



# Proceeds of Crime Act 2002

## 2002 CHAPTER 29

### PART 8

#### INVESTIGATIONS

#### CHAPTER 3

#### SCOTLAND

#### *General*

#### **409 Jurisdiction of sheriff**

- (1) A sheriff may grant a production order, search warrant, customer information order or account monitoring order under this Act 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 may be executed within the sheriffdom of the sheriff who granted it.
- (3) This section is without prejudice to any existing rule of law or to any other provision of this Act.

#### **Modifications etc. (not altering text)**

- C1** S. 409 modified (11.6.2006) by [Crime \(International Co-operation\) Act 2003 \(c. 32\), ss. 41\(5\), 94\(3\); S.S.I. 2006/281, art. 2](#)
- C2** S. 409 modified (11.6.2006) by [Crime \(International Co-operation\) Act 2003 \(c. 32\), ss. 38\(5\), 41\(5\), 94\(3\); S.S.I. 2006/281, art. 2](#)
- C3** S. 409 modified (19.10.2009) by [Crime \(International Co-operation\) Act 2003 \(c. 32\), ss. 22\(6\), 94\(1\); S.I. 2009/2605, art. 2\(b\)](#)

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**C4** S. 409 modified (31.7.2017) by [The Criminal Justice \(European Investigation Order\) Regulations 2017 \(S.I. 2017/730\)](#), regs. 1(1), **39(10)**, 44(9)(b), 45(8) (with reg. 3)

**Commencement Information**

**I1** S. 409 in force at 24.2.2003 by [S.I. 2003/120](#), art. 2, [Sch.](#) (with arts. 3, 4) (as amended (20.2.2003) by [S.I. 2003/333](#), art. 14)

**410 Code of practice**

- (1) The Scottish Ministers must prepare a code of practice as to the exercise by proper persons of functions they have under this Chapter.
- (2) After preparing a draft of the code the Scottish Ministers—
  - (a) must publish the draft;
  - (b) must consider any representations made to them about the draft;
  - (c) may amend the draft accordingly.
- (3) After the Scottish Ministers have proceeded under subsection (2) they must lay the code before the Scottish Parliament.
- (4) When they have done so, the Scottish Ministers may bring the code into operation on such day as they may appoint by order.
- (5) A proper person must comply with a code of practice which is in operation under this section in the exercise of any function he has under this Chapter.
- (6) If a proper person fails to comply with any provision of a code of practice issued under this section he is not by reason only of that failure liable in any criminal or civil proceedings.
- (7) But the code of practice is admissible in evidence in such proceedings and a court may take account of any failure to comply with its provisions in determining any questions in the proceedings.
- (8) The Scottish Ministers may from time to time revise a code previously brought into operation under this section; and the preceding provisions of this section apply to a revised code as they apply to the code as first prepared.

**Commencement Information**

**I2** S. 410 in force at 24.2.2003 by [S.I. 2003/120](#), art. 2, [Sch.](#) (with arts. 3, 4) (as amended (20.2.2003) by [S.I. 2003/333](#), art. 14)

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

- (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 subsection (2), on behalf of the Scottish Ministers.
- (2) The specified functions are the functions conferred on the Scottish Ministers by—
  - (a) section 380(1) (production orders),
  - (b) section 382(2) (entry orders),
  - (c) section 386(4) (supplementary to production and entry orders),

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- (d) section 387(1) (search warrants),
- (e) section 391(1) (disclosure orders),
- (f) section 396(4) (supplementary to disclosure orders),
- (g) section 397(1) (customer information orders),
- (h) section 403(4) (supplementary to customer information orders),
- (i) section 404(1) (account monitoring orders),
- (j) section 408(4) (supplementary to account monitoring orders).

#### Commencement Information

- I3** S. 411 in force at 24.2.2003 by [S.I. 2003/120](#), art. 2, **Sch.** (with arts. 3, 4) (as amended (20.2.2003) by [S.I. 2003/333](#), art. 14)

## 412 Interpretation

In this Chapter, unless the context otherwise requires—

“appropriate person” means—

- (a) the procurator fiscal, in relation to a confiscation investigation or a money laundering investigation,
- (b) the Scottish Ministers, in relation to a civil recovery investigation [<sup>F1</sup>, a detained cash investigation, a detained property investigation [<sup>F2</sup> or a frozen funds investigation]] [<sup>F2</sup>, a frozen funds investigation or a cryptoasset investigation];

references to a “constable” include references to [<sup>F3</sup>an officer of Revenue and Customs]] [<sup>F4</sup>and to an immigration officer];

“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 his 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.

“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 (c. 61) and any tent or movable structure;

“proper person” means—

- (a) a constable, in relation to a confiscation investigation or a money laundering investigation;
- (b) the Scottish Ministers or a person named by them, in relation to a civil recovery investigation [<sup>F1</sup>, a detained cash investigation, a detained property investigation [<sup>F5</sup> or a frozen funds investigation]] [<sup>F5</sup>, a frozen funds investigation or a cryptoasset investigation].

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### Textual Amendments

- F1** Words in s. 412 substituted (27.4.2017 for specified purposes, 31.1.2018 for E.W.S. for specified purposes, 16.4.2018 for E.W.S. in so far as not already in force, 28.6.2021 for N.I. in so far as not already in force) by [Criminal Finances Act 2017 \(c. 22\)](#), s. 58(5)(6), [Sch. 5 para. 72](#); [S.I. 2018/78](#), reg. 5(3)(a)(i)(ii); [S.I. 2021/724](#), reg. 4(i)
- F2** Words in s. 412 substituted (26.10.2023 for specified purposes) by [Economic Crime and Corporate Transparency Act 2023 \(c. 56\)](#), s. 219(1)(2)(b), [Sch. 9 para. 8\(30\)\(a\)](#)
- F3** Words in s. 412 substituted (17.7.2013) by [Finance Act 2013 \(c. 29\)](#), [Sch. 48 para. 20](#)
- F4** Words in s. 412 inserted (25.6.2013) by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(2), [Sch. 21 para. 38](#) (with [Sch. 21 para. 40](#)); [S.I. 2013/1042](#), art. 4(k)
- F5** Words in s. 412 substituted (26.10.2023 for specified purposes) by [Economic Crime and Corporate Transparency Act 2023 \(c. 56\)](#), s. 219(1)(2)(b), [Sch. 9 para. 8\(30\)\(b\)](#)

### Commencement Information

- I4** S. 412 in force at 24.2.2003 by [S.I. 2003/120](#), art. 2, [Sch.](#) (with arts. 3, 4) (as amended (20.2.2003) by [S.I. 2003/333](#), art. 14)

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

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

- s. 13(5)(a)(iia) inserted by [2015 c. 30 Sch. 5 para. 15\(3\)\(d\)](#)
- s. 323(1)(hc) inserted by [2023 c. 20 Sch. para. 45\(2\)](#)
- s. 323(4)(ec) inserted by [2023 c. 20 Sch. para. 45\(3\)](#)
- s. 323(5)(ec) inserted by [2023 c. 20 Sch. para. 45\(4\)](#)