



Proceeds of Crime Act 2002

2002 CHAPTER 29

PART 8

INVESTIGATIONS

CHAPTER 3

SCOTLAND

Account monitoring orders

404 Account monitoring orders

- (1) The sheriff may, on an application made to him by the appropriate person, make an account monitoring order if he is satisfied that each of the requirements for the making of the order is fulfilled.
- (2) In making an account monitoring order in relation to property subject to a civil recovery investigation, the sheriff shall act in the exercise of his civil jurisdiction.
- (3) The application for an account monitoring order must state that—
 - (a) a person specified in the application is subject to a confiscation investigation or a money laundering investigation, or
 - (b) property specified in the application is subject to a civil recovery investigation and a person specified in the application appears to hold the property.
- (4) The application must also state that—
 - (a) the order is sought for the purposes of the investigation;
 - (b) the order is sought against the financial institution specified in the application in relation to account information of the description so specified.

- (5) Account information is information relating to an account or accounts held at the financial institution specified in the application by the person so specified (whether solely or jointly with another).
- (6) The application for an account monitoring order may specify information relating to—
 - (a) all accounts held by the person specified in the application for the order at the financial institution so specified,
 - (b) a particular description, or particular descriptions, of accounts so held, or
 - (c) a particular account, or particular accounts, so held.
- (7) An account monitoring order is an order that the financial institution specified in the application for the order must, for the period stated in the order, provide account information of the description specified in the order to the proper person in the manner, and at or by the time or times, stated in the order.
- (8) The period stated in an account monitoring order must not exceed the period of 90 days beginning with the day on which the order is made.

405 Requirements for making of account monitoring order

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

406 Statements

- (1) A statement made by a financial institution in response to an account monitoring order may not be used in evidence against it in criminal proceedings.
- (2) But subsection (1) does not apply—
 - (a) in the case of proceedings under Part 3;
 - (b) in the case of proceedings for contempt of court, or

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

407 Further provisions

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

408 Supplementary

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