) or (3) of this Order,
  - (d) on a prosecution for an offence under section 393(1) or (3) of the Proceeds of Crime Act 2002,
  - (e) on a prosecution for perjury, or
  - (f) on a prosecution for some other offence where, in giving evidence, the person makes a statement inconsistent with the statement mentioned in paragraph (1).
- (3) A statement may not be used by virtue of paragraph (2)(f) against a person unless—
  - (a) evidence relating to it is adduced, or
  - (b) a question relating to it is asked,

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

### Further provisions

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

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

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

(4) Documents so produced may be retained for so long as it is necessary to retain them (as opposed to a copy of them) in connection with the external investigation.

- (5) But if the Scottish Ministers have reasonable grounds for believing that—
  - (a) the documents may need to be produced for the purposes of any legal proceedings, and

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(5) 2002 c. 29.

(6) S.I. 2005/3181.

(b) they might otherwise be unavailable for those purposes, they may be retained until the proceedings are concluded.

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

### **Supplementary**

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

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

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

(3) The court may—

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

### **Customer information orders**

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

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

(3) The application for a customer information order must state that—

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

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

- (a) for the purposes of the external investigation,
- (b) against the financial institution or financial institutions specified in the application.

(5) An application for a customer information order may specify—

- (a) all financial institutions,
- (b) a particular description, or particular descriptions, of financial institutions, or
- (c) a particular financial institution or particular financial institutions.

(6) A customer information order is an order that a financial institution covered by the application for the order must, on being required to do so by notice in writing given by the Scottish Ministers, provide any such customer information as it has relating to the person specified in the application.

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

(8) If a financial institution on which a requirement is imposed by a notice given under a customer information order requires the production of evidence of authority to give the notice, it is not bound to comply with the requirement unless evidence of the authority has been produced to it.

## Meaning of customer information

57.—(1) “Customer information”, in relation to a person and a financial institution, is information whether the person holds, or has held, an account or accounts at the financial institution (whether solely or jointly with another) and (if so) information as to—

- (a) the matters specified in paragraph (2) if the person is an individual,
  - (b) the matters specified in paragraph (3) if the person is a company or limited liability partnership or a similar body incorporated or otherwise established outside the United Kingdom.
- (2) The matters referred to in paragraph (1)(a) are—
- (a) the account number or numbers,
  - (b) the person’s full name,
  - (c) their date of birth,
  - (d) their most recent address and any previous addresses,
  - (e) the date or dates on which they began to hold the account or accounts and, if they have ceased to hold the account or any of the accounts, the date or dates on which they did so,
  - (f) such evidence of identity as was obtained by the financial institution under or for the purposes of any legislation relating to money laundering,
  - (g) the full name, date of birth and most recent address, and any previous addresses, of any person who holds, or has held, an account at the financial institution jointly with them,
  - (h) the account number or numbers of any other account or accounts held at the financial institution to which they are a signatory and details of the person holding the other account or accounts.
- (3) The matters referred to in paragraph (1)(b) are—
- (a) the account number or numbers,
  - (b) the person’s full name,
  - (c) a description of any business which the person carries on,
  - (d) the country or territory in which it is incorporated or otherwise established and any number allocated to it under the Companies Act 2006<sup>(7)</sup> or corresponding legislation of any country or territory outside the United Kingdom,
  - (e) any number assigned to it for the purposes of value added tax in the United Kingdom,
  - (f) its registered office, and any previous registered offices, under the Companies Act 2006 (or corresponding earlier legislation) or anything similar under corresponding legislation of any country or territory outside the United Kingdom,
  - (g) its registered office, and any previous registered offices, under the Limited Liability Partnerships Act 2000<sup>(8)</sup> or anything similar under corresponding legislation of any country or territory outside Great Britain,
  - (h) the date or dates on which it began to hold the account or accounts and, if it has ceased to hold the account or any of the accounts, the date or dates on which it did so,
  - (i) such evidence of identity as was obtained by the financial institution under or for the purposes of any legislation relating to money laundering,
  - (j) the full name, date of birth and most recent address and any previous addresses of any person who is a signatory to the account or any of the accounts.

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(7) 2006 c. 46.

(8) 2000 c. 12.

- (4) Money laundering is an act which—
- (a) constitutes an offence under section 327, 328 or 329 of the Proceeds of Crime Act 2002<sup>(9)</sup> or section 18 of the Terrorism Act 2000<sup>(10)</sup>,
  - (b) constitutes an offence specified in section 415(1A) of the Proceeds of Crime Act 2002, or
  - (c) would constitute an offence specified in paragraph (a) or (b) if done in the United Kingdom.

### Requirements for making of customer information order

- 58.**—(1) These are the requirements for the making of a customer information order.
- (2) There must be reasonable grounds for suspecting that—
- (a) the property specified in the application for the order is property obtained as a result of or in connection with criminal conduct,
  - (b) the person specified in the application holds all or some of the property.
- (3) There must be reasonable grounds for believing that customer information which may be provided in compliance with the order is likely to be of substantial value (whether or not by itself) to the external investigation.
- (4) There must be reasonable grounds for believing that it is in the public interest for the customer information to be provided, having regard to the benefit likely to accrue to the external investigation if the information is obtained.

### Offences

- 59.**—(1) A financial institution commits an offence if without reasonable excuse it fails to comply with a requirement imposed on it under a customer information order.
- (2) A financial institution guilty of an offence under paragraph (1) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (3) A financial institution commits an offence if, in purported compliance with a customer information order, it—
- (a) makes a statement which it knows to be false or misleading in a material particular, or
  - (b) recklessly makes a statement which is false or misleading in a material particular.
- (4) A financial institution guilty of an offence under paragraph (3) is liable—
- (a) on summary conviction, to a fine not exceeding the statutory maximum, or
  - (b) on conviction on indictment, to a fine.

### Statements

- 60.**—(1) A statement made by a financial institution in response to a customer information order may not be used in evidence against it in criminal proceedings.
- (2) But paragraph (1) does not apply—
- (a) in the case of proceedings under Part 3 of the Proceeds of Crime Act 2002,
  - (b) in the case of proceedings under Part 3 of the Proceeds of Crime Act 2002 (External Requests and Orders) Order 2005<sup>(11)</sup>,
  - (c) on a prosecution for an offence under article 59(1) or (3) of this Order,

<sup>(9)</sup> 2002 c. 29.

<sup>(10)</sup> 2000 c. 11.

<sup>(11)</sup> S.I. 2005/3181.

- (d) on a prosecution for an offence under section 400(1) or (3) of the Proceeds of Crime Act 2002, or
  - (e) on a prosecution for an offence where, in giving evidence, the financial institution makes a statement inconsistent with the statement mentioned in paragraph (1).
- (3) A statement may not be used by virtue of paragraph (2)(e) against a financial institution unless—
- (a) evidence relating to it is adduced, or
  - (b) a question relating to it is asked,
- by or on behalf of the financial institution in the proceedings arising out of the prosecution.

### **Further Provisions**

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

### **Supplementary**

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

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

- (a) the Scottish Ministers,
  - (b) any person affected by the order.
- (3) The sheriff may—
- (a) discharge the order,
  - (b) vary the order.

### **Account monitoring orders**

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

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

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

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

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

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

(5) Account information is information relating to an account or accounts held at the financial institution specified in the application by the person so specified (whether solely or jointly with another).

(6) The application for an account monitoring order may specify information relating to—

- (a) all accounts held by the person specified in the application for the order at the financial institution so specified,
- (b) a particular description, or particular descriptions, of accounts so held, or
- (c) a particular account, or particular accounts, so held.

(7) An account monitoring order is an order that the financial institution specified in the application for the order must, for the period stated in the order, provide account information of the description specified in the order to the proper person in the manner, and at or by the time or times, stated in the order.

(8) The period stated in an account monitoring order must not exceed the period of 90 days beginning with the day on which the order is made.

### **Requirements for making an account monitoring order**

**64.**—(1) These are the requirements for the making of an account monitoring order.

(2) There must be reasonable grounds for suspecting that—

- (a) the property specified in the application for the order is property obtained as a result of or in connection with criminal conduct,
- (b) the person specified in the application holds all or some of the property.

(3) There must be reasonable grounds for believing that account information which may be provided in compliance with the order is likely to be of substantial value (whether or not by itself) to the external investigation.

(4) There must be reasonable grounds for believing that it is in the public interest for the account information to be provided, having regard to the benefit likely to accrue to the external investigation if the information is obtained.

### **Statements**

**65.**—(1) A statement made by a financial institution in response to an account monitoring order may not be used in evidence against it in criminal proceedings.

(2) But paragraph (1) does not apply—

- (a) in the case of proceedings under Part 3 of the Proceeds of Crime Act 2002,
- (b) in the case of proceedings under Part 3 of the Proceeds of Crime Act 2002 (External Requests and Orders) Order 2005(12),
- (c) in the case of proceedings for contempt of court, or
- (d) on prosecution for an offence where, in giving evidence, the financial institution makes a statement inconsistent with the statement mentioned in paragraph (1).

(3) A statement may not be used by virtue of paragraph (2)(d) against a financial institution unless—

- (a) evidence relating to it is adduced, or
- (b) a question relating to it is asked,

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

### **Further provisions**

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

### **Supplementary**

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

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

- (a) the Scottish Ministers,
  - (b) any person affected by the order.
- (3) The sheriff may—
- (a) discharge the order,
  - (b) vary the order.

### **Jurisdiction of sheriff**

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

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

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

### **Code of Practice**

69. The Code of Practice issued under the Proceeds of Crime Act 2002 (Investigations: Code of Practice)(Scotland) Order 2009(13) shall apply to the powers conferred by this Part as it applies to powers conferred by Chapter 3 of Part 8 of the Proceeds of Crime Act 2002(14) in relation to civil recovery proceedings.

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

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

- (2) The specified functions are the functions conferred on the Scottish Ministers by—
- (a) article 40(1) (production orders),
  - (b) article 42(2) (entry orders),
  - (c) article 46(2) (supplementary to production and entry orders),
  - (d) article 47(1) (search warrants),
  - (e) article 50(1) (disclosure orders),
  - (f) article 55(2) (supplementary to disclosure orders),

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(13) S.I. 2009/245.

(14) 2002 c. 29.

- (g) article 56(1) (customer information orders),
- (h) article 62(2) (supplementary to customer information orders),
- (i) article 63(1) (account monitoring orders),
- (j) article 67(2) (supplementary to account monitoring orders).