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# Criminal Justice Act 1988

## 1988 CHAPTER 33

### PART VI

#### CONFISCATION OF THE PROCEEDS OF AN OFFENCE

VALID FROM 01/11/1995

*[<sup>F1</sup>Investigations into the proceeds of criminal conduct]*

#### Textual Amendments

**F1** S. 93H (and the heading immediately preceding it) inserted (1.11.1995) by 1995 c. 11, s.11; S.I. 1995/2650, art.2

#### <sup>F2</sup>93H Order to make material available.

- (1) A constable may, for the purposes of an investigation into whether any person has benefited from any criminal conduct or into the extent or whereabouts of the proceeds of any criminal conduct, apply to a Circuit judge for an order under subsection (2) below in relation to particular material or material of a particular description.
- (2) If, on such an application, the judge is satisfied that the conditions in subsection (4) below are fulfilled, he may make an order that the person who appears to him to be in possession of the material to which the application relates shall—
  - (a) produce it to a constable for him to take away, or
  - (b) give a constable access to it,within such period as the order may specify.

This subsection has effect subject to section 93J(11) below.

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- (3) The period to be specified in an order under subsection (2) above shall be seven days unless it appears to the judge that a longer or shorter period would be appropriate in the particular circumstances of the application.
- (4) The conditions referred to in subsection (2) above are—
  - (a) that there are reasonable grounds for suspecting that a specified person has benefited from any criminal conduct;
  - (b) that there are reasonable grounds for suspecting that the material to which the application relates—
    - (i) is likely to be of substantial value (whether by itself or together with other material) to the investigation for the purposes of which the application is made; and
    - (ii) does not consist of or include items subject to legal privilege or excluded material;
  - and
  - (c) that there are reasonable grounds for believing that it is in the public interest, having regard—
    - (i) to the benefit likely to accrue to the investigation if the material is obtained, and
    - (ii) to the circumstances under which the person in possession of the material holds it,that the material should be produced or that access to it should be given.
- (5) Where the judge makes an order under subsection (2)(b) above in relation to material on any premises he may, on the application of a constable, order any person who appears to him to be entitled to grant entry to the premises to allow a constable to enter the premises to obtain access to the material.
- (6) An application under subsection (1) or (5) above may be made ex parte to a judge in chambers.
- (7) Provision may be made by Crown Court Rules as to—
  - (a) the discharge and variation of orders under this section; and
  - (b) proceedings relating to such orders.
- (8) An order of a Circuit judge under this section shall have effect as if it were an order of the Crown Court.
- (9) Where the material to which an application under subsection (1) above relates consists of information contained in a computer—
  - (a) an order under subsection (2)(a) above shall have effect as an order to produce the material in a form in which it can be taken away and in which it is visible and legible; and
  - (b) an order under subsection (2)(b) above shall have effect as an order to give access to the material in a form in which it is visible and legible.
- (10) An order under subsection (2) above—
  - (a) shall not confer any right to production of, or access to, items subject to legal privilege or excluded material;
  - (b) shall have effect notwithstanding any obligation as to secrecy or other restriction upon the disclosure of information imposed by statute or otherwise; and

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(c) may be made in relation to material in the possession of an authorised government department;

and in this subsection “authorised government department” means a government department which is an authorised department for the purposes of the <sup>M1</sup>Crown Proceedings Act 1947.

(11) For the purposes of sections 21 and 22 of the <sup>M2</sup>Police and Criminal Evidence Act 1984 (access to, and copying and retention of, seized material) material produced in pursuance of an order under subsection (2)(a) above shall be treated as if it were material seized by a constable.

(12) In this section—

- (a) “excluded material”, “items subject to legal privilege” and “premises” have the same meanings as in the <sup>M3</sup>Police and Criminal Evidence Act 1984; and
- (b) references to a person benefiting from any criminal conduct, in relation to conduct which is not an offence to which this Part of this Act applies but would be if it had occurred in England and Wales, shall be construed in accordance with section 71(4) and (5) above as if it had so occurred.

#### Textual Amendments

**F2** S. 93(H) (and the heading immediately preceding it) inserted (1.11.1995) by 1995 c.11, s. 11; S.I. 1995/2650, art.2

#### Modifications etc. (not altering text)

**C1** S. 93H restricted (28.7.1998) by 1998 c. 35, s. 14(3)(b); S.I. 1998/1858, art.2

#### Marginal Citations

**M1** 1947 c. 44.

**M2** 1984 c. 60.

**M3** 1984 c. 60.

### [93I] <sup>F3</sup> Authority for search.

(1) A constable may, for the purposes of an investigation into whether any person has benefited from any criminal conduct or into the extent or whereabouts of the proceeds of any criminal conduct apply to a Circuit judge for a warrant under this section in relation to specified premises.

(2) On such application the judge may issue a warrant authorising a constable to enter and search the premises if the judge is satisfied—

- (a) that an order made under section 93H above in relation to material on the premises has not been complied with;
- (b) that the conditions in subsection (3) below are fulfilled; or
- (c) that the conditions in subsection (4) below are fulfilled.

(3) The conditions referred to in subsection (2)(b) above are—

- (a) that there are reasonable grounds for suspecting that a specified person has benefited from criminal conduct;
- (b) that the conditions in subsection (4)(b) and (c) of section 93H above are fulfilled in relation to any material on the premises; and

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- (c) that it would not be appropriate to make an order under that section in relation to the material because—
- (i) it is not practicable to communicate with any person entitled to produce the material;
  - (ii) it is not practicable to communicate with any person entitled to grant access to the material or entitled to grant entry to the premises on which the material is situated; or
  - (iii) the investigation for the purposes of which the application is made might be seriously prejudiced unless a constable could secure immediate access to the material.
- (4) The conditions referred to in subsection (2)(c) above are—
- (a) that there are reasonable grounds for suspecting that a specified person has benefited from any criminal conduct;
  - (b) that there are reasonable grounds for suspecting that there is on the premises any such material relating—
    - (i) to the specified person, or
    - (ii) to the question whether that person has benefited from any criminal conduct or to any question as to the extent or whereabouts of the proceeds of any criminal conduct,
 as is likely to be of substantial value (whether by itself or together with other material) to the investigation for the purposes of which the application is made, but that the material cannot at the time of the application be particularised; and
  - (c) that—
    - (i) it is not practicable to communicate with any person entitled to grant entry to the premises;
    - (ii) entry to the premises will not be granted unless a warrant is produced; or
    - (iii) the investigation for the purposes of which the application is made might be seriously prejudiced unless a constable arriving at the premises could secure immediate entry to them.
- (5) Where a constable has entered premises in the execution of a warrant issued under this section, he may seize and retain any material, other than items subject to legal privilege and excluded material, which is likely to be of substantial value (whether by itself or together with other material) to the investigation for the purposes of which the warrant was issued.
- (6) Subsection (12) of section 93H above shall apply for the purposes of this section as it applies for the purposes of that section.]

#### **Textual Amendments**

**F3** S. 93I inserted (1.11.1995) by 1995 c. 11, s.12; S.I. 1995/2650, art.2

#### **Modifications etc. (not altering text)**

**C2** S. 93I restricted (28.7.1998) by 1998 c. 35, s. 14(3)(b); S.I. 1998/1858, art.2

**C3** S. 93I(5): power of seizure extended (1.4.2003) by 2001 c. 16, ss. 50, 52-54, 68, 138(2), Sch. 1 Pt. 1 para. 47; S.I. 2003/708, art. 2(j)

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S. 93I(5): power of seizure modified (1.4.2003) by 2001 c. 16, ss. 57(3), 55, 68, 138(2), Sch. 1 Pt. 3 para. 105; S.I. 2003/708, art. 2(j)

**[93J] <sup>F4</sup>Disclosure of information held by government departments.**

- (1) Subject to subsection (4) below, the High Court may, on an application by the person appearing to the court to have the conduct of any prosecution, order any material mentioned in subsection (3) below which is in the possession of an authorised government department to be produced to the court within such period as the court may specify.
- (2) The power to make an order under subsection (1) above is exercisable if—
  - (a) the powers conferred on the court by sections 77(1) and 78(1) above are exercisable by virtue of subsection (1) of section 76 above; or
  - (b) those powers are exercisable by virtue of subsection (2) of that section and the court has made a restraint order or a charging order which (in either case) has not been discharged;but where the power to make an order under subsection (1) above is exercisable by virtue only of paragraph (b) above, subsection (3) of section 76 above shall apply for the purposes of this section as it applies for the purposes of sections 77 and 78 above.
- (3) The material referred to in subsection (1) above is any material which—
  - (a) has been submitted to an officer of an authorised government department by the defendant or by a person who has at any time held property which was realisable property;
  - (b) has been made by an officer of an authorised government department in relation to the defendant or such a person; or
  - (c) is correspondence which passed between an officer of an authorised government department and the defendant or such a person;and an order under that subsection may require the production of all such material or of a particular description of such material, being material in the possession of the department concerned.
- (4) An order under subsection (1) above shall not require the production of any material unless it appears to the High Court that the material is likely to contain information that would facilitate the exercise of the powers conferred either—
  - (a) on the court by sections 77 to 80 above; or
  - (b) on a receiver appointed under section 77 or 80 above or in pursuance of a charging order.
- (5) The court may by order authorise the disclosure to such a receiver of any material produced under subsection (1) above or any part of such material; but the court shall not make an order under this subsection unless a reasonable opportunity has been given for an officer of the department to make representations to the court.
- (6) Material disclosed in pursuance of an order under subsection (5) above may, subject to any conditions contained in the order, be further disclosed for the purposes of the functions by virtue of any provision of this Part of this Act of the receiver, of the Crown Court or of any magistrates' court.

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- (7) The court may by order authorise the disclosure to a person mentioned in subsection (8) below of any material produced under subsection (1) above or any part of such material; but the court shall not make an order under this subsection unless—
- (a) a reasonable opportunity has been given for an officer of the department to make representations to the court; and
  - (b) it appears to the court that the material is likely to be of substantial value in exercising functions relating to the investigation of crime.
- (8) The persons referred to in subsection (7) above are—
- (a) any member of a police force;
  - (b) any member of the Crown Prosecution Service; and
  - (c) any officer within the meaning of the <sup>M4</sup>Customs and Excise Management Act 1979.
- (9) Material disclosed in pursuance of an order under subsection (7) above may, subject to any conditions contained in the order, be further disclosed for the purposes of functions relating to the investigation of crime, of whether any person has benefited from any criminal conduct or of the extent or whereabouts of the proceeds of any such conduct.
- (10) Material may be produced or disclosed in pursuance of this section notwithstanding any obligation as to secrecy or other restriction upon the disclosure of information imposed by statute or otherwise.
- (11) An order under subsection (1) above and, in the case of material in the possession of an authorised government department, an order under section 93H above may require any officer of the department (whether named in the order or not) who may for the time being be in possession of the material concerned to comply with it; and an order containing any requirement by virtue of this subsection shall be served as if the proceedings were civil proceedings against the department.
- (12) Where any requirement is included in any order by virtue of subsection (11) above, the person on whom the order is served—
- (a) shall take all reasonable steps to bring it to the attention of the officer concerned; and
  - (b) if the order is not brought to that officer’s attention within the period referred to in subsection (1) above, shall report the reasons for the failure to the court; and it shall also be the duty of any other officer of the department in receipt of the order to take such steps as are mentioned in paragraph (a) above.
- (13) In this section “authorised government department” means a government department which is an authorised department for the purposes of the <sup>M5</sup>Crown Proceedings Act 1947; and subsection (12)(b) of section 93H above shall apply for the purposes of this section as it applies for the purposes of that section.]

#### **Textual Amendments**

**F4** S. 93J inserted (1.11.1995) by 1995 c. 11, s.13; S.I. 1995/2650, art.2

#### **Modifications etc. (not altering text)**

**C4** S. 93J restricted (28.7.1998) by 1998 c. 35, s. 14(3)(c); S.I. 1998/1858, art. 2

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#### **Marginal Citations**

**M4** 1979 c. 2.

**M5** 1947 c. 44.

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