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STATUTORY INSTRUMENTS

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**2014 No. 1893**

The Proceeds of Crime Act 2002  
(External Investigations) Order 2014

PART 3

Disclosure orders

**Disclosure orders**

**16.**—(1) A judge may, on an application made to the judge 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) the order is sought for the purposes of the external investigation, and
- (b) article 3(2) is satisfied.

(3) A disclosure order is an order authorising an appropriate officer to give to a person the appropriate officer considers has relevant information, notice in writing requiring the person 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.

**Requirements for making of disclosure order**

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

(2) There must be reasonable grounds for suspecting that the application relates to an external investigation.

(3) There must be reasonable grounds for believing that—

- (a) 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, and
- (b) 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.

## Offences

**18.**—(1) A person commits an offence if, without reasonable excuse the person fails to comply with a requirement imposed on the person 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 the statutory maximum, or
- (c) both.

(3) A person commits an offence if, in purported compliance with a requirement imposed on the person under a disclosure order, the person—

- (a) makes a statement which the person knows to be false or misleading in a material particular, or
- (b) recklessly makes a statement which is false or misleading in a material particular.

(4) A person guilty of an offence under 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.

## 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 Act,
- (b) in the case of proceedings under Part 2 or 4 of the Proceeds of Crime Act 2002 (External Requests and Orders) Order 2005(1),
- (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 Act,
- (e) on a prosecution for an offence under section 5 of the Perjury Act 1911(2) or Article 10 of the Perjury (Northern Ireland) Order 1979(3) (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.

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(1) [S.I. 2005/3181](#); Parts 2 and 4 were amended by section 59 of, and paragraph 1 in Part 1 of Schedule 11 to, the Constitutional Reform Act 2005 (c. 4), article 2 of [S.I. 2008/302](#) and articles 2 and 8 of [S.I. 2011/1242](#).

(2) [1911 c. 6](#).

(3) [S.I. 1979/1714 \(N.I. 19\)](#).

### **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) the appropriate officer might otherwise be unavailable for those purposes,

the documents 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.

### **Supplementary**

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

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

(a) the person who applied for the order,

(b) any person affected by the order.

(3) The Crown Court—

(a) may discharge the order,

(b) may vary the order.

(4) If an appropriate officer applies for a disclosure order, an application to discharge or vary the order need not be by the same appropriate officer.

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