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STATUTORY INSTRUMENTS

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**2013 No. 2605**

**PROCEEDS OF CRIME**

The Proceeds of Crime Act 2002  
(External Investigations) Order 2013

*Made - - - - 9th October 2013*  
*Laid before Parliament 16th October 2013*  
*Coming into force - - 11th November 2013*

At the Court at Buckingham Palace, the 9th day of October 2013

Present,

The Queen's Most Excellent Majesty in Council

Her Majesty, in exercise of the powers conferred upon Her by sections 445 and 459(2) of the Proceeds of Crime Act 2002(1), is pleased, by and with the advice of Her Privy Council, to order, and it is ordered, as follows.

[<sup>F1</sup>PART A1

Introduction]

**Textual Amendments**

**F1** Pt. A1 heading substituted (28.6.2021) by [The Proceeds of Crime Act 2002 \(External Investigations and External Orders and Requests\) \(Amendment\) Order 2021 \(S.I. 2021/638\)](#), arts. 1(2), **37(1)**

[<sup>F2</sup>Citation, commencement and extent]

**1.**—(1) This Order may be cited as the Proceeds of Crime Act 2002 (External Investigations) Order 2013 and shall come into force on 11th November 2013.

[<sup>F3</sup>(2) Part 1 extends to England and Wales and Northern Ireland only.]

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(1) [2002 c. 29](#); section 445(2)(b) was amended by paragraphs 47 and 71, of Schedule 14 to the Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2010 ([S.I. 2010/976](#)) and paragraphs 121 and 139 in Part 6 of Schedule 8, to the Serious Crime Act 2007 (c. 27).

*Status: Point in time view as at 28/06/2021.*

*Changes to legislation: There are currently no known outstanding effects for the The Proceeds of Crime Act 2002 (External Investigations) Order 2013. (See end of Document for details)*

(3) Part 2 extends to Scotland only.

#### Textual Amendments

- F2** Art. 1 heading inserted (28.6.2021) by The Proceeds of Crime Act 2002 (External Investigations and External Orders and Requests) (Amendment) Order 2021 (S.I. 2021/638), arts. 1(2), **37(2)**
- F3** Art. 1(2) substituted (28.6.2021) by The Proceeds of Crime Act 2002 (External Investigations and External Orders and Requests) (Amendment) Order 2021 (S.I. 2021/638), arts. 1(2), **38**

#### Commencement Information

- II** Art. 1 in force at 11.11.2013, see **art. 1(1)**

## PART 1

### Interpretation

2.—<sup>F4</sup>(1) An “appropriate officer” means—

- (a) an NCA officer;
- (b) <sup>F5</sup>... an FCA officer;
- (c) <sup>F6</sup>... an officer of Revenue and Customs;
- (d) a relevant Director.]

(2) “Document”, “excluded material” and “premises” have the same meanings as in the Police and Criminal Evidence Act 1984<sup>(2)</sup> or (in relation to Northern Ireland) the Police and Criminal Evidence (Northern Ireland) Order 1989<sup>(3)</sup>.

(3) “Financial institution” means a person carrying on a business in the regulated sector.

(4) But a person who ceases to carry on a business in the regulated sector (whether by virtue of paragraph 5 of Schedule 9 to the Proceeds of Crime Act 2002<sup>(4)</sup> or otherwise) is to continue to be treated as a financial institution for the purposes of any requirement under—

- (a) a customer information order, or
- (b) an account monitoring order,

to provide information which relates to a time when the person was a financial institution.

(5) References in this Part to a business in the regulated sector must be construed in accordance with Schedule 9 to the Proceeds of Crime Act 2002.

<sup>F7</sup>(5A) “FCA” means the Financial Conduct Authority and “an FCA officer” is a member of the staff of the FCA.]

(6) “NCA” means National Crime Agency.

(7) A “relevant Director”—

- (a) in relation to England and Wales, means the Director of Public Prosecutions<sup>F8</sup>... or the Director of the Serious Fraud Office; and
- (b) in relation to Northern Ireland, means the Director of the Serious Fraud Office or the Director of Public Prosecutions for Northern Ireland.

(2) 1984 c. 60.

(3) S.I. 1989/1341 (N.I. 12).

(4) 2002 c. 29.

[<sup>F9</sup>(7A) “Settlement” (in relation to unexplained wealth orders and interim freezing orders) has the meaning given by section 620 of the Income Tax (Trading and Other Income) Act 2005.]

(8) For the purposes of this Part—

- (a) anything which the Director of Public Prosecutions, <sup>F10</sup>... or the Director of the Serious Fraud Office, is authorised or required to do under, or in relation to, this Part may be done by a member of their staff if the member of staff is authorised by the Director concerned (generally or specifically) for that purpose,
- (b) anything which a relevant Director, or a member of their staff, is authorised or required to do under, or in relation to, this Part may be done by a person providing services under arrangements made by the relevant Director if the person is authorised by the relevant Director (whether generally or specifically) for that purpose.

(9) But paragraph (8)(b) does not apply to the functions of the Director of Public Prosecutions for Northern Ireland.

(10) References to notice in writing include references to notice given by electronic means.

[<sup>F11</sup>(11) A “senior appropriate officer” means—

- (a) in relation to an NCA officer, the Director General of the NCA or any NCA officer authorised by the Director General (whether generally or specifically) for this purpose;
- (b) in relation to an FCA officer <sup>F12</sup>..., an FCA officer who is not below such grade as is designated by the Treasury for the purposes of this Order; and
- (c) in relation to an officer of Revenue and Customs <sup>F13</sup>..., the Commissioners for Her Majesty’s Revenue and Customs or an officer of Revenue and Customs authorised by the Commissioners (whether generally or specifically) for this purpose.]

[<sup>F14</sup>(12) For the purposes of this Part—

“enforcement authority” means <sup>F15</sup>...—

- (a) the National Crime Agency;
- (b) Her Majesty’s Revenue and Customs;
- (c) the FCA;
- (d) the Director of the Serious Fraud Office, or
- (e) [<sup>F16</sup>the Director of Public Prosecutions (in relation to England and Wales) or the Director of Public Prosecutions for Northern Ireland (in relation to Northern Ireland);]

“external request” has the same meaning as in article 21H (unexplained wealth order: application for interim freezing order);

“interim freezing order” has the same meaning as in article 21H;

“requesting party” has the same meaning as in article 21C(5) (non-compliance with an unexplained wealth order);

“respondent” has the same meaning as in article 21A(2)(b) (unexplained wealth orders);

“response period” has the same meaning as in article 21C(5);

“unexplained wealth order” has the same meaning as in article 21A(4).]

#### Textual Amendments

- F4** Art. 2(1) substituted (12.11.2018) by [The Proceeds of Crime Act 2002 \(External Investigations and External Orders and Requests\) \(Amendment\) Order 2018 \(S.I. 2018/1078\)](#), arts. 1(2), **10(a)**

*Status: Point in time view as at 28/06/2021.*

*Changes to legislation: There are currently no known outstanding effects for the The Proceeds of Crime Act 2002 (External Investigations) Order 2013. (See end of Document for details)*

- F5** Words in art. 2(1)(b) omitted (28.6.2021) by virtue of The Proceeds of Crime Act 2002 (External Investigations and External Orders and Requests) (Amendment) Order 2021 (S.I. 2021/638), arts. 1(2), **39(a)**
- F6** Words in art. 2(1)(c) omitted (28.6.2021) by virtue of The Proceeds of Crime Act 2002 (External Investigations and External Orders and Requests) (Amendment) Order 2021 (S.I. 2021/638), arts. 1(2), **39(a)**
- F7** Art. 2(5A) inserted (12.11.2018) by The Proceeds of Crime Act 2002 (External Investigations and External Orders and Requests) (Amendment) Order 2018 (S.I. 2018/1078), arts. 1(2), **10(b)**
- F8** Words in art. 2(7)(a) omitted (27.3.2014) by virtue of The Public Bodies (Merger of the Director of Public Prosecutions and the Director of Revenue and Customs Prosecutions) Order 2014 (S.I. 2014/834), art. 1(1), **Sch. 3 para. 38(2)**
- F9** Art. 2(7A) inserted (12.11.2018) by The Proceeds of Crime Act 2002 (External Investigations and External Orders and Requests) (Amendment) Order 2018 (S.I. 2018/1078), arts. 1(2), **9(2)(a)**
- F10** Words in art. 2(8)(a) omitted (27.3.2014) by virtue of The Public Bodies (Merger of the Director of Public Prosecutions and the Director of Revenue and Customs Prosecutions) Order 2014 (S.I. 2014/834), art. 1(1), **Sch. 3 para. 38(3)**
- F11** Art. 2(11) substituted (12.11.2018) by The Proceeds of Crime Act 2002 (External Investigations and External Orders and Requests) (Amendment) Order 2018 (S.I. 2018/1078), arts. 1(2), **10(c)**
- F12** Words in art. 2(11)(b) omitted (28.6.2021) by virtue of The Proceeds of Crime Act 2002 (External Investigations and External Orders and Requests) (Amendment) Order 2021 (S.I. 2021/638), arts. 1(2), **39(b)**
- F13** Words in art. 2(11)(c) omitted (28.6.2021) by virtue of The Proceeds of Crime Act 2002 (External Investigations and External Orders and Requests) (Amendment) Order 2021 (S.I. 2021/638), arts. 1(2), **39(b)**
- F14** Art. 2(12) inserted (12.11.2018) by The Proceeds of Crime Act 2002 (External Investigations and External Orders and Requests) (Amendment) Order 2018 (S.I. 2018/1078), arts. 1(2), **9(2)(b)**
- F15** Words in art. 2(12) omitted (28.6.2021) by virtue of The Proceeds of Crime Act 2002 (External Investigations and External Orders and Requests) (Amendment) Order 2021 (S.I. 2021/638), arts. 1(2), **39(c)(i)**
- F16** Words in art. 2(12) substituted (28.6.2021) by The Proceeds of Crime Act 2002 (External Investigations and External Orders and Requests) (Amendment) Order 2021 (S.I. 2021/638), arts. 1(2), **39(c)(ii)**

#### Commencement Information

- I2** Art. 2 in force at 11.11.2013, see **art. 1(1)**

### Scope of Part 1

3.—(1) This Part has effect for the purpose of enabling the Director General of NCA [<sup>F17</sup>, a relevant Director or (in relation to an unexplained wealth order or an interim freezing order <sup>F18</sup>...) an enforcement authority] to assist an external investigation by obtaining orders and warrants from the High Court.

(2) The powers conferred by this Part are exercisable in relation to [<sup>F19</sup>a person or property subject to an external investigation] only if the Director General of NCA [<sup>F20</sup>, the relevant Director or (in relation to an unexplained wealth order or an interim freezing order <sup>F21</sup>...) the enforcement authority] believes paragraph (3) applies in relation to—

- (a) the country or territory of the overseas authority carrying out the external investigation, and
- (b) England and Wales or (if the powers are to be exercised in Northern Ireland) Northern Ireland.

- (3) This paragraph applies if—
- (a) a criminal investigation in connection with the [F22 person or] property has not begun,
  - (b) a criminal investigation in connection with the [F23 person or] property has begun but it is unlikely criminal proceedings will be brought, or
  - (c) criminal proceedings brought in connection with the [F24 person or] property have been concluded without an order having been made in relation to the [F24 person or] property.
- (4) Criminal proceedings have been concluded when—
- (a) the person against whom the criminal proceedings are brought is acquitted,
  - (b) the person against whom the criminal proceedings are brought is pardoned,
  - (c) the person against whom the criminal proceedings are brought is convicted and sentenced,
  - (d) the person against whom the criminal proceedings are brought is convicted and the conviction is quashed,
  - (e) the criminal proceedings are discontinued, or
  - (f) any jury is discharged without a finding otherwise than in circumstances where the criminal proceedings are continued without a jury.
- F25(5) .....

**Textual Amendments**

- F17** Words in art. 3(1) substituted (12.11.2018) by The Proceeds of Crime Act 2002 (External Investigations and External Orders and Requests) (Amendment) Order 2018 (S.I. 2018/1078), arts. 1(2), **5(a)**
- F18** Words in art. 3(1) omitted (28.6.2021) by virtue of The Proceeds of Crime Act 2002 (External Investigations and External Orders and Requests) (Amendment) Order 2021 (S.I. 2021/638), arts. 1(2), **40**
- F19** Words in art. 3(2) substituted (30.11.2015) by The Proceeds of Crime Act 2002 (External Investigations) (Amendment) Order 2015 (S.I. 2015/1751), arts. 1(2), **3(2)**
- F20** Words in art. 3(2) substituted (12.11.2018) by The Proceeds of Crime Act 2002 (External Investigations and External Orders and Requests) (Amendment) Order 2018 (S.I. 2018/1078), arts. 1(2), **5(b)**
- F21** Words in art. 3(2) omitted (28.6.2021) by virtue of The Proceeds of Crime Act 2002 (External Investigations and External Orders and Requests) (Amendment) Order 2021 (S.I. 2021/638), arts. 1(2), **40**
- F22** Words in art. 3(3)(a) inserted (30.11.2015) by The Proceeds of Crime Act 2002 (External Investigations) (Amendment) Order 2015 (S.I. 2015/1751), arts. 1(2), **3(3)(a)**
- F23** Words in art. 3(3)(b) inserted (30.11.2015) by The Proceeds of Crime Act 2002 (External Investigations) (Amendment) Order 2015 (S.I. 2015/1751), arts. 1(2), **3(3)(b)**
- F24** Words in art. 3(3)(c) inserted (30.11.2015) by The Proceeds of Crime Act 2002 (External Investigations) (Amendment) Order 2015 (S.I. 2015/1751), arts. 1(2), **3(3)(c)**
- F25** Art. 3(5) omitted (12.11.2018) by virtue of The Proceeds of Crime Act 2002 (External Investigations and External Orders and Requests) (Amendment) Order 2018 (S.I. 2018/1078), arts. 1(2), **5(c)**

**Commencement Information**

- I3** Art. 3 in force at 11.11.2013, see art. 1(1)

*Status: Point in time view as at 28/06/2021.*

*Changes to legislation: There are currently no known outstanding effects for the The Proceeds of Crime Act 2002 (External Investigations) Order 2013. (See end of Document for details)*

### Action on receipt of request in relation to an external investigation

4.—(1) The Secretary of State may refer to the Director General of NCA [<sup>F26</sup>, a relevant Director, <sup>F27</sup>... the FCA, the Commissioners for Her Majesty's Revenue and Customs or an enforcement authority] a request for assistance in relation to an external investigation.

(2) The Director General of NCA [<sup>F28</sup>, a relevant Director, <sup>F29</sup>... the FCA, the Commissioners for Her Majesty's Revenue and Customs or an enforcement authority] may on receipt of the request for assistance act under this Part.

#### Textual Amendments

- F26** Words in art. 4(1) substituted (12.11.2018) by The Proceeds of Crime Act 2002 (External Investigations and External Orders and Requests) (Amendment) Order 2018 (S.I. 2018/1078), arts. 1(2), **6**
- F27** Words in art. 4(1) omitted (28.6.2021) by virtue of The Proceeds of Crime Act 2002 (External Investigations and External Orders and Requests) (Amendment) Order 2021 (S.I. 2021/638), arts. 1(2), **41**
- F28** Words in art. 4(2) substituted (12.11.2018) by The Proceeds of Crime Act 2002 (External Investigations and External Orders and Requests) (Amendment) Order 2018 (S.I. 2018/1078), arts. 1(2), **6**
- F29** Words in art. 4(2) omitted (28.6.2021) by virtue of The Proceeds of Crime Act 2002 (External Investigations and External Orders and Requests) (Amendment) Order 2021 (S.I. 2021/638), arts. 1(2), **41**

#### Commencement Information

- I4** Art. 4 in force at 11.11.2013, see art. 1(1)

### Offences of prejudicing external investigation

5.—(1) This article applies if a person knows or suspects that an appropriate officer is acting (or proposing to act) under this Part in connection with an external investigation.

(2) A person commits an offence if—

- (a) they make a disclosure which is likely to prejudice the external investigation, or
- (b) they falsify, conceal, destroy or otherwise dispose of, or cause or permit the falsification, concealment, destruction or disposal of, documents which are relevant to the external investigation.

(3) A person does not commit an offence under paragraph (2)(a) if—

- (a) they do not know or suspect that the disclosure is likely to prejudice the external investigation,
- (b) the disclosure is made pursuant to this Part,
- (c) the disclosure is made pursuant to the Proceeds of Crime Act 2002 (External Requests and Orders) Order 2005(5),
- (d) the disclosure is made in the exercise of a function under the Proceeds of Crime Act 2002 or any other enactment relating to criminal conduct or benefit from criminal conduct or in compliance with a requirement imposed under or by virtue of the Proceeds of Crime Act 2002,

- (e) the disclosure is of a matter within section 333A(2) or (3)(a) (money laundering: tipping off) of the Proceeds of Crime Act 2002 and the information on which the disclosure is based came to the person in the course of a business in the regulated sector, or
  - (f) they are a professional legal adviser and the disclosure falls within paragraph (4).
- (4) A disclosure falls within this paragraph if it is a disclosure—
- (a) to (or to a representative of) a client of the professional legal adviser in connection with the giving by the adviser of legal advice to the client, or
  - (b) to any person in connection with legal proceedings or contemplated legal proceedings.
- (5) But a disclosure does not fall within paragraph (4) if it is made with the intention of furthering a criminal purpose.
- (6) A person does not commit an offence under paragraph (2)(b) if—
- (a) they do not know or suspect that the documents are relevant to the external investigation, or
  - (b) they do not intend to conceal any facts disclosed by the documents from any appropriate officer acting in connection with the external investigation.
- (7) A person guilty of an offence under paragraph (2) 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 five years or to a fine or to both.

#### Commencement Information

**I5** Art. 5 in force at 11.11.2013, see [art. 1\(1\)](#)

#### Production orders

**6.—(1)** A High Court judge may, on an application made to them by an appropriate officer, make a production order if the judge is satisfied that each of the requirements for the making of the order is fulfilled.

- [<sup>F30</sup>(2) The application for a production order must state that—
- (a) a person specified in the application is subject to an external investigation and the condition in article 3(2) is met in respect of the person; or
  - (b) property specified in the application is subject to an external investigation and the condition in article 3(2) is met in respect of the property.]

(3) The application must also state that—

    - (a) the order is sought for the purposes of the external investigation,
    - (b) the order is sought in relation to material, or material of a description, specified in the application,
    - (c) a person specified in the application appears to be in possession or control of the material.

(4) 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 the material to produce it to an appropriate officer for the appropriate officer to take away, or
    - (b) requiring that person to give an appropriate officer access to the material,

within the period stated in the order.

*Status: Point in time view as at 28/06/2021.*

*Changes to legislation: There are currently no known outstanding effects for the The Proceeds of Crime Act 2002 (External Investigations) Order 2013. (See end of Document for details)*

(5) 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 High Court judge by whom the order is made that a longer or shorter period would be appropriate in the particular circumstances.

#### Textual Amendments

**F30** Art. 6(2) substituted (30.11.2015) by [The Proceeds of Crime Act 2002 \(External Investigations\) \(Amendment\) Order 2015 \(S.I. 2015/1751\)](#), arts. 1(2), 4

#### Commencement Information

**I6** Art. 6 in force at 11.11.2013, see [art. 1\(1\)](#)

### Requirements for making of production order

7.—(1) These are the requirements for the making of a production order.

[<sup>F31</sup>(2) There must be reasonable grounds for suspecting that—

- (a) the person the application for the order specifies as being subject to the external investigation holds property obtained as a result of or in connection with criminal conduct;
- (b) that person has, at any time, held property that was obtained as a result of or in connection with criminal conduct; or
- (c) the property the application for the order specifies as being subject to the external investigation is property obtained as a result of or in connection with criminal conduct.]

(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 external investigation.

(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 external 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

**F31** Art. 7(2) substituted (30.11.2015) by [The Proceeds of Crime Act 2002 \(External Investigations\) \(Amendment\) Order 2015 \(S.I. 2015/1751\)](#), arts. 1(2), 5

#### Commencement Information

**I7** Art. 7 in force at 11.11.2013, see [art. 1\(1\)](#)

### Order to grant entry

8.—(1) This article applies if a High Court judge makes a production order requiring a person to give an appropriate officer access to material on any premises.

(2) The High Court judge may, on an application made to them by an appropriate officer 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 an appropriate officer to be entitled to grant entry to the premises to allow the appropriate officer to enter the premises to obtain access to the material.

**Commencement Information**

**I8** Art. 8 in force at 11.11.2013, see **art. 1(1)**

**Further provisions**

**9.—(1)** A production order does not require a person to produce, or give access to, privileged material.

(2) Privileged material is any material which the person would be entitled to refuse to produce on grounds of legal professional privilege in proceedings in the High Court.

(3) A production order does not require a person to produce, or give access to, excluded material.

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

(5) An appropriate officer may take copies of any material which is produced, or to which access is given, in compliance with a production order.

(6) 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 external investigation.

(7) But if an appropriate officer 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,

it may be retained until the proceedings are concluded.

(8) Material produced in compliance with a production order may be sent to the overseas authority which made the request for assistance or to the Secretary of State for forwarding to that overseas authority.

**Commencement Information**

**I9** Art. 9 in force at 11.11.2013, see **art. 1(1)**

**Computer information**

**10.—(1)** This article 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 an appropriate officer for the appropriate officer to take away, it has effect as an order to produce the material in a form in which it can be taken away by the appropriate officer and in which it is visible and legible.

(3) If the order is an order requiring a person to give an appropriate officer access to the material, it has effect as an order to give the appropriate officer access to the material in a form in which it is visible and legible.

**Commencement Information**

**I10** Art. 10 in force at 11.11.2013, see **art. 1(1)**

**Government departments**

**11.**—(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) An order containing such a requirement must be served as if the proceedings were civil proceedings against the department.

(4) 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.

(5) If the order is not brought to the attention of the officer concerned within the period stated in the order (in pursuance of article 6(4)) the person on whom it is served must report the reasons for the failure to a High Court judge.

(6) An authorised government department is a government department, or a Northern Ireland department, which is an authorised department for the purposes of the Crown Proceedings Act 1947(6).

**Commencement Information**

**111** Art. 11 in force at 11.11.2013, see [art. 1\(1\)](#)

**Supplementary**

**12.**—(1) An application for a production order or an order to grant entry may be made ex parte to a High Court judge in chambers.

(2) An application to discharge or vary a production order or an order to grant entry may be made to the High Court by—

(a) the person who applied for the order,

(b) any person affected by the order.

(3) The High Court—

(a) may discharge the order,

(b) may vary the order.

(4) If [<sup>F32</sup>an officer of a description mentioned in paragraph (a), (b) or (c) of the meaning of appropriate officer (see article 2 (interpretation))] applies for a production order or an order to grant entry, an application to discharge or vary the order [<sup>F33</sup>may be made by a different officer of the same description].

(5) References to a person who applied for a production order or an order to grant entry must be construed accordingly.

(6) Production orders and orders to grant entry have effect as if they were orders of the High Court.

(7) Paragraphs (2) to (6) do not apply to orders made in England and Wales.

### Textual Amendments

- F32** Words in art. 12(4) substituted (12.11.2018) by The Proceeds of Crime Act 2002 (External Investigations and External Orders and Requests) (Amendment) Order 2018 (S.I. 2018/1078), arts. 1(2), **11(1)(a)**
- F33** Words in art. 12(4) substituted (12.11.2018) by The Proceeds of Crime Act 2002 (External Investigations and External Orders and Requests) (Amendment) Order 2018 (S.I. 2018/1078), arts. 1(2), **11(1)(b)**

### Commencement Information

- I12** Art. 12 in force at 11.11.2013, see **art. 1(1)**

## Search and seizure warrants

**13.—(1)** A High Court judge may, on an application made to them by an appropriate officer, issue a search and seizure warrant if the judge is satisfied—

- (a) that [<sup>F34</sup>a person specified in the application or] property specified in the application is subject to an external investigation,
  - (b) the condition in article 3(2) is met in respect of the [<sup>F35</sup>person or] property, and
  - (c) either of the requirements in paragraph (4) is fulfilled.
- (2) The application must <sup>F36</sup>... state that the warrant is sought —
- (a) for the purposes of the external investigation,
  - (b) in relation to the premises specified in the application,
  - (c) in relation to material specified in the application, or that there are reasonable grounds for believing that there is material falling within article 14(6) on the premises.
- (3) A search and seizure warrant is a warrant authorising an appropriate person—
- (a) to enter and search the premises specified in the application for the warrant, and
  - (b) to seize and retain any material found there which is likely to be of substantial value (whether or not by itself) to the external investigation.
- (4) The requirements for the issue of a search and seizure 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 article 14 is satisfied in relation to the warrant.
- (5) An “appropriate person” is an NCA officer [<sup>F37</sup>, FCA officer <sup>F38</sup>..., officer of Revenue and Customs <sup>F38</sup>...] or a member of the staff of the relevant Director.

### Textual Amendments

- F34** Words in art. 13(1)(a) inserted (30.11.2015) by The Proceeds of Crime Act 2002 (External Investigations) (Amendment) Order 2015 (S.I. 2015/1751), arts. 1(2), **6(2)**
- F35** Words in art. 13(1)(b) inserted (30.11.2015) by The Proceeds of Crime Act 2002 (External Investigations) (Amendment) Order 2015 (S.I. 2015/1751), arts. 1(2), **6(3)**
- F36** Word in art. 13(2) omitted (30.11.2015) by virtue of The Proceeds of Crime Act 2002 (External Investigations) (Amendment) Order 2015 (S.I. 2015/1751), arts. 1(2), **6(4)**

*Status: Point in time view as at 28/06/2021.*

*Changes to legislation: There are currently no known outstanding effects for the The Proceeds of Crime Act 2002 (External Investigations) Order 2013. (See end of Document for details)*

- F37** Words in art. 13(5) inserted (12.11.2018) by The Proceeds of Crime Act 2002 (External Investigations and External Orders and Requests) (Amendment) Order 2018 (S.I. 2018/1078), arts. 1(2), **11(2)**
- F38** Words in art. 13(5) omitted (28.6.2021) by virtue of The Proceeds of Crime Act 2002 (External Investigations and External Orders and Requests) (Amendment) Order 2021 (S.I. 2021/638), arts. 1(2), **42**

#### Commencement Information

- I13** Art. 13 in force at 11.11.2013, see **art. 1(1)**

#### Requirements where production order not available

- 14.**—(1) This article is satisfied in relation to a search and seizure warrant if—
- (a) paragraph (2) applies, and
  - (b) either the first or the second set of conditions is complied with.
- [<sup>F39</sup>(2) This paragraph applies if there are reasonable grounds for suspecting that—
- (a) the person specified in the application for the warrant holds property obtained as a result of or in connection with criminal conduct;
  - (b) that person has, at any time, held property that was obtained as a result of or in connection with criminal conduct; or
  - (c) the property specified in the application for the warrant is property obtained as a result of or in connection with criminal conduct.]
- (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 external investigation,
  - (b) it is in the public interest for the material to be obtained, having regard to the benefit likely to accrue to the external 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 paragraph (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 entry to the premises,
  - (c) that the external investigation might be seriously prejudiced unless an appropriate 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 paragraph (6),
  - (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 external investigation if the material is obtained, and
  - (c) any one or more of the requirements in paragraph (7) is met.
- (6) Material falls within this paragraph if it cannot be identified at the time of the application but it—
- [<sup>F40</sup>(a) relates to the person or property specified in the application or to any of the questions listed in paragraph (6A); and]

- (b) is likely to be of substantial value (whether or not by itself) to the external investigation.
- [<sup>F41</sup>(6A) 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 was obtained as a result of or in connection with criminal conduct; or
    - (iii) the nature, extent or whereabouts of the property; and
  - (b) where property is specified in the application, any question as to—
    - (i) whether the property was obtained as a result of or in connection with criminal conduct;
    - (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 was obtained as a result of or in connection with criminal conduct; or
    - (v) the nature, extent or whereabouts of the specified property or the other property.]
- (7) 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 external investigation might be seriously prejudiced unless an appropriate person arriving at the premises is able to secure immediate entry to them.
- (8) An “appropriate person” is an NCA officer [<sup>F42</sup>, FCA officer <sup>F43</sup>..., officer of Revenue and Customs <sup>F43</sup>...] or a member of the staff of the relevant Director.

#### Textual Amendments

- F39** Art. 14(2) substituted (30.11.2015) by The Proceeds of Crime Act 2002 (External Investigations) (Amendment) Order 2015 (S.I. 2015/1751), arts. 1(2), **7(2)**
- F40** Art. 14(6)(a) substituted (30.11.2015) by The Proceeds of Crime Act 2002 (External Investigations) (Amendment) Order 2015 (S.I. 2015/1751), arts. 1(2), **7(3)**
- F41** Art. 14(6A) inserted (30.11.2015) by The Proceeds of Crime Act 2002 (External Investigations) (Amendment) Order 2015 (S.I. 2015/1751), arts. 1(2), **7(4)**
- F42** Words in art. 14(8) inserted (12.11.2018) by The Proceeds of Crime Act 2002 (External Investigations and External Orders and Requests) (Amendment) Order 2018 (S.I. 2018/1078), arts. 1(2), **11(3)**
- F43** Words in art. 14(8) omitted (28.6.2021) by virtue of The Proceeds of Crime Act 2002 (External Investigations and External Orders and Requests) (Amendment) Order 2021 (S.I. 2021/638), arts. 1(2), **43**

#### Commencement Information

- I14** Art. 14 in force at 11.11.2013, see **art. 1(1)**

#### Further provisions: general

**15.—(1)** This article applies to search and seizure warrants sought for the purposes of an external investigation.

*Status: Point in time view as at 28/06/2021.*

*Changes to legislation: There are currently no known outstanding effects for the The Proceeds of Crime Act 2002 (External Investigations) Order 2013. (See end of Document for details)*

- (2) An application for a warrant may be made ex parte to a High Court judge in chambers.
- (3) A warrant may be issued subject to conditions.
- (4) A search and seizure warrant does not confer the right to seize privileged material.
- (5) Privileged material is any material which a person would be entitled to refuse to produce on grounds of legal professional privilege in proceedings in the High Court.
- (6) A search and seizure warrant does not confer the right to seize excluded material.
- (7) A warrant continues in force until the end of the period of one month starting with the day on which it is issued.
- (8) A warrant authorises the person it names 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 named person believes relates to any matter relevant to the external investigation, to be produced in a form—
- (a) in which it can be taken away, and
  - (b) in which it is visible and legible.
- (9) A warrant may include provision authorising a person who is exercising powers under it to do other things which—
- (a) are specified in the warrant, and
  - (b) need to be done in order to give effect to it.
- (10) Copies may be taken of any material seized under a warrant.
- (11) Material seized under a warrant may be retained for so long as it is necessary to retain it (as opposed to copies of it) in connection with the external investigation.
- (12) But if the appropriate officer 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,
- it may be retained until the proceedings are concluded.
- (13) Material seized under a warrant may be sent to the overseas authority which made the request for assistance or to the Secretary of State for forwarding to that overseas authority.

#### Commencement Information

**I15** Art. 15 in force at 11.11.2013, see [art. 1\(1\)](#)

#### Disclosure orders

**16.**—(1) A High Court judge may, on an application made to them by an appropriate officer, make a disclosure order if the judge is satisfied that each of the requirements for the making of the order is fulfilled.

- (2) The application for a disclosure order must state that—
- (a) [<sup>F44</sup>a person specified in the application or] property specified in the application is subject to an external investigation,
  - (b) the order is sought for the purposes of the investigation, and
  - (c) the condition in article 3(2) is met in respect of the [<sup>F45</sup>person or] property.

(3) A disclosure order is an order authorising an appropriate officer to give to any person the appropriate officer considers has relevant information notice in writing requiring them to do, with respect to any matter relevant to the external investigation, 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.

(4) Relevant information is information (whether or not contained in a document) which the appropriate officer concerned considers to be relevant to the external investigation.

(5) 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 them.

#### Textual Amendments

- F44** Words in art. 16(2)(a) inserted (30.11.2015) by [The Proceeds of Crime Act 2002 \(External Investigations\) \(Amendment\) Order 2015 \(S.I. 2015/1751\)](#), arts. 1(2), **8(a)**
- F45** Words in art. 16(2)(c) inserted (30.11.2015) by [The Proceeds of Crime Act 2002 \(External Investigations\) \(Amendment\) Order 2015 \(S.I. 2015/1751\)](#), arts. 1(2), **8(b)**

#### Commencement Information

- I16** [Art. 16](#) in force at 11.11.2013, see [art. 1\(1\)](#)

### Requirements for making of disclosure order

17.—(1) These are the requirements for the making of a disclosure order.

[<sup>F46</sup>(2) There must be reasonable grounds for suspecting that—

- (a) the person specified in the application for the order holds property obtained as a result of or in connection with criminal conduct;
- (b) that person has, at any time, held property that was obtained as a result of or in connection with criminal conduct; or
- (c) the property specified in the application for the order is property obtained as a result of or in connection with criminal conduct.]

(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 external investigation.

(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 external investigation if the information is obtained.

#### Textual Amendments

- F46** [Art. 17\(2\)](#) substituted (30.11.2015) by [The Proceeds of Crime Act 2002 \(External Investigations\) \(Amendment\) Order 2015 \(S.I. 2015/1751\)](#), arts. 1(2), **9**

#### Commencement Information

- I17** [Art. 17](#) in force at 11.11.2013, see [art. 1\(1\)](#)

## Offences

**18.**—(1) A person commits an offence if without reasonable excuse they fail to comply with a requirement imposed on them under a disclosure order.

(2) A person guilty of an offence under paragraph (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 them under a disclosure order, they—

- (a) make a statement which they know to be false or misleading in a material particular, or
- (b) recklessly make a statement which is false or misleading in a material particular.

(4) A person guilty of an offence under paragraph (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.

### Commencement Information

**118** Art. 18 in force at 11.11.2013, see [art. 1\(1\)](#)

## Statements

**19.**—(1) A statement made by a person in response to a requirement imposed on them under a disclosure order may not be used in evidence against them in criminal proceedings.

(2) But paragraph (1) does not apply—

- (a) in the case of proceedings under Part 2 or 4 of the Proceeds of Crime Act 2002<sup>(7)</sup>,
- (b) in the case of proceedings under Part 2 or 4 of the Proceeds of Crime Act 2002 (External Requests and Orders) Order 2005<sup>(8)</sup>,
- (c) on a prosecution for an offence under article 18(1) or (3) of this Order,
- (d) on a prosecution for an offence under section 359(1) or (3) of the Proceeds of Crime Act 2002,
- (e) on a prosecution for an offence under section 5 of the Perjury Act 1911<sup>(9)</sup> or Article 10 of the Perjury (Northern Ireland) Order 1979<sup>(10)</sup> (false statements), or
- (f) on a prosecution for some other offence where, in giving evidence, the person makes a statement inconsistent with the statement mentioned in paragraph (1).

(3) A statement may not be used by virtue of paragraph (2)(f) against a person unless—

- (a) evidence relating to it is adduced, or
- (b) a question relating to it is asked,

by them or on their behalf in the proceedings arising out of the prosecution.

<sup>(7)</sup> 2002 c. 29.

<sup>(8)</sup> S.I. 2005/3181.

<sup>(9)</sup> 1911 c. 6.

<sup>(10)</sup> S.I. 1979/1714 (N.I. 19).



**Commencement Information**

**I19** Art. 19 in force at 11.11.2013, see [art. 1\(1\)](#)

**Further provisions**

**20.**—(1) A disclosure order does not confer the right to require a person to answer any privileged question, provide any privileged information or produce any privileged document, except that a lawyer may be required to provide the name and address of their client.

(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 any information which the person would be entitled to refuse to provide on grounds of legal professional privilege in proceedings in the High Court.

(4) Privileged material is any material which the person would be entitled to refuse to produce on grounds of legal professional privilege in proceedings in the High Court.

(5) A disclosure order does not confer the right to require a person to produce excluded material.

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

(7) An appropriate officer may take copies of any documents produced in compliance with a requirement to produce them which is imposed under a disclosure order.

(8) 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 external investigation.

(9) But if an appropriate officer has 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.

(10) Material produced in compliance with a disclosure order may be sent to the overseas authority which made the request for assistance or to the Secretary of State for forwarding to that overseas authority.

**Commencement Information**

**I20** Art. 20 in force at 11.11.2013, see [art. 1\(1\)](#)

**Supplementary**

**21.**—(1) An application for a disclosure order may be made ex parte to a High Court judge in chambers.

(2) An application to discharge or vary a disclosure order may be made to the High Court by—

- (a) the person who applied for the order,
- (b) any person affected by the order.

(3) The High Court—

- (a) may discharge the order,
- (b) may vary the order.

*Status: Point in time view as at 28/06/2021.*

*Changes to legislation: There are currently no known outstanding effects for the The Proceeds of Crime Act 2002 (External Investigations) Order 2013. (See end of Document for details)*

(4) If [<sup>F47</sup>an officer of a description mentioned in paragraph (a), (b) or (c) of the meaning of appropriate officer (see article 2 (interpretation))] applies for a disclosure order, an application to discharge or vary the order [<sup>F48</sup>may be made by a different officer of the same description].

(5) References to a person who applied for a disclosure order must be construed accordingly.

(6) Paragraphs (2) to (5) do not apply to orders made in England and Wales.

#### Textual Amendments

**F47** Words in art. 21(4) substituted (12.11.2018) by [The Proceeds of Crime Act 2002 \(External Investigations and External Orders and Requests\) \(Amendment\) Order 2018 \(S.I. 2018/1078\)](#), arts. 1(2), **11(4)(a)**

**F48** Words in art. 21(4) substituted (12.11.2018) by [The Proceeds of Crime Act 2002 \(External Investigations and External Orders and Requests\) \(Amendment\) Order 2018 \(S.I. 2018/1078\)](#), arts. 1(2), **11(4)(b)**

#### Commencement Information

**I21** [Art. 21](#) in force at 11.11.2013, see [art. 1\(1\)](#)

#### [<sup>F49</sup>Unexplained wealth orders <sup>F50</sup> ...

**21A.**—(1) The High Court may, on an application made by an enforcement authority (see article 2(12) (interpretation)), make an unexplained wealth order in respect of any property if the court is satisfied that each of the requirements for making the order is fulfilled.

(2) An application for the order must—

- (a) specify or describe the property in respect of which the order is sought, and
- (b) specify the person <sup>F51</sup>... whom the enforcement authority thinks holds the property (“the respondent”).

(3) An application for an unexplained wealth order may be made without notice.

(4) 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.

(5) 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.

(6) The order may, in connection with requiring the respondent to provide the statement mentioned in paragraph (4), also require the respondent to produce documents of a kind specified or described in the order.

(7) 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).

(8) For the purposes of this article and article 21B (requirements for making of unexplained wealth order), property is held by a person if that person holds an interest in it (see also article 21G (holding of property: trusts and company arrangements etc.)).

#### Textual Amendments

- F49** Arts. 21A-21G inserted (12.11.2018) by [The Proceeds of Crime Act 2002 \(External Investigations and External Orders and Requests\) \(Amendment\) Order 2018 \(S.I. 2018/1078\)](#), arts. 1(2), 7
- F50** Words in art. 21A heading omitted (28.6.2021) by virtue of [The Proceeds of Crime Act 2002 \(External Investigations and External Orders and Requests\) \(Amendment\) Order 2021 \(S.I. 2021/638\)](#), arts. 1(2), **44(a)**
- F51** Words in art. 21A(2) omitted (28.6.2021) by virtue of [The Proceeds of Crime Act 2002 \(External Investigations and External Orders and Requests\) \(Amendment\) Order 2021 \(S.I. 2021/638\)](#), arts. 1(2), **44(b)**

#### Requirements for making of unexplained wealth order

**21B.**—(1) These are the requirements for the making of an unexplained wealth order in respect of any property.

(2) The High Court 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 that of the sum for the time being specified in section 362B(2)(b) of the Proceeds of Crime Act 2002 (requirements for making of unexplained wealth order).

(3) The High Court 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 High Court 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 <sup>F52</sup>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 paragraph (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 article.

(6) For the purposes of paragraph (3)—

- (a) regard is to be had to any mortgage, charge or other kind of security that it is reasonable to assume was or may have been available to the respondent for the purpose of obtaining the property;
- (b) it is to be assumed that the respondent obtained the property for a price equivalent to its market value;

*Status: Point in time view as at 28/06/2021.*

*Changes to legislation: There are currently no known outstanding effects for the The Proceeds of Crime Act 2002 (External Investigations) Order 2013. (See end of Document for details)*

- (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 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 paragraph (4)(a), “politically exposed person” has the same meaning as for the time being specified in section 362B of the Proceeds of Crime Act 2002.
- (8) For the purposes of this article—
- (a) a person is involved in serious crime [<sup>F53</sup>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 [<sup>F54</sup>sections 2, 2A and 3] of that Act) <sup>F55</sup>...;
- (b) section 1122 of the Corporation Tax Act 2010 (“connected” persons) applies in determining whether a person is connected with another.
- (9) Where the property in respect of which the order is sought comprises more than one item of property, the reference in paragraph (2)(b) to the value of the property is to the total value of those items.

#### Textual Amendments

- F49** Arts. 21A-21G inserted (12.11.2018) by [The Proceeds of Crime Act 2002 \(External Investigations and External Orders and Requests\) \(Amendment\) Order 2018 \(S.I. 2018/1078\)](#), arts. 1(2), 7
- F52** Words in art. 21B(4)(b)(i) substituted (28.6.2021) by [The Proceeds of Crime Act 2002 \(External Investigations and External Orders and Requests\) \(Amendment\) Order 2021 \(S.I. 2021/638\)](#), arts. 1(2), [45\(a\)](#)
- F53** Words in art. 21B(8)(a) substituted (28.6.2021) by [The Proceeds of Crime Act 2002 \(External Investigations and External Orders and Requests\) \(Amendment\) Order 2021 \(S.I. 2021/638\)](#), arts. 1(2), [45\(b\)\(i\)](#)
- F54** Words in art. 21B(8)(a) substituted (28.6.2021) by [The Proceeds of Crime Act 2002 \(External Investigations and External Orders and Requests\) \(Amendment\) Order 2021 \(S.I. 2021/638\)](#), arts. 1(2), [45\(b\)\(ii\)](#)
- F55** Words in art. 21B(8)(a) omitted (28.6.2021) by virtue of [The Proceeds of Crime Act 2002 \(External Investigations and External Orders and Requests\) \(Amendment\) Order 2021 \(S.I. 2021/638\)](#), arts. 1(2), [45\(b\)\(iii\)](#)

#### Non-compliance with an unexplained wealth order

**21C.—**(1) This article 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) For the purposes of paragraph (1) 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.

(3) In the event of a failure by the respondent to comply with the requirements of an unexplained wealth order, the enforcement authority that applied for the order must inform the Secretary of State

of that failure and whether an interim freezing order has effect in relation to the property (see article 21H (unexplained wealth order: application for interim freezing order)).

- (4) The Secretary of State must—
- (a) inform the requesting party of the non-compliance with the unexplained wealth order, and
  - (b) if an interim freezing order has effect in relation to the property, inform the requesting party that the interim freezing order will cease to have effect on the expiry of 28 days beginning with the day after the day with which the response period ends.

- (5) In this article—
- “requesting party” means the overseas authority that requested assistance with the external investigation in question;
- “response period” means the period specified by the court in accordance with article 21A(7) (period specified for complying with the order).

#### Textual Amendments

**F49** Arts. 21A-21G inserted (12.11.2018) by [The Proceeds of Crime Act 2002 \(External Investigations and External Orders and Requests\) \(Amendment\) Order 2018 \(S.I. 2018/1078\)](#), arts. 1(2), 7

### Compliance or purported compliance with an unexplained wealth order

- 21D.**—(1) This article applies if—
- (a) before the end of the response period, 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 was made, and
  - (b) an interim freezing order has effect in relation to the property (see article 21H (unexplained wealth order: application for interim freezing order)).
- (2) In this article “compliance material” means—
- (a) any statement given in compliance or purported compliance with an unexplained wealth order, and
  - (b) any document produced in compliance, or purported compliance, with a requirement included in the order by virtue of article 21A(6) (provision of documents);

and compliance material is “provided” when it is given or produced as required by the order.

(3) The enforcement authority that has been provided with the compliance material must give the Secretary of State a copy of the compliance material, and inform the Secretary of State of the date upon which the compliance material was provided.

- (4) The Secretary of State must—
- (a) inform the requesting party of the compliance, or purported compliance, with the unexplained wealth order,
  - (b) supply the requesting party with a copy of the compliance material, and
  - (c) inform the requesting party that the interim freezing order will cease to have effect on the expiry of 120 days beginning with the day after the day on which the compliance material was provided to the enforcement authority.
- (5) If the compliance material is not all provided at the same time, it is to be regarded as provided when the last of that material is provided.

*Status: Point in time view as at 28/06/2021.*

*Changes to legislation: There are currently no known outstanding effects for the The Proceeds of Crime Act 2002 (External Investigations) Order 2013. (See end of Document for details)*

### Textual Amendments

**F49** Arts. 21A-21G inserted (12.11.2018) by [The Proceeds of Crime Act 2002 \(External Investigations and External Orders and Requests\) \(Amendment\) Order 2018 \(S.I. 2018/1078\)](#), arts. 1(2), 7

### Statements

**21E.**—(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) Paragraph (1) does not apply—

- (a) in the case of proceedings under [<sup>F56</sup>Part 2 or 4] of the Proceeds of Crime Act 2002 (confiscation: England and Wales [<sup>F57</sup>or Northern Ireland]),
- (b) in the case of proceedings under [<sup>F58</sup>Part 2 or 4] of the Proceeds of Crime Act 2002 (External Requests and Orders) Order 2005 (giving effect in England and Wales [<sup>F59</sup>or Northern Ireland] to external requests in connection with criminal investigations or proceedings and to external orders arising from such proceedings),
- (c) on a prosecution for an offence under section 5 of the Perjury Act 1911 [<sup>F60</sup>or Article 10 of the Perjury (Northern Ireland) Order 1979] (false statements), or
- (d) on a prosecution for some other offence where, in giving evidence, the person makes a statement inconsistent with the statement mentioned in paragraph (1).

(3) A statement may not be used by virtue of paragraph (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.

### Textual Amendments

**F49** Arts. 21A-21G inserted (12.11.2018) by [The Proceeds of Crime Act 2002 \(External Investigations and External Orders and Requests\) \(Amendment\) Order 2018 \(S.I. 2018/1078\)](#), arts. 1(2), 7

**F56** Words in art. 21E(2)(a) substituted (28.6.2021) by [The Proceeds of Crime Act 2002 \(External Investigations and External Orders and Requests\) \(Amendment\) Order 2021 \(S.I. 2021/638\)](#), arts. 1(2), [46\(a\)\(i\)](#)

**F57** Words in art. 21E(2)(a) inserted (28.6.2021) by [The Proceeds of Crime Act 2002 \(External Investigations and External Orders and Requests\) \(Amendment\) Order 2021 \(S.I. 2021/638\)](#), arts. 1(2), [46\(a\)\(ii\)](#)

**F58** Words in art. 21E(2)(b) substituted (28.6.2021) by [The Proceeds of Crime Act 2002 \(External Investigations and External Orders and Requests\) \(Amendment\) Order 2021 \(S.I. 2021/638\)](#), arts. 1(2), [46\(a\)\(i\)](#)

**F59** Words in art. 21E(2)(b) inserted (28.6.2021) by [The Proceeds of Crime Act 2002 \(External Investigations and External Orders and Requests\) \(Amendment\) Order 2021 \(S.I. 2021/638\)](#), arts. 1(2), [46\(a\)\(ii\)](#)

**F60** Words in art. 21E(2)(c) inserted (28.6.2021) by [The Proceeds of Crime Act 2002 \(External Investigations and External Orders and Requests\) \(Amendment\) Order 2021 \(S.I. 2021/638\)](#), arts. 1(2), [46\(b\)](#)

### Disclosure of information, copying of documents etc.

**21F.**—(1) An unexplained wealth order has effect in spite of any restriction on the disclosure of information (however imposed).

(2) But paragraphs (1) to (5) of article 20 (further provisions: rights in connection with privileged information, questions and material) apply in relation to requirements imposed by an unexplained wealth order as they apply in relation to requirements imposed under a disclosure order.

(3) The enforcement authority 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 external investigation in relation to the property in respect of which the unexplained wealth order is made.

(5) But if the enforcement authority has 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.

(6) Unless article 21D (compliance or purported compliance with an unexplained wealth order) applies, an enforcement authority which has been provided with compliance material may send the compliance material to the requesting party or to the Secretary of State for forwarding to the requesting party.

#### Textual Amendments

**F49** Arts. 21A-21G inserted (12.11.2018) by [The Proceeds of Crime Act 2002 \(External Investigations and External Orders and Requests\) \(Amendment\) Order 2018 \(S.I. 2018/1078\)](#), arts. 1(2), 7

### Holding of property: trusts and company arrangements etc.

**21G.**—(1) This article applies for the purposes of articles 21A (unexplained wealth orders) and 21B (requirements for making of unexplained wealth order).

(2) The cases in which a person (“P”) is to be taken to “hold” property include 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 paragraph (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.]

*Status: Point in time view as at 28/06/2021.*

*Changes to legislation: There are currently no known outstanding effects for the The Proceeds of Crime Act 2002 (External Investigations) Order 2013. (See end of Document for details)*

#### Textual Amendments

**F49** Arts. 21A-21G inserted (12.11.2018) by [The Proceeds of Crime Act 2002 \(External Investigations and External Orders and Requests\) \(Amendment\) Order 2018 \(S.I. 2018/1078\)](#), arts. 1(2), 7

#### [<sup>F61</sup>Supplementary: Northern Ireland

**21GA.**—(1) An application to the High Court in Northern Ireland to discharge or vary an unexplained wealth order may be made by—

- (a) the enforcement authority, or
  - (b) the respondent.
- (2) The High Court in Northern Ireland—
- (a) may discharge the order;
  - (b) may vary the order.]

#### Textual Amendments

**F61** Art. 21GA inserted (28.6.2021) by [The Proceeds of Crime Act 2002 \(External Investigations and External Orders and Requests\) \(Amendment\) Order 2021 \(S.I. 2021/638\)](#), arts. 1(2), 47

#### [<sup>F62</sup>Unexplained wealth order: application for interim freezing order

**21H.**—(1) This article applies where the High Court 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 external order (within the meaning of section 447(2) of the Proceeds of Crime Act 2002 (interpretation)) 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 persons with an interest in the property, from in any way dealing with the property (subject to any exclusions under article 21J (exclusions)).

- (4) An interim freezing order—
- (a) may be made only on the application of the enforcement authority that applied for the unexplained wealth order to which the interim freezing order relates,
  - (b) may be made only in order to give effect to an external request (within the meaning of section 447(1) of the Proceeds of Crime Act 2002),
  - (c) must be made in the same proceedings as those in which the unexplained wealth order is made, and
  - (d) may be combined in one document with the unexplained wealth order.

(5) If an application for an unexplained wealth order in respect of property is made without notice, an application for an interim freezing order in respect of the property must also be made without notice.



### Textual Amendments

**F62** Arts. 21H-21P inserted (12.11.2018) by [The Proceeds of Crime Act 2002 \(External Investigations and External Orders and Requests\) \(Amendment\) Order 2018 \(S.I. 2018/1078\)](#), arts. 1(2), **8**

### Variation and discharge of interim freezing order

**21I.**—(1) The High Court may at any time vary or discharge an interim freezing order.

(2) The High Court must discharge an interim freezing order, so far as it has effect in relation to property, in each of the following two cases.

(3) The first case is where—

- (a) the applicable 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 period in relation to the property concerned, and
- (b) proceedings on the application (including on any appeal) have been determined or otherwise disposed of.

(5) The “applicable period” means—

- (a) in a case where the respondent complies, or purports to comply, with the requirements imposed by an unexplained wealth order before the end of the response period, the period of 120 days beginning with the day after the day upon which the compliance material was provided to the enforcement authority ends (see article 21D(2) (provision of compliance material)), and
- (b) in any other case, the period of 28 days beginning with the day after the day with which the response period ends.

(6) In calculating a period for the purposes of paragraph (5), no account is to be taken of—

- (a) any Saturday or Sunday,
- (b) Christmas Day,
- (c) Good Friday,
- (d) any day which is a bank holiday under the Banking and Financial Dealings Act 1971 [<sup>F63</sup>in the part of the United Kingdom in which the interim freezing order concerned is made].

(7) Before exercising the power under this article to vary or discharge an interim freezing order, the court must (as well as giving the parties to the proceedings an opportunity to be heard) give an opportunity to any person who may be affected by its decision to be heard.

(8) Paragraph (7) does not apply where the court is acting as required by paragraph (2).

(9) In this article, “relevant application” means an application for—

- (a) a restraint order under article 8 [<sup>F64</sup>or 95] of the Proceeds of Crime Act 2002 (External Requests and Orders) Order 2005 (restraint orders), or
- (b) a prohibition order under Part 4A of that Order (giving effect in England and Wales and Northern Ireland to external requests by means of civil proceedings).

*Status: Point in time view as at 28/06/2021.*

*Changes to legislation: There are currently no known outstanding effects for the The Proceeds of Crime Act 2002 (External Investigations) Order 2013. (See end of Document for details)*

### Textual Amendments

- F62** Arts. 21H-21P inserted (12.11.2018) by [The Proceeds of Crime Act 2002 \(External Investigations and External Orders and Requests\) \(Amendment\) Order 2018 \(S.I. 2018/1078\)](#), arts. 1(2), **8**
- F63** Words in art. 21I(6)(d) substituted (28.6.2021) by [The Proceeds of Crime Act 2002 \(External Investigations and External Orders and Requests\) \(Amendment\) Order 2021 \(S.I. 2021/638\)](#), arts. 1(2), **48(a)**
- F64** Words in art. 21I(9)(a) inserted (28.6.2021) by [The Proceeds of Crime Act 2002 \(External Investigations and External Orders and Requests\) \(Amendment\) Order 2021 \(S.I. 2021/638\)](#), arts. 1(2), **48(b)**

### Exclusions

**21J.**—(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 subject to conditions.
- (5) Where the court exercises the power to make an exclusion for the purposes of enabling a person to meet legal expenses that the person has incurred, or may incur, in respect of proceedings under this Order, it must ensure that the exclusion—
- (a) is limited to reasonable legal expenses that the person has reasonably incurred or reasonably incurs,
  - (b) specifies the total amount that may be released for legal expenses in pursuance of the exclusion, and
  - (c) is made subject to the same conditions as would be the required conditions (see article 198 of the Proceeds of Crime Act 2002 (External Requests and Orders) Order 2005 (legal expenses excluded from freezing: required conditions)) if the order had been made under article 147 of that Order (application for property freezing order).
- (6) The court in deciding whether to make an exclusion for the purposes of enabling a person to meet legal expenses in respect of proceedings under this Order—
- (a) must have regard to the desirability of the person being represented in any proceedings under this Part in which the person is a participant, and
  - (b) must disregard the possibility that legal representation of the person in any such proceedings might, were an exclusion not made [<sup>F65</sup>—
    - (i) be made available under arrangements made for the purposes of Part 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012, or
    - (ii) be funded by the Legal Services Agency Northern Ireland.]

(7) If excluded property is not specified in the order it must be described in the order in general terms.

#### Textual Amendments

- F62** Arts. 21H-21P inserted (12.11.2018) by [The Proceeds of Crime Act 2002 \(External Investigations and External Orders and Requests\) \(Amendment\) Order 2018 \(S.I. 2018/1078\)](#), arts. 1(2), **8**
- F65** Art. 21J(6)(b)(i)(ii) substituted for words (28.6.2021) by [The Proceeds of Crime Act 2002 \(External Investigations and External Orders and Requests\) \(Amendment\) Order 2021 \(S.I. 2021/638\)](#), arts. 1(2), **49**

#### Restrictions on proceedings and remedies

**21K.**—(1) While an interim freezing order has effect—

- (a) the High Court may stay any action, execution or other legal process in respect of the property to which the order applies, and
- (b) no distress may be levied, and no power to use the procedure in Schedule 12 to the Tribunals, Courts and Enforcement Act 2007 (taking control of goods) may be exercised, against the property to which the order applies except with the leave of the High Court and subject to any terms the court may impose.

(2) If a court (whether the High Court 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) stay the proceedings, or
- (b) allow them to continue on any terms it thinks fit.

(3) If an interim freezing order applies to a tenancy of any premises, a right of forfeiture in relation to the premises is exercisable—

- (a) only with the leave of the High Court, and
- (b) subject to any terms that the court may impose.

(4) The reference in paragraph (3) to a “right of forfeiture” in relation to premises is to the right of a landlord or other person to whom rent is payable to exercise a right of forfeiture by peaceable re-entry to the premises in respect of any failure by the tenant to comply with a term or condition of the tenancy.

(5) Before exercising a power conferred by this article, the court must (as well as giving the parties to any proceedings an opportunity to be heard) give an opportunity to any person who may be affected by the court’s decision to be heard.

#### Textual Amendments

- F62** Arts. 21H-21P inserted (12.11.2018) by [The Proceeds of Crime Act 2002 \(External Investigations and External Orders and Requests\) \(Amendment\) Order 2018 \(S.I. 2018/1078\)](#), arts. 1(2), **8**

#### Receivers in connection with interim freezing orders

**21L.**—(1) This article applies where the High Court makes an interim freezing order on an application by an enforcement authority.

(2) The court may, on an application by the enforcement authority, by order appoint a receiver in respect of any property to which the interim freezing order applies.

(3) An application under paragraph (2) may be made at the same time as the application for the interim freezing order or at any time afterwards.

(4) The application may be made without notice if the circumstances of the case are such that notice of the application would give rise to a risk of any external order that might subsequently be obtained being frustrated.

(5) In its application the enforcement authority must nominate a suitably qualified person for appointment as a receiver.

(6) The person nominated may be a member of staff of the enforcement authority.

#### Textual Amendments

**F62** Arts. 21H-21P inserted (12.11.2018) by [The Proceeds of Crime Act 2002 \(External Investigations and External Orders and Requests\) \(Amendment\) Order 2018 \(S.I. 2018/1078\)](#), arts. 1(2), 8

#### Powers of receivers appointed under article 21L

**21M.**—(1) If the High Court appoints a receiver under article 21L (receivers in connection with interim freezing orders) on an application by an enforcement authority, the court may act under this article on the application of the authority.

(2) The court may by order authorise or require the receiver—

- (a) to manage 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) Managing property includes—

- (a) selling or otherwise disposing of assets comprised in the property which are perishable or which ought to be disposed of before their value diminishes;
- (b) where the property comprises assets of a trade or business, carrying on, or arranging for another to carry on, the trade or business;
- (c) incurring capital expenditure in respect of the property.

(4) 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 [<sup>F66</sup>(in England and Wales or, as the case may be, Northern Ireland)] 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.

(5) 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 the person's possession or control to a place [<sup>F67</sup>(in England and Wales or, as the case may be, Northern Ireland)] specified by the receiver or to place them in the custody of the receiver.

(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 article.

(7) Paragraph (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 article 21L, but

(b) at the time of dealing with the property the receiver believed on reasonable grounds that they were entitled to do so by virtue of being appointed under article 21L.

(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 paragraph (8) does not apply to the extent that the loss or damage is caused by the receiver's negligence.

#### **Textual Amendments**

**F62** Arts. 21H-21P inserted (12.11.2018) by [The Proceeds of Crime Act 2002 \(External Investigations and External Orders and Requests\) \(Amendment\) Order 2018 \(S.I. 2018/1078\)](#), arts. 1(2), **8**

**F66** Words in art. 21M(4)(a) substituted (28.6.2021) by [The Proceeds of Crime Act 2002 \(External Investigations and External Orders and Requests\) \(Amendment\) Order 2021 \(S.I. 2021/638\)](#), arts. 1(2), **50**

**F67** Words in art. 21M(5) substituted (28.6.2021) by [The Proceeds of Crime Act 2002 \(External Investigations and External Orders and Requests\) \(Amendment\) Order 2021 \(S.I. 2021/638\)](#), arts. 1(2), **50**

#### **Supervision of article 21L receiver and variations**

**21N.**—(1) Any of the following persons may at any time apply to the High Court for directions as to the exercise of the functions of a receiver appointed under article 21L (receivers in connection with interim freezing orders)—

- (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 paragraph (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) a person who may be interested in the application under paragraph (1).

(3) The court may at any time vary or discharge—

- (a) the appointment of a receiver under article 21L,
- (b) an order under article 21M (powers of receivers appointed under article 21L), or
- (c) directions under this article.

(4) Before exercising a power under paragraph (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 article 21M or (as the case may be) for the directions under this article;
- (c) the parties to the proceedings for the interim freezing order concerned;
- (d) any person who may be affected by the court's decision.

*Status: Point in time view as at 28/06/2021.*

*Changes to legislation: There are currently no known outstanding effects for the The Proceeds of Crime Act 2002 (External Investigations) Order 2013. (See end of Document for details)*

#### Textual Amendments

**F62** Arts. 21H-21P inserted (12.11.2018) by [The Proceeds of Crime Act 2002 \(External Investigations and External Orders and Requests\) \(Amendment\) Order 2018 \(S.I. 2018/1078\)](#), arts. 1(2), **8**

#### Registration

**21O.** Section 362Q of the Proceeds of Crime Act 2002 (registration) applies in relation to interim freezing orders under this Order as it applies to property freezing orders under section 245A of that Act (application for property freezing order).

#### Textual Amendments

**F62** Arts. 21H-21P inserted (12.11.2018) by [The Proceeds of Crime Act 2002 \(External Investigations and External Orders and Requests\) \(Amendment\) Order 2018 \(S.I. 2018/1078\)](#), arts. 1(2), **8**

#### Compensation

**21P.—(1)** Where an interim freezing order in respect of any property is discharged, the person to whom the property belongs may make an application to the High Court for the payment of compensation.

(2) The application must be made within the period of three months beginning with the discharge of the interim freezing order.

(3) The court may award compensation to be paid to the applicant only if satisfied that—

- (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 enforcement authority that applied 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 enforcement authority that applied for the interim freezing order, and
- (b) the amount of the compensation to be paid is the amount that the court thinks reasonable, having regard to the loss suffered and any other relevant circumstance.]

#### Textual Amendments

**F62** Arts. 21H-21P inserted (12.11.2018) by [The Proceeds of Crime Act 2002 \(External Investigations and External Orders and Requests\) \(Amendment\) Order 2018 \(S.I. 2018/1078\)](#), arts. 1(2), **8**

#### Customer information orders

**22.—(1)** A High Court judge may, on an application made to them by an appropriate officer, make a customer information order if the judge is satisfied that each of the requirements for the making of the order is fulfilled.

[<sup>F68</sup>(2) The application for a customer information order must state that—

- (a) a person specified in the application is subject to an external investigation; and
- (b) the condition in article 3(2) is met in respect of the person.]

- (3) The application must also state that—
- (a) the order is sought for the purposes of the external investigation,
  - (b) the order is sought against the financial institution or financial institutions specified in the application.
- (4) 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.
- (5) 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 an appropriate officer, provide any such customer information as it has relating to the person specified in the application.
- (6) A financial institution which is required to provide information under a customer information order must provide the information to an appropriate officer in such manner, and at or by such time, as an appropriate officer requires.
- (7) 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.

#### Textual Amendments

**F68** Art. 22(2) substituted (30.11.2015) by [The Proceeds of Crime Act 2002 \(External Investigations\) \(Amendment\) Order 2015 \(S.I. 2015/1751\)](#), arts. 1(2), **10**

#### Commencement Information

**I22** Art. 22 in force at 11.11.2013, see [art. 1\(1\)](#)

### Meaning of customer information

**23.**—(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 or any safe deposit box at the financial institution (whether solely or jointly with another) and (if so) information as to—

- (a) the matters specified in paragraph (2) if the person is an individual,
  - (b) the matters specified in paragraph (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 paragraph (1)(a) are—
- (a) the account number or numbers or the number of any safe deposit box,
  - (b) the person’s full name,
  - (c) their date of birth,
  - (d) their most recent address and any previous addresses,
  - (e) in the case of an account or accounts, the date or dates on which they began to hold the account or accounts and, if they have ceased to hold the account or any of the accounts, the date or dates on which they did so,
  - (f) in the case of any safe deposit box, the date on which the box was made available to them and if the box has ceased to be available to them the date on which it so ceased,

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*Status: Point in time view as at 28/06/2021.*

*Changes to legislation: There are currently no known outstanding effects for the The Proceeds of Crime Act 2002 (External Investigations) Order 2013. (See end of Document for details)*

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- (g) such evidence of identity as was obtained by the financial institution under or for the purposes of any legislation relating to money laundering,
  - (h) 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 them,
  - (i) the account number or numbers of any other account or accounts held at the financial institution to which they are a signatory and details of the person holding the other account or accounts.
- (3) The matters referred to in paragraph (1)(b) are—
- (a) the account number or numbers or the number of any safe deposit box,
  - (b) the person’s full name,
  - (c) a description of any business which the person carries on,
  - (d) the country or territory in which it is incorporated or otherwise established and any number allocated to it under the Companies Act 2006<sup>(11)</sup> 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 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<sup>(12)</sup> or anything similar under corresponding legislation of any country or territory outside Great Britain,
  - (h) in the case of an account or accounts, 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) in the case of any safe deposit box, the date on which the box was made available to it and if the box has ceased to be available to it the date on which it so ceased,
  - (j) such evidence of identity as was obtained by the financial institution under or for the purposes of any legislation relating to money laundering,
  - (k) 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) Money laundering is an act which—
- (a) constitutes an offence under section 327, 328 or 329 of the Proceeds of Crime Act 2002<sup>(13)</sup> or section 18 of the Terrorism Act 2000<sup>(14)</sup>,
  - (b) constitutes an offence specified in section 415(1A) of the Proceeds of Crime Act 2002, or
  - (c) would constitute an offence specified in paragraph (a) or (b) if done in the United Kingdom.
- (5) A “safe deposit box” includes any procedure under which a financial institution provides a facility to hold items for safe keeping on behalf of another person.

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<sup>(11)</sup> 2006 c. 46.

<sup>(12)</sup> 2000 c. 12.

<sup>(13)</sup> 2002 c. 29.

<sup>(14)</sup> 2000 c. 11.



#### Commencement Information

I23 Art. 23 in force at 11.11.2013, see [art. 1\(1\)](#)

### Requirements for making of customer information order

24.—(1) These are the requirements for the making of a customer information order.

[<sup>F69</sup>(2) There must be reasonable grounds for suspecting that—

- (a) the person specified in the application for the order holds property obtained as a result of or in connection with criminal conduct; or
- (b) that person has, at any time, held property that was obtained as a result of or in connection with criminal conduct.]

(3) 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 external investigation.

(4) 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 external investigation if the information is obtained.

#### Textual Amendments

F69 Art. 24(2) substituted (30.11.2015) by [The Proceeds of Crime Act 2002 \(External Investigations\) \(Amendment\) Order 2015 \(S.I. 2015/1751\)](#), arts. 1(2), 11

#### Commencement Information

I24 Art. 24 in force at 11.11.2013, see [art. 1\(1\)](#)

### Offences

25.—(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 paragraph (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
- (b) recklessly makes a statement which is false or misleading in a material particular.

(4) A financial institution guilty of an offence under paragraph (3) is liable—

- (a) on summary conviction, to a fine not exceeding the statutory maximum, or
- (b) on conviction on indictment, to a fine.

#### Commencement Information

I25 Art. 25 in force at 11.11.2013, see [art. 1\(1\)](#)

*Status: Point in time view as at 28/06/2021.*

*Changes to legislation: There are currently no known outstanding effects for the The Proceeds of Crime Act 2002 (External Investigations) Order 2013. (See end of Document for details)*

## Statements

**26.**—(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 paragraph (1) does not apply—

- (a) in the case of proceedings under Part 2 or 4 of the Proceeds of Crime Act 2002,
- (b) in the case of proceedings under Part 2 or 4 of the Proceeds of Crime Act 2002 (External Requests and Orders) Order 2005(15),
- (c) on a prosecution for an offence under article 25(1) or (3) of this Order,
- (d) on a prosecution for an offence under section 366(1) or (3) of the Proceeds of Crime Act 2002, or
- (e) on a prosecution for some other offence where, in giving evidence, the financial institution makes a statement inconsistent with the statement mentioned in paragraph (1).

(3) A statement may not be used by virtue of paragraph (2)(e) 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.

### Commencement Information

**I26** Art. 26 in force at 11.11.2013, see [art. 1\(1\)](#)

## Disclosure of information

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

### Commencement Information

**I27** Art. 27 in force at 11.11.2013, see [art. 1\(1\)](#)

## Supplementary

**28.**—(1) An application for a customer information order may be made ex parte to a High Court judge in chambers.

(2) An application to discharge or vary a customer information order may be made to the High Court by—

- (a) the person who applied for the order,
- (b) any person affected by the order.

(3) The High Court—

- (a) may discharge the order,
- (b) may vary the order.

(4) If [<sup>F70</sup>an officer of a description mentioned in paragraph (a), (b) or (c) of the meaning of appropriate officer (see article 2 (interpretation))] applies for a customer information order, an application to discharge or vary the order [<sup>F71</sup>may be made by a different officer of the same description].

(5) References to a person who applied for a customer information order must be construed accordingly.

(6) An NCA officer may not make an application for a customer information order or an application to vary such an order unless they are a senior appropriate officer or they are authorised to do so by a senior appropriate officer.

(7) Paragraphs (2) to (5) do not apply to orders made in England and Wales.

#### Textual Amendments

**F70** Words in art. 28(4) substituted (12.11.2018) by [The Proceeds of Crime Act 2002 \(External Investigations and External Orders and Requests\) \(Amendment\) Order 2018 \(S.I. 2018/1078\)](#), arts. 1(2), **11(5)(a)**

**F71** Words in art. 28(4) substituted (12.11.2018) by [The Proceeds of Crime Act 2002 \(External Investigations and External Orders and Requests\) \(Amendment\) Order 2018 \(S.I. 2018/1078\)](#), arts. 1(2), **11(5)(b)**

#### Commencement Information

**I28** [Art. 28](#) in force at 11.11.2013, see [art. 1\(1\)](#)

### Account monitoring orders

**29.**—(1) A High Court judge may, on an application made to them by an appropriate officer, make an account monitoring order if the judge is satisfied that each of the requirements for the making of the order is fulfilled.

[<sup>F72</sup>(2) The application for an account monitoring order must state that—

- (a) a person specified in the application is subject to an external investigation; and
- (b) the condition in article 3(2) is met in respect of the person.]

(3) The application must also state that—

- (a) the order is sought for the purposes of the external investigation,
- (b) the order is sought against the financial institution specified in the application in relation to account information of the description so specified.

(4) 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).

(5) 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.

(6) 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 an appropriate officer in the manner, and at or by the time or times, stated in the order.

*Status: Point in time view as at 28/06/2021.*

*Changes to legislation: There are currently no known outstanding effects for the The Proceeds of Crime Act 2002 (External Investigations) Order 2013. (See end of Document for details)*

(7) 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

**F72** Art. 29(2) substituted (30.11.2015) by [The Proceeds of Crime Act 2002 \(External Investigations\) \(Amendment\) Order 2015 \(S.I. 2015/1751\)](#), arts. 1(2), **12**

#### Commencement Information

**I29** Art. 29 in force at 11.11.2013, see [art. 1\(1\)](#)

### Requirements for making of account monitoring order

**30.**—(1) These are the requirements for the making of an account monitoring order.

[<sup>F73</sup>(2) There must be reasonable grounds for suspecting that the person specified in the application for the order holds property obtained as a result of or in connection with criminal conduct.]

(3) 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 external investigation.

(4) 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 external investigation if the information is obtained.

#### Textual Amendments

**F73** Art. 30(2) substituted (30.11.2015) by [The Proceeds of Crime Act 2002 \(External Investigations\) \(Amendment\) Order 2015 \(S.I. 2015/1751\)](#), arts. 1(2), **13**

#### Commencement Information

**I30** Art. 30 in force at 11.11.2013, see [art. 1\(1\)](#)

### Statements

**31.**—(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 paragraph (1) does not apply—

- (a) in the case of proceedings under Part 2 or 4 of the Proceeds of Crime Act 2002(**16**),
- (b) in the case of proceedings under Part 2 or 4 of the Proceeds of Crime Act 2002 (External Requests and Orders) Order 2005(**17**),
- (c) in the case of proceedings for contempt of court, or
- (d) on a prosecution for an offence where, in giving evidence, the financial institution makes a statement inconsistent with the statement mentioned in paragraph (1).

(3) A statement may not be used by virtue of paragraph (2)(d) against a financial institution unless—

(16) 2002 c. 29.

(17) S.I. 2005/3181.

(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.

**Commencement Information**

I31 Art. 31 in force at 11.11.2013, see art. 1(1)

**Applications**

32. An application for an account monitoring order may be made ex parte to a High Court judge in chambers.

**Commencement Information**

I32 Art. 32 in force at 11.11.2013, see art. 1(1)

**Disclosure of information**

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

**Commencement Information**

I33 Art. 33 in force at 11.11.2013, see art. 1(1)

**Supplementary**

34.—(1) An application to discharge or vary an account monitoring order may be made to the High Court by—

- (a) the person who applied for the order,
- (b) any person affected by the order.

(2) The High Court—

- (a) may discharge the order,
- (b) may vary the order.

(3) If [<sup>F74</sup>an officer of a description mentioned in paragraph (a), (b) or (c) of the meaning of appropriate officer (see article 2 (interpretation))] applies for an account monitoring order, an application to discharge or vary the order [<sup>F75</sup>may be made by a different officer of the same description].

(4) References to a person who applied for an account monitoring order must be construed accordingly.

(5) Account monitoring orders have effect as if they were orders of the High Court.

(6) This article does not apply to orders made in England and Wales.

*Status: Point in time view as at 28/06/2021.*

*Changes to legislation: There are currently no known outstanding effects for the The Proceeds of Crime Act 2002 (External Investigations) Order 2013. (See end of Document for details)*

#### Textual Amendments

- F74** Words in art. 34(3) substituted (12.11.2018) by [The Proceeds of Crime Act 2002 \(External Investigations and External Orders and Requests\) \(Amendment\) Order 2018 \(S.I. 2018/1078\)](#), arts. 1(2), **11(6)(a)**
- F75** Words in art. 34(3) substituted (12.11.2018) by [The Proceeds of Crime Act 2002 \(External Investigations and External Orders and Requests\) \(Amendment\) Order 2018 \(S.I. 2018/1078\)](#), arts. 1(2), **11(6)(b)**

#### Commencement Information

- I34** [Art. 34](#) in force at 11.11.2013, see [art. 1\(1\)](#)

#### [<sup>F76</sup>Codes of Practice

**35.** A code of practice in operation under section 377 or 377A of the Proceeds of Crime Act 2002 applies to functions exercisable under this Part as it applies to functions exercisable under Chapter 2 of Part 8 of that Act in relation to civil recovery investigations.]

#### Textual Amendments

- F76** [Art. 35](#) substituted (30.11.2015) by [The Proceeds of Crime Act 2002 \(External Investigations\) \(Amendment\) Order 2015 \(S.I. 2015/1751\)](#), arts. 1(2), **14**

## PART 2

### Interpretation

**36.**—(1) References to a “constable” include references to an officer of Revenue and Customs and to an immigration officer.

(2) “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 their 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.

(3) “Financial institution” means a person carrying on a business in the regulated sector.

(4) But a person who ceases to carry on a business in the regulated sector (whether by virtue of paragraph 5 of Schedule 9 to the Proceeds of Crime Act 2002(**18**) or otherwise) is to continue to be treated as financial institution for the purposes of any requirement under—

- (a) a customer information order, or
- (b) an account monitoring order,

to provide information which relates to a time when the person was a financial institution.

(5) References in this Part to a business in the regulated sector must be construed in accordance with Schedule 9 to the Proceeds of Crime Act 2002.

(18) 2002 c. 29.

- (6) References to notice in writing include references to notice given by electronic means.
- (7) References to “premises” include any place and, in particular, include—
- (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<sup>(19)</sup> and any tent or moveable structure.
- (8) “Proper person” means the Scottish Ministers or a person named by them.
- [<sup>F77</sup>(9) “Settlement” (in relation to unexplained wealth orders and interim freezing orders) has the meaning given by section 620 of the Income Tax (Trading and Other Income) Act 2005.
- (10) For the purposes of this Part—
- “external request” has the same meaning as in article 46I (unexplained wealth order: application for interim freezing order);
- “interim freezing order” has the same meaning as in article 46I;
- “requesting party” has the same meaning as in article 46C(5) (non-compliance with an unexplained wealth order);
- “respondent” has the same meaning as in article 46A(2)(b) (unexplained wealth orders);
- “response period” has the same meaning as in article 46C(5);
- “unexplained wealth order” has the same meaning as in article 46A (unexplained wealth orders: Scotland).]

#### Textual Amendments

**F77** Art. 36(9)(10) inserted (12.11.2018) by [The Proceeds of Crime Act 2002 \(External Investigations and External Orders and Requests\) \(Amendment\) Order 2018 \(S.I. 2018/1078\)](#), arts. 1(2), **15**

#### Commencement Information

**I35** [Art. 36](#) in force at 11.11.2013, see [art. 1\(1\)](#)

## Scope of Part 2

**37.**—(1) This Part has effect for the purpose of enabling the Scottish Ministers to assist in an external investigation by obtaining orders and warrants from the court.

(2) The powers conferred by this Part are exercisable in relation to [<sup>F78</sup>a person or property subject to an external investigation] only if the Scottish Ministers believe paragraph (3) applies in relation to—

- (a) the country or territory of the overseas authority carrying out the external investigation, and
  - (b) Scotland.
- (3) This paragraph applies if—
- (a) a criminal investigation in connection with the [<sup>F79</sup>person or] property has not begun,
  - (b) a criminal investigation in connection with the [<sup>F80</sup>person or] property has begun but it is unlikely criminal proceedings will be brought, or
  - (c) criminal proceedings brought in connection with the [<sup>F81</sup>person or] property have been concluded without an order having been made in relation to the [<sup>F81</sup>person or] property.

*Status: Point in time view as at 28/06/2021.*

*Changes to legislation: There are currently no known outstanding effects for the The Proceeds of Crime Act 2002 (External Investigations) Order 2013. (See end of Document for details)*

- (4) Criminal proceedings against a person are taken to be concluded if—
- (a) a plea of guilty is recorded against the person,
  - (b) the person is acquitted,
  - (c) the person is pardoned,
  - (d) the proceedings against the person are deserted simpliciter,
  - (e) the person is convicted and does not appeal against the conviction before the expiry of the time period allowed for such an appeal,
  - (f) the proceedings are deserted pro loco et tempore for any reason and no further trial diet is appointed,
  - (g) the indictment or complaint falls or is for any other reason not brought to trial, the diet is not continued, adjourned or postponed and no further proceedings are in contemplation.
- <sup>F82</sup>(5) .....
- (6) In this article, references to the court are to—
- (a) the Court of Session in relation to applications for disclosure orders [<sup>F83</sup>, unexplained wealth orders and interim freezing orders,]
  - (b) the sheriff in relation to applications for production orders, search warrants, customer information orders and account monitoring orders.

#### Textual Amendments

- F78** Words in [art. 37\(2\)](#) substituted (30.11.2015) by [The Proceeds of Crime Act 2002 \(External Investigations\) \(Amendment\) Order 2015 \(S.I. 2015/1751\)](#), arts. 1(2), **15(2)**
- F79** Words in [art. 37\(3\)\(a\)](#) inserted (30.11.2015) by [The Proceeds of Crime Act 2002 \(External Investigations\) \(Amendment\) Order 2015 \(S.I. 2015/1751\)](#), arts. 1(2), **15(3)(a)**
- F80** Words in [art. 37\(3\)\(b\)](#) inserted (30.11.2015) by [The Proceeds of Crime Act 2002 \(External Investigations\) \(Amendment\) Order 2015 \(S.I. 2015/1751\)](#), arts. 1(2), **15(3)(b)**
- F81** Words in [art. 37\(3\)\(c\)](#) inserted (30.11.2015) by [The Proceeds of Crime Act 2002 \(External Investigations\) \(Amendment\) Order 2015 \(S.I. 2015/1751\)](#), arts. 1(2), **15(3)(c)**
- F82** [Art. 37\(5\)](#) omitted (12.11.2018) by virtue of [The Proceeds of Crime Act 2002 \(External Investigations and External Orders and Requests\) \(Amendment\) Order 2018 \(S.I. 2018/1078\)](#), arts. 1(2), **12(a)**
- F83** Words in [art. 37\(6\)\(a\)](#) inserted (12.11.2018) by [The Proceeds of Crime Act 2002 \(External Investigations and External Orders and Requests\) \(Amendment\) Order 2018 \(S.I. 2018/1078\)](#), arts. 1(2), **12(b)**

#### Commencement Information

- I36** [Art. 37](#) in force at 11.11.2013, see [art. 1\(1\)](#)

#### Action on receipt of request in relation to an external investigation

**38.**—(1) The Secretary of State may refer to the Scottish Ministers a request for assistance in relation to an external investigation.

(2) The Scottish Ministers may on receipt of the request for assistance act under this Part.

#### Commencement Information

- I37** [Art. 38](#) in force at 11.11.2013, see [art. 1\(1\)](#)



## Offences of prejudicing external investigation

**39.**—(1) This article applies if a person knows or suspects that a proper person is acting (or proposing to act) under this Part in connection with an external investigation.

(2) A person commits an offence if—

- (a) they make a disclosure which is likely to prejudice the external investigation, or
- (b) they falsify, conceal, destroy or otherwise dispose of, or cause or permit the falsification, concealment, destruction or disposal of, documents which are relevant to the external investigation.

(3) A person does not commit an offence under paragraph (2)(a) if—

- (a) they do not know or suspect that the disclosure is likely to prejudice the external investigation,
- (b) the disclosure is made pursuant to this Part,
- (c) the disclosure is made pursuant to the Proceeds of Crime Act 2002 (External Requests and Orders) Order 2005(20),
- (d) the disclosure is made in the exercise of a function under the Proceeds of Crime Act 2002 or any other enactment relating to criminal conduct or benefit from criminal conduct or in compliance with a requirement imposed under or by virtue of the Proceeds of Crime Act 2002,
- (e) the disclosure is of a matter within section 333A(2) or (3)(a) (money laundering: tipping off) of the Proceeds of Crime Act 2002 and the information on which the disclosure is based came to the person in the course of a business in the regulated sector, or
- (f) they are a professional legal adviser and the disclosure falls within paragraph (4).

(4) A disclosure falls within this paragraph if it is a disclosure—

- (a) to (or to a representative of) a client of the professional legal adviser in connection with the giving by the adviser of legal advice to the client, or
- (b) to any person in connection with legal proceedings or contemplated legal proceedings.

(5) But a disclosure does not fall within paragraph (4) if it is made with the intention of furthering a criminal purpose.

(6) A person does not commit an offence under paragraph (2)(b) if—

- (a) they do not know or suspect that the documents are relevant to the external investigation, or
- (b) they do not intend to conceal any facts disclosed by the documents from a proper person acting in connection with the external investigation.

(7) A person guilty of an offence under paragraph (2) is liable—

- (a) on summary conviction, to imprisonment for a term not exceeding twelve 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 five years or to a fine or to both.

### Commencement Information

**I38** Art. 39 in force at 11.11.2013, see [art. 1\(1\)](#)

## Production Orders

**40.**—(1) The sheriff may, on an application made to the sheriff by the Scottish Ministers, make a production order if the sheriff is satisfied that each of the requirements for the making of the order is fulfilled.

(2) In making a production order the sheriff shall act in exercise of the sheriff's civil jurisdiction.

[<sup>F84</sup>(3) The application for a production order must state that—

- (a) a person specified in the application is subject to an external investigation and the condition in article 37(2) is met in respect of the person; or
- (b) property specified in the application is subject to an external investigation and the condition in article 37(2) is met in respect of the property.]

(4) The application must also state that—

- (a) the order is sought for the purposes of the external investigation,
- (b) the order is sought in relation to material, or material of a description, specified in the application,
- (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 the material to produce it to a proper person for the proper person 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

**F84** Art. 40(3) substituted (30.11.2015) by [The Proceeds of Crime Act 2002 \(External Investigations\) \(Amendment\) Order 2015 \(S.I. 2015/1751\)](#), arts. 1(2), **16**

### Commencement Information

**I39** Art. 40 in force at 11.11.2013, see [art. 1\(1\)](#)

## Requirements for making of production order

**41.**—(1) These are the requirements for the making of a production order.

[<sup>F85</sup>(2) There must be reasonable grounds for suspecting that—

- (a) the person the application for the order specifies as being subject to the external investigation holds property obtained as a result of or in connection with criminal conduct;
- (b) that person has, at any time, held property that was obtained as a result of or in connection with criminal conduct; or
- (c) the property the application for the order specifies as being subject to the external investigation is property obtained as a result of or in connection with criminal conduct.]

(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 external investigation.

(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 external 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

**F85** Art. 41(2) substituted (30.11.2015) by [The Proceeds of Crime Act 2002 \(External Investigations\) \(Amendment\) Order 2015 \(S.I. 2015/1751\)](#), arts. 1(2), 17

#### Commencement Information

**I40** Art. 41 in force at 11.11.2013, see [art. 1\(1\)](#)

### Order to grant entry

**42.**—(1) This article applies if a sheriff makes a production order requiring a person to give a proper person access to material on premises.

(2) The sheriff may, on any application made to the sheriff by the Scottish Ministers 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 Scottish Ministers to be entitled to grant entry to the premises to allow a proper person to enter the premises to obtain access to the material.

#### Commencement Information

**I41** Art. 42 in force at 11.11.2013, see [art. 1\(1\)](#)

### Further provisions

**43.**—(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 external investigation.

(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,

it may be retained until the proceedings are concluded.

(6) Material produced in compliance with a production order must be sent to the Secretary of State for forwarding to the overseas authority that made the request for assistance.

*Status: Point in time view as at 28/06/2021.*

*Changes to legislation: There are currently no known outstanding effects for the The Proceeds of Crime Act 2002 (External Investigations) Order 2013. (See end of Document for details)*

#### Commencement Information

**I42** Art. 43 in force at 11.11.2013, see [art. 1\(1\)](#)

#### Computer information

**44.**—(1) This article applies if any 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 a proper person to take away, it has effect as an order to produce the material in a form in which it can be taken away by the proper person 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 the proper person access to the material in a form in which it is visible and legible.

#### Commencement Information

**I43** Art. 44 in force at 11.11.2013, see [art. 1\(1\)](#)

#### Government departments

**45.**—(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 article 40(5)) the person on whom it is served must report the reasons for the failure to the sheriff exercising a civil jurisdiction.

(5) An “authorised government department” includes a government department which is an authorised department for the purposes of the Crown Proceedings Act 1947(21) and the Scottish Administration.

#### Commencement Information

**I44** Art. 45 in force at 11.11.2013, see [art. 1\(1\)](#)

#### Supplementary

**46.**—(1) An application for a production order or an order to grant entry may be made ex parte to a sheriff in chambers.

(21) 1947 c. 44.

(2) An application to discharge or vary a production order or an order to grant entry may be made to the sheriff by—

- (a) the Scottish Ministers,
- (b) any person affected by the order.

(3) The sheriff may—

- (a) discharge the order,
- (b) vary the order.

#### Commencement Information

I45 Art. 46 in force at 11.11.2013, see art. 1(1)

### <sup>F86</sup>Unexplained wealth orders

**46A.**—(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 making the order is fulfilled.

(2) An application for the order must—

- (a) specify or describe the property in respect of which the order is sought, and
- (b) specify the person in Scotland whom the Scottish Ministers think holds the property (“the respondent”).

(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 paragraph (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).

(7) For the purposes of this article and article 46B (requirements for making of unexplained wealth order), property is held by a person if that person holds an interest in it (see also article 46G (holding of property: trust and company arrangements etc.)).

*Status: Point in time view as at 28/06/2021.*

*Changes to legislation: There are currently no known outstanding effects for the The Proceeds of Crime Act 2002 (External Investigations) Order 2013. (See end of Document for details)*

### Textual Amendments

**F86** Arts. 46A-46H inserted (12.11.2018) by [The Proceeds of Crime Act 2002 \(External Investigations and External Orders and Requests\) \(Amendment\) Order 2018 \(S.I. 2018/1078\)](#), arts. 1(2), **13**

### Requirements for making of unexplained wealth order

**46B.**—(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 that of the sum for the time being specified in section 396B(2)(b) of the Proceeds of Crime Act 2002 (requirements for making of unexplained wealth order).
- (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 [<sup>F87</sup>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 paragraph (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 article.
- (6) For the purposes of paragraph (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 purpose 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 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 paragraph (4)(a), “politically exposed person” has the same meaning as for the time being specified in section 396B of the Proceeds of Crime Act 2002.
- (8) For the purposes of this article—

- (a) a person is involved in serious crime [<sup>F88</sup>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 [<sup>F89</sup>sections 2, 2A and 3] of that Act) <sup>F90</sup> ...;
- (b) section 1122 of the Corporation Tax Act 2010 (“connected” persons) applies in determining whether a person is connected with another.
- (9) Where the property in respect of which the order is sought comprises more than one item of property, the reference in paragraph (2)(b) to the value of the property is to the total value of those items.

#### Textual Amendments

- F86** Arts. 46A-46H inserted (12.11.2018) by [The Proceeds of Crime Act 2002 \(External Investigations and External Orders and Requests\) \(Amendment\) Order 2018 \(S.I. 2018/1078\)](#), arts. 1(2), **13**
- F87** Words in art. 46B(4)(b)(i) substituted (28.6.2021) by virtue of [The Proceeds of Crime Act 2002 \(External Investigations and External Orders and Requests\) \(Amendment\) Order 2021 \(S.I. 2021/638\)](#), arts. 1(2), **51(a)**
- F88** Words in art. 46B(8)(a) substituted (28.6.2021) by virtue of [The Proceeds of Crime Act 2002 \(External Investigations and External Orders and Requests\) \(Amendment\) Order 2021 \(S.I. 2021/638\)](#), arts. 1(2), **51(b)(i)**
- F89** Words in art. 46B(8)(a) substituted (28.6.2021) by [The Proceeds of Crime Act 2002 \(External Investigations and External Orders and Requests\) \(Amendment\) Order 2021 \(S.I. 2021/638\)](#), arts. 1(2), **51(b)(ii)**
- F90** Words in art. 46B(8)(a) omitted (28.6.2021) by virtue of [The Proceeds of Crime Act 2002 \(External Investigations and External Orders and Requests\) \(Amendment\) Order 2021 \(S.I. 2021/638\)](#), arts. 1(2), **51(b)(iii)**

#### Non-compliance with an unexplained wealth order

**46C.**—(1) This article 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) For the purposes of paragraph (1) 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.

(3) In the event of a failure by the respondent to comply with the requirements of an unexplained wealth order, the Scottish Ministers must inform the Secretary of State of that failure and whether an interim freezing order has effect in relation to the property (see article 46I (unexplained wealth order: application for interim freezing order)).

(4) The Secretary of State must—

- (a) inform the requesting party of the non-compliance with the unexplained wealth order, and
- (b) if an interim freezing order has effect in relation to the property, inform the requesting party that the interim freezing order will cease to have effect on the expiry of 28 days beginning with the day after the day with which the response period ends.

(5) In this article—

“requesting party” means the overseas authority that requested assistance with the external investigation in question;

“response period” means the period specified by the court in accordance with article 46A(6) (period specified for complying with the order).

*Status: Point in time view as at 28/06/2021.*

*Changes to legislation: There are currently no known outstanding effects for the The Proceeds of Crime Act 2002 (External Investigations) Order 2013. (See end of Document for details)*

### Textual Amendments

**F86** Arts. 46A-46H inserted (12.11.2018) by [The Proceeds of Crime Act 2002 \(External Investigations and External Orders and Requests\) \(Amendment\) Order 2018 \(S.I. 2018/1078\)](#), arts. 1(2), **13**

### Compliance or purported compliance with an unexplained wealth order

**46D.**—(1) This article applies if—

- (a) before the end of the response period, 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 was made; and
- (b) an interim freezing order has effect in relation to the property (see article 46I (unexplained wealth order: application for interim freezing order)).

(2) In this article “compliance material” means—

- (a) any statement given in compliance or purported compliance with an unexplained wealth order, and
- (b) any document produced in compliance, or purported compliance, with a requirement included in the order by virtue of article 46A(5) (provision of documents);

and compliance material is “provided” when it is given or produced as required by the order.

(3) The Scottish Ministers must give the Secretary of State a copy of the compliance material which has been provided, and inform the Secretary of State of the date upon which the compliance material was provided.

(4) The Secretary of State must—

- (a) inform the requesting party of the compliance, or purported compliance, with the unexplained wealth order,
- (b) supply the requesting party with a copy of the compliance material, and
- (c) inform the requesting party that the interim freezing order will cease to have effect on the expiry of 120 days beginning with the day after the day on which the compliance material was provided to the person to whom the order required it to be given.

(5) If the compliance material is not all provided at the same time, it is to be regarded as provided when the last of that material is provided.

### Textual Amendments

**F86** Arts. 46A-46H inserted (12.11.2018) by [The Proceeds of Crime Act 2002 \(External Investigations and External Orders and Requests\) \(Amendment\) Order 2018 \(S.I. 2018/1078\)](#), arts. 1(2), **13**

### Statements

**46E.**—(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) Paragraph (1) does not apply—

- (a) in the case of proceedings under Part 3 of the Proceeds of Crime Act 2002 (confiscation: Scotland),
- (b) in the case of proceedings under Part 3 of Proceeds of Crime Act 2002 (External Requests and Orders) Order 2005 (giving effect in Scotland to external requests in connection



with criminal investigations or proceedings and to external orders arising from such proceedings),

- (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 paragraph (1).
- (3) A statement may not be used by virtue of paragraph (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.

#### Textual Amendments

**F86** Arts. 46A-46H inserted (12.11.2018) by [The Proceeds of Crime Act 2002 \(External Investigations and External Orders and Requests\) \(Amendment\) Order 2018 \(S.I. 2018/1078\)](#), arts. 1(2), **13**

#### Disclosure of information, copying of documents etc.

**46F.**—(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 the 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 such a requirement.

(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 external investigation 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.

(6) Unless article 46D (compliance or purported compliance with an unexplained wealth order) applies, an enforcement authority which has been provided with compliance material may send the compliance material to the requesting party or to the Secretary of State for forwarding to the requesting party.

#### Textual Amendments

**F86** Arts. 46A-46H inserted (12.11.2018) by [The Proceeds of Crime Act 2002 \(External Investigations and External Orders and Requests\) \(Amendment\) Order 2018 \(S.I. 2018/1078\)](#), arts. 1(2), **13**

#### Holding of property: trusts and company arrangements etc.

**46G.**—(1) This article applies for the purposes of articles 46A (unexplained wealth orders) and 46B (requirements for making of unexplained wealth order).

- (2) The cases in which a person (“P”) is to be taken to “hold” property include where—

*Status: Point in time view as at 28/06/2021.*

*Changes to legislation: There are currently no known outstanding effects for the The Proceeds of Crime Act 2002 (External Investigations) Order 2013. (See end of Document for details)*

- (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 paragraph (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.

#### Textual Amendments

**F86** Arts. 46A-46H inserted (12.11.2018) by [The Proceeds of Crime Act 2002 \(External Investigations and External Orders and Requests\) \(Amendment\) Order 2018 \(S.I. 2018/1078\)](#), arts. 1(2), **13**

#### Supplementary

- 46H.**—(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, or
  - (b) vary the order.]

#### Textual Amendments

**F86** Arts. 46A-46H inserted (12.11.2018) by [The Proceeds of Crime Act 2002 \(External Investigations and External Orders and Requests\) \(Amendment\) Order 2018 \(S.I. 2018/1078\)](#), arts. 1(2), **13**

#### [<sup>F91</sup>Unexplained wealth order: application for interim freezing order

- 46I.**—(1) This article 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 external order (within the meaning of section 447(2) of the Proceeds of Crime Act 2002 (interpretation)) 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 persons with an interest in the property, from in any way dealing with the property (subject to any exclusions under article 46K (exclusions)).

(4) An interim freezing order—

- (a) may be made only on the application of the Scottish Ministers;
- (b) may be made only in order to give effect to an external request (within the meaning of section 447(1) of the Proceeds of Crime Act 2002);
- (c) must be made in the same proceedings as those in which the unexplained wealth order is made, and
- (d) may be combined in one document with the unexplained wealth order.

(5) If an application for an unexplained wealth order in respect of property is made without notice, an application for an interim freezing order in respect of the property must also be made without notice.

#### Textual Amendments

**F91** Arts. 46I-46R inserted (12.11.2018) by [The Proceeds of Crime Act 2002 \(External Investigations and External Orders and Requests\) \(Amendment\) Order 2018 \(S.I. 2018/1078\)](#), arts. 1(2), 14

#### Variation and discharge of interim freezing order

**46J.**—(1) The Court of Session may at any time vary or discharge an interim freezing order.

(2) The Court of Session must discharge an interim freezing order, so far as it has effect in relation to property, in each of the following two cases.

(3) The first case is where—

- (a) the applicable 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 period in relation to the property concerned, and
- (b) proceedings on the application (including on any appeal) have been determined or otherwise disposed of.

(5) The “applicable period” means—

- (a) in a case where the respondent complies, or purports to comply, with the requirements imposed by an unexplained wealth order before the end of the response period, the period of 120 days beginning with the day after the day upon which the compliance material was provided to the enforcement authority (see article 46D(2) (provision of compliance material), and
- (b) in any other case, the period of 28 days beginning with the day after the day with which the response period ends.

(6) In calculating the period of 48 hours for the purposes of paragraph (5), no account is to be taken of—

- (a) any Saturday or Sunday,
- (b) Christmas Day,

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- (c) Good Friday,
- (d) any day which is a bank holiday under the Banking and Financial Dealings Act 1971 in Scotland.

(7) Before exercising the power under this article to vary or discharge an interim freezing order, the court must (as well as giving the parties to the proceedings an opportunity to be heard) give an opportunity to any person who may be affected by its decision to be heard.

(8) Paragraph (7) does not apply where the court is acting as required by paragraph (2).

(9) In this article, “relevant application” means an application for—

- (a) a restraint order under article 58 of the Proceeds of Crime Act 2002 (External Requests and Orders) Order 2005 (restraint orders), or
- (b) a prohibition order under Part 4B of that Order (giving effect in Scotland to external requests by means of civil proceedings).

#### Textual Amendments

**F91** Arts. 46I-46R inserted (12.11.2018) by [The Proceeds of Crime Act 2002 \(External Investigations and External Orders and Requests\) \(Amendment\) Order 2018 \(S.I. 2018/1078\)](#), arts. 1(2), **14**

#### Exclusions

**46K.**—(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 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 Part.

(6) If excluded property is not specified in the order it must be described in the order in general terms.

#### Textual Amendments

**F91** Arts. 46I-46R inserted (12.11.2018) by [The Proceeds of Crime Act 2002 \(External Investigations and External Orders and Requests\) \(Amendment\) Order 2018 \(S.I. 2018/1078\)](#), arts. 1(2), **14**

#### Restrictions on proceedings and remedies

**46L.**—(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 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 article, the court must (as well as giving the parties to any proceedings an opportunity to be heard) give an opportunity to any person who may be affected by the court's decision to be heard.

#### Textual Amendments

**F91** Arts. 46I-46R inserted (12.11.2018) by [The Proceeds of Crime Act 2002 \(External Investigations and External Orders and Requests\) \(Amendment\) Order 2018 \(S.I. 2018/1078\)](#), arts. 1(2), **14**

#### Arrestment of property affected by interim freezing order

**46M.**—(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 paragraph (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.

(4) A warrant under paragraph (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 article 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 paragraph (5), the Scottish Ministers must apply to the Court of Session for an order recalling or, as the case may be, restricting the arrestment.

#### Textual Amendments

**F91** Arts. 46I-46R inserted (12.11.2018) by [The Proceeds of Crime Act 2002 \(External Investigations and External Orders and Requests\) \(Amendment\) Order 2018 \(S.I. 2018/1078\)](#), arts. 1(2), **14**

#### Inhibition of property affected by interim freezing order

**46N.**—(1) On the application of the Scottish Ministers, the Court of Session may, in relation to the property mentioned in paragraph (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

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*Changes to legislation: There are currently no known outstanding effects for the The Proceeds of Crime Act 2002 (External Investigations) Order 2013. (See end of Document for details)*

(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 paragraph (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 paragraph (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.

#### Textual Amendments

**F91** Arts. 46I-46R inserted (12.11.2018) by [The Proceeds of Crime Act 2002 \(External Investigations and External Orders and Requests\) \(Amendment\) Order 2018 \(S.I. 2018/1078\)](#), arts. 1(2), **14**

#### Receivers in connection with interim freezing orders

**46O.**—(1) This article 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 paragraph (2) may be made at the same time as the application for the interim freezing order or at any time afterwards.

(4) The application may be made without notice if the circumstances of the case are such that notice of the application would give rise to a risk of any external order that might subsequently be obtained being frustrated.

(5) In its 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.

#### Textual Amendments

**F91** Arts. 46I-46R inserted (12.11.2018) by [The Proceeds of Crime Act 2002 \(External Investigations and External Orders and Requests\) \(Amendment\) Order 2018 \(S.I. 2018/1078\)](#), arts. 1(2), **14**

#### Powers of receivers appointed under article 46O

**46P.**—(1) If the Court of Session appoints a receiver under article 46O (receivers in connection with interim freezing orders), the court may act under this article on the application of the Scottish Ministers.

(2) The court may by order authorise or require the receiver—

- (a) to manage 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) Managing property includes—
- (a) selling or otherwise disposing of assets comprised in the property which are perishable or which ought to be disposed of before their value diminishes;
  - (b) where the property comprises assets of a trade or business, carrying on, or arranging for another to carry on, the trade or business;
  - (c) incurring capital expenditure in respect of the property.
- (4) 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.
- (5) 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 the person's possession or control to a place in Scotland specified by the receiver or to place them in the custody of the receiver.
- (6) In paragraph (5) "document" means anything in which information of any description is recorded.
- (7) 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 article.
- (8) Paragraph (9) applies in a case where—
- (a) the receiver deals with property that is not property in respect of which the receiver was appointed under article 46O, but
  - (b) at the time of dealing with the property the receiver believed on reasonable grounds that they were entitled to do so by virtue of being appointed under article 46O.
- (9) The receiver is not liable to any person in respect of any loss or damage resulting from the receiver's dealing with the property.
- (10) But paragraph (9) does not apply to the extent that the loss or damage is caused by the receiver's negligence.

#### Textual Amendments

**F91** Arts. 46I-46R inserted (12.11.2018) by [The Proceeds of Crime Act 2002 \(External Investigations and External Orders and Requests\) \(Amendment\) Order 2018 \(S.I. 2018/1078\)](#), arts. 1(2), **14**

#### Supervision of article 46O receiver and variations

**46Q.**—(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 article 46O (receivers in connection with interim freezing orders)—

- (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;

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*Changes to legislation: There are currently no known outstanding effects for the The Proceeds of Crime Act 2002 (External Investigations) Order 2013. (See end of Document for details)*

- (d) a person who may be affected by an action proposed to be taken by the receiver.
- (2) Before it gives directions under paragraph (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) a person who may be interested in the application under paragraph (1).
- (3) The court may at any time vary or discharge—
- (a) the appointment of a receiver under article 46O,
  - (b) an order under article 46P (powers of receivers appointed under article 46O), or
  - (c) directions under this article.
- (4) Before exercising a power under paragraph (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 article 46O or (as the case may be) for the directions under this article;
  - (c) the parties to the proceedings for the interim freezing order concerned;
  - (d) any person who may be affected by the court's decision.

#### Textual Amendments

**F91** Arts. 46I-46R inserted (12.11.2018) by [The Proceeds of Crime Act 2002 \(External Investigations and External Orders and Requests\) \(Amendment\) Order 2018 \(S.I. 2018/1078\)](#), arts. 1(2), 14

#### Compensation

**46R.**—(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 award compensation to be paid to the applicant only if satisfied that—
- (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 the compensation to be paid is the amount that the court thinks reasonable, having regard to the loss suffered and any other relevant circumstance.]



### Textual Amendments

**F91** Arts. 46I-46R inserted (12.11.2018) by [The Proceeds of Crime Act 2002 \(External Investigations and External Orders and Requests\) \(Amendment\) Order 2018 \(S.I. 2018/1078\)](#), arts. 1(2), **14**

### Search warrants

**47.**—(1) The sheriff may, on an application made to the sheriff by the Scottish Ministers, issue a search warrant if the sheriff is satisfied—

- (a) that [<sup>F92</sup>a person specified in the application or] property specified in the application is subject to an external investigation,
  - (b) the condition in article 37(2) is met in respect of the [<sup>F93</sup>person or] property, and
  - (c) either of the requirements in paragraph (6) is fulfilled
- (2) In issuing a search warrant the sheriff shall act in exercise of the sheriff’s civil jurisdiction.
- (3) The application must <sup>F94</sup>... state that the warrant is sought—
- (a) for the purposes of the external investigation,
  - (b) in relation to the premises specified in the application,
  - (c) in relation to material specified in the application, or that there are reasonable grounds for believing that there is material falling within article 48(6) on the premises.
- (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 which is likely to be of substantial value (whether or not by itself) to the external investigation.
- (5) A proper person may, if necessary, use reasonable force in executing a search warrant.
- (6) 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 article 48 is satisfied in relation to the warrant.
- (7) An application for a search warrant may be made ex parte to a sheriff in chambers.

### Textual Amendments

**F92** Words in art. 47(1)(a) inserted (30.11.2015) by [The Proceeds of Crime Act 2002 \(External Investigations\) \(Amendment\) Order 2015 \(S.I. 2015/1751\)](#), arts. 1(2), **18(2)**

**F93** Words in art. 47(1)(b) inserted (30.11.2015) by [The Proceeds of Crime Act 2002 \(External Investigations\) \(Amendment\) Order 2015 \(S.I. 2015/1751\)](#), arts. 1(2), **18(3)**

**F94** Word in art. 47(3) omitted (30.11.2015) by virtue of [The Proceeds of Crime Act 2002 \(External Investigations\) \(Amendment\) Order 2015 \(S.I. 2015/1751\)](#), arts. 1(2), **18(4)**

### Commencement Information

**I46** Art. 47 in force at 11.11.2013, see [art. 1\(1\)](#)

**Requirements where production order not available**

- 48.**—(1) This article is satisfied in relation to a search warrant if—
- (a) paragraph (2) applies, and
  - (b) either the first or the second set of conditions is complied with.
- [<sup>F95</sup>(2) This paragraph applies if there are reasonable grounds for suspecting that—
- (a) the person specified in the application for the warrant holds property obtained as a result of or in connection with criminal conduct;
  - (b) that person has, at any time, held property that was obtained as a result of or in connection with criminal conduct; or
  - (c) the property specified in the application for the warrant is property obtained as a result of or in connection with criminal conduct.]
- (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 external investigation,
  - (b) it is in the public interest for the material to be obtained, having regard to the benefit likely to accrue to the external 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 paragraph (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 material or to grant entry to the premises,
  - (c) that the external 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 paragraph (6),
  - (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 external investigation if the material is obtained, and
  - (c) any one or more of the requirements in paragraph (7) is met.
- (6) Material falls within this paragraph if it cannot be identified at the time of the application but it—
- [<sup>F96</sup>(a) relates to the person or property specified in the application or to any of the questions listed in paragraph (6A); and]
- (b) is likely to be of substantial value (whether or not by itself) to the external investigation.
- [<sup>F97</sup>(6A) 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 was obtained as a result of or in connection with criminal conduct; or
    - (iii) the nature, extent or whereabouts of the property; and

- (b) where property is specified in the application, any question as to—
  - (i) whether the property was obtained as a result of or in connection with criminal conduct;
  - (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 was obtained as a result of or in connection with criminal conduct; or
  - (v) the nature, extent or whereabouts of the specified property or the other property.]
- (7) 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 external investigation might be seriously prejudiced unless a proper person arriving at the premises is able to secure immediate entry to them.

#### Textual Amendments

- F95** Art. 48(2) substituted (30.11.2015) by [The Proceeds of Crime Act 2002 \(External Investigations\) \(Amendment\) Order 2015 \(S.I. 2015/1751\)](#), arts. 1(2), **19(2)**
- F96** Art. 48(6)(a) substituted (30.11.2015) by [The Proceeds of Crime Act 2002 \(External Investigations\) \(Amendment\) Order 2015 \(S.I. 2015/1751\)](#), arts. 1(2), **19(3)**
- F97** Art. 48(6A) inserted (30.11.2015) by [The Proceeds of Crime Act 2002 \(External Investigations\) \(Amendment\) Order 2015 \(S.I. 2015/1751\)](#), arts. 1(2), **19(4)**

#### Commencement Information

- I47** Art. 48 in force at 11.11.2013, see [art. 1\(1\)](#)

#### Further provisions: general

**49.**—(1) This article applies to search warrants sought for the purposes of an external investigation.

- (2) A search warrant does not confer the right to seize any items subject to legal privilege.
- (3) A warrant may be issued subject to conditions.
- (4) A warrant continues in force until the end of the period of one month starting with the day on which it is issued.
- (5) 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 a proper person believes relates to any matter relevant to the external investigation, to be produced in a form—
  - (a) in which it can be taken away, and
  - (b) in which it is visible and legible.
- (6) A warrant may include provision authorising the person executing it to do other things which—
  - (a) are specified in the warrant, and
  - (b) need to be done in order to give effect to it.

*Status: Point in time view as at 28/06/2021.*

*Changes to legislation: There are currently no known outstanding effects for the The Proceeds of Crime Act 2002 (External Investigations) Order 2013. (See end of Document for details)*

- (7) Copies may be taken of any material seized under a warrant.
- (8) Material seized under a warrant may be retained for so long as it is necessary to retain it (as opposed to copies of it) in connection with the external investigation.
- (9) 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.
- (10) Material seized under a warrant must be sent to the Secretary of State for forwarding to the overseas authority that made the request for assistance.

#### Commencement Information

**I48** Art. 49 in force at 11.11.2013, see [art. 1\(1\)](#)

#### Disclosure orders

- 50.**—(1) The Court of Session, on an application made to it by the Scottish Ministers, may make a disclosure order if it is satisfied that each of the requirements for the making of the order is fulfilled.
- (2) The application for a disclosure order must state that—
- (a) [<sup>F98</sup>a person specified in the application or] property specified in the application is subject to an external investigation,
  - (b) the order is sought for the purposes of the investigation, and
  - (c) the condition in article 37(2) is met in respect of the [<sup>F99</sup>person or] property.
- (3) A disclosure order is an order authorising the Scottish Ministers to give to any person the Scottish Ministers consider has relevant information notice in writing requiring them to do, with respect to any matter relevant to the external investigation, 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.
- (4) Relevant information is information (whether or not contained in a document) which the Scottish Ministers consider to be relevant to the external investigation.
- (5) 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 them.

#### Textual Amendments

**F98** Words in [art. 50\(2\)\(a\)](#) inserted (30.11.2015) by [The Proceeds of Crime Act 2002 \(External Investigations\) \(Amendment\) Order 2015 \(S.I. 2015/1751\)](#), arts. 1(2), **20(a)**

**F99** Words in [art. 50\(2\)\(c\)](#) inserted (30.11.2015) by [The Proceeds of Crime Act 2002 \(External Investigations\) \(Amendment\) Order 2015 \(S.I. 2015/1751\)](#), arts. 1(2), **20(b)**

#### Commencement Information

**I49** Art. 50 in force at 11.11.2013, see [art. 1\(1\)](#)

## Requirements for making of disclosure order

51.—(1) These are the requirements for the making of a disclosure order.

[<sup>F100</sup>(2) There must be reasonable grounds for suspecting that—

- (a) the person specified in the application for the order holds property obtained as a result of or in connection with criminal conduct;
- (b) that person has, at any time, held property that was obtained as a result of or in connection with criminal conduct; or
- (c) the property specified in the application for the order is property obtained as a result of or in connection with criminal conduct.]

(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 external investigation.

(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 external investigation if the information is obtained.

### Textual Amendments

**F100** Art. 51(2) substituted (30.11.2015) by [The Proceeds of Crime Act 2002 \(External Investigations\) \(Amendment\) Order 2015 \(S.I. 2015/1751\)](#), arts. 1(2), **21**

### Commencement Information

**I50** [Art. 51](#) in force at 11.11.2013, see [art. 1\(1\)](#)

## Offences

52.—(1) A person commits an offence if without reasonable excuse they fail to comply with a requirement imposed on them under a disclosure order.

(2) A person guilty of an offence under paragraph (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 them under a disclosure order, they—

- (a) make a statement which they know to be false or misleading in a material particular, or
- (b) recklessly make a statement which is false or misleading in a material particular.

(4) A person guilty of an offence under paragraph (3) is liable—

- (a) on summary conviction, to imprisonment for a term not exceeding twelve 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.

### Commencement Information

**I51** [Art. 52](#) in force at 11.11.2013, see [art. 1\(1\)](#)

*Status: Point in time view as at 28/06/2021.*

*Changes to legislation: There are currently no known outstanding effects for the The Proceeds of Crime Act 2002 (External Investigations) Order 2013. (See end of Document for details)*

## Statements

**53.**—(1) A statement made by a person in response to a requirement imposed on them under a disclosure order may not be used in evidence against them in criminal proceedings.

(2) But paragraph (1) does not apply—

- (a) in the case of proceedings under Part 3 of the Proceeds of Crime Act 2002<sup>(22)</sup>,
- (b) in the case of proceedings under Part 3 of the Proceeds of Crime Act 2002 (External Requests and Orders) Order 2005<sup>(23)</sup>,
- (c) on a prosecution for an offence under article 52(1) or (3) of this Order,
- (d) on a prosecution for an offence under section 393(1) or (3) of the Proceeds of Crime Act 2002,
- (e) on a prosecution for perjury, or
- (f) on a prosecution for some other offence where, in giving evidence, the person makes a statement inconsistent with the statement mentioned in paragraph (1).

(3) A statement may not be used by virtue of paragraph (2)(f) against a person unless—

- (a) evidence relating to it is adduced, or
- (b) a question relating to it is asked,

by them or on their behalf in the proceedings arising out of the prosecution.

### Commencement Information

**I52** [Art. 53](#) in force at 11.11.2013, see [art. 1\(1\)](#)

## Further provisions

**54.**—(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 they 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 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 external investigation.

(5) But if 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.

(6) Material produced in compliance with a disclosure order must be sent to the Secretary of State for forwarding to the overseas authority that made the request for assistance.

<sup>(22)</sup> 2002 c. 29.

<sup>(23)</sup> S.I. 2005/3181.

#### Commencement Information

I53 Art. 54 in force at 11.11.2013, see art. 1(1)

#### Supplementary

55.—(1) An application for a disclosure order may be made ex parte to a judge of the Court of Session in chambers.

(2) An application to discharge or vary a disclosure order may be made to the Court of Session by—

- (a) the Scottish Ministers,
  - (b) any person affected by the order.
- (3) The court may—
- (a) discharge the order,
  - (b) vary the order.

#### Commencement Information

I54 Art. 55 in force at 11.11.2013, see art. 1(1)

#### Customer information orders

56.—(1) The sheriff may, on an application made to the sheriff by the Scottish Ministers, make a customer information order if the sheriff is satisfied that each of the requirements for the making of the order is fulfilled.

(2) In making a customer information order the sheriff shall act in the sheriff's civil jurisdiction.

[<sup>F101</sup>(3) The application for a customer information order must state that—

- (a) a person specified in the application is subject to an external investigation; and
  - (b) the condition in article 37(2) is met in respect of the person.]
- (4) The application must also state that the order is sought—
- (a) for the purposes of the external investigation,
  - (b) 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 Scottish Ministers, 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.

*Status: Point in time view as at 28/06/2021.*

*Changes to legislation: There are currently no known outstanding effects for the The Proceeds of Crime Act 2002 (External Investigations) Order 2013. (See end of Document for details)*

(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.

#### Textual Amendments

**F101** Art. 56(3) substituted (30.11.2015) by [The Proceeds of Crime Act 2002 \(External Investigations\) \(Amendment\) Order 2015 \(S.I. 2015/1751\)](#), arts. 1(2), **22**

#### Commencement Information

**I55** Art. 56 in force at 11.11.2013, see [art. 1\(1\)](#)

### Meaning of customer information

**57.**—(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 [<sup>F102</sup>or any safe deposit box] at the financial institution (whether solely or jointly with another) and (if so) information as to—

- (a) the matters specified in paragraph (2) if the person is an individual,
- (b) the matters specified in paragraph (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 paragraph (1)(a) are—

- (a) the account number or numbers [<sup>F103</sup>or the number of any safe deposit box],
- (b) the person’s full name,
- (c) their date of birth,
- (d) their most recent address and any previous addresses,
- (e) [<sup>F104</sup>in the case of an account or accounts,] the date or dates on which they began to hold the account or accounts and, if they have ceased to hold the account or any of the accounts, the date or dates on which they did so,

[<sup>F105</sup>(ea) in the case of any safe deposit box, the date on which the box was made available to them and if the box has ceased to be available to them the date on which it so ceased,]

- (f) such evidence of 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 them,
- (h) the account number or numbers of any other account or accounts held at the financial institution to which they are a signatory and details of the person holding the other account or accounts.

(3) The matters referred to in paragraph (1)(b) are—

- (a) the account number or numbers [<sup>F106</sup>or the number of any safe deposit box],
- (b) the person’s full name,
- (c) a description of any business which the person carries on,



- (d) the country or territory in which it is incorporated or otherwise established and any number allocated to it under the Companies Act 2006(24) 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 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(25) or anything similar under corresponding legislation of any country or territory outside Great Britain,
- (h) [<sup>F107</sup>in the case of an account or accounts,] 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,
- [<sup>F108</sup>(ha) in the case of any safe deposit box, the date on which the box was made available to it and if the box has ceased to be available to it the date on which it so ceased,]
  - (i) such evidence of 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) Money laundering is an act which—
  - (a) constitutes an offence under section 327, 328 or 329 of the Proceeds of Crime Act 2002(26) or section 18 of the Terrorism Act 2000(27),
  - (b) constitutes an offence specified in section 415(1A) of the Proceeds of Crime Act 2002, or
  - (c) would constitute an offence specified in paragraph (a) or (b) if done in the United Kingdom.
- [<sup>F109</sup>(5) A “safe deposit box” includes any procedure under which a financial institution provides a facility to hold items for safe keeping on behalf of another person.]

#### Textual Amendments

- F102** Words in art. 57(1) inserted (31.12.2020) by European Union (Future Relationship) Act 2020 (c. 29), s. 40(7), **Sch. 3 para. 4(2)** (with Sch. 3 para. 4(6)); S.I. 2020/1662, reg. 2(dd)
- F103** Words in art. 57(2)(a) inserted (31.12.2020) by European Union (Future Relationship) Act 2020 (c. 29), s. 40(7), **Sch. 3 para. 4(3)(a)** (with Sch. 3 para. 4(6)); S.I. 2020/1662, reg. 2(dd)
- F104** Words in art. 57(2)(e) inserted (31.12.2020) by European Union (Future Relationship) Act 2020 (c. 29), s. 40(7), **Sch. 3 para. 4(3)(b)** (with Sch. 3 para. 4(6)); S.I. 2020/1662, reg. 2(dd)
- F105** Art. 57(2)(ea) inserted (31.12.2020) by European Union (Future Relationship) Act 2020 (c. 29), s. 40(7), **Sch. 3 para. 4(3)(c)** (with Sch. 3 para. 4(6)); S.I. 2020/1662, reg. 2(dd)
- F106** Words in art. 57(3)(a) inserted (31.12.2020) by European Union (Future Relationship) Act 2020 (c. 29), s. 40(7), **Sch. 3 para. 4(4)(a)** (with Sch. 3 para. 4(6)); S.I. 2020/1662, reg. 2(dd)
- F107** Words in art. 57(3)(h) inserted (31.12.2020) by European Union (Future Relationship) Act 2020 (c. 29), s. 40(7), **Sch. 3 para. 4(4)(b)** (with Sch. 3 para. 4(6)); S.I. 2020/1662, reg. 2(dd)
- F108** Art. 57(3)(ha) inserted (31.12.2020) by European Union (Future Relationship) Act 2020 (c. 29), s. 40(7), **Sch. 3 para. 4(4)(c)** (with Sch. 3 para. 4(6)); S.I. 2020/1662, reg. 2(dd)

(24) 2006 c. 46.  
(25) 2000 c. 12.  
(26) 2002 c. 29.  
(27) 2000 c. 11.

*Status: Point in time view as at 28/06/2021.*

*Changes to legislation: There are currently no known outstanding effects for the The Proceeds of Crime Act 2002 (External Investigations) Order 2013. (See end of Document for details)*

**F109** Art. 57(5) inserted (31.12.2020) by European Union (Future Relationship) Act 2020 (c. 29), s. 40(7), Sch. 3 para. 4(5) (with Sch. 3 para. 4(6)); S.I. 2020/1662, reg. 2(dd)

#### Commencement Information

**I56** Art. 57 in force at 11.11.2013, see [art. 1\(1\)](#)

### Requirements for making of customer information order

**58.**—(1) These are the requirements for the making of a customer information order.

[<sup>F110</sup>(2) There must be reasonable grounds for suspecting that—

- (a) the person specified in the application for the order holds property obtained as a result of or in connection with criminal conduct; or
- (b) that person has, at any time, held property that was obtained as a result of or in connection with criminal conduct.]

(3) 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 external investigation.

(4) 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 external investigation if the information is obtained.

#### Textual Amendments

**F110** Art. 58(2) substituted (30.11.2015) by The Proceeds of Crime Act 2002 (External Investigations) (Amendment) Order 2015 (S.I. 2015/1751), arts. 1(2), 23

#### Commencement Information

**I57** Art. 58 in force at 11.11.2013, see [art. 1\(1\)](#)

### Offences

**59.**—(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 paragraph (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
- (b) recklessly makes a statement which is false or misleading in a material particular.

(4) A financial institution guilty of an offence under paragraph (3) is liable—

- (a) on summary conviction, to a fine not exceeding the statutory maximum, or
- (b) on conviction on indictment, to a fine.

#### Commencement Information

**I58** Art. 59 in force at 11.11.2013, see [art. 1\(1\)](#)

## Statements

**60.**—(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 paragraph (1) does not apply—

- (a) in the case of proceedings under Part 3 of the Proceeds of Crime Act 2002,
- (b) in the case of proceedings under Part 3 of the Proceeds of Crime Act 2002 (External Requests and Orders) Order 2005(28),
- (c) on a prosecution for an offence under article 59(1) or (3) of this Order,
- (d) on a prosecution for an offence under section 400(1) or (3) of the Proceeds of Crime Act 2002, or
- (e) on a prosecution for an offence where, in giving evidence, the financial institution makes a statement inconsistent with the statement mentioned in paragraph (1).

(3) A statement may not be used by virtue of paragraph (2)(e) 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.

### Commencement Information

**I59** Art. 60 in force at 11.11.2013, see [art. 1\(1\)](#)

## Further Provisions

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

### Commencement Information

**I60** Art. 61 in force at 11.11.2013, see [art. 1\(1\)](#)

## Supplementary

**62.**—(1) An application for a customer information order may be made ex parte to a sheriff in chambers.

(2) An application to discharge or vary a customer information order may be made to the sheriff by—

- (a) the Scottish Ministers,
- (b) any person affected by the order.

(3) The sheriff may—

- (a) discharge the order,
- (b) vary the order.

*Status: Point in time view as at 28/06/2021.*

*Changes to legislation: There are currently no known outstanding effects for the The Proceeds of Crime Act 2002 (External Investigations) Order 2013. (See end of Document for details)*

### Commencement Information

**I61** Art. 62 in force at 11.11.2013, see [art. 1\(1\)](#)

### Account monitoring orders

**63.**—(1) The sheriff may, on an application made to the sheriff by the Scottish Ministers, make an account monitoring order if the sheriff is satisfied that each of the requirements for the making of the order is fulfilled.

(2) In making an account monitoring order the sheriff shall act in exercise of the sheriff’s civil jurisdiction.

[<sup>F111</sup>(3) The application for an account monitoring order must state that—

- (a) a person specified in the application is subject to an external investigation; and
- (b) the condition in article 37(2) is met in respect of the person.]

(4) The application must also state that the order is sought—

- (a) for the purposes of the external investigation,
- (b) 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

**F111** Art. 63(3) substituted (30.11.2015) by [The Proceeds of Crime Act 2002 \(External Investigations\) \(Amendment\) Order 2015 \(S.I. 2015/1751\)](#), arts. 1(2), **24**

### Commencement Information

**I62** Art. 63 in force at 11.11.2013, see [art. 1\(1\)](#)

### Requirements for making an account monitoring order

**64.**—(1) These are the requirements for the making of an account monitoring order.

[<sup>F112</sup>(2) There must be reasonable grounds for suspecting that the person specified in the application for the order holds property obtained as a result of or in connection with criminal conduct.]

(3) 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 external investigation.

(4) 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 external investigation if the information is obtained.

#### Textual Amendments

**F112** Art. 64(2) substituted (30.11.2015) by The Proceeds of Crime Act 2002 (External Investigations) (Amendment) Order 2015 (S.I. 2015/1751), arts. 1(2), **25**

#### Commencement Information

**I63** Art. 64 in force at 11.11.2013, see **art. 1(1)**

### Statements

**65.**—(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 paragraph (1) does not apply—

- (a) in the case of proceedings under Part 3 of the Proceeds of Crime Act 2002,
- (b) in the case of proceedings under Part 3 of the Proceeds of Crime Act 2002 (External Requests and Orders) Order 2005(**29**),
- (c) in the case of proceedings for contempt of court, or
- (d) on prosecution for an offence where, in giving evidence, the financial institution makes a statement inconsistent with the statement mentioned in paragraph (1).

(3) A statement may not be used by virtue of paragraph (2)(d) 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.

#### Commencement Information

**I64** Art. 65 in force at 11.11.2013, see **art. 1(1)**

### Further provisions

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

*Status: Point in time view as at 28/06/2021.*

*Changes to legislation: There are currently no known outstanding effects for the The Proceeds of Crime Act 2002 (External Investigations) Order 2013. (See end of Document for details)*

#### Commencement Information

**I65** Art. 66 in force at 11.11.2013, see [art. 1\(1\)](#)

#### Supplementary

**67.**—(1) An application for an account monitoring order may be made ex parte to a sheriff in chambers.

(2) An application to discharge or vary an account monitoring order may be made to the sheriff by—

- (a) the Scottish Ministers,
  - (b) any person affected by the order.
- (3) The sheriff may—
- (a) discharge the order,
  - (b) vary the order.

#### Commencement Information

**I66** Art. 67 in force at 11.11.2013, see [art. 1\(1\)](#)

#### Jurisdiction of sheriff

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

(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 is executed within the sheriffdom of the sheriff who granted it.

(3) This article is without prejudice to any existing rule of law.

#### Commencement Information

**I67** Art. 68 in force at 11.11.2013, see [art. 1\(1\)](#)

#### [<sup>F113</sup> Code of Practice

**69.** A code of practice in operation under section 410 of the Proceeds of Crime Act 2002 applies to functions exercisable under this Part as it applies to functions exercisable under Chapter 3 of Part 8 of that Act in relation to civil recovery investigations.]

#### Textual Amendments

**F113** Art. 69 substituted (30.11.2015) by [The Proceeds of Crime Act 2002 \(External Investigations\) \(Amendment\) Order 2015 \(S.I. 2015/1751\)](#), arts. 1(2), **26**

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

**70.**—(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 paragraph (2), on behalf of Scottish Ministers.

(2) The specified functions are the functions conferred on the Scottish Ministers by—

- (a) article 40(1) (production orders),
- (b) article 42(2) (entry orders),
- (c) article 46(2) (supplementary to production and entry orders),
- (d) article 47(1) (search warrants),
- (e) article 50(1) (disclosure orders),
- (f) article 55(2) (supplementary to disclosure orders),
- (g) article 56(1) (customer information orders),
- (h) article 62(2) (supplementary to customer information orders),
- (i) article 63(1) (account monitoring orders),
- (j) article 67(2) (supplementary to account monitoring orders).

### **Commencement Information**

**I68** Art. 70 in force at 11.11.2013, see [art. 1\(1\)](#)

*Richard Tilbrook*  
Clerk of the Privy Council

**Status:** Point in time view as at 28/06/2021.

**Changes to legislation:** There are currently no known outstanding effects for the The Proceeds of Crime Act 2002 (External Investigations) Order 2013. (See end of Document for details)

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## EXPLANATORY NOTE

*(This note is not part of the Order)*

This Order makes provision to assist an external investigation, within the meaning of section 447(3) of the Proceeds of Crime Act 2002 (c. 29) (“the 2002 Act”), by obtaining orders and warrants from the court. The provisions correspond (subject to specified modifications) to the civil recovery investigation provisions in Part 8 of the 2002 Act. Overseas requests to investigate that are criminal in nature will continue to be dealt with through the provisions in the Crime (International Co-operation) Act 2003 (c. 32). This Order extends to England and Wales, Scotland and Northern Ireland.

Articles 3 and 4 provide that the Secretary of State may refer a request in relation to an external investigation to the Director General of NCA or a relevant Director to provide assistance. The external investigation will concern property only where a criminal investigation in connection with the property has not begun, or a criminal investigation in connection with the property has begun but it is unlikely criminal proceedings will be brought, or criminal proceedings brought in connection with the property have been concluded without an order having been made in relation to the property.

Article 5 provides for offences of prejudicing an external investigation. This broadly corresponds to section 342 of the 2002 Act. The article makes it an offence to prejudice an external investigation by making a disclosure about it or by tampering with evidence relevant to the external investigation.

Articles 6 and 7 provide for production orders. These broadly correspond to sections 345 and 346 of the 2002 Act. An application for a production order may be made by an appropriate officer; article 2(1) provides the meaning for an appropriate officer.

Article 8 provides for an order to grant entry. This broadly corresponds to section 347 of the 2002 Act. This power might be used, for example, to enable an appropriate officer to be granted entry to a building in circumstances where a production order had been made in respect of material in a particular office in that building.

Article 11 extends the scope of a production order to cover material held by an authorised government department. This broadly corresponds to section 350 of the 2002 Act.

Article 12 provides that an application for a production order or an order to grant entry may be made without notice to the other party. This broadly corresponds to section 351 of the 2002 Act.

Article 13 provides for search and seizure warrants. This broadly corresponds to section 352 of the 2002 Act. As in articles 6 and 7 an application for a warrant may be made by an appropriate officer. A warrant may be issued if a production order has been made and not complied with and there are reasonable grounds for believing that the material specified in the warrant is on the premises, or the requirements of article 14 are met.

Article 14 refers to two sets of conditions for issuing a warrant in the absence of a production order. This broadly corresponds to section 353 of the 2002 Act. The first set of conditions might be satisfied, for example, where the person who owns the material is abroad and therefore it is not possible to communicate with that person. In such circumstances, it is clear that a production order in respect of that person would have no effect. The second set of conditions might be satisfied where it is impossible to describe the material for the purposes of a production order and access will not be gained without a warrant.

Article 15 sets out provisions regarding how and when a warrant issued by a High Court judge may be exercised. This broadly corresponds to sections 354 and 356 of the 2002 Act. A High Court judge may make the warrant subject to such conditions as the judge sees fit.



Article 16 provides for disclosure orders. This broadly corresponds to section 357 of the 2002 Act. Unlike the other orders covered by this Order, which have to be applied for separately on each occasion, once a disclosure order has been made there is a continuing power of investigation. A person may require that evidence of the authority to exercise disclosure powers is provided. Where this happens, it is envisaged that a copy of the disclosure order will be given to the person.

Article 17 provides for the requirements for the making of a disclosure order. This broadly corresponds to section 358 of the 2002 Act. Owing to the necessarily invasive nature of the disclosure order, it is not anticipated that disclosure orders will be sought unless other powers, such as production orders, have already been sought or would demonstrably not suffice to enable the required information to be obtained.

Article 18 provides for offences in relation to disclosure orders. This broadly corresponds to section 359 of the 2002 Act. As the disclosure order obliges a person to comply with certain requirements, sanctions to compel such compliance are required. There is a maximum penalty of six months imprisonment and/or a level 5 fine for non-compliance and two years imprisonment and/or an unlimited fine for knowingly or recklessly making a false or misleading statement.

Article 19 provides for statements in response to a disclosure order. This broadly corresponds to section 360 of the 2002 Act. The article prevents a statement obtained under compulsion from a person from being used to incriminate them in this jurisdiction (subject to exceptions).

Articles 20 and 21 set out further provisions regarding disclosure orders. These broadly correspond to sections 361 and 362 of the 2002 Act.

Article 22 provides for customer information orders. This broadly corresponds to section 363 of the 2002 Act. A customer information order requires all (or a targeted sample of) banks and other financial institutions to provide details of any accounts held by a person who appears to hold property that is subject to an external investigation. Article 28(6) requires in certain circumstances the prior authorisation of a senior appropriate officer before an appropriate officer can make an initial or variation application for a customer information order. An appropriate officer who is also a senior appropriate officer can apply for the order and variations themselves without requiring further and separate authorisation. As with disclosure orders, a person may require the person serving a notice given under the order to demonstrate that they have the authority they claim. Again, it is envisaged that a copy of the original customer information order will be provided.

Articles 23 and 24 set out the definition of “customer information” for individuals and for companies and partnerships and the requirements for the making of such an order. These broadly correspond to sections 364 and 365 of the 2002 Act.

Article 25 provides for offences in relation to customer information orders. This broadly corresponds to section 366 of the 2002 Act. As with the disclosure order, there are two offences connected with customer information orders. As the sanctions are directed at non-complaint institutions rather than an individual they are solely financial. The maximum penalties are a level 5 fine for non-compliance and an unlimited fine for knowingly or recklessly making a false or misleading statement.

Article 26 provides for statements in response to a customer information order. This broadly corresponds to section 367 of the 2002 Act. Like the disclosure order, a customer information order requires an institution to divulge information. This article sets out the standard conditions on the use of such information to prevent information obtained under compulsion from being used in this jurisdiction against the financial institution in criminal proceedings against it (subject to certain exceptions).

Articles 27 and 28 set out further provisions in relation to customer information orders. These broadly correspond to sections 368 and 369 of the 2002 Act.

Article 29 provides for account monitoring orders. This broadly corresponds to section 370 of the 2002 Act. An account monitoring order requires a financial institution to provide specified information in relation to an account (for example, details of all transactions passing through the

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account) during a specified period up to a maximum of 90 days. The information would normally be provided in the form of a bank statement.

Article 30 sets out the requirements for the making of an account monitoring order. This broadly corresponds to section 371 of the 2002 Act. It is anticipated that it will need to be shown that an account monitoring order lasting over a period of time (rather than a one-off production order) is necessary.

Article 31 provides for statements in response to an account monitoring order. This broadly corresponds to section 372 of the 2002 Act. As with the disclosure order and customer information order, an account monitoring order compels an institution to divulge information. Similar to the provisions for disclosure orders and customer information orders, this article sets out the standard conditions on the use of such information to prevent self-incriminatory information being used as evidence in criminal proceedings in this jurisdiction against the financial institution (subject to certain exceptions).

Articles 32 to 34 set out further provisions relating to account monitoring orders. These broadly correspond to sections 373 to 375 of the 2002 Act.

Articles 36 to 69 make equivalent provision for Scotland to that in articles 2 to 35 for England and Wales and Northern Ireland.

Article 70 sets out the functions that seconded constables in Scotland cannot exercise on behalf of Scottish Ministers. This corresponds to section 411 of the 2002 Act.

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**Changes to legislation:**

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