



# Proceeds of Crime Act 2002

## 2002 CHAPTER 29

### PART 8

#### INVESTIGATIONS

### CHAPTER 3

#### SCOTLAND

#### *[<sup>F1</sup>Unexplained wealth orders*

#### **[<sup>F1</sup>396D Effect of order: cases of compliance or purported compliance**

- (1) This section applies in a case where [<sup>F2</sup>the respondent and the specified responsible officer (if any) between them comply, or purport to comply, with all of the] requirements imposed by an unexplained wealth order in respect of any property in relation to which the order is made before the end of the response period (as defined by section 396C(4)).
- (2) If an interim freezing order has effect in relation to the property (see section 396J), the Scottish Ministers must—
  - (a) consider whether the Lord Advocate should be given an opportunity to determine what enforcement or investigatory proceedings, if any, the Lord Advocate considers ought to be taken by the Lord Advocate in relation to the property, and
  - (b) determine whether they consider that any proceedings under Part 5 (civil recovery of the proceeds of unlawful conduct) or this Chapter ought to be taken by them in relation to the property.
- (3) If the Scottish Ministers consider that the Lord Advocate should be given an opportunity to make a determination as mentioned in subsection (2)(a), the Lord Advocate must determine what enforcement or investigatory proceedings, if any, the

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Lord Advocate considers ought to be taken by the Lord Advocate in relation to the property.

- (4) A determination under subsection (2)(b) or (3) must be made within the period of 60 days starting with the day of compliance [<sup>F3</sup>, or that period as it may be extended by virtue of section 396DA or 396DB (the “determination period”)].
- (5) If the determinations under subsections (2)(b) and (3) are that no further proceedings under Part 5 or this Chapter and no further enforcement or investigatory proceedings ought to be taken in relation to the property, the Scottish Ministers must notify the Court of Session of the nature of the determinations as soon as reasonably practicable (and in any event before the end of the [<sup>F4</sup>determination period]).
- (6) If there is no interim freezing order in effect in relation to the property—
- (a) the Scottish Ministers may (at any time) determine whether they consider that any proceedings under Part 5 or this Chapter ought to be taken by them in relation to the property, and
  - (b) the Lord Advocate may (at any time) determine what, if any, enforcement or investigatory proceedings the Lord Advocate considers ought to be taken by the Lord Advocate in relation to the property.
- (7) A determination under this section to take no further proceedings under Part 5 or this Chapter or no further enforcement or investigatory proceedings in relation to any property does not prevent any such proceedings being taken subsequently (whether as a result of new information or otherwise) in relation to the property.
- (8) For the purposes of this section—
- <sup>F5</sup>(a) . . . . .
  - (b) references to the day of compliance are to the day on which the requirements imposed by the order are complied with (or, if the requirements are complied with over more than one day, the last of those days), and
  - (c) where an order requires the sending of information in writing to, or the production of documents at, an address specified in the order, compliance with the order (so far as relating to that requirement) occurs when the written information is received, or the documents are produced, at that address,
- and in paragraphs [<sup>F6</sup>(b) and (c)] references to compliance include purported compliance.
- (9) In this section “enforcement or investigatory proceedings” means any proceedings in relation to property taken under—
- (a) Part 3 (confiscation proceedings in Scotland), or
  - (b) this Chapter.]

#### Textual Amendments

- F1** Ss. 396A-396I and cross-heading inserted (27.4.2017 for specified purposes, 31.1.2018 in so far as not already in force) by [Criminal Finances Act 2017 \(c. 22\)](#), [ss. 4, 58\(1\)\(6\)](#); [S.I. 2018/78](#), [reg. 3\(a\)](#)
- F2** Words in s. 396D(1) substituted (15.5.2022) by [Economic Crime \(Transparency and Enforcement\) Act 2022 \(c. 10\)](#), [ss. 46\(9\)\(a\)](#), 69(1); [S.I. 2022/519](#), [regs. 1\(3\), 2](#)
- F3** Words in s. 396D(4) inserted (15.5.2022) by [Economic Crime \(Transparency and Enforcement\) Act 2022 \(c. 10\)](#), [ss. 50\(2\)\(a\)](#), 69(1); [S.I. 2022/519](#), [regs. 1\(3\), 2](#)
- F4** Words in s. 396D(5) substituted (15.5.2022) by [Economic Crime \(Transparency and Enforcement\) Act 2022 \(c. 10\)](#), [ss. 50\(2\)\(b\)](#), 69(1); [S.I. 2022/519](#), [regs. 1\(3\), 2](#)

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- F5** S. 396D(8)(a) omitted (15.5.2022) by virtue of Economic Crime (Transparency and Enforcement) Act 2022 (c. 10), ss. 46(9)(b)(i), 69(1); S.I. 2022/519, regs. 1(3), 2
- F6** Words in s. 396D(8) substituted (15.5.2022) by Economic Crime (Transparency and Enforcement) Act 2022 (c. 10), ss. 46(9)(b)(ii), 69(1); S.I. 2022/519, regs. 1(3), 2

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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\(4\)](#)