



# Proceeds of Crime Act 2002

## 2002 CHAPTER 29

### PART 8

#### INVESTIGATIONS

#### CHAPTER 3

#### SCOTLAND

#### *Disclosure orders*

### 391 Disclosure orders

- (1) The High Court of Justiciary, on an application made to it by the Lord Advocate in relation to confiscation investigations [<sup>F1</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>F2</sup>detained cash investigation][<sup>F3</sup>, a detained property investigation or a frozen funds investigation]<sup>F4</sup>....
- (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>F5</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>F6</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

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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.
- (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

- F1** 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)
- F2** Words in s. 391(2) inserted (18.6.2009) by [Serious Crime Act 2007 \(c. 27\)](#), s. 94(3), **Sch. 10 para. 20**; S.I. 2009/224, art. 2(1)(d)(ii)
- F3** 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)
- F4** Words in s. 391(2) omitted (27.4.2017 for specified purposes, 31.1.2018 in so far as not already in force) by virtue of [Criminal Finances Act 2017 \(c. 22\)](#), ss. 8(2)(b), 58(1)(6); S.I. 2018/78, reg. 3(b)
- F5** 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)
- F6** 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

- II** 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

- (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>F7</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>F8</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

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- (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.

#### Textual Amendments

- F7** 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)
- F8** 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

- I2** 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

- (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—
- imprisonment for a term not exceeding six months,
  - a fine not exceeding level 5 on the standard scale, or
  - both.
- (3) A person commits an offence if, in purported compliance with a requirement imposed on him under a disclosure order, he—
- makes a statement which he knows to be false or misleading in a material particular, or
  - 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—
- 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
  - 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)

- C1** 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))

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**C2** 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**

**I3** 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)

**394 Statements**

- (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)**

- C3** 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)
- C4** 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)
- C5** 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)
- C6** 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**

**I4** 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**

- (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).

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- (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—
  - (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)**

- C7** 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))
- C8** 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**

- I5** 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**

- (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>F9</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>F10</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.

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- (5) The court may—
- (a) discharge the order;
  - (b) vary the order.

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**Textual Amendments**

- F9** 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)
- F10** 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**

- I6** 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)

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