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Serious Organised Crime and Police Act 2005

2005 CHAPTER 15

PART 2

INVESTIGATIONS, PROSECUTIONS, PROCEEDINGS AND PROCEEDS OF CRIME

VALID FROM 01/04/2006

CHAPTER 1

INVESTIGATORY POWERS OF DPP, ETC.

Introductory

60 Investigatory powers of DPP etc.

- (1) This Chapter confers powers on—
 - (a) the Director of Public Prosecutions,
 - (b) the Director of Revenue and Customs Prosecutions, and
 - (c) the Lord Advocate,in relation to the giving of disclosure notices in connection with the investigation of offences to which this Chapter applies.
- (2) The Director of Public Prosecutions may, to such extent as he may determine, delegate the exercise of his powers under this Chapter to a Crown prosecutor.
- (3) The Director of Revenue and Customs Prosecutions may, to such extent as he may determine, delegate the exercise of his powers under this Chapter to a Revenue and Customs Prosecutor.

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- (4) The Lord Advocate may, to such extent as he may determine, delegate the exercise of his powers under this Chapter to a procurator fiscal.
- (5) In this Chapter “the Investigating Authority” means—
- (a) the Director of Public Prosecutions,
 - (b) the Director of Revenue and Customs Prosecutions, or
 - (c) the Lord Advocate.
- (6) But, in circumstances where the powers of any of those persons are exercisable by any other person by virtue of subsection (2), (3) or (4), references to “the Investigating Authority” accordingly include any such other person.

61 Offences to which this Chapter applies

- (1) This Chapter applies to the following offences—
- (a) any offence listed in Schedule 2 to the Proceeds of Crime Act 2002 (c. 29) (lifestyle offences: England and Wales);
 - (b) any offence listed in Schedule 4 to that Act (lifestyle offences: Scotland);
 - (c) any offence under sections 15 to 18 of the Terrorism Act 2000 (c. 11) (offences relating to fund-raising, money laundering etc.);
 - (d) any offence under section 170 of the Customs and Excise Management Act 1979 (c. 2) (fraudulent evasion of duty) or section 72 of the Value Added Tax Act 1994 (c. 23) (offences relating to VAT) which is a qualifying offence;
 - (e) any offence under section 17 of the Theft Act 1968 (c. 60) (false accounting), or any offence at common law of cheating in relation to the public revenue, which is a qualifying offence;
 - (f) any offence under section 1 of the Criminal Attempts Act 1981 (c. 47), or in Scotland at common law, of attempting to commit any offence in paragraph (c) or any offence in paragraph (d) or (e) which is a qualifying offence;
 - (g) any offence under section 1 of the Criminal Law Act 1977 (c. 45), or in Scotland at common law, of conspiracy to commit any offence in paragraph (c) or any offence in paragraph (d) or (e) which is a qualifying offence.
- (2) For the purposes of subsection (1) an offence in paragraph (d) or (e) of that subsection is a qualifying offence if the Investigating Authority certifies that in his opinion—
- (a) in the case of an offence in paragraph (d) or an offence of cheating the public revenue, the offence involved or would have involved a loss, or potential loss, to the public revenue of an amount not less than £5,000;
 - (b) in the case of an offence under section 17 of the Theft Act 1968 (c. 60), the offence involved or would have involved a loss or gain, or potential loss or gain, of an amount not less than £5,000.
- (3) A document purporting to be a certificate under subsection (2) is to be received in evidence and treated as such a certificate unless the contrary is proved.
- (4) The Secretary of State may by order—
- (a) amend subsection (1), in its application to England and Wales, so as to remove an offence from it or add an offence to it;
 - (b) amend subsection (2), in its application to England and Wales, so as to—

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- (i) take account of any amendment made by virtue of paragraph (a) above, or
 - (ii) vary the sums for the time being specified in subsection (2)(a) and (b).
- (5) The Scottish Ministers may by order—
- (a) amend subsection (1), in its application to Scotland, so as to remove an offence from it or add an offence to it;
 - (b) amend subsection (2), in its application to Scotland, so as to—
 - (i) take account of any amendment made by virtue of paragraph (a) above, or
 - (ii) vary the sums for the time being specified in subsection (2)(a) and (b).

Disclosure notices

62 Disclosure notices

- (1) If it appears to the Investigating Authority—
- (a) that there are reasonable grounds for suspecting that an offence to which this Chapter applies has been committed,
 - (b) that any person has information (whether or not contained in a document) which relates to a matter relevant to the investigation of that offence, and
 - (c) that there are reasonable grounds for believing that information which may be provided by that person in compliance with a disclosure notice is likely to be of substantial value (whether or not by itself) to that investigation,
- he may give, or authorise an appropriate person to give, a disclosure notice to that person.
- (2) In this Chapter “appropriate person” means—
- (a) a constable,
 - (b) a member of the staff of SOCA who is for the time being designated under section 43, or
 - (c) an officer of Revenue and Customs.
- (3) In this Chapter “disclosure notice” means a notice in writing requiring the person to whom it is given to do all or any of the following things in accordance with the specified requirements, namely—
- (a) answer questions with respect to any matter relevant to the investigation;
 - (b) provide information with respect to any such matter as is specified in the notice;
 - (c) produce such documents, or documents of such descriptions, relevant to the investigation as are specified in the notice.
- (4) In subsection (3) “the specified requirements” means such requirements specified in the disclosure notice as relate to—
- (a) the time at or by which,
 - (b) the place at which, or
 - (c) the manner in which,

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the person to whom the notice is given is to do any of the things mentioned in paragraphs (a) to (c) of that subsection; and those requirements may include a requirement to do any of those things at once.

- (5) A disclosure notice must be signed or counter-signed by the Investigating Authority.
- (6) This section has effect subject to section 64 (restrictions on requiring information etc.).

63 Production of documents

- (1) This section applies where a disclosure notice has been given under section 62.
- (2) An authorised person may—
 - (a) take copies of or extracts from any documents produced in compliance with the notice, and
 - (b) require the person producing them to provide an explanation of any of them.
- (3) Documents so produced may be retained for so long as the Investigating Authority considers that it is necessary to retain them (rather than copies of them) in connection with the investigation for the purposes of which the disclosure notice was given.
- (4) If the Investigating Authority has reasonable grounds for believing—
 - (a) that any such documents may have to be produced for the purposes of any legal proceedings, and
 - (b) that they might otherwise be unavailable for those purposes,
 they may be retained until the proceedings are concluded.
- (5) If a person who is required by a disclosure notice to produce any documents does not produce the documents in compliance with the notice, an authorised person may require that person to state, to the best of his knowledge and belief, where they are.
- (6) In this section “authorised person” means any appropriate person who either—
 - (a) is the person by whom the notice was given, or
 - (b) is authorised by the Investigating Authority for the purposes of this section.
- (7) This section has effect subject to section 64 (restrictions on requiring information etc.).

64 Restrictions on requiring information etc.

- (1) A person may not be required under section 62 or 63—
 - (a) to answer any privileged question,
 - (b) to provide any privileged information, or
 - (c) to produce any privileged document,
 except that a lawyer may be required to provide the name and address of a client of his.
- (2) A “privileged question” is a question which the person would be entitled to refuse to answer on grounds of legal professional privilege in proceedings in the High Court.
- (3) “Privileged information” is information which the person would be entitled to refuse to provide on grounds of legal professional privilege in such proceedings.

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- (4) A “privileged document” is a document which the person would be entitled to refuse to produce on grounds of legal professional privilege in such proceedings.
- (5) A person may not be required under section 62 to produce any excluded material (as defined by section 11 of the Police and Criminal Evidence Act 1984 (c. 60)).
- (6) In the application of this section to Scotland—
 - (a) subsections (1) to (5) do not have effect, but
 - (b) a person may not be required under section 62 or 63 to answer any question, provide any information or produce any document which he would be entitled, on grounds of legal privilege, to refuse to answer or (as the case may be) provide or produce.
- (7) In subsection (6)(b), “legal privilege” has the meaning given by section 412 of the Proceeds of Crime Act 2002 (c. 29).
- (8) A person may not be required under section 62 or 63 to disclose any information or produce any document in respect of which he owes an obligation of confidence by virtue of carrying on any banking business, unless—
 - (a) the person to whom the obligation of confidence is owed consents to the disclosure or production, or
 - (b) the requirement is made by, or in accordance with a specific authorisation given by, the Investigating Authority.
- (9) Subject to the preceding provisions, any requirement under section 62 or 63 has effect despite any restriction on disclosure (however imposed).

65 Restrictions on use of statements

- (1) A statement made by a person in response to a requirement imposed under section 62 or 63 (“the relevant statement”) may not be used in evidence against him in any criminal proceedings unless subsection (2) or (3) applies.
- (2) This subsection applies where the person is being prosecuted—
 - (a) for an offence under section 67 of this Act, or
 - (b) for an offence under section 5 of the Perjury Act 1911 (c. 6) (false statements made on oath otherwise than in judicial proceedings or made otherwise than on oath), or
 - (c) for an offence under section 2 of the False Oaths (Scotland) Act 1933 (c. 20) (false statutory declarations and other false statements without oath) or at common law for an offence of attempting to pervert the course, or defeat the ends, of justice.
- (3) This subsection applies where the person is being prosecuted for some other offence and—
 - (a) the person, when giving evidence in the proceedings, makes a statement inconsistent with the relevant statement, and
 - (b) in the proceedings evidence relating to the relevant statement is adduced, or a question about it is asked, by or on behalf of the person.

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Enforcement

66 Power to enter and seize documents

- (1) A justice of the peace may issue a warrant under this section if, on an information on oath laid by the Investigating Authority, he is satisfied—
 - (a) that any of the conditions mentioned in subsection (2) is met in relation to any documents of a description specified in the information, and
 - (b) that the documents are on premises so specified.
- (2) The conditions are—
 - (a) that a person has been required by a disclosure notice to produce the documents but has not done so;
 - (b) that it is not practicable to give a disclosure notice requiring their production;
 - (c) that giving such a notice might seriously prejudice the investigation of an offence to which this Chapter applies.
- (3) A warrant under this section is a warrant authorising an appropriate person named in it—
 - (a) to enter and search the premises, using such force as is reasonably necessary;
 - (b) to take possession of any documents appearing to be documents of a description specified in the information, or to take any other steps which appear to be necessary for preserving, or preventing interference with, any such documents;
 - (c) in the case of any such documents consisting of information recorded otherwise than in legible form, to take possession of any computer disk or other electronic storage device which appears to contain the information in question, or to take any other steps which appear to be necessary for preserving, or preventing interference with, that information;
 - (d) to take copies of or extracts from any documents or information falling within paragraph (b) or (c);
 - (e) to require any person on the premises to provide an explanation of any such documents or information or to state where any such documents or information may be found;
 - (f) to require any such person to give the appropriate person such assistance as he may reasonably require for the taking of copies or extracts as mentioned in paragraph (d).
- (4) A person executing a warrant under this section may take other persons with him, if it appears to him to be necessary to do so.
- (5) A warrant under this section must, if so required, be produced for inspection by the owner or occupier of the premises or anyone acting on his behalf.
- (6) If the premises are unoccupied or the occupier is temporarily absent, a person entering the premises under the authority of a warrant under this section must leave the premises as effectively secured against trespassers as he found them.
- (7) Where possession of any document or device is taken under this section—
 - (a) the document may be retained for so long as the Investigating Authority considers that it is necessary to retain it (rather than a copy of it) in connection with the investigation for the purposes of which the warrant was sought, or

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- (b) the device may be retained for so long as he considers that it is necessary to retain it in connection with that investigation, as the case may be.
- (8) If the Investigating Authority has reasonable grounds for believing—
 - (a) that any such document or device may have to be produced for the purposes of any legal proceedings, and
 - (b) that it might otherwise be unavailable for those purposes, it may be retained until the proceedings are concluded.
- (9) Nothing in this section authorises a person to take possession of, or make copies of or take extracts from, any document or information which, by virtue of section 64, could not be required to be produced or disclosed under section 62 or 63.
- (10) In the application of this section to Scotland—
 - (a) subsection (1) has effect as if, for the words from the beginning to “satisfied—”, there were substituted “ A sheriff may issue a warrant under this section, on the application of a procurator fiscal, if he is satisfied— ”;
 - (b) subsections (1)(a) and (3)(b) have effect as if, for “in the information”, there were substituted “ in the application ”; and
 - (c) subsections (4) to (6) do not have effect.

67 Offences in connection with disclosure notices or search warrants

- (1) A person commits an offence if, without reasonable excuse, he fails to comply with any requirement imposed on him under section 62 or 63.
- (2) A person commits an offence if, in purported compliance with any requirement imposed on him under section 62 or 63—
 - (a) he makes a statement which is false or misleading, and
 - (b) he either knows that it is false or misleading or is reckless as to whether it is false or misleading.

“False or misleading” means false or misleading in a material particular.
- (3) A person commits an offence if he wilfully obstructs any person in the exercise of any rights conferred by a warrant under section 66.
- (4) A person guilty of an offence under subsection (1) or (3) is liable on summary conviction—
 - (a) to imprisonment for a term not exceeding 51 weeks, or
 - (b) to a fine not exceeding level 5 on the standard scale, or to both.
- (5) A person guilty of an offence under subsection (2) is liable—
 - (a) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine, or to both;
 - (b) on summary conviction, to imprisonment for a term not exceeding 12 months or to a fine not exceeding the statutory maximum, or to both.
- (6) In the application of this section to Scotland, the reference to 51 weeks in subsection (4)(a) is to be read as a reference to 12 months.

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Supplementary

68 Procedure applicable to search warrants

In Part 1 of Schedule 1 to the Criminal Justice and Police Act 2001 (c. 16) (powers of seizure to which section 50 applies) after paragraph 73E (inserted by the Human Tissue Act 2004 (c. 30)) insert—

“Serious Organised Crime and Police Act 2005

73F The power of seizure conferred by section 66 of the Serious Organised Crime and Police Act 2005 (seizure of documents for purposes of investigation by DPP or other Investigating Authority).”

69 Manner in which disclosure notice may be given

- (1) This section provides for the manner in which a disclosure notice may be given under section 62.
- (2) The notice may be given to a person by—
 - (a) delivering it to him,
 - (b) leaving it at his proper address,
 - (c) sending it by post to him at that address.
- (3) The notice may be given—
 - (a) in the case of a body corporate, to the secretary or clerk of that body;
 - (b) in the case of a partnership, to a partner or a person having the control or management of the partnership business;
 - (c) in the case of an unincorporated association (other than a partnership), to an officer of the association.
- (4) For the purposes of this section and section 7 of the Interpretation Act 1978 (c. 30) (service of documents by post) in its application to this section, the proper address of a person is his usual or last-known address (whether residential or otherwise), except that—
 - (a) in the case of a body corporate or its secretary or clerk, it is the address of the registered office of that body or its principal office in the United Kingdom,
 - (b) in the case of a partnership, a partner or a person having the control or management of the partnership business, it is that of the principal office of the partnership in the United Kingdom, and
 - (c) in the case of an unincorporated association (other than a partnership) or an officer of the association, it is that of the principal office of the association in the United Kingdom.
- (5) This section does not apply to Scotland.

70 Interpretation of Chapter 1

- (1) In this Chapter—

“appropriate person” has the meaning given by section 62(2);

“the Investigating Authority” is to be construed in accordance with section 60(5) and (6);

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“disclosure notice” has the meaning given by section 62(3);

“document” includes information recorded otherwise than in legible form.

- (2) In relation to information recorded otherwise than in legible form, any reference in this Chapter to the production of documents is a reference to the production of a copy of the information in legible form.

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