STATUTORY INSTRUMENTS

2015 No. 206

PROCEEDS OF CRIME, SCOTLAND

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

Made - - - -	*11th February 2015*
Laid before Parliament	*16th February 2015*
Coming into force - -	*16th March 2015*

At the Court at Buckingham Palace, the 11th day of February 2015

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:

PROSPECTIVE

Citation, commencement and extent

1. This Order—

(a) may be cited as the Proceeds of Crime Act 2002 (External Investigations) (Scotland) Order 2015;

(b) comes into force on 16th March 2015; and

(c) extends to Scotland only.

Commencement Information

I1 Art. 1 in force at 16.3.2015, see **art. 1(b)**

(**1**) 2002 c.29; section 445(2)(b) was amended by article 12 of, paragraphs 47 and 71 of Schedule 14 to, S.I. 2010/976, section 74 of, paragraphs 121 and 139 in Part 6 of Schedule 8 to, the Serious Crime Act 2007 (c.27), and section 15 of, paragraphs 108 and 150 in Part 2 of Schedule 8 to, the Crime and Courts Act 2013 (c.22). In accordance with section 459(7) of the Proceeds of Crime Act 2002, a copy of this Order will be laid before the Scottish Parliament.

Interpretation

2.—(1) In this Order—

"the Act" means the Proceeds of Crime Act 2002;

"account monitoring order" has the same meaning as in article 29;

"customer information order" has the same meaning as in article 22;

"disclosure order" has the same meaning as in article 16;

"financial institution" means a person carrying on a business in the regulated sector, 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 Act or otherwise) is to continue to be treated as a financial institution for the purposes of any requirement under a customer information order or an account monitoring order to provide information which relates to a time when the person was a financial institution;

"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 advisor and their client;

(b) communications made in connection with or in contemplation of legal proceedings and for the purposes of those proceedings,

which would be so protected;

"production order" has the same meaning as in article 6;

"search warrant" has the same meaning as in article 13;

(2) In this Order references to—

(a) a "business in the regulated sector" must be construed in accordance with Schedule 9 to the Act;

(b) a "constable" include references to an officer of Revenue and Customs and to an immigration officer;

(c) "notice in writing" includes reference to notice given by electronic means;

(d) "premises" include any place and in particular, include—

(i) any vehicle, vessel, aircraft or hovercraft,

(ii) any offshore installation within the meaning of section 12(1) of the Mineral Workings (Offshore Installations) Act 1971(**2**) and any tent or moveable structure.

Commencement Information

I2 Art. 2 in force at 16.3.2015, see **art. 1(b)**

Scope of the Order

3.—(1) This Order has effect for the purpose of enabling the Lord Advocate and procurator fiscal to assist an external investigation by obtaining orders and warrants from the court.

(2) The powers conferred by this Order are exercisable only if the Lord Advocate believes that the external investigation relates to a criminal investigation or criminal proceedings in the country or territory of the overseas authority carrying out the external investigation.

(**2**) 1971 c.61; the definition of "offshore installation" was substituted by the Offshore Installations and Pipeline Works (Management and Administration) Regulations 1995/738.

(3) For the purpose of paragraph (2), criminal proceedings include proceedings to remove from a person the benefit of that person's criminal conduct following that person's conviction for an offence or offences.

(4) This Order does not apply to an external investigation into whether a money laundering offence has been committed.

(5) In this article, references to the court are to—

(a) The High Court of Justiciary in relation to applications for disclosure orders;

(b) The sheriff in relation to applications for production orders, search warrants, customer information orders and account monitoring orders.

Commencement Information

I3 Art. 3 in force at 16.3.2015, see **art. 1(b)**

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

4.—(1) The Secretary of State may refer to the Lord Advocate a request for assistance in relation to an external investigation.

(2) The Lord Advocate or procurator fiscal may, on receipt of the request for assistance, act under this Order.

Commencement Information

I4 Art. 4 in force at 16.3.2015, see **art. 1(b)**

Offences of prejudicing an external investigation

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

(2) A person commits an offence if the person—

(a) makes a disclosure which is likely to prejudice the external investigation; or

(b) falsifies, conceals, destroys or otherwise disposes of, or causes or permits 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) the person does not know or suspect that the disclosure is likely to prejudice the external investigation;

(b) the disclosure is made—

(i) in the exercise of a function under—

(aa) the Act; or

(bb) any other enactment relating to criminal conduct or benefit from criminal conduct; or

(ii) in compliance with a requirement imposed under or by virtue of—

(aa) the Act; or

(bb) any other enactment relating to criminal conduct or benefit from criminal conduct;

(c) the disclosure is of a matter within section 333A(2) or (3)(a) (money laundering: tipping off) of the Act(**3**) and the information on which the disclosure is based came to the person in the course of a business in the regulated sector; or

(d) the person is 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 the person—

(a) does not know or suspect that the documents are relevant to the external investigation; or

(b) does not intend to conceal any facts disclosed by the documents from any constable 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.

(8) In this article references to enactment include an instrument made under an Act of the Scottish Parliament.

Commencement Information

I5 Art. 5 in force at 16.3.2015, see **art. 1(b)**

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—

(**3**) Section 333A was inserted by regulation 3 of, and paragraphs 1 and 4 of Schedule 2 to, S.I. 2007/3398, and was amended by section 15(3) of, and paragraphs 108 and 132 in Part 2 of Schedule 8 to, the Crime and Courts Act 2013.

(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

I6 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.

(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

I7 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

I8 Art. 8 in force at 16.3.2015, see **art. 1(b)**