

STATUTORY INSTRUMENTS

2015 No. 206

The Proceeds of Crime Act 2002 (External Investigations) (Scotland) Order 2015

PROSPECTIVE

PART 1

Production orders

Production orders

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

(2) The application for a production order must state that—

- (a) article 3(2) is satisfied;
- (b) the order is sought for the purposes of the external investigation;
- (c) the order is sought in relation to material, or material of a description, specified in the application;
- (d) a person specified in the application appears to be in possession or control of the material.

(3) 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 constable for the constable to take away; or
- (b) requiring that person to give a constable access to the material,

within the period stated in the order.

(4) 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.

Commencement Information

II Art. 6 in force at 16.3.2015, see [art. 1\(b\)](#)

Requirements for making of production order

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

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

Status: This version of this part contains provisions that are prospective.

Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to The Proceeds of Crime Act 2002 (External Investigations) (Scotland) Order 2015. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

- (3) There must be reasonable grounds for believing that—
- (a) 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;
 - (b) the material is likely to be of substantial value (whether or not by itself) to the external investigation; and
 - (c) it is in the public interest for the material to be produced or for access to it to be given, having regard to—
 - (i) the benefit likely to accrue to the external investigation if the material is obtained;
 - (ii) the circumstances under which the person the application specifies as appearing to be in possession or control of the material holds it.

Commencement Information

I2 Art. 7 in force at 16.3.2015, see [art. 1\(b\)](#)

Order to grant entry

8.—(1) This article applies if a sheriff makes a production order requiring a person to give a constable access to material on any premises.

(2) The sheriff may, on an application made to the sheriff by the procurator fiscal 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 procurator fiscal to be entitled to grant entry to the premises to allow a constable to enter the premises to obtain access to the material.

Commencement Information

I3 Art. 8 in force at 16.3.2015, see [art. 1\(b\)](#)

Further provisions

9.—(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 constable 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 constable 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: This version of this part contains provisions that are prospective.

Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to *The Proceeds of Crime Act 2002 (External Investigations) (Scotland) Order 2015*. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details) [View outstanding changes](#)

Commencement Information

I4 Art. 9 in force at 16.3.2015, see [art. 1\(b\)](#)

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 requires a person to produce the material to a constable for a constable to take away, it has effect as an order to produce the material in a form in which it—

- (a) can be taken away by the constable; and
- (b) it is visible and legible.

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

Commencement Information

I5 Art. 10 in force at 16.3.2015, see [art. 1\(b\)](#)

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) 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 6(4)) the person on whom it is served must report the reasons for the failure to a sheriff.

(5) An “authorised government department” includes a government department which is an authorised department for the purposes of the Crown Proceedings Act 1947(1) and the Scottish Administration.

Commencement Information

I6 Art. 11 in force at 16.3.2015, see [art. 1\(b\)](#)

Supplementary

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

Status: This version of this part contains provisions that are prospective.

Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to The Proceeds of Crime Act 2002 (External Investigations) (Scotland) Order 2015. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

(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 procurator fiscal;
- (b) any person affected by the order.

(3) The sheriff may—

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

Commencement Information

I7 Art. 12 in force at 16.3.2015, see [art. 1\(b\)](#)

Status:

This version of this part contains provisions that are prospective.

Changes to legislation:

There are outstanding changes not yet made by the legislation.gov.uk editorial team to The Proceeds of Crime Act 2002 (External Investigations) (Scotland) Order 2015. Any changes that have already been made by the team appear in the content and are referenced with annotations.

[View outstanding changes](#)

Changes and effects yet to be applied to the whole Instrument associated Parts and Chapters:

Whole provisions yet to be inserted into this Instrument (including any effects on those provisions):

- art. 23(2)(ea) inserted by [2020 c. 29 Sch. 3 para. 5\(3\)\(c\)](#)
- art. 23(3)(ha) inserted by [2020 c. 29 Sch. 3 para. 5\(4\)\(c\)](#)
- art. 23(5) inserted by [2020 c. 29 Sch. 3 para. 5\(5\)](#)