



Proceeds of Crime Act 2002

2002 CHAPTER 29

PART 8

INVESTIGATIONS

CHAPTER 2

ENGLAND AND WALES AND NORTHERN IRELAND

Disclosure orders

357 Disclosure orders

- (1) A judge may, on an application made to him by the Director, make a disclosure order if he is satisfied that each of the requirements for the making of the order is fulfilled.
- (2) No application for a disclosure order may be made in relation to a money laundering investigation.
- (3) The application for a disclosure order must state that—
 - (a) a person specified in the application is subject to a confiscation investigation which is being carried out by the Director and the order is sought for the purposes of the investigation, or
 - (b) property specified in the application is subject to a civil recovery investigation and the order is sought for the purposes of the investigation.
- (4) A disclosure order is an order authorising the Director to give to any person the Director considers has relevant information notice in writing requiring him to do, with respect to any matter relevant to the investigation for the purposes of which the order is sought, 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;

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- (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.
- (5) Relevant information is information (whether or not contained in a document) which the Director considers to be relevant to the investigation.
- (6) 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 him.

358 Requirements for making of disclosure order

- (1) These are the requirements for the making of a disclosure order.
- (2) There must be reasonable grounds for suspecting that—
- (a) in the case of a confiscation investigation, the person specified in the application for the order has benefited from his criminal conduct;
 - (b) in the case of a civil recovery investigation, the property specified in the application for the order is recoverable property or associated property.
- (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 investigation for the purposes of which the order is sought.
- (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 investigation if the information is obtained.

359 Offences

- (1) A person commits an offence if without reasonable excuse he fails to comply with a requirement imposed on him under a disclosure order.
- (2) A person guilty of an offence under subsection (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 him under a disclosure order, he—
- (a) makes a statement which he 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 subsection (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.

360 Statements

- (1) A statement made by a person in response to a requirement imposed on him under a disclosure order may not be used in evidence against him in criminal proceedings.
- (2) But subsection (1) does not apply—
 - (a) in the case of proceedings under Part 2 or 4,
 - (b) on a prosecution for an offence under section 359(1) or (3),
 - (c) on a prosecution for an offence under section 5 of the Perjury Act 1911 (c. 6) or Article 10 of the Perjury (Northern Ireland) Order 1979 (S.I. 1979/1714 (N.I. 19)) (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 subsection (1).
- (3) A statement may not be used by virtue of subsection (2)(d) against a person unless—
 - (a) evidence relating to it is adduced, or
 - (b) a question relating to it is asked,by him or on his behalf in the proceedings arising out of the prosecution.

361 Further provisions

- (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 a client of his.
- (2) A privileged question is a question which the person would be entitled to refuse to answer on grounds of legal professional privilege in proceedings in the High Court.
- (3) Privileged information is 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) The Director 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 investigation for the purposes of which the order was made.
- (9) But if the Director 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.

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362 Supplementary

- (1) An application for a disclosure order may be made ex parte to a judge in chambers.
- (2) Rules of court may make provision as to the practice and procedure to be followed in connection with proceedings relating to disclosure orders.
- (3) An application to discharge or vary a disclosure order may be made to the court by—
 - (a) the Director;
 - (b) any person affected by the order.
- (4) The court—
 - (a) may discharge the order;
 - (b) may vary the order.
- (5) Subsections (2) to (4) do not apply to orders made in England and Wales for the purposes of a civil recovery investigation.