



# Proceeds of Crime Act 2002

## 2002 CHAPTER 29

### PART 8 U.K.

#### INVESTIGATIONS

### CHAPTER 3 S

#### SCOTLAND

#### *Production orders*

### 380 Production orders S

- (1) The sheriff may, on an application made to him by the appropriate person, make a production order if he is satisfied that each of the requirements for the making of the order is fulfilled.
- (2) In making a production order in relation to <sup>F1</sup>... a civil recovery investigation [<sup>F2</sup><sup>F3</sup>or a detained cash investigation]<sup>F2</sup>, a detained cash investigation, a detained property investigation or a frozen funds investigation], the sheriff shall act in the exercise of his civil jurisdiction.
- (3) The application for a production order must state that—
  - (a) a person specified in the application is subject to a confiscation investigation [<sup>F4</sup>, a civil recovery investigation ] or a money laundering investigation, or
  - (b) property specified in the application is subject to a civil recovery investigation [<sup>F5</sup><sup>F6</sup>or a detained cash investigation]<sup>F5</sup>, a detained cash investigation, a detained property investigation or a frozen funds investigation].
- (4) The application must also state that—
  - (a) the order is sought for the purposes of the investigation;
  - (b) the order is sought in relation to material, or material of a description, specified in the application;

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- (c) a person specified in the application appears to be in possession or control of the material.
- (5) A production order is an order either—
- (a) requiring the person the application for the order specifies as appearing to be in possession or control of material to produce it to a proper person for him to take away, or
  - (b) requiring that person to give a proper person access to the material, within the period stated in the order.
- (6) The period stated in a production order must be a period of seven days beginning with the day on which the order is made, unless it appears to the sheriff that a longer or shorter period would be appropriate in the particular circumstances.

#### Textual Amendments

- F1** Words in s. 380(2) omitted (1.6.2015) by virtue of [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(2), [Sch. 19 para. 14\(2\)](#); [S.I. 2015/964](#), art. 2(d) (with art. 3)
- F2** Words in s. 380(2) substituted (27.4.2017 for specified purposes, 31.1.2018 for specified purposes, 16.4.2018 in so far as not already in force) by [Criminal Finances Act 2017 \(c. 22\)](#), s. 58(5)(6), [Sch. 5 para. 60](#); [S.I. 2018/78](#), reg. 5(3)(a)(i)(ii)
- F3** Words in s. 380(2) inserted (18.6.2009) by [Serious Crime Act 2007 \(c. 27\)](#), s. 94(3), [Sch. 10 para. 14](#); [S.S.I. 2009/224](#), art. 2(1)(d)(ii)
- F4** Words in s. 380(3)(a) inserted (1.6.2015) by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(2), [Sch. 19 para. 14\(3\)](#); [S.I. 2015/964](#), art. 2(d) (with art. 3)
- F5** Words in s. 380(3)(b) substituted (27.4.2017 for specified purposes, 31.1.2018 for specified purposes, 16.4.2018 in so far as not already in force) by [Criminal Finances Act 2017 \(c. 22\)](#), s. 58(5)(6), [Sch. 5 para. 60](#); [S.I. 2018/78](#), reg. 5(3)(a)(i)(ii)
- F6** Words in s. 380(3)(b) inserted (18.6.2009) by [Serious Crime Act 2007 \(c. 27\)](#), [ss. 75\(4\)](#), 94(3); [S.S.I. 2009/224](#), art. 2(1)(a)

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

- C1** S. 380(5) modified (1.4.2003) by [The Proceeds of Crime Act 2002 \(Investigations in different parts of the United Kingdom\) Order 2003 \(S.I. 2003/425\)](#), arts. 1, [14\(3\)](#), (4)
- C2** S. 380(5) modified (1.4.2003) by [The Proceeds of Crime Act 2002 \(Investigations in different parts of the United Kingdom\) Order 2003 \(S.I. 2003/425\)](#), arts. 1, [4\(3\)\(4\)](#), 14(3), (4)

#### Commencement Information

- I1** S. 380 in force at 24.2.2003 by [S.I. 2003/120](#), art. 2, [Sch.](#) (with arts. 3, 4) (as amended (20.2.2003) by [S.I. 2003/333](#), art. 14)

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

- (1) These are the requirements for the making of a production order.
- (2) There must be reasonable grounds for suspecting that—
- (a) in the case of a confiscation investigation, the person the application for the order specifies as being subject to the investigation has benefited from his criminal conduct;
  - (b) <sup>[F7]</sup> in the case of a civil recovery investigation—

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- (i) the person the application for the order specifies as being subject to the investigation holds recoverable property or associated property,
    - (ii) that person has, at any time, held property that was recoverable property or associated property at the time, or
    - (iii) the property the application for the order specifies as being subject to the investigation is recoverable property or associated property;]
  - [<sup>F8</sup>(ba) in the case of a detained cash investigation into the derivation of cash, the property the application for the order specifies as being subject to the investigation, or a part of it, is recoverable property;
  - (bb) in the case of a detained cash investigation into the intended use of cash, the property the application for the order specifies as being subject to the investigation, or a part of it, is intended by any person to be used in unlawful conduct;]
  - [<sup>F9</sup>(bc) in the case of a detained property investigation into the derivation of property, the property the application for the order specifies as being subject to the investigation, or a part of it, is recoverable property;
  - (bd) in the case of a detained property investigation into the intended use of property, the property the application for the order specifies as being subject to the investigation, or a part of it, is intended by any person to be used in unlawful conduct;
  - (be) in the case of a frozen funds investigation into the derivation of money held in an account in relation to which an account freezing order made under section 303Z3 has effect (a “frozen account”), the property the application for the order specifies as being subject to the investigation, or a part of it, is recoverable property;
  - (bf) in the case of a frozen funds investigation into the intended use of money held in a frozen account, the property the application for the order specifies as being subject to the investigation, or a part of it, is intended by any person to be used in unlawful conduct;]
  - (c) in the case of a money laundering investigation, the person the application for the order specifies as being subject to the investigation has committed a money laundering offence.
- (3) There must be reasonable grounds for believing that the person the application specifies as appearing to be in possession or control of the material so specified is in possession or control of it.
- (4) There must be reasonable grounds for believing that the material is likely to be of substantial value (whether or not by itself) to the investigation for the purposes of which the order is sought.
- (5) There must be reasonable grounds for believing that it is in the public interest for the material to be produced or for access to it to be given, having regard to—
- (a) the benefit likely to accrue to the investigation if the material is obtained,
  - (b) the circumstances under which the person the application specifies as appearing to be in possession or control of the material holds it.

#### Textual Amendments

- F7** S. 381(2)(b) substituted (1.6.2015) by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(2), [Sch. 19 para. 15](#); [S.I. 2015/964](#), art. 2(d) (with art. 3)

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- F8** S. 381(2)(ba)(bb) inserted (18.6.2009) by [Serious Crime Act 2007 \(c. 27\)](#), **ss. 75(5), 94(3)**; S.I. 2009/224, art. 2(1)(a)
- F9** S. 381(2)(bc)-(bf) inserted (27.4.2017 for specified purposes, 31.1.2018 for specified purposes, 16.4.2018 in so far as not already in force) by [Criminal Finances Act 2017 \(c. 22\)](#), s. 58(5)(6), **Sch. 5 para. 61**; S.I. 2018/78, reg. 5(3)(a)(i)(ii)

#### Commencement Information

- I2** S. 381 in force at 24.2.2003 by [S.I. 2003/120](#), art. 2, **Sch.** (with arts. 3, 4) (as amended (20.2.2003) by [S.I. 2003/333](#), art. 14)

### 382 Order to grant entry **S**

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

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

- C3** S. 382(3) modified (1.4.2003) by [The Proceeds of Crime Act 2002 \(Investigations in different parts of the United Kingdom\) Order 2003 \(S.I. 2003/425\)](#), arts. 1, **14(3), (4)**
- C4** S. 382(3) modified (1.4.2003) by [The Proceeds of Crime Act 2002 \(Investigations in different parts of the United Kingdom\) Order 2003 \(S.I. 2003/425\)](#), arts. 1, **4(3)(4), 14(3), (4)**

#### Commencement Information

- I3** S. 382 in force at 24.2.2003 by [S.I. 2003/120](#), art. 2, **Sch.** (with arts. 3, 4) (as amended (20.2.2003) by [S.I. 2003/333](#), art. 14)

### 383 Further provisions **S**

- (1) A production order does not require a person to produce, or give access to, any items subject to legal privilege.
- (2) A production order has effect in spite of any restriction on the disclosure of information (however imposed).
- (3) A proper person may take copies of any material which is produced, or to which access is given, in compliance with a production order.
- (4) Material produced in compliance with a production order may be retained for so long as it is necessary to retain it (as opposed to copies of it) in connection with the investigation for the purposes of which the order was made.
- (5) But if a proper person has reasonable grounds for believing that—
  - (a) the material may need to be produced for the purposes of any legal proceedings, and
  - (b) it might otherwise be unavailable for those purposes,

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it may be retained until the proceedings are concluded.

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

- C5** S. 383(1) excluded (1.4.2003) by [The Proceeds of Crime Act 2002 \(Investigations in different parts of the United Kingdom\) Order 2003 \(S.I. 2003/425\)](#), arts. 1, **4(6)**
- C6** S. 383(1)(2) excluded (1.4.2003) by [The Proceeds of Crime Act 2002 \(Investigations in different parts of the United Kingdom\) Order 2003 \(S.I. 2003/425\)](#), arts. 1, **24(6)**
- C7** S. 383(1) excluded (1.4.2003) by [The Proceeds of Crime Act 2002 \(Investigations in different parts of the United Kingdom\) Order 2003 \(S.I. 2003/425\)](#), arts. 1, 4(6), **14(6)**, 24(6)
- C8** S. 383(1)(2) modified (1.4.2003) by [The Proceeds of Crime Act 2002 \(Investigations in different parts of the United Kingdom\) Order 2003 \(S.I. 2003/425\)](#), arts. 1, **23(6)**
- C9** S. 383(2) excluded (1.4.2003) by [The Proceeds of Crime Act 2002 \(Investigations in different parts of the United Kingdom\) Order 2003 \(S.I. 2003/425\)](#), arts. 1, **4(6)**
- C10** S. 383(2) excluded (1.4.2003) by [The Proceeds of Crime Act 2002 \(Investigations in different parts of the United Kingdom\) Order 2003 \(S.I. 2003/425\)](#), arts. 1, 4(6), **14(6)**, 24(6)
- C11** S. 383(3) modified (1.4.2003) by [The Proceeds of Crime Act 2002 \(Investigations in different parts of the United Kingdom\) Order 2003 \(S.I. 2003/425\)](#), arts. 1, **14(3)**, (4)
- C12** S. 383(3) modified (1.4.2003) by [The Proceeds of Crime Act 2002 \(Investigations in different parts of the United Kingdom\) Order 2003 \(S.I. 2003/425\)](#), arts. 1, **4(3)(4)**, 14(3)(4)
- C13** S. 383(5) modified (1.4.2003) by [The Proceeds of Crime Act 2002 \(Investigations in different parts of the United Kingdom\) Order 2003 \(S.I. 2003/425\)](#), arts. 1, **14(3)**, (4)
- C14** S. 383(5) modified (1.4.2003) by [The Proceeds of Crime Act 2002 \(Investigations in different parts of the United Kingdom\) Order 2003 \(S.I. 2003/425\)](#), arts. 1, **4(3)(4)**, 14(3)(4)

#### Commencement Information

- I4** S. 383 in force at 24.2.2003 by [S.I. 2003/120](#), art. 2, **Sch.** (with arts. 3, 4) (as amended (20.2.2003) by [S.I. 2003/333](#), art. 14)

## 384 Computer information **S**

- (1) This section applies if any of the material specified in an application for a production order consists of information contained in a computer.
- (2) If the order is an order requiring a person to produce the material to a proper person for him to take away, it has effect as an order to produce the material in a form in which it can be taken away by him and in which it is visible and legible.
- (3) If the order is an order requiring a person to give a proper person access to the material, it has effect as an order to give him access to the material in a form in which it is visible and legible.

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

- C15** S. 384 modified (1.4.2003) by [The Proceeds of Crime Act 2002 \(Investigations in different parts of the United Kingdom\) Order 2003 \(S.I. 2003/425\)](#), arts. 1, **14(3)**, (4)
- C16** S. 384 modified (1.4.2003) by [The Proceeds of Crime Act 2002 \(Investigations in different parts of the United Kingdom\) Order 2003 \(S.I. 2003/425\)](#), arts. 1, **4(3)(4)**, 14(3)(4)

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#### Commencement Information

- I5** S. 384 in force at 24.2.2003 by S.I. 2003/120, art. 2, Sch. (with arts. 3, 4) (as amended (20.2.2003) by S.I. 2003/333, art. 14)

### 385 Government departments **S**

- (1) A production order may be made in relation to material in the possession or control of an authorised government department.
- (2) An order so made may require any officer of the department (whether named in the order or not) who may for the time being be in possession or control of the material to comply with it.
- (3) If an order contains such a requirement—
  - (a) the person on whom it is served must take all reasonable steps to bring it to the attention of the officer concerned;
  - (b) any other officer of the department who is in receipt of the order must also take all reasonable steps to bring it to the attention of the officer concerned.
- (4) If the order is not brought to the attention of the officer concerned within the period stated in the order (in pursuance of section 380(5)) the person on whom it is served must report the reasons for the failure to—
  - (a) the sheriff in the case of an order made for the purposes of a confiscation investigation or a money laundering investigation;
  - (b) the sheriff exercising a civil jurisdiction in the case of an order made for the purposes of a civil recovery investigation [F10[F11or a detained cash investigation]]F10, a detained cash investigation, a detained property investigation or a frozen funds investigation].
- (5) In this section, “authorised government department” includes a government department which is an authorised department for the purposes of the Crown Proceedings Act 1947 (c. 44) and the Scottish Administration.

#### Textual Amendments

- F10** Words in s. 385(4)(b) substituted (27.4.2017 for specified purposes, 31.1.2018 for specified purposes, 16.4.2018 in so far as not already in force) by [Criminal Finances Act 2017 \(c. 22\)](#), s. 58(5)(6), [Sch. 5 para. 62](#); S.I. 2018/78, reg. 5(3)(a)(i)(ii)
- F11** Words in s. 385(4)(b) inserted (18.6.2009) by [Serious Crime Act 2007 \(c. 27\)](#), s. 94(3), [Sch. 10 para. 15](#); S.S.I. 2009/224, art. 2(1)(d)(ii)

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

- C17** S. 385 modified (1.4.2003) by [The Proceeds of Crime Act 2002 \(Investigations in different parts of the United Kingdom\) Order 2003 \(S.I. 2003/425\)](#), arts. 1, [23\(7\)](#), [24\(7\)](#)
- C18** S. 385 excluded (1.4.2003) by [The Proceeds of Crime Act 2002 \(Investigations in different parts of the United Kingdom\) Order 2003 \(S.I. 2003/425\)](#), arts. 1, [14\(7\)](#)
- C19** S. 385 excluded (1.4.2003) by [The Proceeds of Crime Act 2002 \(Investigations in different parts of the United Kingdom\) Order 2003 \(S.I. 2003/425\)](#), arts. 1, [4\(7\)](#), [14\(7\)](#)
- C20** S. 385 modified (1.4.2003) by [The Proceeds of Crime Act 2002 \(Investigations in different parts of the United Kingdom\) Order 2003 \(S.I. 2003/425\)](#), arts. 1, [24\(7\)](#)

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#### Commencement Information

- I6** S. 385 in force at 24.2.2003 by [S.I. 2003/120](#), [art. 2](#), [Sch.](#) (with [arts. 3, 4](#)) (as amended (20.2.2003) by [S.I. 2003/333](#), [art. 14](#))

### 386 Supplementary **S**

- (1) An application for a production order or an order to grant entry may be made ex parte to a sheriff in chambers.
- (2) Provision may be made by rules of court as to the discharge and variation of production orders and orders to grant entry.
- (3) Rules of court under subsection (2) relating to production orders and orders to grant entry—
  - (a) made in a confiscation investigation or a money laundering investigation shall, without prejudice to section 305 of the Criminal Procedure (Scotland) Act 1995 (c. 46) be made by act of adjournal;
  - (b) made in a civil recovery investigation [<sup>F12</sup>[<sup>F13</sup>or a detained cash investigation]]<sup>F12</sup>, a detained cash investigation, a detained property investigation or a frozen funds investigation] shall, without prejudice to section 32 of the Sheriff Courts (Scotland) Act 1971 (c. 58) be made by act of sederunt.
- (4) An application to discharge or vary a production order or an order to grant entry may be made to the sheriff by—
  - (a) the person who applied for the order;
  - (b) any person affected by the order.
- (5) The sheriff may—
  - (a) discharge the order;
  - (b) vary the order.

#### Textual Amendments

- F12** Words in s. 386(3)(b) substituted (27.4.2017 for specified purposes, 31.1.2018 for specified purposes, 16.4.2018 in so far as not already in force) by [Criminal Finances Act 2017 \(c. 22\)](#), s. 58(5)(6), [Sch. 5 para. 63](#); [S.I. 2018/78](#), [reg. 5\(3\)\(a\)\(i\)\(ii\)](#)
- F13** Words in s. 386(3)(b) inserted (18.6.2009) by [Serious Crime Act 2007 \(c. 27\)](#), s. 94(3), [Sch. 10 para. 16](#); [S.S.I. 2009/224](#), [art. 2\(1\)\(d\)\(ii\)](#)

#### Commencement Information

- I7** S. 386 in force at 24.2.2003 by [S.I. 2003/120](#), [art. 2](#), [Sch.](#) (with [arts. 3, 4](#)) (as amended (20.2.2003) by [S.I. 2003/333](#), [art. 14](#))

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## Search warrants

### 387 Search warrants **S**

- (1) The sheriff may, on an application made to him by the appropriate person, issue a search warrant if he is satisfied that either of the requirements for the issuing of the warrant is fulfilled.
- (2) In issuing a search warrant in relation to <sup>F14</sup>... a civil recovery investigation [<sup>F15</sup><sup>F16</sup> or a detained cash investigation]]<sup>F15</sup>, a detained cash investigation, a detained property investigation or a frozen funds investigation], the sheriff shall act in the exercise of his civil jurisdiction.
- (3) The application for a search warrant must state that—
  - (a) a person specified in the application is subject to a confiscation investigation [<sup>F17</sup>, a civil recovery investigation] or a money laundering investigation, or
  - (b) property specified in the application is subject to a civil recovery investigation [<sup>F18</sup><sup>F19</sup> or a detained cash investigation]]<sup>F18</sup>, a detained cash investigation, a detained property investigation or a frozen funds investigation].
- (4) A search warrant is a warrant authorising a proper person—
  - (a) to enter and search the premises specified in the application for the warrant, and
  - (b) to seize and retain any material specified in the warrant which is found there and which is likely to be of substantial value (whether or not by itself) to the investigation for the purposes of which the application is made.
- <sup>F20</sup>(4A) A proper person may, if necessary, use reasonable force in executing a search warrant.]
- (5) The requirements for the issue of a search warrant are—
  - (a) that a production order made in relation to material has not been complied with and there are reasonable grounds for believing that the material is on the premises specified in the application for the warrant, or
  - (b) that section 388 is satisfied in relation to the warrant.
- (6) An application for a search warrant may be made ex parte to a sheriff in chambers.

#### Textual Amendments

- F14** Words in s. 387(2) omitted (1.6.2015) by virtue of [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(2), [Sch. 19 para. 16\(2\)](#); S.I. 2015/964, art. 2(d) (with art. 3)
- F15** Words in s. 387(2) substituted (27.4.2017 for specified purposes, 31.1.2018 for specified purposes, 16.4.2018 in so far as not already in force) by [Criminal Finances Act 2017 \(c. 22\)](#), s. 58(5)(6), [Sch. 5 para. 64](#); S.I. 2018/78, reg. 5(3)(a)(i)(ii)
- F16** Words in s. 387(2) inserted (18.6.2009) by [Serious Crime Act 2007 \(c. 27\)](#), s. 94(3), [Sch. 10 para. 17](#); S.S.I. 2009/224, art. 2(1)(d)(ii)
- F17** Words in s. 387(3)(a) inserted (1.6.2015) by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(2), [Sch. 19 para. 16\(3\)](#); S.I. 2015/964, art. 2(d) (with art. 3)
- F18** Words in s. 387(3)(b) substituted (27.4.2017 for specified purposes, 31.1.2018 for specified purposes, 16.4.2018 in so far as not already in force) by [Criminal Finances Act 2017 \(c. 22\)](#), s. 58(5)(6), [Sch. 5 para. 64](#); S.I. 2018/78, reg. 5(3)(a)(i)(ii)
- F19** Words in s. 387(3)(b) inserted (18.6.2009) by [Serious Crime Act 2007 \(c. 27\)](#), [ss. 76\(4\)](#), 94(3); S.S.I. 2009/224, art. 2(1)(b)



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**F20** S. 387(4A) inserted (28.4.2008) by [Serious Crime Act 2007 \(c. 27\)](#), **ss. 86**, 94(3); S.S.I. 2008/152, art. 2

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

**C21** S. 387(4) modified (1.4.2003) by [The Proceeds of Crime Act 2002 \(Investigations in different parts of the United Kingdom\) Order 2003 \(S.I. 2003/425\)](#), arts. 1, **16(2)**

**C22** S. 387(4) modified (1.4.2003) by [The Proceeds of Crime Act 2002 \(Investigations in different parts of the United Kingdom\) Order 2003 \(S.I. 2003/425\)](#), arts. 1, **6(2)**, 16(2)

**Commencement Information**

**I8** S. 387 in force at 24.2.2003 by [S.I. 2003/120](#), art. 2, **Sch.** (with arts. 3, 4) (as amended (20.2.2003) by [S.I. 2003/333](#), art. 14)

**388 Requirements where production order not available** **S**

- (1) This section is satisfied in relation to a search warrant if—
- (a) subsection (2) applies, and
  - (b) either the first or the second set of conditions is complied with.
- (2) This subsection applies if there are reasonable grounds for suspecting that—
- (a) in the case of a confiscation investigation, the person specified in the application for the warrant has benefited from his criminal conduct;
  - [<sup>F21</sup>(b) in the case of a civil recovery investigation—
    - (i) the person specified in the application for the warrant holds recoverable property or associated property,
    - (ii) that person has, at any time, held property that was recoverable property or associated property at the time, or
    - (iii) the property specified in the application for the warrant is recoverable property or associated property;]
  - [<sup>F22</sup>(ba) in the case of a detained cash investigation into the derivation of cash, the property specified in the application for the warrant, or a part of it, is recoverable property;
  - (bb) in the case of a detained cash investigation into the intended use of cash, the property specified in the application for the warrant, or a part of it, is intended by any person to be used in unlawful conduct;]
  - [<sup>F23</sup>(bc) in the case of a detained property investigation into the derivation of property, the property specified in the application for the warrant, or a part of it, is recoverable property;
  - (bd) in the case of a detained property investigation into the intended use of property, the property specified in the application for the warrant, or a part of it, is intended by any person to be used in unlawful conduct;
  - (be) in the case of a frozen funds investigation into the derivation of money held in an account in relation to which an account freezing order made under section 303Z3 has effect (a “frozen account”), the property specified in the application for the warrant, or a part of it, is recoverable property;
  - (bf) in the case of a frozen funds investigation into the intended use of money held in a frozen account, the property specified in the application for the warrant, or a part of it, is intended by any person to be used in unlawful conduct;]
  - (c) in the case of a money laundering investigation, the person specified in the application for the warrant has committed a money laundering offence.

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*Status: Point in time view as at 31/07/2017.*

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- (3) The first set of conditions is that there are reasonable grounds for believing that—
- (a) any material on the premises specified in the application for the warrant is likely to be of substantial value (whether or not by itself) to the investigation for the purposes of which the warrant is sought,
  - (b) it is in the public interest for the material to be obtained, having regard to the benefit likely to accrue to the investigation if the material is obtained, and
  - (c) it would not be appropriate to make a production order for any one or more of the reasons in subsection (4).
- (4) The reasons are—
- (a) that it is not practicable to communicate with any person against whom the production order could be made;
  - (b) that it is not practicable to communicate with any person who would be required to comply with an order to grant access to the material or to grant entry to the premises on which the material is situated;
  - (c) that the investigation might be seriously prejudiced unless a proper person is able to secure immediate access to the material.
- (5) The second set of conditions is that—
- (a) there are reasonable grounds for believing that there is material on the premises specified in the application for the warrant and that the material falls within subsection (6), (7) [<sup>F24</sup>, (7A), (7B) [<sup>F25</sup>, (7C), (7D), (7E), (7F)]] or (8),
  - (b) there are reasonable grounds for believing that it is in the public interest for the material to be obtained, having regard to the benefit likely to accrue to the investigation if the material is obtained, and
  - (c) any one or more of the requirements in subsection (9) is met.
- (6) In the case of a confiscation investigation, material falls within this subsection if it cannot be identified at the time of the application but it—
- (a) relates to the person specified in the application, the question whether he has benefited from his criminal conduct [<sup>F26</sup> or of realisable property available for satisfying a confiscation order made in respect of him] or any question as to the extent or whereabouts of his benefit from his criminal conduct, and
  - (b) is likely to be of substantial value (whether or not by itself) to the investigation for the purposes of which the warrant is sought.
- (7) In the case of a civil recovery investigation, material falls within this subsection if it cannot be identified at the time of the application but it—
- <sup>F27</sup>(a) relates to the person or property specified in the application or to any of the questions listed in subsection (7ZA), and]
  - (b) is likely to be of substantial value (whether or not by itself) to the investigation for the purposes of which the warrant is sought.
- <sup>F28</sup>(7ZA) Those questions are—
- (a) where a person is specified in the application, any question as to—
    - (i) what property the person holds or has held,
    - (ii) whether the property is or has been recoverable property or associated property, or
    - (iii) the nature, extent or whereabouts of the property, and
  - (b) where property is specified in the application, any question as to—

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- (i) whether the property is or has been recoverable property or associated property,
  - (ii) who holds it or has held it,
  - (iii) whether a person who appears to hold or to have held it holds or has held other property,
  - (iv) whether the other property is or has been recoverable property or associated property, or
  - (v) the nature, extent or whereabouts of the specified property or the other property.]
- [<sup>F29</sup>(7A) In the case of a detained cash investigation into the derivation of cash, material falls within this subsection if it cannot be identified at the time of the application but it—
- (a) relates to the property specified in the application, the question whether the property, or a part of it, is recoverable property or any other question as to its derivation, and
  - (b) is likely to be of substantial value (whether or not by itself) to the investigation for the purposes of which the warrant is sought.
- (7B) In the case of a detained cash investigation into the intended use of cash, material falls within this subsection if it cannot be identified at the time of the application but it—
- (a) relates to the property specified in the application or the question whether the property, or a part of it, is intended by any person to be used in unlawful conduct, and
  - (b) is likely to be of substantial value (whether or not by itself) to the investigation for the purposes of which the warrant is sought.]
- [<sup>F30</sup>(7C) In the case of a detained property investigation into the derivation of property, material falls within this subsection if it cannot be identified at the time of the application but it—
- (a) relates to the property specified in the application, the question whether the property, or a part of it, is recoverable property or any other question as to its derivation, and
  - (b) is likely to be of substantial value (whether or not by itself) to the investigation for the purposes of which the warrant is sought.
- (7D) In the case of a detained property investigation into the intended use of property, material falls within this subsection if it cannot be identified at the time of the application but it—
- (a) relates to the property specified in the application or the question whether the property, or a part of it, is intended by any person to be used in unlawful conduct, and
  - (b) is likely to be of substantial value (whether or not by itself) to the investigation for the purposes of which the warrant is sought.
- (7E) In the case of a frozen funds investigation into the derivation of money held in a frozen account, material falls within this subsection if it cannot be identified at the time of the application but it—
- (a) relates to the property specified in the application, the question whether the property, or a part of it, is recoverable property or any other question as to its derivation, and
  - (b) is likely to be of substantial value (whether or not by itself) to the investigation for the purposes of which the warrant is sought.

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- (7F) In the case of a frozen funds investigation into the intended use of money held in a frozen account, material falls within this subsection if it cannot be identified at the time of the application but it—
- (a) relates to the property specified in the application or the question whether the property, or a part of it, is intended by any person to be used in unlawful conduct, and
  - (b) is likely to be of substantial value (whether or not by itself) to the investigation for the purposes of which the warrant is sought.]
- (8) In the case of a money laundering investigation, material falls within this subsection if it cannot be identified at the time of the application but it—
- (a) relates to the person specified in the application or the question whether he has committed a money laundering offence, and
  - (b) is likely to be of substantial value (whether or not by itself) to the investigation for the purposes of which the warrant is sought.
- (9) The requirements are—
- (a) that it is not practicable to communicate with any person entitled to grant entry to the premises;
  - (b) that entry to the premises will not be granted unless a warrant is produced;
  - (c) that the investigation might be seriously prejudiced unless a proper person arriving at the premises is able to secure immediate entry to them.

#### Textual Amendments

- F21** S. 388(2)(b) substituted (1.6.2015) by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(2), [Sch. 19 para. 17\(2\)](#); [S.I. 2015/964](#), art. 2(d) (with art. 3)
- F22** S. 388(2)(ba)(bb) inserted (18.6.2009) by [Serious Crime Act 2007 \(c. 27\)](#), [ss. 76\(5\)](#), 94(3); [S.S.I. 2009/224](#), art. 2(1)(b)
- F23** S. 388(2)(bc)-(bf) inserted (27.4.2017 for specified purposes, 31.1.2018 for specified purposes, 16.4.2018 in so far as not already in force) by [Criminal Finances Act 2017 \(c. 22\)](#), s. 58(5)(6), [Sch. 5 para. 65\(2\)](#); [S.I. 2018/78](#), reg. 5(3)(a)(i)(ii)
- F24** Words in s. 388(5)(a) inserted (18.6.2009) by [Serious Crime Act 2007 \(c. 27\)](#), s. 94(3), [Sch. 10 para. 18](#); [S.S.I. 2009/224](#), art. 2(1)(d)(ii)
- F25** Words in s. 388(5)(a) inserted (27.4.2017 for specified purposes, 31.1.2018 for specified purposes, 16.4.2018 in so far as not already in force) by [Criminal Finances Act 2017 \(c. 22\)](#), s. 58(5)(6), [Sch. 5 para. 65\(3\)](#); [S.I. 2018/78](#), reg. 5(3)(a)(i)(ii)
- F26** Words in s. 388(6)(a) inserted (1.3.2016) by [Serious Crime Act 2015 \(c. 9\)](#), [ss. 38\(3\)](#), 88(2)(b); [S.S.I. 2016/11](#), reg. 2(h)
- F27** S. 388(7)(a) substituted (1.6.2015) by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(2), [Sch. 19 para. 17\(3\)](#); [S.I. 2015/964](#), art. 2(d) (with art. 3)
- F28** S. 388(7ZA) inserted (1.6.2015) by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(2), [Sch. 19 para. 17\(4\)](#); [S.I. 2015/964](#), art. 2(d) (with art. 3)
- F29** S. 388(7A)(7B) inserted (18.6.2009) by [Serious Crime Act 2007 \(c. 27\)](#), [ss. 76\(6\)](#), 94(3); [S.S.I. 2009/224](#), art. 2(1)(b)
- F30** S. 388(7C)-(7F) inserted (27.4.2017 for specified purposes, 31.1.2018 for specified purposes, 16.4.2018 in so far as not already in force) by [Criminal Finances Act 2017 \(c. 22\)](#), s. 58(5)(6), [Sch. 5 para. 65\(4\)](#); [S.I. 2018/78](#), reg. 5(3)(a)(i)(ii)

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#### Commencement Information

- 19** S. 388 in force at 24.2.2003 by S.I. 2003/120, art. 2, **Sch.** (with arts. 3, 4) (as amended (20.2.2003) by S.I. 2003/333, art. 14)

### 389 Further provisions: general **S**

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

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

- C23** S. 389 applied (1.4.2003) by The Proceeds of Crime Act 2002 (Investigations in different parts of the United Kingdom) Order 2003 (S.I. 2003/425), arts. 1, **25(5)**, 26(5)
- C24** S. 389 applied (1.4.2003) by The Proceeds of Crime Act 2002 (Investigations in different parts of the United Kingdom) Order 2003 (S.I. 2003/425), arts. 1, **26(5)**
- C25** S. 389 excluded (1.4.2003) by The Proceeds of Crime Act 2002 (Investigations in different parts of the United Kingdom) Order 2003 (S.I. 2003/425), arts. 1, **16(3)**
- C26** S. 389 excluded (1.4.2003) by The Proceeds of Crime Act 2002 (Investigations in different parts of the United Kingdom) Order 2003 (S.I. 2003/425), arts. 1, **6(3)**, 16(3)

#### Commencement Information

- 110** S. 389 in force at 24.2.2003 by S.I. 2003/120, art. 2, **Sch.** (with arts. 3, 4) (as amended (20.2.2003) by S.I. 2003/333, art. 14)

### 390 Further provisions: confiscation, civil recovery <sup>F31</sup>, detained cash <sup>F32</sup>, detained property, frozen funds] and money laundering **S**

- (1) This section applies to search warrants sought for the purposes of confiscation investigations, civil recovery investigations <sup>F33</sup>, detained cash investigations<sup>F34</sup>, detained property investigations, frozen funds investigations] or money laundering investigations.
- (2) A warrant continues in force until the end of the period of one month starting with the day on which it is issued.
- (3) A warrant authorises the person executing it to require any information which is held in a computer and is accessible from the premises specified in the application for the warrant, and which the proper person believes relates to any matter relevant to the investigation, to be produced in a form—
  - (a) in which it can be taken away, and
  - (b) in which it is visible and legible.
- (4) Copies may be taken of any material seized under a warrant.
- (5) A warrant issued in relation to a civil recovery investigation <sup>F35</sup><sup>F36</sup> or a detained cash investigation<sup>F35</sup>, a detained cash investigation, a detained property investigation or a frozen funds investigation] may be issued subject to conditions.
- (6) A warrant issued in relation to a civil recovery investigation <sup>F37</sup><sup>F38</sup> or a detained cash investigation<sup>F37</sup>, a detained cash investigation, a detained property investigation or a frozen funds investigation] may include provision authorising the person executing it to do other things which—
  - (a) are specified in the warrant, and

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- (b) need to be done in order to give effect to it.
- (7) Material seized under a warrant issued in relation to a civil recovery investigation [F39[F40 or a detained cash investigation]] [F39], a detained cash investigation, a detained property investigation or a frozen funds investigation ] may be retained for so long as it is necessary to retain it (as opposed to copies of it) in connection with the investigation for the purposes of which the warrant was issued.
- (8) But if the Scottish Ministers have reasonable grounds for believing that—
- (a) the material may need to be produced for the purposes of any legal proceedings, and
  - (b) it might otherwise be unavailable for those purposes,
- it may be retained until the proceedings are concluded.

#### Textual Amendments

- F31** Words in s. 390 heading inserted (18.6.2009) by [Serious Crime Act 2007 \(c. 27\), s. 94\(3\), Sch. 10 para. 19\(2\)](#); [S.S.I. 2009/224, art. 2\(1\)\(d\)\(ii\)](#)
- F32** Words in s. 390 heading inserted (27.4.2017 for specified purposes, 31.1.2018 for specified purposes, 16.4.2018 in so far as not already in force) by [Criminal Finances Act 2017 \(c. 22\), s. 58\(5\)\(6\), Sch. 5 para. 66\(2\)](#); [S.I. 2018/78, reg. 5\(3\)\(a\)\(i\)\(ii\)](#)
- F33** Words in s. 390(1) inserted (18.6.2009) by [Serious Crime Act 2007 \(c. 27\), s. 94\(3\), Sch. 10 para. 19\(3\)](#); [S.S.I. 2009/224, art. 2\(1\)\(d\)\(ii\)](#)
- F34** Words in s. 390(1) inserted (27.4.2017 for specified purposes, 31.1.2018 for specified purposes, 16.4.2018 in so far as not already in force) by [Criminal Finances Act 2017 \(c. 22\), s. 58\(5\)\(6\), Sch. 5 para. 66\(3\)](#); [S.I. 2018/78, reg. 5\(3\)\(a\)\(i\)\(ii\)](#)
- F35** Words in s. 390(5) substituted (27.4.2017 for specified purposes, 31.1.2018 for specified purposes, 16.4.2018 in so far as not already in force) by [Criminal Finances Act 2017 \(c. 22\), s. 58\(5\)\(6\), Sch. 5 para. 66\(4\)](#); [S.I. 2018/78, reg. 5\(3\)\(a\)\(i\)\(ii\)](#)
- F36** Words in s. 390(5) inserted (18.6.2009) by [Serious Crime Act 2007 \(c. 27\), s. 94\(3\), Sch. 10 para. 19\(4\)](#); [S.S.I. 2009/224, art. 2\(1\)\(d\)\(ii\)](#)
- F37** Words in s. 390(6) substituted (27.4.2017 for specified purposes, 31.1.2018 for specified purposes, 16.4.2018 in so far as not already in force) by [Criminal Finances Act 2017 \(c. 22\), s. 58\(5\)\(6\), Sch. 5 para. 66\(4\)](#); [S.I. 2018/78, reg. 5\(3\)\(a\)\(i\)\(ii\)](#)
- F38** Words in s. 390(6) inserted (18.6.2009) by [Serious Crime Act 2007 \(c. 27\), s. 94\(3\), Sch. 10 para. 19\(5\)](#); [S.S.I. 2009/224, art. 2\(1\)\(d\)\(ii\)](#)
- F39** Words in s. 390(7) substituted (27.4.2017 for specified purposes, 31.1.2018 for specified purposes, 16.4.2018 in so far as not already in force) by [Criminal Finances Act 2017 \(c. 22\), s. 58\(5\)\(6\), Sch. 5 para. 66\(4\)](#); [S.I. 2018/78, reg. 5\(3\)\(a\)\(i\)\(ii\)](#)
- F40** Words in s. 390(7) inserted (18.6.2009) by [Serious Crime Act 2007 \(c. 27\), s. 94\(3\), Sch. 10 para. 19\(6\)](#); [S.S.I. 2009/224, art. 2\(1\)\(d\)\(ii\)](#)

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

- C27** S. 390(3) excluded (1.4.2003) by [The Proceeds of Crime Act 2002 \(Investigations in different parts of the United Kingdom\) Order 2003 \(S.I. 2003/425\), arts. 1, 16\(5\)](#)
- C28** S. 390(3) excluded (1.4.2003) by [The Proceeds of Crime Act 2002 \(Investigations in different parts of the United Kingdom\) Order 2003 \(S.I. 2003/425\), arts. 1, 6\(5\), 16\(5\)](#)
- C29** S. 390(3) applied (1.4.2003) by [The Proceeds of Crime Act 2002 \(Investigations in different parts of the United Kingdom\) Order 2003 \(S.I. 2003/425\), arts. 1, 26\(8\)](#)
- C30** S. 390(3) applied (1.4.2003) by [The Proceeds of Crime Act 2002 \(Investigations in different parts of the United Kingdom\) Order 2003 \(S.I. 2003/425\), arts. 1, 25\(8\), 26\(8\)](#)

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- C31** S. 390(4) excluded (1.4.2003) by [The Proceeds of Crime Act 2002 \(Investigations in different parts of the United Kingdom\) Order 2003 \(S.I. 2003/425\)](#), arts. 1, **26(10)**
- C32** S. 390(4) modified (1.4.2003) by [The Proceeds of Crime Act 2002 \(Investigations in different parts of the United Kingdom\) Order 2003 \(S.I. 2003/425\)](#), arts. 1, **16(7)**
- C33** S. 390(4) excluded (1.4.2003) by [The Proceeds of Crime Act 2002 \(Investigations in different parts of the United Kingdom\) Order 2003 \(S.I. 2003/425\)](#), arts. 1, **25(10)**, 26(10)
- C34** S. 390(4) modified (1.4.2003) by [The Proceeds of Crime Act 2002 \(Investigations in different parts of the United Kingdom\) Order 2003 \(S.I. 2003/425\)](#), arts. 1, **6(7)**, 16(7)

#### Commencement Information

- I11** S. 390 in force at 24.2.2003 by [S.I. 2003/120](#), art. 2, **Sch.** (with arts. 3, 4) (as amended (20.2.2003) by [S.I. 2003/333](#), art. 14)

### Disclosure orders

#### 391 Disclosure orders **S**

- (1) The High Court of Justiciary, on an application made to it by the Lord Advocate in relation to confiscation investigations [<sup>F41</sup>or money laundering investigations], or the Court of Session, on an application made to it by the Scottish Ministers in relation to civil recovery investigations, may make a disclosure order if it is satisfied that each of the requirements for the making of the order is fulfilled.
- (2) No application for a disclosure order may be made in relation to a [<sup>F42</sup>detained cash investigation][<sup>F43</sup>, a detained property investigation or a frozen funds investigation][<sup>F44</sup>money laundering investigation].
- (3) The application for a disclosure order must state that—
  - (a) a person specified in the application is subject to a confiscation investigation and the order is sought for the purposes of the investigation, or
  - <sup>F45</sup>(aa) a person specified in the application is subject to a money laundering investigation and the order is sought for the purposes of the investigation, or]
  - (b) [<sup>F46</sup>a person specified in the application or] property specified in the application is subject to a civil recovery investigation and the order is sought for the purposes of the investigation.
- (4) A disclosure order is an order authorising the Lord Advocate or the Scottish Ministers to give to any person the Lord Advocate considers or the Scottish Ministers consider has relevant information, notice in writing requiring him to do, with respect to any matter relevant to the investigation for the purposes of which the order is sought, any or all of the following—
  - (a) answer questions, either at a time specified in the notice or at once, at a place so specified;
  - (b) provide information specified in the notice, by a time and in a manner so specified;
  - (c) produce documents, or documents of a description, specified in the notice, either at or by a time so specified or at once, and in a manner so specified.
- (5) Relevant information is information (whether or not contained in a document) which the Lord Advocate considers or the Scottish Ministers consider to be relevant to the investigation.

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

#### Textual Amendments

- F41** Words in s. 391(1) inserted (27.4.2017 for specified purposes, 31.1.2018 in so far as not already in force) by [Criminal Finances Act 2017 \(c. 22\)](#), **ss. 8(2)(a)**, 58(1)(6); S.I. 2018/78, reg. 3(b)
- F42** Words in s. 391(2) inserted (18.6.2009) by [Serious Crime Act 2007 \(c. 27\)](#), s. 94(3), **Sch. 10 para. 20**; S.S.I. 2009/224, art. 2(1)(d)(ii)
- F43** Words in s. 391(2) inserted (27.4.2017 for specified purposes, 31.1.2018 for specified purposes, 16.4.2018 in so far as not already in force) by [Criminal Finances Act 2017 \(c. 22\)](#), s. 58(5)(6), **Sch. 5 para. 67**; S.I. 2018/78, reg. 5(3)(a)(i)(ii)
- F44** Words in s. 391(2) omitted (27.4.2017 for specified purposes) by virtue of [Criminal Finances Act 2017 \(c. 22\)](#), **ss. 8(2)(b)**, 58(1)(6)
- F45** S. 391(3)(aa) inserted (27.4.2017 for specified purposes, 31.1.2018 in so far as not already in force) by [Criminal Finances Act 2017 \(c. 22\)](#), **ss. 8(2)(c)**, 58(1)(6); S.I. 2018/78, reg. 3(b)
- F46** Words in s. 391(3)(b) inserted (1.6.2015 for E.W.S.) by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(2), **Sch. 19 para. 18**; S.I. 2015/964, art. 2(d) (with art. 3)

#### Commencement Information

- I12** S. 391 in force at 24.2.2003 by S.I. 2003/120, art. 2, **Sch.** (with arts. 3, 4) (as amended (20.2.2003) by S.I. 2003/333, art. 14)

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

- (1) These are the requirements for the making of a disclosure order.
- (2) There must be reasonable grounds for suspecting that—
- (a) in the case of a confiscation investigation, the person specified in the application for the order has benefited from his criminal conduct;
  - [<sup>F47</sup>(aa) in the case of a money laundering investigation, the person specified in the application for the order has committed a money laundering offence;]
  - [<sup>F48</sup>(b) in the case of a civil recovery investigation—
    - (i) the person specified in the application for the order holds recoverable property or associated property,
    - (ii) that person has, at any time, held property that was recoverable property or associated property at the time, or
    - (iii) the property specified in the application for the order is recoverable property or associated property;]
- (3) There must be reasonable grounds for believing that information which may be provided in compliance with a requirement imposed under the order is likely to be of substantial value (whether or not by itself) to the investigation for the purposes of which the order is sought.
- (4) There must be reasonable grounds for believing that it is in the public interest for the information to be provided, having regard to the benefit likely to accrue to the investigation if the information is obtained.



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#### Textual Amendments

- F47** S. 392(2)(aa) inserted (27.4.2017 for specified purposes, 31.1.2018 in so far as not already in force) by [Criminal Finances Act 2017 \(c. 22\)](#), [ss. 8\(3\)](#), 58(1)(6); S.I. 2018/78, reg. 3(b)
- F48** S. 392(2)(b) substituted (1.6.2015) by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(2), [Sch. 19 para. 19](#); S.I. 2015/964, art. 2(d) (with art. 3)

#### Commencement Information

- I13** S. 392 in force at 24.2.2003 by [S.I. 2003/120](#), art. 2, [Sch.](#) (with arts. 3, 4) (as amended (20.2.2003) by [S.I. 2003/333](#), art. 14)

### 393 Offences **S**

- (1) A person commits an offence if without reasonable excuse he fails to comply with a requirement imposed on him under a disclosure order.
- (2) A person guilty of an offence under subsection (1) is liable on summary conviction to—
  - (a) imprisonment for a term not exceeding six months,
  - (b) a fine not exceeding level 5 on the standard scale, or
  - (c) both.
- (3) A person commits an offence if, in purported compliance with a requirement imposed on him under a disclosure order, he—
  - (a) makes a statement which he knows to be false or misleading in a material particular, or
  - (b) recklessly makes a statement which is false or misleading in a material particular.
- (4) A person guilty of an offence under subsection (3) is liable—
  - (a) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum or to both, or
  - (b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both.

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

- C35** S. 393 applied (1.4.2003) by [The Proceeds of Crime Act 2002 \(Investigations in different parts of the United Kingdom\) Order 2003 \(S.I. 2003/425\)](#), arts. 1, [8\(6\)-\(8\)](#), 18(6)(7), 27(2)(6)(7), 28(2)(7) (as amended (1.4.2008) by [S.I. 2008/298](#), arts. 1(1), [2\(9\)](#)(10))
- C36** S. 393 excluded (1.4.2003) by [The Proceeds of Crime Act 2002 \(Investigations in different parts of the United Kingdom\) Order 2003 \(S.I. 2003/425\)](#), arts. 1, [8\(1\)\(2\)](#), 18(2)

#### Commencement Information

- I14** S. 393 in force at 24.2.2003 by [S.I. 2003/120](#), art. 2, [Sch.](#) (with arts. 3, 4) (as amended (20.2.2003) by [S.I. 2003/333](#), art. 14)

*Status: Point in time view as at 31/07/2017.*

*Changes to legislation: Proceeds of Crime Act 2002, Chapter 3 is up to date with all changes known to be in force on or before 27 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

### 394 Statements **S**

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

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

- C37** S. 394 restricted (1.4.2003) by [The Proceeds of Crime Act 2002 \(Investigations in different parts of the United Kingdom\) Order 2003 \(S.I. 2003/425\)](#), arts. 1, **18(6)**, (8)
- C38** S. 394 applied (with modifications) (1.4.2003) by [The Proceeds of Crime Act 2002 \(Investigations in different parts of the United Kingdom\) Order 2003 \(S.I. 2003/425\)](#), arts. 1, **8(1)(3)(4)**, 18(3)(4)
- C39** S. 394 restricted (1.4.2003) by [The Proceeds of Crime Act 2002 \(Investigations in different parts of the United Kingdom\) Order 2003 \(S.I. 2003/425\)](#), arts. 1, **8(8)**, 18(6)(8)
- C40** S. 394 applied (with modifications) (1.4.2003) by [The Proceeds of Crime Act 2002 \(Investigations in different parts of the United Kingdom\) Order 2003 \(S.I. 2003/425\)](#), arts. 1, **18(3)**, (4)

#### Commencement Information

- I15** S. 394 in force at 24.2.2003 by [S.I. 2003/120](#), art. 2, **Sch.** (with arts. 3, 4) (as amended (20.2.2003) by [S.I. 2003/333](#), art. 14)

### 395 Further provisions **S**

- (1) A disclosure order does not confer the right to require a person to answer any question, provide any information or produce any document which he would be entitled to refuse to answer, provide or produce on grounds of legal privilege.
- (2) A disclosure order has effect in spite of any restriction on the disclosure of information (however imposed).
- (3) The Lord Advocate and the Scottish Ministers may take copies of any documents produced in compliance with a requirement to produce them which is imposed under a disclosure order.
- (4) Documents so produced may be retained for so long as it is necessary to retain them (as opposed to a copy of them) in connection with the investigation for the purposes of which the order was made.
- (5) But if the Lord Advocate has, or the Scottish Ministers have, reasonable grounds for believing that—

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- (a) the documents may need to be produced for the purposes of any legal proceedings, and
  - (b) they might otherwise be unavailable for those purposes,
- they may be retained until the proceedings are concluded.

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

- C41** S. 395 applied (with modifications) (1.4.2003) by [The Proceeds of Crime Act 2002 \(Investigations in different parts of the United Kingdom\) Order 2003 \(S.I. 2003/425\)](#), arts. 1, **27(5)** (as amended (1.4.2008) by [S.I. 2008/298](#), arts. 1(1), 2(9))
- C42** S. 395 excluded (1.4.2003) by [The Proceeds of Crime Act 2002 \(Investigations in different parts of the United Kingdom\) Order 2003 \(S.I. 2003/425\)](#), arts. 1, **27(6)**, (7)

#### Commencement Information

- I16** S. 395 in force at 24.2.2003 by [S.I. 2003/120](#), art. 2, **Sch.** (with arts. 3, 4) (as amended (20.2.2003) by [S.I. 2003/333](#), art. 14)

## 396 Supplementary **S**

- (1) An application for a disclosure order may be made ex parte to—
  - (a) in the case of an order made in a confiscation investigation [<sup>F49</sup>or a money laundering investigation], a judge of the High Court of Justiciary;
  - (b) in the case of an order made in a civil recovery investigation, a judge of the Court of Session,in chambers.
- (2) Provision may be made by rules of court as to the discharge and variation of disclosure orders.
- (3) Rules of court under subsection (2) relating to disclosure orders—
  - (a) made in a confiscation investigation [<sup>F50</sup>or a money laundering investigation] shall, without prejudice to section 305 of the Criminal Procedure (Scotland) Act 1995 (c. 46) be made by act of adjournal;
  - (b) made in a civil recovery investigation shall, without prejudice to section 5 of the Court of Session Act 1988 (c. 36), be made by act of sederunt.
- (4) An application to discharge or vary a disclosure order may be made to a judge of the court which made the order by—
  - (a) the Lord Advocate or the Scottish Ministers;
  - (b) any person affected by the order.
- (5) The court may—
  - (a) discharge the order;
  - (b) vary the order.

#### Textual Amendments

- F49** Words in s. 396(1)(a) inserted (27.4.2017 for specified purposes, 31.1.2018 in so far as not already in force) by [Criminal Finances Act 2017 \(c. 22\)](#), ss. **8(4)(a)**, 58(1)(6); [S.I. 2018/78](#), reg. 3(b)
- F50** Words in s. 396(3)(a) inserted (27.4.2017 for specified purposes, 31.1.2018 in so far as not already in force) by [Criminal Finances Act 2017 \(c. 22\)](#), ss. **8(4)(b)**, 58(1)(6); [S.I. 2018/78](#), reg. 3(b)

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#### Commencement Information

**I17** S. 396 in force at 24.2.2003 by [S.I. 2003/120](#), [art. 2](#), [Sch.](#) (with [arts. 3, 4](#)) (as amended (20.2.2003) by [S.I. 2003/333](#), [art. 14](#))

### *<sup>F51</sup>Unexplained wealth orders*

#### Textual Amendments

**F51** Ss. 396A-396I and cross-heading inserted (27.4.2017 for specified purposes, 31.1.2018 in so far as not already in force) by [Criminal Finances Act 2017 \(c. 22\)](#), [ss. 4, 58\(1\)\(6\)](#); [S.I. 2018/78](#), [reg. 3\(a\)](#)

### **396A Unexplained wealth orders** **S**

- (1) The Court of Session may, on an application made by the Scottish Ministers, make an unexplained wealth order in respect of any property if the court is satisfied that each of the requirements for the making of the order is fulfilled.
- (2) An application for an order must—
  - (a) specify or describe the property in respect of which the order is sought, and
  - (b) specify the person whom the Scottish Ministers think holds the property (“the respondent”) (and the person specified may include a person outside the United Kingdom).
- (3) An unexplained wealth order is an order requiring the respondent to provide a statement—
  - (a) setting out the nature and extent of the respondent's interest in the property in respect of which the order is made,
  - (b) explaining how the respondent obtained the property (including, in particular, how any costs incurred in obtaining it were met),
  - (c) where the property is held by the trustees of a settlement, setting out such details of the settlement as may be specified in the order, and
  - (d) setting out such other information in connection with the property as may be so specified.
- (4) The order must specify—
  - (a) the form and manner in which the statement is to be given,
  - (b) the person to whom it is to be given, and
  - (c) the place at which it is to be given or, if it is to be given in writing, the address to which it is to be sent.
- (5) The order may, in connection with requiring the respondent to provide the statement mentioned in subsection (3), also require the respondent to produce documents of a kind specified or described in the order.
- (6) The respondent must comply with the requirements imposed by an unexplained wealth order within whatever period the court may specify (and different periods may be specified in relation to different requirements).

*Status: Point in time view as at 31/07/2017.*

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### **396B Requirements for making of unexplained wealth order** S

- (1) These are the requirements for the making of an unexplained wealth order in respect of any property.
- (2) The Court of Session must be satisfied that there is reasonable cause to believe that—
  - (a) the respondent holds the property, and
  - (b) the value of the property is greater than £50,000.
- (3) The Court of Session must be satisfied that there are reasonable grounds for suspecting that the known sources of the respondent's lawfully obtained income would have been insufficient for the purposes of enabling the respondent to obtain the property.
- (4) The Court of Session must be satisfied that—
  - (a) the respondent is a politically exposed person, or
  - (b) there are reasonable grounds for suspecting that—
    - (i) the respondent is, or has been, involved in serious crime (whether in a part of the United Kingdom or elsewhere), or
    - (ii) a person connected with the respondent is, or has been, so involved.
- (5) It does not matter for the purposes of subsection (2)(a)—
  - (a) whether or not there are other persons who also hold the property;
  - (b) whether the property was obtained by the respondent before or after the coming into force of this section.
- (6) For the purposes of subsection (3)—
  - (a) regard is to be had to any heritable security, charge or other kind of security that it is reasonable to assume was or may have been available to the respondent for the purposes of obtaining the property;
  - (b) it is to be assumed that the respondent obtained the property for a price equivalent to its market value;
  - (c) income is “lawfully obtained” if it is obtained lawfully under the laws of the country from where the income arises;
  - (d) “known” sources of the respondent's income are the sources of income (whether arising from employment, assets or otherwise) that are reasonably ascertainable from available information at the time of the making of the application for the order;
  - (e) where the property is an interest in other property comprised in a settlement, the reference to the respondent obtaining the property is to be taken as if it were a reference to the respondent obtaining direct ownership of such share in the settled property as relates to, or is fairly represented by, that interest.
- (7) In subsection (4)(a), “politically exposed person” means a person who is—
  - (a) an individual who is, or has been, entrusted with prominent public functions by an international organisation or by a State other than the United Kingdom or another EEA State,
  - (b) a family member of a person within paragraph (a),
  - (c) known to be a close associate of a person within that paragraph, or
  - (d) otherwise connected with a person within that paragraph.
- (8) Article 3 of Directive 2015/849/EU of the European Parliament and of the Council of 20 May 2015 applies for the purposes of determining—

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- (a) whether a person has been entrusted with prominent public functions (see point (9) of that Article),
  - (b) whether a person is a family member (see point (10) of that Article), and
  - (c) whether a person is known to be a close associate of another (see point (11) of that Article).
- (9) For the purposes of this section—
- (a) a person is involved in serious crime in a part of the United Kingdom or elsewhere if the person would be so involved for the purposes of Part 1 of the Serious Crime Act 2007 (see in particular sections 2, 2A and 3 of that Act);
  - (b) section 1122 of the Corporation Tax Act 2010 (“connected” persons) applies in determining whether a person is connected with another.
- (10) Where the property in respect of which the order is sought comprises more than one item of property, the reference in subsection (2)(b) to the value of the property is to the total value of those items.

### **396C Effect of order: cases of non-compliance** S

- (1) This section applies in a case where the respondent fails, without reasonable excuse, to comply with the requirements imposed by an unexplained wealth order in respect of any property before the end of the response period.
- (2) The property is to be presumed to be recoverable property for the purposes of any proceedings taken in respect of the property under Part 5, unless the contrary is shown.
- (3) The presumption in subsection (2) applies in relation to property—
  - (a) only so far as relating to the respondent's interest in the property, and
  - (b) only if the value of that interest is greater than the sum specified in section 396B(2)(b).

It is for the court hearing the proceedings under Part 5 in relation to which reliance is placed on the presumption to determine the matters in this subsection.

- (4) The “response period” is whatever period the court specifies under section 396A(6) as the period within which the requirements imposed by the order are to be complied with (or the period ending the latest, if more than one is specified in respect of different requirements).
- (5) For the purposes of subsection (1)—
  - (a) a respondent who purports to comply with the requirements imposed by an unexplained wealth order is not to be taken to have failed to comply with the order (see instead section 396D);
  - (b) where an unexplained wealth order imposes more than one requirement on the respondent, the respondent is to be taken to have failed to comply with the requirements imposed by the order unless each of the requirements is complied with or is purported to be complied with.
- (6) Subsections (7) and (8) apply in determining the respondent's interest for the purposes of subsection (3) in a case where the respondent to the unexplained wealth order—
  - (a) is connected with another person who is, or has been, involved in serious crime (see subsection (4)(b)(ii) of section 396B), or

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- (b) is a politically exposed person of a kind mentioned in paragraph (b), (c) or (d) of subsection (7) of that section (family member, known close associates etc of individual entrusted with prominent public functions).
- (7) In a case within subsection (6)(a), the respondent's interest is to be taken to include any interest in the property of the person involved in serious crime with whom the respondent is connected.
- (8) In a case within subsection (6)(b), the respondent's interest is to be taken to include any interest in the property of the person mentioned in subsection (7)(a) of section 396B.
- (9) Where an unexplained wealth order is made in respect of property comprising more than one item of property, the reference in subsection (3)(b) to the value of the respondent's interest in the property is to the total value of the respondent's interest in those items.

### **396D Effect of order: cases of compliance or purported compliance** S

- (1) This section applies in a case where the respondent complies, or purports to comply, with the requirements imposed by an unexplained wealth order in respect of any property in relation to which the order is made before the end of the response period (as defined by section 396C(4)).
- (2) If an interim freezing order has effect in relation to the property (see section 396J), the Scottish Ministers must—
  - (a) consider whether the Lord Advocate should be given an opportunity to determine what enforcement or investigatory proceedings, if any, the Lord Advocate considers ought to be taken by the Lord Advocate in relation to the property, and
  - (b) determine whether they consider that any proceedings under Part 5 (civil recovery of the proceeds of unlawful conduct) or this Chapter ought to be taken by them in relation to the property.
- (3) If the Scottish Ministers consider that the Lord Advocate should be given an opportunity to make a determination as mentioned in subsection (2)(a), the Lord Advocate must determine what enforcement or investigatory proceedings, if any, the Lord Advocate considers ought to be taken by the Lord Advocate in relation to the property.
- (4) A determination under subsection (2)(b) or (3) must be made within the period of 60 days starting with the day of compliance.
- (5) If the determinations under subsections (2)(b) and (3) are that no further proceedings under Part 5 or this Chapter and no further enforcement or investigatory proceedings ought to be taken in relation to the property, the Scottish Ministers must notify the Court of Session of the nature of the determinations as soon as reasonably practicable (and in any event before the end of the 60 day period mentioned in subsection (4)).
- (6) If there is no interim freezing order in effect in relation to the property—
  - (a) the Scottish Ministers may (at any time) determine whether they consider that any proceedings under Part 5 or this Chapter ought to be taken by them in relation to the property, and

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- (b) the Lord Advocate may (at any time) determine what, if any, enforcement or investigatory proceedings the Lord Advocate considers ought to be taken by the Lord Advocate in relation to the property.
- (7) A determination under this section to take no further proceedings under Part 5 or this Chapter or no further enforcement or investigatory proceedings in relation to any property does not prevent any such proceedings being taken subsequently (whether as a result of new information or otherwise) in relation to the property.
- (8) For the purposes of this section—
- (a) the respondent complies with the requirements imposed by an unexplained wealth order only if all of the requirements are complied with,
  - (b) references to the day of compliance are to the day on which the requirements imposed by the order are complied with (or, if the requirements are complied with over more than one day, the last of those days), and
  - (c) where an order requires the sending of information in writing to, or the production of documents at, an address specified in the order, compliance with the order (so far as relating to that requirement) occurs when the written information is received, or the documents are produced, at that address,
- and in paragraphs (a) to (c) references to compliance include purported compliance.
- (9) In this section “enforcement or investigatory proceedings” means any proceedings in relation to property taken under—
- (a) Part 3 (confiscation proceedings in Scotland), or
  - (b) this Chapter.

### 396E Offence **S**

- (1) A person commits an offence if, in purported compliance with a requirement imposed by an unexplained wealth order, the person—
- (a) makes a statement that the person knows to be false or misleading in a material particular, or
  - (b) recklessly makes a statement that is false or misleading in a material particular.
- (2) A person guilty of an offence under this section is liable—
- (a) on summary conviction, to imprisonment for a term not exceeding 12 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 2 years, or to a fine, or to both.

### 396F Statements **S**

- (1) A statement made by a person in response to a requirement imposed by an unexplained wealth order may not be used in evidence against that person in criminal proceedings.
- (2) Subsection (1) does not apply—
- (a) in the case of proceedings under Part 3,
  - (b) on a prosecution for an offence under section 396E,
  - (c) on a prosecution for perjury, or
  - (d) on a prosecution for some other offence where, in giving evidence, the person makes a statement inconsistent with the statement mentioned in subsection (1).



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- (3) A statement may not be used by virtue of subsection (2)(d) against a person unless—
- (a) evidence relating to it is adduced, or
  - (b) a question relating to it is asked,
- by the person or on the person's behalf in proceedings arising out of the prosecution.

### **396G Disclosure of information, copying of documents, etc** S

- (1) An unexplained wealth order does not confer the right to require a person to answer any question, provide any information or produce any document which the person would be entitled to refuse to answer, provide or produce on grounds of legal privilege.
- (2) An unexplained wealth 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 by the respondent in connection with complying with the requirements imposed by an unexplained wealth order.
- (4) Documents so produced may also be retained for so long as it is necessary to retain them (as opposed to a copy of them) in connection with an investigation of a kind mentioned in section 341 in relation to the property in respect of which the unexplained wealth order is made.
- (5) But if the Scottish Ministers have reasonable grounds to believe that the documents—
  - (a) may need to be produced for the purposes of any legal proceedings, and
  - (b) might otherwise be unavailable for those purposes,they may be retained until the proceedings are concluded.

### **396H Holding of property: trusts and company arrangements etc** S

- (1) This section applies for the purposes of sections 396A and 396B.
- (2) The cases in which a person (P) is to be taken to “hold” property include those where—
  - (a) P has effective control over the property;
  - (b) P is the trustee of a settlement in which the property is comprised;
  - (c) P is a beneficiary (whether actual or potential) in relation to such a settlement.
- (3) A person is to be taken to have “effective control” over property if, from all the circumstances, it is reasonable to conclude that the person—
  - (a) exercises,
  - (b) is able to exercise, or
  - (c) is entitled to acquire,direct or indirect control over the property.
- (4) Where a person holds property by virtue of subsection (2) references to the person obtaining the property are to be read accordingly.
- (5) References to a person who holds or obtains property include any body corporate, whether incorporated or formed under the law of a part of the United Kingdom or in a country or territory outside the United Kingdom.

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- (6) For further provision about how to construe references to the holding of property, see section 414.

### 396I Supplementary **S**

- (1) An application for an unexplained wealth order may be made without notice.
- (2) Provision may be made by rules of court as to the discharge and variation of unexplained wealth orders.
- (3) An application to discharge or vary an unexplained wealth order may be made to the Court of Session by—
  - (a) the Scottish Ministers, or
  - (b) any person affected by the order.
- (4) The Court of Session may—
  - (a) discharge the order;
  - (b) vary the order.]

*[<sup>F52</sup>Unexplained wealth orders: interim freezing of property*

#### Textual Amendments

**F52** Ss. 396J-396S inserted (27.4.2017 for specified purposes, 31.1.2018 in so far as not already in force) by [Criminal Finances Act 2017 \(c. 22\)](#), [ss. 5, 58\(1\)\(6\)](#); [S.I. 2018/78, reg. 3\(a\)](#)

### 396J Application for interim freezing order **S**

- (1) This section applies where the Court of Session makes an unexplained wealth order in respect of any property.
- (2) The court may make an interim freezing order in respect of the property if the court considers it necessary to do so for the purposes of avoiding the risk of any recovery order that might subsequently be obtained being frustrated.
- (3) An interim freezing order is an order that prohibits the respondent to the unexplained wealth order, and any other person with an interest in the property, from in any way dealing with the property (subject to any exclusions under section 396L).
- (4) An interim freezing order—
  - (a) may be made only on the application of the Scottish Ministers,
  - (b) must be made in the same proceedings as those in which the unexplained wealth order is made, and
  - (c) may be combined in one document with the unexplained wealth order.
- (5) If an application for an unexplained wealth order in respect of any property is made without notice, an application for an interim freezing order in respect of the property must also be made without notice.

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### **396K Variation and recall of interim freezing order** **S**

- (1) The Court of Session may at any time vary or recall an interim freezing order.
- (2) The Court of Session must recall an interim freezing order, so far as it has effect in relation to any property, in each of the following three cases.
- (3) The first case is where—
  - (a) the applicable 48 hour period has ended, and
  - (b) a relevant application has not been made before the end of that period in relation to the property concerned.
- (4) The second case is where—
  - (a) a relevant application has been made before the end of the applicable 48 hour period in relation to the property concerned, and
  - (b) proceedings on the application (including any on appeal) have been determined or otherwise disposed of.
- (5) The third case is where the court has received a notification in relation to the property concerned under section 396D(5) (notification of no further proceedings).
- (6) References in this section to the “applicable 48 hour period” are to be read as follows—
  - (a) in a case where the respondent complies, or purports to comply, with the requirements imposed by the unexplained wealth order before the end of the response period, it is the period of 48 hours beginning with the day after the day with which the 60 day period mentioned in section 396D(4) ends;
  - (b) in any other case, it is the period of 48 hours beginning with the day after the day on which the response period ends.
- (7) In calculating a period of 48 hours for the purposes of subsection (6), no account is to be taken of—
  - (a) any Saturday or Sunday,
  - (b) Christmas Day,
  - (c) Good Friday, or
  - (d) any other day that is a bank holiday under the Banking and Financial Dealings Act 1971 in Scotland.
- (8) Section 396D(8) applies for the purposes of subsection (6) in determining whether a person complies, or purports to comply, with the requirements imposed by an unexplained wealth order and when such compliance, or purported compliance, takes place.
- (9) Before exercising power under this section to vary or recall an interim 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.
- (10) Subsection (9) does not apply where the court is acting as required by subsection (2).
- (11) In this section—
  - “relevant application” means an application for—
    - (a) a restraint order under section 120,
    - (b) a prohibitory property order under section 255A, or
    - (c) an interim administration order under section 256;
  - “response period” has the meaning given by section 396C(4).

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### **396L Exclusions** S

- (1) The power to vary an interim freezing order includes (amongst other things) 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 (amongst other things) make provision for the purpose of enabling any person—
  - (a) to meet the person's 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 Chapter.
- (6) If excluded property is not specified in the order it must be described in the order in general terms.

### **396M Restrictions on proceedings and remedies** S

- (1) While an interim freezing order has effect the Court of Session may sist any action, execution or other legal process in respect of the property to which the order applies.
- (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 an interim freezing order has been applied for or made in respect of the property, it may—
  - (a) sist the proceedings, or
  - (b) allow them to continue on any terms it thinks fit.
- (3) Before exercising a power conferred by this section, the court must (as well as giving the parties to any proceedings concerned an opportunity to be heard) give such an opportunity to any person who may be affected by the court's decision.

### **396N Arrestment of property affected by interim freezing order** S

- (1) On the application of the Scottish Ministers the Court of Session may, in relation to moveable property to which an interim freezing 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 interim freezing order or at any time afterwards.
- (3) A warrant for arrestment may be granted only if the property would be arrestable if the person entitled to it were a debtor.

*Status: Point in time view as at 31/07/2017.*

*Changes to legislation: Proceeds of Crime Act 2002, Chapter 3 is up to date with all changes known to be in force on or before 27 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- (4) A warrant under subsection (1) has effect as if granted on the dependence of an action for debt at the instance of the Scottish Ministers 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 interim freezing 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 Scottish Ministers must apply to the Court of Session for an order recalling or, as the case may be, restricting the arrestment.

### **396O Inhibition of property affected by interim freezing order** S

- (1) On the application of the Scottish Ministers, the Court of Session may, in relation to the property mentioned in subsection (2), grant warrant for inhibition against any person specified in an interim freezing order.
- (2) The property is heritable property situated in Scotland to which the interim freezing 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 Scottish Ministers 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 Scottish Ministers in the register of inhibitions and adjudications.
- (4) Section 155 of the Titles to Land Consolidation (Scotland) Act 1868 (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 interim freezing 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 Scottish Ministers 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.

### **396P Receivers in connection with interim freezing orders** S

- (1) This section applies where the Court of Session makes an interim freezing order on an application by the Scottish Ministers.
- (2) The Court of Session may, on an application by the Scottish Ministers, by order appoint a receiver in respect of any property to which the interim freezing order applies.
- (3) An application under subsection (2) may be made at the same time as the application for the interim freezing order or at any time afterwards.

*Status: Point in time view as at 31/07/2017.*

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- (4) The application may be made without notice if the circumstances of the case are such that notice of the application would prejudice the right of the Scottish Ministers to obtain a recovery order in respect of the property.
- (5) In their application the Scottish Ministers must nominate a suitably qualified person for appointment as a receiver.
- (6) The person nominated may be a member of staff of the Scottish Ministers.
- (7) The Scottish Ministers may apply a sum received by them under section 280(2) in making payment of the remuneration and expenses of a receiver appointed under this section.
- (8) Subsection (7) does not apply in relation to the remuneration of the receiver if that person is a member of staff of the Scottish Ministers (but it does apply in relation to such remuneration if the receiver is a person providing services under arrangements made by the Scottish Ministers).

### **396Q Powers of receivers appointed under section 396P S**

- (1) If the Court of Session appoints a receiver under section 396P, the court may act under this section on the application of the Scottish Ministers.
- (2) The court may by order authorise or require the receiver—
  - (a) to exercise any of the powers mentioned in paragraph 5 of Schedule 6 (management powers) in relation to any property in respect of which the receiver is appointed;
  - (b) to take any other steps the court thinks appropriate in connection with the management of any such property (including securing the detention, custody or preservation of the property in order to manage it).
- (3) The court may by order require any person in respect of whose property the receiver is appointed—
  - (a) to bring the property to a place in Scotland specified by the receiver or to place it in the custody of the receiver (if in either case the person is able to do so);
  - (b) to do anything the person is reasonably required to do by the receiver for the preservation of the property.
- (4) The court may by order require any person in respect of whose property the receiver is appointed to bring any documents relating to the property which are in that person's possession or control to a place in Scotland specified by the receiver or to place them in the custody of the receiver.
- (5) In subsection (4) “document” means anything in which information of any description is recorded.
- (6) Any prohibition on dealing with property imposed by an interim freezing order does not prevent a person from complying with any requirements imposed by virtue of this section.
- (7) Subsection (8) applies in a case where—
  - (a) the receiver deals with property that is not property in respect of which the receiver was appointed under section 396P, but

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- (b) at the time of dealing with the property the receiver believed on reasonable grounds that he or she was entitled to do so by virtue of his or her appointment.
- (8) The receiver is not liable to any person in respect of any loss or damage resulting from the receiver's dealing with the property.
- (9) But subsection (8) does not apply to the extent that the loss or damage is caused by the receiver's negligence.

### **396R Supervision of section 396P receiver and variations** **S**

- (1) Any of the following persons may at any time apply to the Court of Session for directions as to the exercise of the functions of a receiver appointed under section 396P—
  - (a) the receiver;
  - (b) a party to the proceedings for the appointment of the receiver or the interim freezing order concerned;
  - (c) a person affected by an action taken by the receiver;
  - (d) a person who may be affected by an action proposed to be taken by the receiver.
- (2) Before it gives directions under subsection (1), the court must give an opportunity to be heard to—
  - (a) the receiver;
  - (b) the parties to the proceedings for the appointment of the receiver and for the interim freezing order concerned;
  - (c) any person who may be interested in the application under subsection (1).
- (3) The court may at any time vary or recall—
  - (a) the appointment of a receiver under section 396P,
  - (b) an order under section 396Q, or
  - (c) directions under this section.
- (4) Before exercising a power under subsection (3) the court must give an opportunity to be heard to—
  - (a) the receiver;
  - (b) the parties to the proceedings for the appointment of the receiver, for the order under section 396Q or (as the case may be) for the directions under this section;
  - (c) the parties to the proceedings for the interim freezing order concerned;
  - (d) any person who may be affected by the court's decision.

### **396S Compensation** **S**

- (1) Where an interim freezing order in respect of any property is recalled, the person to whom the property belongs may make an application to the Court of Session for the payment of compensation.
- (2) The application must be made within the period of three months beginning with the recall of the interim freezing order.
- (3) The court may order compensation to be paid to the applicant only if satisfied that—

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- (a) the applicant has suffered loss as a result of the making of the interim freezing order,
  - (b) there has been a serious default on the part of the Scottish Ministers in applying for the order, and
  - (c) the order would not have been made had the default not occurred.
- (4) Where the court orders the payment of compensation—
- (a) the compensation is payable by the Scottish Ministers, and
  - (b) the amount of compensation to be paid is the amount that the court thinks reasonable, having regard to the loss suffered and any other relevant circumstances.]

*f<sup>F53</sup> Unexplained wealth orders: enforcement abroad*

**Textual Amendments**

**F53** Ss. 396T, 396U and cross-heading inserted (27.4.2017 for specified purposes, 31.1.2018 in so far as not already in force) by [Criminal Finances Act 2017 \(c. 22\)](#), **ss. 6, 58(1)(6)**; S.I. 2018/78, [reg. 3\(a\)](#)

**396T Enforcement abroad: Scottish Ministers** **S**

- (1) This section applies if—
- (a) the Court of Session makes an unexplained wealth order in respect of any property,
  - (b) it appears to the Scottish Ministers that the risk mentioned in section 396J(2) applies in relation to the property, and
  - (c) the Scottish Ministers believe that the property is in a country outside the United Kingdom (the receiving country).
- (2) The Scottish Ministers may send a request for assistance in relation to the property to the Secretary of State with a view to it being forwarded under this section.
- (3) The Secretary of State may forward the request for assistance to the government of the receiving country.
- (4) A request for assistance under this section is a request to the government of the receiving country—
- (a) to secure that any person is prohibited from dealing with the property;
  - (b) for assistance in connection with the management of the property, including with securing its detention, custody or preservation.

**396U Enforcement abroad: receiver** **S**

- (1) This section applies if—
- (a) an interim freezing order has effect in relation to property, and
  - (b) the receiver appointed under section 396P in respect of the property believes that it is in a country outside the United Kingdom (the receiving country).
- (2) The receiver may send a request for assistance in relation to the property to the Secretary of State with a view to it being forwarded under this section.



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- (3) The Secretary of State must forward the request for assistance to the government of the receiving country.
- (4) A request for assistance under this section is a request to the government of the receiving country—
  - (a) to secure that any person is prohibited from dealing with the property;
  - (b) for assistance in connection with the management of the property, including with securing its detention, custody or preservation.]

### *Customer information orders*

## **397 Customer information orders** **S**

- (1) The sheriff may, on an application made to him by the appropriate person, make a customer information order if he is satisfied that each of the requirements for the making of the order is fulfilled.
- [<sup>F54</sup>(1A) No application for a customer information order may be made in relation to a detained cash investigation [<sup>F55</sup>, a detained property investigation or a frozen funds investigation].]
- (2) In making a customer information order in relation to <sup>F56</sup>... a civil recovery investigation the sheriff shall act in the exercise of his civil jurisdiction.
- (3) The application for a customer information order must state that—
  - (a) a person specified in the application is subject to a confiscation investigation [<sup>F57</sup>, a civil recovery investigation] or a money laundering investigation, <sup>F58</sup>...
  - <sup>F58</sup>(b) .....
- (4) The application must also state that—
  - (a) the order is sought for the purposes of the investigation;
  - (b) the order is sought against the financial institution or financial institutions specified in the application.
- (5) An application for a customer information order may specify—
  - (a) all financial institutions,
  - (b) a particular description, or particular descriptions, of financial institutions, or
  - (c) a particular financial institution or particular financial institutions.
- (6) A customer information order is an order that a financial institution covered by the application for the order must, on being required to do so by notice in writing given by the appropriate person, provide any such customer information as it has relating to the person specified in the application.
- (7) A financial institution which is required to provide information under a customer information order must provide the information to a proper person in such manner, and at or by such time, as that person requires.
- (8) If a financial institution on which a requirement is imposed by a notice given under a customer information order requires the production of evidence of authority to give the notice, it is not bound to comply with the requirement unless evidence of the authority has been produced to it.

*Status: Point in time view as at 31/07/2017.*

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#### Textual Amendments

- F54** S. 397(1A) inserted (18.6.2009) by [Serious Crime Act 2007 \(c. 27\)](#), s. 94(3), [Sch. 10 para. 21](#); [S.S.I. 2009/224](#), art. 2(1)(d)(ii)
- F55** Words in s. 397(1A) inserted (27.4.2017 for specified purposes, 31.1.2018 for specified purposes, 16.4.2018 in so far as not already in force) by [Criminal Finances Act 2017 \(c. 22\)](#), s. 58(5)(6), [Sch. 5 para. 68](#); [S.I. 2018/78](#), reg. 5(3)(a)(i)(ii)
- F56** Words in s. 397(2) omitted (1.6.2015) by virtue of [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(2), [Sch. 19 para. 20\(2\)](#); [S.I. 2015/964](#), art. 2(d) (with art. 3)
- F57** Words in s. 397(3) inserted (1.6.2015) by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(2), [Sch. 19 para. 20\(3\)\(a\)](#); [S.I. 2015/964](#), art. 2(d) (with art. 3)
- F58** S. 397(3)(b) and word omitted (1.6.2015) by virtue of [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(2), [Sch. 19 para. 20\(3\)\(b\)](#); [S.I. 2015/964](#), art. 2(d) (with art. 3)

#### Commencement Information

- I18** S. 397 in force at 24.2.2003 by [S.I. 2003/120](#), art. 2, [Sch.](#) (with arts. 3, 4) (as amended (20.2.2003) by [S.I. 2003/333](#), art. 14)

### 398 Meaning of customer information **S**

- (1) “Customer information”, in relation to a person and a financial institution, is information whether the person holds, or has held, an account or accounts at the financial institution (whether solely or jointly with another) and (if so) information as to—
- (a) the matters specified in subsection (2) if the person is an individual;
  - (b) the matters specified in subsection (3) if the person is a company or limited liability partnership or a similar body incorporated or otherwise established outside the United Kingdom.
- (2) The matters referred to in subsection (1)(a) are—
- (a) the account number or numbers;
  - (b) the person’s full name;
  - (c) his date of birth;
  - (d) his most recent address and any previous addresses;
  - (e) the date or dates on which he began to hold the account or accounts and, if he has ceased to hold the account or any of the accounts, the date or dates on which he did so;
  - (f) such evidence of his identity as was obtained by the financial institution under or for the purposes of any legislation relating to money laundering;
  - (g) the full name, date of birth and most recent address, and any previous addresses, of any person who holds, or has held, an account at the financial institution jointly with him;
  - (h) the account number or numbers of any other account or accounts held at the financial institution to which he is a signatory and details of the person holding the other account or accounts.
- (3) The matters referred to in subsection (1)(b) are—
- (a) the account number or numbers;
  - (b) the person’s full name;
  - (c) a description of any business which the person carries on;

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- (d) the country or territory in which it is incorporated or otherwise established and any number allocated to it under [<sup>F59</sup>the Companies Act 2006] 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 [<sup>F60</sup>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 (c. 12) or anything similar under corresponding legislation of any country or territory outside Great Britain;
  - (h) the date or dates on which it began to hold the account or accounts and, if it has ceased to hold the account or any of the accounts, the date or dates on which it did so;
  - (i) such evidence of its identity as was obtained by the financial institution under or for the purposes of any legislation relating to money laundering;
  - (j) the full name, date of birth and most recent address and any previous addresses of any person who is a signatory to the account or any of the accounts.
- (4) The Scottish Ministers may by order provide for information of a description specified in the order—
- (a) to be customer information, or
  - (b) no longer to be customer information.
- (5) Money laundering is an act which—
- (a) constitutes an offence under section 327, 328 or 329 of this Act or section 18 of the Terrorism Act 2000 (c. 11), or
  - [<sup>F61</sup>(aa) constitutes an offence specified in section 415(1A) of this Act,]
  - (b) would constitute an offence specified in paragraph (a)[<sup>F62</sup>or (aa)] if done in the United Kingdom.

#### Textual Amendments

- F59** Words in s. 398(3)(d) substituted (1.10.2009) by virtue of [The Companies Act 2006 \(Consequential Amendments, Transitional Provisions and Savings\) Order 2009 \(S.I. 2009/1941\)](#), art. 1(2), **Sch. 1 para. 196(3)(a)** (with art. 10)
- F60** Words in s. 398(3)(f) substituted (1.10.2009) by virtue of [The Companies Act 2006 \(Consequential Amendments, Transitional Provisions and Savings\) Order 2009 \(S.I. 2009/1941\)](#), art. 1(2), **Sch. 1 para. 196(3)(b)** (with art. 10)
- F61** S. 398(5)(aa) inserted (1.7.2005) by [Serious Organised Crime and Police Act 2005 \(c. 15\)](#), **ss. 107(3)(a)**, 178(7)(a); S.I. 2005/1521, art. 2(1)(e)
- F62** Words in s. 398(5)(b) inserted (1.7.2005) by [Serious Organised Crime and Police Act 2005 \(c. 15\)](#), **ss. 107(3)(b)**, 178(7)(a); S.I. 2005/1521, art. 2(1)(e)

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

- C43** S. 398 modified (11.6.2006) by [Crime \(International Co-operation\) Act 2003 \(c. 32\)](#), **ss. 37(6)**, 94(3); S.S.I. 2006/281, art. 2
- C44** S. 398 modified (31.7.2017) by [The Criminal Justice \(European Investigation Order\) Regulations 2017 \(S.I. 2017/730\)](#), regs. 1(1), **44(9)(a)** (with reg. 3)

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#### Commencement Information

**I19** S. 398 in force at 24.2.2003 by [S.I. 2003/120](#), [art. 2](#), [Sch.](#) (with [arts. 3, 4](#)) (as amended (20.2.2003) by [S.I. 2003/333](#), [art. 14](#))

### 399 Requirements for making of customer information order **S**

- (1) These are the requirements for the making of a customer information order.
- (2) In the case of a confiscation investigation, there must be reasonable grounds for suspecting that the person specified in the application for the order has benefited from his criminal conduct.
- [<sup>F63</sup>(3A) In the case of a civil recovery investigation, there must be reasonable grounds for suspecting that the person specified in the application—
  - (a) holds recoverable property or associated property, or
  - (b) has, at any time, held property that was recoverable property or associated property at the time.]
  - (4) In the case of a money laundering investigation, there must be reasonable grounds for suspecting that the person specified in the application for the order has committed a money laundering offence.
  - (5) In the case of any investigation, there must be reasonable grounds for believing that customer information which may be provided in compliance with the order is likely to be of substantial value (whether or not by itself) to the investigation for the purposes of which the order is sought.
  - (6) In the case of any investigation there must be reasonable grounds for believing that it is in the public interest for the customer information to be provided, having regard to the benefit likely to accrue to the investigation if the information is obtained.

#### Textual Amendments

**F63** S. 399(3A) substituted for s. 399(3) (1.6.2015) by [Crime and Courts Act 2013 \(c. 22\)](#), [s. 61\(2\)](#), [Sch. 19 para. 21](#); [S.I. 2015/964](#), [art. 2\(d\)](#) (with [art. 3](#))

#### Commencement Information

**I20** S. 399 in force at 24.2.2003 by [S.I. 2003/120](#), [art. 2](#), [Sch.](#) (with [arts. 3, 4](#)) (as amended (20.2.2003) by [S.I. 2003/333](#), [art. 14](#))

### 400 Offences **S**

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

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- (b) recklessly makes a statement which is false or misleading in a material particular.
- (4) A financial institution guilty of an offence under subsection (3) is liable—
  - (a) on summary conviction, to a fine not exceeding the statutory maximum, or
  - (b) on conviction on indictment, to a fine.

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

- C45** S. 400 applied (1.4.2003) by [The Proceeds of Crime Act 2002 \(Investigations in different parts of the United Kingdom\) Order 2003 \(S.I. 2003/425\)](#), arts. 1, **10(2)**, 20(2), 29(1)(2), 30(1)(2)
- C46** S. 400 applied (1.4.2003) by [The Proceeds of Crime Act 2002 \(Investigations in different parts of the United Kingdom\) Order 2003 \(S.I. 2003/425\)](#), arts. 1, **20(2)**
- C47** S. 400 applied (1.4.2003) by [The Proceeds of Crime Act 2002 \(Investigations in different parts of the United Kingdom\) Order 2003 \(S.I. 2003/425\)](#), arts. 1, **30(1)**, (2)
- C48** S. 400 applied (1.4.2003) by [The Proceeds of Crime Act 2002 \(Investigations in different parts of the United Kingdom\) Order 2003 \(S.I. 2003/425\)](#), arts. 1, **29(1)**, (2)

**Commencement Information**

- I21** S. 400 in force at 24.2.2003 by [S.I. 2003/120](#), art. 2, **Sch.** (with arts. 3, 4) (as amended (20.2.2003) by [S.I. 2003/333](#), art. 14)

**401 Statements** **S**

- (1) A statement made by a financial institution in response to a customer information order may not be used in evidence against it in criminal proceedings.
- (2) But subsection (1) does not apply—
  - (a) in the case of proceedings under Part 3,
  - (b) on a prosecution for an offence under section 400(1) or (3), or
  - (c) on a prosecution for some other offence where, in giving evidence, the financial institution makes a statement inconsistent with the statement mentioned in subsection (1).
- (3) A statement may not be used by virtue of subsection (2)(c) against a financial institution unless—
  - (a) evidence relating to it is adduced, or
  - (b) a question relating to it is asked,by or on behalf of the financial institution in the proceedings arising out of the prosecution.

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

- C49** S. 401 applied (with modifications) (1.4.2003) by [The Proceeds of Crime Act 2002 \(Investigations in different parts of the United Kingdom\) Order 2003 \(S.I. 2003/425\)](#), arts. 1, **10(3)**, 20(3)
- C50** S. 401 applied (with modifications) (1.4.2003) by [The Proceeds of Crime Act 2002 \(Investigations in different parts of the United Kingdom\) Order 2003 \(S.I. 2003/425\)](#), arts. 1, **20(3)**

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#### Commencement Information

**I22** S. 401 in force at 24.2.2003 by [S.I. 2003/120](#), [art. 2](#), [Sch.](#) (with [arts. 3, 4](#)) (as amended (20.2.2003) by [S.I. 2003/333](#), [art. 14](#))

### 402 Further provisions **S**

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

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

**C51** S. 402 applied (1.4.2003) by [The Proceeds of Crime Act 2002 \(Investigations in different parts of the United Kingdom\) Order 2003 \(S.I. 2003/425\)](#), [arts. 1](#), [29\(1\)\(4\)](#), [30\(1\)\(4\)](#)

**C52** S. 402 applied (1.4.2003) by [The Proceeds of Crime Act 2002 \(Investigations in different parts of the United Kingdom\) Order 2003 \(S.I. 2003/425\)](#), [arts. 1](#), [30\(1\)](#), [\(4\)](#)

#### Commencement Information

**I23** S. 402 in force at 24.2.2003 by [S.I. 2003/120](#), [art. 2](#), [Sch.](#) (with [arts. 3, 4](#)) (as amended (20.2.2003) by [S.I. 2003/333](#), [art. 14](#))

### 403 Supplementary **S**

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

#### Commencement Information

**I24** S. 403 in force at 24.2.2003 by [S.I. 2003/120](#), [art. 2](#), [Sch.](#) (with [arts. 3, 4](#)) (as amended (20.2.2003) by [S.I. 2003/333](#), [art. 14](#))

*Status: Point in time view as at 31/07/2017.*

*Changes to legislation: Proceeds of Crime Act 2002, Chapter 3 is up to date with all changes known to be in force on or before 27 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

### Account monitoring orders

#### 404 Account monitoring orders **S**

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

[<sup>F64</sup>(1A) No application for an account monitoring order may be made in relation to a detained cash investigation [<sup>F65</sup>, a detained property investigation or a frozen funds investigation].]

(2) In making an account monitoring order in relation to <sup>F66</sup>... a civil recovery investigation, the sheriff shall act in the exercise of his civil jurisdiction.

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

(a) a person specified in the application is subject to a confiscation investigation [<sup>F67</sup>, a civil recovery investigation] or a money laundering investigation, <sup>F68</sup>...

<sup>F68</sup>(b) .....

(4) The application must also state that—

(a) the order is sought for the purposes of the investigation;

(b) the order is sought against the financial institution specified in the application in relation to account information of the description so specified.

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

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

(a) all accounts held by the person specified in the application for the order at the financial institution so specified,

(b) a particular description, or particular descriptions, of accounts so held, or

(c) a particular account, or particular accounts, so held.

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

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

#### Textual Amendments

**F64** S. 404(1A) inserted (18.6.2009) by [Serious Crime Act 2007 \(c. 27\)](#), s. 94(3), **Sch. 10 para. 22**; [S.S.I. 2009/224](#), art. 2(1)(d)(ii)

**F65** Words in s. 404(1A) inserted (27.4.2017 for specified purposes, 31.1.2018 for specified purposes, 16.4.2018 in so far as not already in force) by [Criminal Finances Act 2017 \(c. 22\)](#), s. 58(5)(6), **Sch. 5 para. 69**; [S.I. 2018/78](#), reg. 5(3)(a)(i)(ii)

**F66** Words in s. 404(2) omitted (1.6.2015) by virtue of [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(2), **Sch. 19 para. 22(2)**; [S.I. 2015/964](#), art. 2(d) (with art. 3)

**F67** Words in s. 404(3) inserted (1.6.2015) by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(2), **Sch. 19 para. 22(3)(a)**; [S.I. 2015/964](#), art. 2(d) (with art. 3)

*Status: Point in time view as at 31/07/2017.*

*Changes to legislation: Proceeds of Crime Act 2002, Chapter 3 is up to date with all changes known to be in force on or before 27 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

**F68** S. 404(3)(b) and word omitted (1.6.2015) by virtue of [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(2), [Sch. 19 para. 22\(3\)\(b\)](#); S.I. 2015/964, art. 2(d) (with art. 3)

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

**C53** S. 404(7) modified (1.4.2003) by [The Proceeds of Crime Act 2002 \(Investigations in different parts of the United Kingdom\) Order 2003 \(S.I. 2003/425\)](#), arts. 1, [12\(3\)](#), 22(3)

**C54** S. 404(7) modified (1.4.2003) by [The Proceeds of Crime Act 2002 \(Investigations in different parts of the United Kingdom\) Order 2003 \(S.I. 2003/425\)](#), arts. 1, [22\(3\)](#)

**Commencement Information**

**I25** S. 404 in force at 24.2.2003 by [S.I. 2003/120](#), art. 2, [Sch.](#) (with arts. 3, 4) (as amended (20.2.2003) by [S.I. 2003/333](#), art. 14)

**405 Requirements for making of account monitoring order** **S**

- (1) These are the requirements for the making of an account monitoring order.
- (2) In the case of a confiscation investigation, there must be reasonable grounds for suspecting that the person specified in the application for the order has benefited from his criminal conduct.
- [<sup>F69</sup>(3A) In the case of a civil recovery investigation, there must be reasonable grounds for suspecting that the person specified in the application holds recoverable property or associated property.]
- (4) In the case of a money laundering investigation, there must be reasonable grounds for suspecting that the person specified in the application for the order has committed a money laundering offence.
- (5) In the case of any investigation, there must be reasonable grounds for believing that account information which may be provided in compliance with the order is likely to be of substantial value (whether or not by itself) to the investigation for the purposes of which the order is sought.
- (6) In the case of any investigation, there must be reasonable grounds for believing that it is in the public interest for the account information to be provided, having regard to the benefit likely to accrue to the investigation if the information is obtained.

**Textual Amendments**

**F69** S. 405(3A) substituted for s. 405(3) (1.6.2015) by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(2), [Sch. 19 para. 23](#); S.I. 2015/964, art. 2(d) (with art. 3)

**Commencement Information**

**I26** S. 405 in force at 24.2.2003 by [S.I. 2003/120](#), art. 2, [Sch.](#) (with arts. 3, 4) (as amended (20.2.2003) by [S.I. 2003/333](#), art. 14)

**406 Statements** **S**

- (1) A statement made by a financial institution in response to an account monitoring order may not be used in evidence against it in criminal proceedings.
- (2) But subsection (1) does not apply—



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- (a) in the case of proceedings under Part 3;
  - (b) in the case of proceedings for contempt of court, or
  - (c) on a prosecution for an offence where, in giving evidence, the financial institution makes a statement inconsistent with the statement mentioned in subsection (1).
- (3) A statement may not be used by virtue of subsection (2)(c) against a financial institution unless—
- (a) evidence relating to it is adduced, or
  - (b) a question relating to it is asked,
- by or on behalf of the financial institution in the proceedings arising out of the prosecution.

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

**C55** S. 406 applied (1.4.2003) by [The Proceeds of Crime Act 2002 \(Investigations in different parts of the United Kingdom\) Order 2003 \(S.I. 2003/425\)](#), arts. 1, **22(5)**

**C56** S. 406 applied (1.4.2003) by [The Proceeds of Crime Act 2002 \(Investigations in different parts of the United Kingdom\) Order 2003 \(S.I. 2003/425\)](#), arts. 1, **12(5)**, 22(5)

**Commencement Information**

**I27** S. 406 in force at 24.2.2003 by [S.I. 2003/120](#), art. 2, **Sch.** (with arts. 3, 4) (as amended (20.2.2003) by [S.I. 2003/333](#), art. 14)

**407 Further provisions** **S**

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

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

**C57** S. 407 modified (1.4.2003) by [The Proceeds of Crime Act 2002 \(Investigations in different parts of the United Kingdom\) Order 2003 \(S.I. 2003/425\)](#), arts. 1, **32(6)**

**C58** S. 407 modified (1.4.2003) by [The Proceeds of Crime Act 2002 \(Investigations in different parts of the United Kingdom\) Order 2003 \(S.I. 2003/425\)](#), arts. 1, **31(6)**, 32(6)

**Commencement Information**

**I28** S. 407 in force at 24.2.2003 by [S.I. 2003/120](#), art. 2, **Sch.** (with arts. 3, 4) (as amended (20.2.2003) by [S.I. 2003/333](#), art. 14)

**408 Supplementary** **S**

- (1) An application for an account monitoring order may be made ex parte to a sheriff in chambers.
- (2) Provision may be made by rules of court as to the discharge and variation of account monitoring orders.
- (3) Rules of court under subsection (2) relating to account monitoring orders—

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- (a) made in a confiscation investigation or a money laundering investigation shall, without prejudice to section 305 of the Criminal Procedure (Scotland) Act 1995 (c. 46), be made by act of adjournal;
  - (b) made in a civil recovery investigation shall, without prejudice to section 32 of the Sheriff Courts (Scotland) Act 1971 (c. 58), be made by act of sederunt.
- (4) An application to discharge or vary an account monitoring order may be made to the sheriff by—
- (a) the person who applied for the order;
  - (b) any person affected by the order.
- (5) The sheriff may—
- (a) discharge the order;
  - (b) vary the order.

#### Commencement Information

**I29** S. 408 in force at 24.2.2003 by [S.I. 2003/120, art. 2, Sch.](#) (with arts. 3, 4) (as amended (20.2.2003) by [S.I. 2003/333, art. 14](#))

### *[<sup>F70</sup>Evidence overseas*

#### Textual Amendments

**F70** Ss. 408A, 408B and cross-heading inserted (22.11.2014 for specified purposes, 1.6.2015 for S. in so far as not already in force) by [Crime and Courts Act 2013 \(c. 22\), s. 61\(2\), Sch. 19 para. 28; S.I. 2014/3098, art. 3; S.I. 2015/964, art. 2\(e\)](#)

## 408A Evidence overseas **S**

- (1) This section applies if a person or property is subject to a civil recovery investigation [<sup>F71</sup>or a detained cash investigation][<sup>F71</sup>, a detained cash investigation, a detained property investigation or a frozen funds investigation].
- (2) A judge of the Court of Session may request assistance under this section if—
  - (a) an application is made by an appropriate person or a person subject to the investigation, and
  - (b) the judge thinks that there is relevant evidence in a country or territory outside the United Kingdom.
- (3) An appropriate person may request assistance under this section if the person thinks that there is relevant evidence in a country or territory outside the United Kingdom.
- (4) The assistance that may be requested under this section is assistance in obtaining outside the United Kingdom relevant evidence specified in the request.
- (5) Relevant evidence is—
  - (a) in relation to an application or request made for the purposes of a civil recovery investigation, evidence relevant for the purpose of identifying recoverable property or associated property, including evidence as to a matter described in section 341(2)(a) to (d);

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- (b) in relation to an application or request made for the purposes of a detained cash investigation, evidence as to a matter described in section 341(3A)(a) or (b).
  - [<sup>F72</sup>(c) in relation to an application or request made for the purposes of a detained property investigation, evidence as to a matter described in section 341(3B)(a) or (b);
  - (d) in relation to an application or request made for the purposes of a frozen funds investigation, evidence as to a matter described in section 341(3C)(a) or (b);]
- (6) A request for assistance under this section may be sent—
- (a) to a court or tribunal which is specified in the request and which exercises jurisdiction in the place where the evidence is to be obtained,
  - (b) to the government of the country or territory concerned, or
  - (c) to an authority recognised by the government of the country or territory concerned as the appropriate authority for receiving requests for assistance of that kind.
- (7) Alternatively, a request for assistance under this section may be sent to the Secretary of State with a view to it being forwarded to a court, tribunal, government or authority mentioned in subsection (6).
- (8) The Secretary of State must forward the request for assistance to the court, tribunal, government or authority.
- (9) In a case of urgency, a request for assistance under this section may be sent to—
- (a) the International Criminal Police Organisation, or
  - (b) any person competent to receive it under any provisions adopted under the EU Treaties,
- for forwarding to the court, tribunal, government or authority mentioned in subsection (6).
- (10) Rules of court may make provision as to the practice and procedure to be followed in connection with proceedings relating to requests for assistance made by a judge under this section.
- (11) “Evidence” includes documents, information in any other form and material.

#### Textual Amendments

- F71** Words in s. 408A(1) substituted (27.4.2017 for specified purposes, 31.1.2018 for specified purposes, 16.4.2018 in so far as not already in force) by [Criminal Finances Act 2017 \(c. 22\)](#), s. 58(5)(6), [Sch. 5 para. 70\(2\)](#); S.I. 2018/78, reg. 5(3)(a)(i)(ii)
- F72** S. 408A(5)(c)(d) inserted (27.4.2017 for specified purposes, 31.1.2018 for specified purposes, 16.4.2018 in so far as not already in force) by [Criminal Finances Act 2017 \(c. 22\)](#), s. 58(5)(6), [Sch. 5 para. 70\(3\)](#); S.I. 2018/78, reg. 5(3)(a)(i)(ii)

#### 408B Evidence overseas: restrictions on use **S**

- (1) This section applies to evidence obtained by means of a request for assistance under section 408A.
- (2) The evidence must not be used for any purpose other than—
- (a) for the purposes of the investigation for which it was obtained, or

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- (b) for the purposes of proceedings described in subsection (3) or any proceedings arising out of such proceedings.
- (3) Those proceedings are—
- (a) if the request was made for the purposes of a civil recovery investigation, proceedings under Chapter 2 of Part 5 of this Act arising out of the investigation;
- (b) if the request was made for the purposes of a detained cash investigation, proceedings under Chapter 3 of Part 5 of this Act arising out of the investigation.
- <sup>F73</sup> [ if the request was made for the purposes of a detained property investigation, proceedings under Chapter 3A of Part 5 of this Act arising out of the investigation;
- (d) if the request was made for the purposes of a frozen funds investigation, proceedings under Chapter 3B of Part 5 of this Act arising out of the investigation;]
- (4) Subsection (2) does not apply if the court, tribunal, government or authority to whom the request for assistance was sent consents to the use.
- (5) The evidence may be received in evidence without being sworn to by anyone, so far as that may be done without unfairness to any party.]

#### Textual Amendments

**F73** S. 408B(3)(c)(d) inserted (27.4.2017 for specified purposes, 31.1.2018 for specified purposes, 16.4.2018 in so far as not already in force) by [Criminal Finances Act 2017 \(c. 22\)](#), s. 58(5)(6), [Sch. 5 para. 71](#); S.I. 2018/78, reg. 5(3)(a)(i)(ii)

#### *Officers of Revenue and Customs*

#### <sup>F74</sup>**408C Restriction on exercise of certain powers conferred on officers of Revenue and Customs** **S**

#### Textual Amendments

**F74** S. 408C omitted (27.4.2017 for specified purposes, 27.6.2017 in so far as not already in force) by virtue of [Criminal Finances Act 2017 \(c. 22\)](#), [ss. 18\(4\)\(d\)](#), 58(4)(6)

#### *General*

#### **409 Jurisdiction of sheriff** **S**

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

*Status: Point in time view as at 31/07/2017.*

*Changes to legislation: Proceeds of Crime Act 2002, Chapter 3 is up to date with all changes known to be in force on or before 27 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- (2) Any such order or warrant may, without being backed or endorsed by another sheriff, be executed throughout Scotland in the same way as it may be executed within the sheriffdom of the sheriff who granted it.
- (3) This section is without prejudice to any existing rule of law or to any other provision of this Act.

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

- C59** S. 409 modified (11.6.2006) by [Crime \(International Co-operation\) Act 2003 \(c. 32\), ss. 41\(5\), 94\(3\); S.S.I. 2006/281, art. 2](#)
- C60** S. 409 modified (11.6.2006) by [Crime \(International Co-operation\) Act 2003 \(c. 32\), ss. 38\(5\), 41\(5\), 94\(3\); S.S.I. 2006/281, art. 2](#)
- C61** S. 409 modified (19.10.2009) by [Crime \(International Co-operation\) Act 2003 \(c. 32\), ss. 22\(6\), 94\(1\); S.I. 2009/2605, art. 2\(b\)](#)
- C62** S. 409 modified (31.7.2017) by [The Criminal Justice \(European Investigation Order\) Regulations 2017 \(S.I. 2017/730\), regs. 1\(1\), 39\(10\), 44\(9\)\(b\), 45\(8\) \(with reg. 3\)](#)

#### **Commencement Information**

- I30** S. 409 in force at 24.2.2003 by [S.I. 2003/120, art. 2, Sch.](#) (with [arts. 3, 4](#)) (as amended (20.2.2003) by [S.I. 2003/333, art. 14](#))

## **410 Code of practice S**

- (1) The Scottish Ministers must prepare a code of practice as to the exercise by proper persons of functions they have under this Chapter.
- (2) After preparing a draft of the code the Scottish Ministers—
  - (a) must publish the draft;
  - (b) must consider any representations made to them about the draft;
  - (c) may amend the draft accordingly.
- (3) After the Scottish Ministers have proceeded under subsection (2) they must lay the code before the Scottish Parliament.
- (4) When they have done so, the Scottish Ministers may bring the code into operation on such day as they may appoint by order.
- (5) A proper person must comply with a code of practice which is in operation under this section in the exercise of any function he has under this Chapter.
- (6) If a proper person fails to comply with any provision of a code of practice issued under this section he is not by reason only of that failure liable in any criminal or civil proceedings.
- (7) But the code of practice is admissible in evidence in such proceedings and a court may take account of any failure to comply with its provisions in determining any questions in the proceedings.
- (8) The Scottish Ministers may from time to time revise a code previously brought into operation under this section; and the preceding provisions of this section apply to a revised code as they apply to the code as first prepared.

*Status: Point in time view as at 31/07/2017.*

*Changes to legislation: Proceeds of Crime Act 2002, Chapter 3 is up to date with all changes known to be in force on or before 27 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

#### Commencement Information

**I31** S. 410 in force at 24.2.2003 by [S.I. 2003/120](#), art. 2, **Sch.** (with arts. 3, 4) (as amended (20.2.2003) by [S.I. 2003/333](#), art. 14)

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

- (1) In Scotland, a constable engaged in temporary service with the Scottish Ministers in connection with their functions under this Part may perform functions, other than those specified in subsection (2), on behalf of the Scottish Ministers.
- (2) The specified functions are the functions conferred on the Scottish Ministers by—
- (a) section 380(1) (production orders),
  - (b) section 382(2) (entry orders),
  - (c) section 386(4) (supplementary to production and entry orders),
  - (d) section 387(1) (search warrants),
  - (e) section 391(1) (disclosure orders),
  - (f) section 396(4) (supplementary to disclosure orders),
  - (g) section 397(1) (customer information orders),
  - (h) section 403(4) (supplementary to customer information orders),
  - (i) section 404(1) (account monitoring orders),
  - (j) section 408(4) (supplementary to account monitoring orders).

#### Commencement Information

**I32** S. 411 in force at 24.2.2003 by [S.I. 2003/120](#), art. 2, **Sch.** (with arts. 3, 4) (as amended (20.2.2003) by [S.I. 2003/333](#), art. 14)

### 412 Interpretation **S**

In this Chapter, unless the context otherwise requires—

“appropriate person” means—

- (a) the procurator fiscal, in relation to a confiscation investigation or a money laundering investigation,
- (b) the Scottish Ministers, in relation to a civil recovery investigation <sup>[<sup>F75</sup>]</sup> <sup>[<sup>F76</sup>]</sup> or a detained cash investigation <sup>[<sup>F75</sup>]</sup> <sup>[<sup>F76</sup>]</sup>, a detained cash investigation, a detained property investigation or a frozen funds investigation];

references to a “constable” include references to <sup>[<sup>F77</sup>]</sup> an officer of Revenue and Customs <sup>[<sup>F78</sup>]</sup> and to an immigration officer];

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

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

which would be so protected.

“premises” include any place and, in particular, include—

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- (a) any vehicle, vessel, aircraft or hovercraft;
  - (b) any offshore installation within the meaning of section 1 of the Mineral Workings (Offshore Installations) Act 1971 (c. 61) and any tent or movable structure;
- “proper person” means—
- (a) a constable, in relation to a confiscation investigation or a money laundering investigation;
  - (b) the Scottish Ministers or a person named by them, in relation to a civil recovery investigation [F75[F79 or a detained cash investigation]]<sup>F75</sup>, a detained cash investigation, a detained property investigation or a frozen funds investigation] .

#### Textual Amendments

- F75** Words in s. 412 substituted (27.4.2017 for specified purposes, 31.1.2018 for specified purposes, 16.4.2018 in so far as not already in force) by [Criminal Finances Act 2017 \(c. 22\)](#), s. 58(5)(6), [Sch. 5 para. 72](#); [S.I. 2018/78](#), reg. 5(3)(a)(i)(ii)
- F76** Words in s. 412 inserted (18.6.2009) by [Serious Crime Act 2007 \(c. 27\)](#), s. 94(3), [Sch. 10 para. 23\(2\)](#); [S.S.I. 2009/224](#), art. 2(1)(d)(ii)
- F77** Words in s. 412 substituted (17.7.2013) by [Finance Act 2013 \(c. 29\)](#), [Sch. 48 para. 20](#)
- F78** Words in s. 412 inserted (25.6.2013) by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(2), [Sch. 21 para. 38](#) (with [Sch. 21 para. 40](#)); [S.I. 2013/1042](#), art. 4(k)
- F79** Words in s. 412 inserted (18.6.2009) by [Serious Crime Act 2007 \(c. 27\)](#), s. 94(3), [Sch. 10 para. 23\(3\)](#); [S.S.I. 2009/224](#), art. 2(1)(d)(ii)

#### Commencement Information

- I33** S. 412 in force at 24.2.2003 by [S.I. 2003/120](#), art. 2, [Sch.](#) (with arts. 3, 4) (as amended (20.2.2003) by [S.I. 2003/333](#), art. 14)

**Status:**

Point in time view as at 31/07/2017.

**Changes to legislation:**

Proceeds of Crime Act 2002, Chapter 3 is up to date with all changes known to be in force on or before 27 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations.