



# Serious Organised Crime and Police Act 2005

## 2005 CHAPTER 15

### PART 2

#### INVESTIGATIONS, PROSECUTIONS, PROCEEDINGS AND PROCEEDS OF CRIME

#### CHAPTER 1

#### INVESTIGATORY POWERS OF DPP, ETC.

#### *Introductory*

#### **60 Investigatory powers of DPP etc.**

- (1) This Chapter confers powers on—
  - (a) the Director of Public Prosecutions,
  - (b) the Director of Revenue and Customs Prosecutions, and
  - (c) the Lord Advocate,in relation to the giving of disclosure notices in connection with the investigation of offences to which this Chapter applies [<sup>F1</sup>or in connection with a terrorist investigation].
- (2) The Director of Public Prosecutions may, to such extent as he may determine, delegate the exercise of his powers under this Chapter to a Crown prosecutor.
- (3) The Director of Revenue and Customs Prosecutions may, to such extent as he may determine, delegate the exercise of his powers under this Chapter to a Revenue and Customs Prosecutor.
- (4) The Lord Advocate may, to such extent as he may determine, delegate the exercise of his powers under this Chapter to a procurator fiscal.

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- (5) In this Chapter “the Investigating Authority” means—
- (a) the Director of Public Prosecutions,
  - (b) the Director of Revenue and Customs Prosecutions, or
  - (c) the Lord Advocate.
- (6) But, in circumstances where the powers of any of those persons are exercisable by any other person by virtue of subsection (2), (3) or (4), references to “the Investigating Authority” accordingly include any such other person.
- [<sup>F2</sup>(7) In this Chapter “terrorist investigation” means an investigation of—
- (a) the commission, preparation or instigation of acts of terrorism,
  - (b) any act or omission which appears to have been for the purposes of terrorism and which consists in or involves the commission, preparation or instigation of an offence, or
  - (c) the commission, preparation or instigation of an offence under the Terrorism Act 2000 (c. 11) or under Part 1 of the Terrorism Act 2006 other than an offence under section 1 or 2 of that Act.]

#### Textual Amendments

- F1** Words in s. 60(1) inserted (13.4.2006) by [Terrorism Act 2006 \(c. 11\)](#), **ss. 33(1)**, 39(2); [S.I. 2006/1013](#), [art. 2\(2\)\(b\)](#)
- F2** S. 60(7) inserted (13.4.2006) by [Terrorism Act 2006 \(c. 11\)](#), **ss. 33(2)**, 39(2); [S.I. 2006/1013](#), [art. 2\(2\)\(b\)](#)

#### Commencement Information

- I1** S. 60 in force at 1.4.2006 for S. by [S.S.I. 2006/166](#), **art. 2(1)(a)**
- I2** S. 60 in force at 1.4.2006 except to the extent that it extends to S. by [S.I. 2005/1521](#), **art. 5(1)**

## 61 Offences to which this Chapter applies

- (1) This Chapter applies to the following offences—
- (a) any offence listed in Schedule 2 to the Proceeds of Crime Act 2002 (c. 29) (lifestyle offences: England and Wales);
  - (b) any offence listed in Schedule 4 to that Act (lifestyle offences: Scotland);
  - (c) any offence under sections 15 to 18 of the Terrorism Act 2000 (c. 11) (offences relating to fund-raising, money laundering etc.);
  - (d) any offence under section 170 of the Customs and Excise Management Act 1979 (c. 2) (fraudulent evasion of duty) or section 72 of the Value Added Tax Act 1994 (c. 23) (offences relating to VAT) which is a qualifying offence;
  - (e) any offence under section 17 of the Theft Act 1968 (c. 60) (false accounting), or any offence at common law of cheating in relation to the public revenue, which is a qualifying offence;
  - (f) any offence under section 1 of the Criminal Attempts Act 1981 (c. 47), or in Scotland at common law, of attempting to commit any offence in paragraph (c) or any offence in paragraph (d) or (e) which is a qualifying offence;
  - (g) any offence under section 1 of the Criminal Law Act 1977 (c. 45), or in Scotland at common law, of conspiracy to commit any offence in paragraph (c) or any offence in paragraph (d) or (e) which is a qualifying offence.

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- (2) For the purposes of subsection (1) an offence in paragraph (d) or (e) of that subsection is a qualifying offence if the Investigating Authority certifies that in his opinion—
- (a) in the case of an offence in paragraph (d) or an offence of cheating the public revenue, the offence involved or would have involved a loss, or potential loss, to the public revenue of an amount not less than £5,000;
  - (b) in the case of an offence under section 17 of the Theft Act 1968 (c. 60), the offence involved or would have involved a loss or gain, or potential loss or gain, of an amount not less than £5,000.
- (3) A document purporting to be a certificate under subsection (2) is to be received in evidence and treated as such a certificate unless the contrary is proved.
- (4) The Secretary of State may by order—
- (a) amend subsection (1), in its application to England and Wales, so as to remove an offence from it or add an offence to it;
  - (b) amend subsection (2), in its application to England and Wales, so as to—
    - (i) take account of any amendment made by virtue of paragraph (a) above, or
    - (ii) vary the sums for the time being specified in subsection (2)(a) and (b).
- (5) The Scottish Ministers may by order—
- (a) amend subsection (1), in its application to Scotland, so as to remove an offence from it or add an offence to it;
  - (b) amend subsection (2), in its application to Scotland, so as to—
    - (i) take account of any amendment made by virtue of paragraph (a) above, or
    - (ii) vary the sums for the time being specified in subsection (2)(a) and (b).

#### Commencement Information

- I3** S. 61 in force at 1.4.2006 except to the extent that it extends to S. by [S.I. 2005/1521, art. 5\(1\)](#)  
**I4** S. 61 in force at 1.4.2006 for S. by [S.S.I. 2006/166, art. 2\(1\)\(a\)](#)

### Disclosure notices

## 62 Disclosure notices

- (1) If it appears to the Investigating Authority—
- (a) that there are reasonable grounds for suspecting that an offence to which this Chapter applies has been committed,
  - (b) that any person has information (whether or not contained in a document) which relates to a matter relevant to the investigation of that offence, and
  - (c) that there are reasonable grounds for believing that information which may be provided by that person in compliance with a disclosure notice is likely to be of substantial value (whether or not by itself) to that investigation,
- he may give, or authorise an appropriate person to give, a disclosure notice to that person.

[<sup>F3</sup>(1A) If it appears to the Investigating Authority—

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- (a) that any person has information (whether or not contained in a document) which relates to a matter relevant to a terrorist investigation, and
  - (b) that there are reasonable grounds for believing that information which may be provided by that person in compliance with a disclosure notice is likely to be of substantial value (whether or not by itself) to that investigation,
- he may give, or authorise an appropriate person to give, a disclosure notice to that person.]
- (2) In this Chapter “appropriate person” means—
- (a) a constable,
  - (b) a member of the staff of SOCA who is for the time being designated under section 43, or
  - (c) an officer of Revenue and Customs.
- (3) In this Chapter “disclosure notice” means a notice in writing requiring the person to whom it is given to do all or any of the following things in accordance with the specified requirements, namely—
- (a) answer questions with respect to any matter relevant to the investigation;
  - (b) provide information with respect to any such matter as is specified in the notice;
  - (c) produce such documents, or documents of such descriptions, relevant to the investigation as are specified in the notice.
- (4) In subsection (3) “the specified requirements” means such requirements specified in the disclosure notice as relate to—
- (a) the time at or by which,
  - (b) the place at which, or
  - (c) the manner in which,
- the person to whom the notice is given is to do any of the things mentioned in paragraphs (a) to (c) of that subsection; and those requirements may include a requirement to do any of those things at once.
- (5) A disclosure notice must be signed or counter-signed by the Investigating Authority.
- (6) This section has effect subject to section 64 (restrictions on requiring information etc.).

#### Textual Amendments

- F3** S. 62(1A) inserted (13.4.2006) by [Terrorism Act 2006 \(c. 11\)](#), **ss. 33(3)**, 39(2); [S.I. 2006/1013](#), **art. 2(2)(b)**

#### Commencement Information

- I5** S. 62 in force at 1.4.2006 for S. by [S.S.I. 2006/166](#), **art. 2(1)(a)**
- I6** S. 62 in force at 1.4.2006 except to the extent that it extends to S. by [S.I. 2005/1521](#), **art. 5(1)**

## 63 Production of documents

- (1) This section applies where a disclosure notice has been given under section 62.
- (2) An authorised person may—

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- (a) take copies of or extracts from any documents produced in compliance with the notice, and
  - (b) require the person producing them to provide an explanation of any of them.
- (3) Documents so produced may be retained for so long as the Investigating Authority considers that it is necessary to retain them (rather than copies of them) in connection with the investigation for the purposes of which the disclosure notice was given.
- (4) If the Investigating Authority has reasonable grounds for believing—
  - (a) that any such documents may have to be produced for the purposes of any legal proceedings, and
  - (b) that they might otherwise be unavailable for those purposes, they may be retained until the proceedings are concluded.
- (5) If a person who is required by a disclosure notice to produce any documents does not produce the documents in compliance with the notice, an authorised person may require that person to state, to the best of his knowledge and belief, where they are.
- (6) In this section “authorised person” means any appropriate person who either—
  - (a) is the person by whom the notice was given, or
  - (b) is authorised by the Investigating Authority for the purposes of this section.
- (7) This section has effect subject to section 64 (restrictions on requiring information etc.).

#### Commencement Information

- I7** S. 63 in force at 1.4.2006 except to the extent that it extends to S. by [S.I. 2005/1521, art. 5\(1\)](#)  
**I8** S. 63 in force at 1.4.2006 for S. by [S.S.I. 2006/166, art. 2\(1\)\(a\)](#)

## 64 Restrictions on requiring information etc.

- (1) A person may not be required under section 62 or 63—
  - (a) to answer any privileged question,
  - (b) to provide any privileged information, or
  - (c) to 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 information which the person would be entitled to refuse to provide on grounds of legal professional privilege in such proceedings.
- (4) A “privileged document” is a document which the person would be entitled to refuse to produce on grounds of legal professional privilege in such proceedings.
- (5) A person may not be required under section 62 to produce any excluded material (as defined by section 11 of the Police and Criminal Evidence Act 1984 (c. 60)).
- (6) In the application of this section to Scotland—
  - (a) subsections (1) to (5) do not have effect, but
  - (b) a person may not be required under section 62 or 63 to answer any question, provide any information or produce any document which he would be entitled,

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on grounds of legal privilege, to refuse to answer or (as the case may be) provide or produce.

- (7) In subsection (6)(b), “legal privilege” has the meaning given by section 412 of the Proceeds of Crime Act 2002 (c. 29).
- (8) A person may not be required under section 62 or 63 to disclose any information or produce any document in respect of which he owes an obligation of confidence by virtue of carrying on any banking business, unless—
- (a) the person to whom the obligation of confidence is owed consents to the disclosure or production, or
  - (b) the requirement is made by, or in accordance with a specific authorisation given by, the Investigating Authority.
- (9) Subject to the preceding provisions, any requirement under section 62 or 63 has effect despite any restriction on disclosure (however imposed).

#### Commencement Information

- I9** S. 64 in force at 1.4.2006 except to the extent that it extends to S. by [S.I. 2005/1521, art. 5\(1\)](#)  
**I10** S. 64 in force at 1.4.2006 for S. by [S.S.I. 2006/166, art. 2\(1\)\(a\)](#)

## 65 Restrictions on use of statements

- (1) A statement made by a person in response to a requirement imposed under section 62 or 63 (“the relevant statement”) may not be used in evidence against him in any criminal proceedings unless subsection (2) or (3) applies.
- (2) This subsection applies where the person is being prosecuted—
- (a) for an offence under section 67 of this Act, or
  - (b) for an offence under section 5 of the Perjury Act 1911 (c. 6) (false statements made on oath otherwise than in judicial proceedings or made otherwise than on oath), or
  - (c) for an offence under section 2 of the False Oaths (Scotland) Act 1933 (c. 20) (false statutory declarations and other false statements without oath) or at common law for an offence of attempting to pervert the course, or defeat the ends, of justice.
- (3) This subsection applies where the person is being prosecuted for some other offence and—
- (a) the person, when giving evidence in the proceedings, makes a statement inconsistent with the relevant statement, and
  - (b) in the proceedings evidence relating to the relevant statement is adduced, or a question about it is asked, by or on behalf of the person.

#### Commencement Information

- I11** S. 65 in force at 1.4.2006 except to the extent that it extends to S. by [S.I. 2005/1521, art. 5\(1\)](#)  
**I12** S. 65 in force at 1.4.2006 for S. by [S.S.I. 2006/166, art. 2\(1\)\(a\)](#)

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## Enforcement

### 66 Power to enter and seize documents

- (1) A justice of the peace may issue a warrant under this section if, on an information on oath laid by the Investigating Authority, he is satisfied—
  - (a) that any of the conditions mentioned in subsection (2) is met in relation to any documents of a description specified in the information, and
  - (b) that the documents are on premises so specified.
- (2) The conditions are—
  - (a) that a person has been required by a disclosure notice to produce the documents but has not done so;
  - (b) that it is not practicable to give a disclosure notice requiring their production;
  - (c) that giving such a notice might seriously prejudice the investigation of an offence to which this Chapter applies.
- (3) A warrant under this section is a warrant authorising an appropriate person named in it—
  - (a) to enter and search the premises, using such force as is reasonably necessary;
  - (b) to take possession of any documents appearing to be documents of a description specified in the information, or to take any other steps which appear to be necessary for preserving, or preventing interference with, any such documents;
  - (c) in the case of any such documents consisting of information recorded otherwise than in legible form, to take possession of any computer disk or other electronic storage device which appears to contain the information in question, or to take any other steps which appear to be necessary for preserving, or preventing interference with, that information;
  - (d) to take copies of or extracts from any documents or information falling within paragraph (b) or (c);
  - (e) to require any person on the premises to provide an explanation of any such documents or information or to state where any such documents or information may be found;
  - (f) to require any such person to give the appropriate person such assistance as he may reasonably require for the taking of copies or extracts as mentioned in paragraph (d).
- (4) A person executing a warrant under this section may take other persons with him, if it appears to him to be necessary to do so.
- (5) A warrant under this section must, if so required, be produced for inspection by the owner or occupier of the premises or anyone acting on his behalf.
- (6) If the premises are unoccupied or the occupier is temporarily absent, a person entering the premises under the authority of a warrant under this section must leave the premises as effectively secured against trespassers as he found them.
- (7) Where possession of any document or device is taken under this section—
  - (a) the document may be retained for so long as the Investigating Authority considers that it is necessary to retain it (rather than a copy of it) in connection with the investigation for the purposes of which the warrant was sought, or

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- (b) the device may be retained for so long as he considers that it is necessary to retain it in connection with that investigation, as the case may be.
- (8) If the Investigating Authority has reasonable grounds for believing—
  - (a) that any such document or device may have to be produced for the purposes of any legal proceedings, and
  - (b) that it might otherwise be unavailable for those purposes, it may be retained until the proceedings are concluded.
- (9) Nothing in this section authorises a person to take possession of, or make copies of or take extracts from, any document or information which, by virtue of section 64, could not be required to be produced or disclosed under section 62 or 63.
- (10) In the application of this section to Scotland—
  - (a) subsection (1) has effect as if, for the words from the beginning to “satisfied—”, there were substituted “ A sheriff may issue a warrant under this section, on the application of a procurator fiscal, if he is satisfied— ”;
  - (b) subsections (1)(a) and (3)(b) have effect as if, for “in the information”, there were substituted “ in the application ”; and
  - (c) subsections (4) to (6) do not have effect.

#### **Commencement Information**

- I13** S. 66 in force at 1.4.2006 except to the extent that it extends to S. by [S.I. 2005/1521, art. 5\(1\)](#)
- I14** S. 66 in force at 1.4.2006 for S. by [S.S.I. 2006/166, art. 2\(1\)\(a\)](#)

### **67 Offences in connection with disclosure notices or search warrants**

- (1) A person commits an offence if, without reasonable excuse, he fails to comply with any requirement imposed on him under section 62 or 63.
- (2) A person commits an offence if, in purported compliance with any requirement imposed on him under section 62 or 63—
  - (a) he makes a statement which is false or misleading, and
  - (b) he either knows that it is false or misleading or is reckless as to whether it is false or misleading.

“False or misleading” means false or misleading in a material particular.
- (3) A person commits an offence if he wilfully obstructs any person in the exercise of any rights conferred by a warrant under section 66.
- (4) A person guilty of an offence under subsection (1) or (3) is liable on summary conviction—
  - (a) to imprisonment for a term not exceeding 51 weeks, or
  - (b) to a fine not exceeding level 5 on the standard scale,
 or to both.
- (5) A person guilty of an offence under subsection (2) is liable—
  - (a) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine, or to both;



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- (b) on summary conviction, to imprisonment for a term not exceeding 12 months or to a fine not exceeding the statutory maximum, or to both.
- (6) In the application of this section to Scotland, the reference to 51 weeks in subsection (4)(a) is to be read as a reference to 12 months.

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**Commencement Information**

- I15** S. 67 in force at 1.4.2006 except to the extent that it extends to S. by [S.I. 2005/1521](#), [art. 5\(1\)](#)  
**I16** S. 67 in force at 1.4.2006 for S. by [S.S.I. 2006/166](#), [art. 2\(1\)\(a\)](#)

*Supplementary*

**68 Procedure applicable to search warrants**

In Part 1 of Schedule 1 to the Criminal Justice and Police Act 2001 (c. 16) (powers of seizure to which section 50 applies) after paragraph 73E (inserted by the Human Tissue Act 2004 (c. 30)) insert—

**“Serious Organised Crime and Police Act 2005**

73F The power of seizure conferred by section 66 of the Serious Organised Crime and Police Act 2005 (seizure of documents for purposes of investigation by DPP or other Investigating Authority).”

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**Commencement Information**

- I17** S. 68 in force at 1.4.2006 for S. by [S.S.I. 2006/166](#), [art. 2\(1\)\(a\)](#)  
**I18** S. 68 in force at 1.4.2006 except to the extent that it extends to S. by [S.I. 2005/1521](#), [art. 5\(1\)](#)

**69 Manner in which disclosure notice may be given**

- (1) This section provides for the manner in which a disclosure notice may be given under section 62.
- (2) The notice may be given to a person by—
  - (a) delivering it to him,
  - (b) leaving it at his proper address,
  - (c) sending it by post to him at that address.
- (3) The notice may be given—
  - (a) in the case of a body corporate, to the secretary or clerk of that body;
  - (b) in the case of a partnership, to a partner or a person having the control or management of the partnership business;
  - (c) in the case of an unincorporated association (other than a partnership), to an officer of the association.
- (4) For the purposes of this section and section 7 of the Interpretation Act 1978 (c. 30) (service of documents by post) in its application to this section, the proper address of

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a person is his usual or last-known address (whether residential or otherwise), except that—

- (a) in the case of a body corporate or its secretary or clerk, it is the address of the registered office of that body or its principal office in the United Kingdom,
- (b) in the case of a partnership, a partner or a person having the control or management of the partnership business, it is that of the principal office of the partnership in the United Kingdom, and
- (c) in the case of an unincorporated association (other than a partnership) or an officer of the association, it is that of the principal office of the association in the United Kingdom.

(5) This section does not apply to Scotland.

#### Commencement Information

**I19** S. 69 in force at 1.4.2006 except to the extent that it extends to S. by [S.I. 2005/1521, art. 5\(1\)](#)

## 70 Interpretation of Chapter 1

(1) In this Chapter—

[<sup>F4</sup>“act of terrorism” includes anything constituting an action taken for the purposes of terrorism, within the meaning of the Terrorism Act 2000 (see section 1(5) of that Act);]

“appropriate person” has the meaning given by section 62(2);

“the Investigating Authority” is to be construed in accordance with section 60(5) and (6);

“disclosure notice” has the meaning given by section 62(3);

“document” includes information recorded otherwise than in legible form.

[<sup>F5</sup>“terrorism” has the same meaning as in the Terrorism Act 2000 (see section 1(1) to (4) of that Act);]

[<sup>F5</sup>“terrorist investigation” has the meaning given by section 60(7).]

(2) In relation to information recorded otherwise than in legible form, any reference in this Chapter to the production of documents is a reference to the production of a copy of the information in legible form.

#### Textual Amendments

**F4** Words in s. 70(1) inserted (13.4.2006) by [Terrorism Act 2006 \(c. 11\), ss. 33\(4\)\(a\), 39\(2\); S.I. 2006/1013, art. 2\(2\)\(b\)](#)

**F5** Words in s. 70(1) inserted (13.4.2006) by [Terrorism Act 2006 \(c. 11\), ss. 33\(4\)\(b\), 39\(2\); S.I. 2006/1013, art. 2\(2\)\(b\)](#)

#### Commencement Information

**I20** S. 70 in force at 1.4.2006 for S. by [S.S.I. 2006/166, art. 2\(1\)\(a\)](#)

**I21** S. 70 in force at 1.4.2006 except to the extent that it extends to S. by [S.I. 2005/1521, art. 5\(1\)](#)

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## CHAPTER 2

### OFFENDERS ASSISTING INVESTIGATIONS AND PROSECUTIONS

#### 71 Assistance by offender: immunity from prosecution

- (1) If a specified prosecutor thinks that for the purposes of the investigation or prosecution of any offence it is appropriate to offer any person immunity from prosecution he may give the person a written notice under this subsection (an “immunity notice”).
- (2) If a person is given an immunity notice, no proceedings for an offence of a description specified in the notice may be brought against that person in England and Wales or Northern Ireland except in circumstances specified in the notice.
- (3) An immunity notice ceases to have effect in relation to the person to whom it is given if the person fails to comply with any conditions specified in the notice.
- (4) Each of the following is a specified prosecutor—
  - (a) the Director of Public Prosecutions;
  - (b) the Director of Revenue and Customs Prosecutions;
  - (c) the Director of the Serious Fraud Office;
  - (d) the Director of Public Prosecutions for Northern Ireland;
  - (e) a prosecutor designated for the purposes of this section by a prosecutor mentioned in paragraphs (a) to (d).
- (5) The Director of Public Prosecutions or a person designated by him under subsection (4)(e) may not give an immunity notice in relation to proceedings in Northern Ireland.
- (6) The Director of Public Prosecutions for Northern Ireland or a person designated by him under subsection (4)(e) may not give an immunity notice in relation to proceedings in England and Wales.
- (7) An immunity notice must not be given in relation to an offence under section 188 of the Enterprise Act 2002 (c. 40) (cartel offences).

#### Commencement Information

**I22** S. 71 in force at 1.4.2006 by S.I. 2006/378, art. 5(1)

#### 72 Assistance by offender: undertakings as to use of evidence

- (1) If a specified prosecutor thinks that for the purposes of the investigation or prosecution of any offence it is appropriate to offer any person an undertaking that information of any description will not be used against the person in any proceedings to which this section applies he may give the person a written notice under this subsection (a “restricted use undertaking”).
- (2) This section applies to—
  - (a) criminal proceedings;
  - (b) proceedings under Part 5 of the Proceeds of Crime Act 2002 (c. 29).

**Status:** Point in time view as at 13/04/2006. This version of this part contains provisions that are not valid for this point in time.

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- (3) If a person is given a restricted use undertaking the information described in the undertaking must not be used against that person in any proceedings to which this section applies brought in England and Wales or Northern Ireland except in the circumstances specified in the undertaking.
- (4) A restricted use undertaking ceases to have effect in relation to the person to whom it is given if the person fails to comply with any conditions specified in the undertaking.
- (5) The Director of Public Prosecutions for Northern Ireland or a person designated by him under section 71(4)(e) may not give a restricted use undertaking in relation to proceedings in England and Wales.
- (6) The Director of Public Prosecutions or a person designated by him under section 71(4)(e) may not give a restricted use undertaking in relation to proceedings in Northern Ireland.
- (7) Specified prosecutor must be construed in accordance with section 71(4).

#### **Commencement Information**

**I23** S. 72 in force at 1.4.2006 by [S.I. 2006/378](#), [art. 5\(1\)](#)

### **73 Assistance by defendant: reduction in sentence**

- (1) This section applies if a defendant—
  - (a) following a plea of guilty is either convicted of an offence in proceedings in the Crown Court or is committed to the Crown Court for sentence, and
  - (b) has, pursuant to a written agreement made with a specified prosecutor, assisted or offered to assist the investigator or prosecutor in relation to that or any other offence.
- (2) In determining what sentence to pass on the defendant the court may take into account the extent and nature of the assistance given or offered.
- (3) If the court passes a sentence which is less than it would have passed but for the assistance given or offered, it must state in open court—
  - (a) that it has passed a lesser sentence than it would otherwise have passed, and
  - (b) what the greater sentence would have been.
- (4) Subsection (3) does not apply if the court thinks that it would not be in the public interest to disclose that the sentence has been discounted; but in such a case the court must give written notice of the matters specified in paragraphs (a) and (b) of subsection (3) to both the prosecutor and the defendant.
- (5) Nothing in any enactment which—
  - (a) requires that a minimum sentence is passed in respect of any offence or an offence of any description or by reference to the circumstances of any offender (whether or not the enactment also permits the court to pass a lesser sentence in particular circumstances), or
  - (b) in the case of a sentence which is fixed by law, requires the court to take into account certain matters for the purposes of making an order which determines or has the effect of determining the minimum period of imprisonment which

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the offender must serve (whether or not the enactment also permits the court to fix a lesser period in particular circumstances),  
affects the power of a court to act under subsection (2).

- (6) If, in determining what sentence to pass on the defendant, the court takes into account the extent and nature of the assistance given or offered as mentioned in subsection (2), that does not prevent the court from also taking account of any other matter which it is entitled by virtue of any other enactment to take account of for the purposes of determining—
- (a) the sentence, or
  - (b) in the case of a sentence which is fixed by law, any minimum period of imprisonment which an offender must serve.
- (7) If subsection (3) above does not apply by virtue of subsection (4) above, sections 174(1)(a) and 270 of the Criminal Justice Act 2003 (c. 44) (requirement to explain reasons for sentence or other order) do not apply to the extent that the explanation will disclose that a sentence has been discounted in pursuance of this section.
- (8) In this section—
- (a) a reference to a sentence includes, in the case of a sentence which is fixed by law, a reference to the minimum period an offender is required to serve, and a reference to a lesser sentence must be construed accordingly;
  - (b) a reference to imprisonment includes a reference to any other custodial sentence within the meaning of section 76 of the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6) or Article 2 of the Criminal Justice (Northern Ireland) Order 1996 (S.I. 1996/ 3160).
- (9) An agreement with a specified prosecutor may provide for assistance to be given to that prosecutor or to any other prosecutor.
- (10) References to a specified prosecutor must be construed in accordance with section 71.

**Commencement Information**

**I24** S. 73 in force at 1.4.2006 by [S.I. 2006/378](#), [art. 5\(1\)](#)

**74 Assistance by defendant: review of sentence**

- (1) This section applies if—
- (a) the Crown Court has passed a sentence on a person in respect of an offence, and
  - (b) the person falls within subsection (2).
- (2) A person falls within this subsection if—
- (a) he receives a discounted sentence in consequence of his having offered in pursuance of a written agreement to give assistance to the prosecutor or investigator of an offence but he knowingly fails to any extent to give assistance in accordance with the agreement;
  - (b) he receives a discounted sentence in consequence of his having offered in pursuance of a written agreement to give assistance to the prosecutor or investigator of an offence and, having given the assistance in accordance with

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- the agreement, in pursuance of another written agreement gives or offers to give further assistance;
- (c) he receives a sentence which is not discounted but in pursuance of a written agreement he subsequently gives or offers to give assistance to the prosecutor or investigator of an offence.
- (3) A specified prosecutor may at any time refer the case back to the court by which the sentence was passed if—
- (a) the person is still serving his sentence, and
- (b) the specified prosecutor thinks it is in the interests of justice to do so.
- (4) A case so referred must, if possible, be heard by the judge who passed the sentence to which the referral relates.
- (5) If the court is satisfied that a person who falls within subsection (2)(a) knowingly failed to give the assistance it may substitute for the sentence to which the referral relates such greater sentence (not exceeding that which it would have passed but for the agreement to give assistance) as it thinks appropriate.
- (6) In a case of a person who falls within subsection (2)(b) or (c) the court may—
- (a) take into account the extent and nature of the assistance given or offered;
- (b) substitute for the sentence to which the referral relates such lesser sentence as it thinks appropriate.
- (7) Any part of the sentence to which the referral relates which the person has already served must be taken into account in determining when a greater or lesser sentence imposed by subsection (5) or (6) has been served.
- (8) A person in respect of whom a reference is made under this section and the specified prosecutor may with the leave of the Court of Appeal appeal to the Court of Appeal against the decision of the Crown Court.
- (9) Section 33(3) of the Criminal Appeal Act 1968 (c. 19) (limitation on appeal from the criminal division of the Court of Appeal) does not prevent an appeal to the Supreme Court under this section.
- (10) A discounted sentence is a sentence passed in pursuance of section 73 or subsection (6) above.
- (11) References—
- (a) to a written agreement are to an agreement made in writing with a specified prosecutor;
- (b) to a specified prosecutor must be construed in accordance with section 71.
- (12) In relation to any proceedings under this section, the Secretary of State may make an order containing provision corresponding to any provision in—
- (a) the Criminal Appeal Act 1968 (subject to any specified modifications), or
- (b) the Criminal Appeal (Northern Ireland) Act 1980 (c. 47) (subject to any specified modifications).
- (13) A person does not fall within subsection (2) if—
- (a) he was convicted of an offence for which the sentence is fixed by law, and
- (b) he did not plead guilty to the offence for which he was sentenced.

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- (14) Section 174(1)(a) or 270 of the Criminal Justice Act 2003 (c. 44) (as the case may be) applies to a sentence substituted under subsection (5) above unless the court thinks that it is not in the public interest to disclose that the person falls within subsection (2) (a) above.
- (15) Subsections (3) to (9) of section 73 apply for the purposes of this section as they apply for the purposes of that section and any reference in those subsections to subsection (2) of that section must be construed as a reference to subsection (6) of this section.

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**Commencement Information**

**I25** S. 74 in force at 1.4.2006 by [S.I. 2006/378](#), [art. 5\(1\)](#) (with [art. 5\(2\)](#))

## **75 Proceedings under section 74: exclusion of public**

- (1) This section applies to—
- (a) any proceedings relating to a reference made under section 74(3), and
  - (b) any other proceedings arising in consequence of such proceedings.
- (2) The court in which the proceedings will be or are being heard may make such order as it thinks appropriate—
- (a) to exclude from the proceedings any person who does not fall within subsection (4);
  - (b) to give such directions as it thinks appropriate prohibiting the publication of any matter relating to the proceedings (including the fact that the reference has been made).
- (3) An order under subsection (2) may be made only to the extent that the court thinks—
- (a) that it is necessary to do so to protect the safety of any person, and
  - (b) that it is in the interests of justice.
- (4) The following persons fall within this subsection—
- (a) a member or officer of the court;
  - (b) a party to the proceedings;
  - (c) counsel or a solicitor for a party to the proceedings;
  - (d) a person otherwise directly concerned with the proceedings.
- (5) This section does not affect any other power which the court has by virtue of any rule of law or other enactment—
- (a) to exclude any person from proceedings, or
  - (b) to restrict the publication of any matter relating to proceedings.

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**Commencement Information**

**I26** S. 75 in force at 1.4.2006 by [S.I. 2006/378](#), [art. 5\(1\)](#)

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## CHAPTER 3

### FINANCIAL REPORTING ORDERS

#### 76 Financial reporting orders: making

- (1) A court sentencing or otherwise dealing with a person convicted of an offence mentioned in subsection (3) may also make a financial reporting order in respect of him.
- (2) But it may do so only if it is satisfied that the risk of the person's committing another offence mentioned in subsection (3) is sufficiently high to justify the making of a financial reporting order.
- (3) The offences are—
  - (a) an offence under any of the following provisions of the Theft Act 1968 (c. 60)—
    - section 15 (obtaining property by deception),
    - section 15A (obtaining a money transfer by deception),
    - section 16 (obtaining a pecuniary advantage by deception),
    - section 20(2) (procuring execution of valuable security, etc.),
  - (b) an offence under either of the following provisions of the Theft Act 1978 (c. 31)—
    - section 1 (obtaining services by deception),
    - section 2 (evasion of liability by deception),
  - (c) any offence specified in Schedule 2 to the Proceeds of Crime Act 2002 (c. 29) (“lifestyle offences”).
- (4) The Secretary of State may by order amend subsection (3) so as to remove an offence from it or add an offence to it.
- (5) A financial reporting order—
  - (a) comes into force when it is made, and
  - (b) has effect for the period specified in the order, beginning with the date on which it is made.
- (6) If the order is made by a magistrates' court, the period referred to in subsection (5) (b) must not exceed 5 years.
- (7) Otherwise, that period must not exceed—
  - (a) if the person is sentenced to imprisonment for life, 20 years,
  - (b) otherwise, 15 years.

#### **Commencement Information**

**I27** S. 76 in force at 1.4.2006 by S.I. 2006/378, art. 4(1), **Sch. para. 11** (with art. 4(2)-(7))



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VALID FROM 01/05/2006

## **77 Financial reporting orders: making in Scotland**

- (1) A court sentencing or otherwise dealing with a person convicted of an offence mentioned in subsection (3) may also make a financial reporting order in respect of him.
- (2) But he or it may do so only if satisfied that the risk of the person's committing another offence mentioned in subsection (3) is sufficiently high to justify the making of a financial reporting order.
- (3) The offences are—
  - (a) at common law, the offence of fraud,
  - (b) any offence specified in Schedule 4 to the Proceeds of Crime Act 2002 (c. 29) (“lifestyle offences”: Scotland).
- (4) The Scottish Ministers may by order amend subsection (3) so as to remove an offence from it or add an offence to it.
- (5) A financial reporting order—
  - (a) comes into force when it is made, and
  - (b) has effect for the period specified in the order, beginning with the date on which it is made.
- (6) If the order is made by the sheriff, the period referred to in subsection (5)(b) must not exceed 5 years.
- (7) If the order is made by the High Court of Justiciary, that period must not exceed—
  - (a) if the person is sentenced to imprisonment for life, 20 years,
  - (b) otherwise, 15 years.

## **78 Financial reporting orders: making in Northern Ireland**

- (1) A court sentencing or otherwise dealing with a person convicted of an offence mentioned in subsection (3) may also make a financial reporting order in respect of him.
- (2) But the court may do so only if it is satisfied that the risk of the person's committing another offence mentioned in subsection (3) is sufficiently high to justify the making of a financial reporting order.
- (3) The offences are—
  - (a) an offence under any of the following provisions of the Theft Act (Northern Ireland) 1969 (c. 16 (N.I.))—
    - section 15 (obtaining property by deception),
    - section 15A (obtaining a money transfer by deception),
    - section 16 (obtaining a pecuniary advantage by deception),
    - section 19(2) (procuring execution of valuable security, etc.),
  - (b) an offence under either of the following provisions of the Theft (Northern Ireland) Order 1978 (S.I. 1978/1407 (N.I. 23))—

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- Article 3 (obtaining services by deception),  
 Article 4 (evasion of liability by deception),
- (c) any offence specified in Schedule 5 to the Proceeds of Crime Act 2002 (“lifestyle offences”: Northern Ireland).
- (4) A financial reporting order—
- (a) comes into force when it is made, and
  - (b) has effect for the period specified in the order, beginning with the date on which it is made.
- (5) If the order is made by a magistrates' court, or by the county court on appeal, the period referred to in subsection (4)(b) must not exceed 5 years.
- (6) Otherwise, that period must not exceed—
- (a) if the person is sentenced to imprisonment for life, 20 years,
  - (b) otherwise, 15 years.

**Commencement Information**

**I28** S. 78 in force at 1.4.2006 by S.I. 2006/378, art. 4(1), **Sch. para. 11** (with art. 4(2)-(7))

**79 Financial reporting orders: effect**

- (1) A person in relation to whom a financial reporting order has effect must do the following.
- (2) He must make a report, in respect of—
  - (a) the period of a specified length beginning with the date on which the order comes into force, and
  - (b) subsequent periods of specified lengths, each period beginning immediately after the end of the previous one.
- (3) He must set out in each report, in the specified manner, such particulars of his financial affairs relating to the period in question as may be specified.
- (4) He must include any specified documents with each report.
- (5) He must make each report within the specified number of days after the end of the period in question.
- (6) He must make each report to the specified person.
- (7) Rules of court may provide for the maximum length of the periods which may be specified under subsection (2).
- (8) In this section, “specified” means specified by the court in the order.
- (9) In Scotland the specified person must be selected by the court from a list set out in an order made for the purposes of this section by the Scottish Ministers.
- (10) A person who without reasonable excuse includes false or misleading information in a report, or otherwise fails to comply with any requirement of this section, is guilty of an offence and is liable on summary conviction to—
  - (a) imprisonment for a term not exceeding—

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- (i) in England and Wales, 51 weeks,
  - (ii) in Scotland, 12 months,
  - (iii) in Northern Ireland, 6 months, or
- (b) a fine not exceeding level 5 on the standard scale,  
or to both.

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**Commencement Information**

**I29** S. 79 in force at 1.4.2006 for E.W.N.I. by [S.I. 2006/378](#), [art. 6](#)

## 80 Financial reporting orders: variation and revocation

- (1) An application for variation or revocation of a financial reporting order may be made by—
  - (a) the person in respect of whom it has been made,
  - (b) the person to whom reports are to be made under it (see section 79(6)).
- (2) The application must be made to the court which made the order.
- (3) But if the order was made on appeal, the application must be made to the court which originally sentenced the person in respect of whom the order was made.
- (4) If (in either case) that court was a magistrates' court, the application may be made to any magistrates' court acting in the same local justice area (or in Northern Ireland for the same county court division) as that court.
- (5) Subsections (3) and (4) do not apply to Scotland.

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**Commencement Information**

**I30** S. 80 in force at 1.4.2006 for E.W.N.I. by [S.I. 2006/378](#), [art. 6](#)

## 81 Financial reporting orders: verification and disclosure

- (1) In this section, “the specified person” means the person to whom reports under a financial reporting order are to be made.
- (2) The specified person may, for the purpose of doing either of the things mentioned in subsection (4), disclose a report to any person who he reasonably believes may be able to contribute to doing either of those things.
- (3) Any other person may disclose information to—
  - (a) the specified person, or
  - (b) a person to whom the specified person has disclosed a report,for the purpose of contributing to doing either of the things mentioned in subsection (4).
- (4) The things mentioned in subsections (2) and (3) are—
  - (a) checking the accuracy of the report or of any other report made pursuant to the same order,
  - (b) discovering the true position.

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- (5) The specified person may also disclose a report for the purposes of—
- (a) the prevention, detection, investigation or prosecution of criminal offences, whether in the United Kingdom or elsewhere,
  - (b) the prevention, detection or investigation of conduct for which penalties other than criminal penalties are provided under the law of any part of the United Kingdom or of any country or territory outside the United Kingdom.
- (6) A disclosure under this section does not breach—
- (a) any obligation of confidence owed by the person making the disclosure, or
  - (b) any other restriction on the disclosure of information (however imposed).
- (7) But nothing in this section authorises a disclosure, in contravention of any provisions of the Data Protection Act 1998 (c. 29), of personal data which are not exempt from those provisions.
- (8) In this section, references to a report include any of its contents, any document included with the report, or any of the contents of such a document.

#### **Commencement Information**

**I31** S. 81 in force at 1.4.2006 for E.W.N.I. by [S.I. 2006/378](#), [art. 6](#)

## **CHAPTER 4**

### PROTECTION OF WITNESSES AND OTHER PERSONS

#### **82 Protection of persons involved in investigations or proceedings**

- (1) A protection provider may make such arrangements as he considers appropriate for the purpose of protecting a person of a description specified in Schedule 5 if—
- (a) the protection provider considers that the person's safety is at risk by virtue of his being a person of a description so specified, and
  - (b) the person is ordinarily resident in the United Kingdom.
- (2) A protection provider may vary or cancel any arrangements made by him under subsection (1) if he considers it appropriate to do so.
- (3) If a protection provider makes arrangements under subsection (1) or cancels arrangements made under that subsection, he must record that he has done so.
- (4) In determining whether to make arrangements under subsection (1), or to vary or cancel arrangements made under that subsection, a protection provider must, in particular, have regard to—
- (a) the nature and extent of the risk to the person's safety,
  - (b) the cost of the arrangements,
  - (c) the likelihood that the person, and any person associated with him, will be able to adjust to any change in their circumstances which may arise from the making of the arrangements or from their variation or cancellation (as the case may be), and

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- (d) if the person is or might be a witness in legal proceedings (whether or not in the United Kingdom), the nature of the proceedings and the importance of his being a witness in those proceedings.
- (5) A protection provider is—
- (a) a chief officer of a police force in England and Wales;
  - (b) a chief constable of a police force in Scotland;
  - (c) the Chief Constable of the Police Service of Northern Ireland;
  - (d) the Director General of SOCA;
  - (e) any of the Commissioners for Her Majesty's Revenue and Customs;
  - (f) the Director of the Scottish Drug Enforcement Agency;
  - (g) a person designated by a person mentioned in any of the preceding paragraphs to exercise his functions under this section.
- (6) The Secretary of State may, after consulting the Scottish Ministers, by order amend Schedule 5 so as to add, modify or omit any entry.
- (7) Nothing in this section affects any power which a person has (otherwise than by virtue of this section) to make arrangements for the protection of another person.

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**Commencement Information**

**I32** S. 82 in force at 1.4.2006 except to the extent that it extends to S. by [S.I. 2005/1521, art. 5\(1\)](#)

**I33** S. 82 in force at 1.4.2006 for S. by [S.S.I. 2006/166, art. 2\(1\)\(b\)](#)

### 83 Joint arrangements

- (1) Arrangements may be made under section 82(1) by two or more protection providers acting jointly.
- (2) If arrangements are made jointly by virtue of subsection (1), any powers conferred on a protection provider by this Chapter are exercisable in relation to the arrangements by—
- (a) all of the protection providers acting together, or
  - (b) one of the protection providers, or some of the protection providers acting together, with the agreement of the others.
- (3) Nothing in this section or in section 84 affects any power which a protection provider has to request or obtain assistance from another protection provider.

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**Commencement Information**

**I34** S. 83 in force at 1.4.2006 for S. by [S.S.I. 2006/166, art. 2\(1\)\(b\)](#)

**I35** S. 83 in force at 1.4.2006 except to the extent that it extends to S. by [S.I. 2005/1521, art. 5\(1\)](#)

### 84 Transfer of responsibility to other protection provider

- (1) A protection provider who makes arrangements under section 82(1) may agree with another protection provider that, as from a date specified in the agreement—
- (a) the protection provider will cease to discharge any responsibilities which he has in relation to the arrangements, and

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- (b) the other protection provider will discharge those responsibilities instead.
- (2) Any such agreement may include provision for the making of payments in respect of any costs incurred or likely to be incurred in consequence of the agreement.
- (3) If an agreement is made under subsection (1), any powers conferred on a protection provider by this Chapter (including the power conferred by subsection (1)) are, as from the date specified in the agreement, exercisable by the other protection provider as if he had made the arrangements under section 82(1).
- (4) Each protection provider who makes an agreement under subsection (1) must record that he has done so.

#### Commencement Information

- I36** S. 84 in force at 1.4.2006 except to the extent that it extends to S. by S.I. 2005/1521, art. 5(1)
- I37** S. 84 in force at 1.4.2006 for S. by S.S.I. 2006/166, art. 2(1)(b)

## 85 Duty to assist protection providers

- (1) This section applies if a protection provider requests assistance from a public authority in connection with the making of arrangements under section 82(1) or the implementation, variation or cancellation of such arrangements.
- (2) The public authority must take reasonable steps to provide the assistance requested.
- (3) “Public authority” includes any person certain of whose functions are of a public nature but does not include—
  - (a) a court or tribunal,
  - (b) either House of Parliament or a person exercising functions in connection with proceedings in Parliament, or
  - (c) the Scottish Parliament or a person exercising functions in connection with proceedings in the Scottish Parliament.

#### Commencement Information

- I38** S. 85 in force at 1.4.2006 except to the extent that it extends to S. by S.I. 2005/1521, art. 5(1)
- I39** S. 85 in force at 1.4.2006 for S. by S.S.I. 2006/166, art. 2(1)(b)

## 86 Offence of disclosing information about protection arrangements

- (1) A person commits an offence if—
  - (a) he discloses information which relates to the making of arrangements under section 82(1) or to the implementation, variation or cancellation of such arrangements, and
  - (b) he knows or suspects that the information relates to the making of such arrangements or to their implementation, variation or cancellation.
- (2) A person who commits an offence under this section is liable—
  - (a) on conviction on indictment, to imprisonment for a term not exceeding two years, to a fine or to both;

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- (b) on summary conviction, to imprisonment for a term not exceeding 12 months, to a fine not exceeding the statutory maximum or to both.
- (3) In the application of this section to Scotland or Northern Ireland, the reference in subsection (2)(b) to 12 months is to be read as a reference to 6 months.

#### Commencement Information

**I40** S. 86 in force at 1.4.2006 for S. by S.S.I. 2006/166, art. 2(1)(b)

**I41** S. 86 in force at 1.4.2006 except to the extent that it extends to S. by S.I. 2005/1521, art. 5(1)

## 87 Defences to liability under section 86

- (1) A person (P) is not guilty of an offence under section 86 if—
- (a) at the time when P disclosed the information, he was or had been a protected person,
  - (b) the information related only to arrangements made for the protection of P or for the protection of P and a person associated with him, and
  - (c) at the time when P disclosed the information, it was not likely that its disclosure would endanger the safety of any person.
- (2) A person (D) is not guilty of an offence under section 86 if—
- (a) D disclosed the information with the agreement of a person (P) who, at the time the information was disclosed, was or had been a protected person,
  - (b) the information related only to arrangements made for the protection of P or for the protection of P and a person associated with him, and
  - (c) at the time when D disclosed the information, it was not likely that its disclosure would endanger the safety of any person.
- (3) A person is not guilty of an offence under section 86 if he disclosed the information for the purposes of safeguarding national security or for the purposes of the prevention, detection or investigation of crime.
- (4) A person is not guilty of an offence under section 86 if—
- (a) at the time when he disclosed the information, he was a protection provider or involved in the making of arrangements under section 82(1) or in the implementation, variation or cancellation of such arrangements, and
  - (b) he disclosed the information for the purposes of the making, implementation, variation or cancellation of such arrangements.
- (5) The Secretary of State may by order make provision prescribing circumstances in which a person who discloses information as mentioned in section 86(1) is not guilty in England and Wales or in Northern Ireland of an offence under that section.
- (6) The Scottish Ministers may by order make provision prescribing circumstances in which a person who discloses information as mentioned in section 86(1) is not guilty in Scotland of an offence under that section.
- (7) If sufficient evidence is adduced to raise an issue with respect to a defence under or by virtue of this section, the court or jury must assume that the defence is satisfied unless the prosecution proves beyond reasonable doubt that it is not.

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#### Commencement Information

**I42** S. 87 in force at 1.4.2006 for S. by S.S.I. 2006/166, art. 2(1)(b)

**I43** S. 87 in force at 1.4.2006 except to the extent that it extends to S. by S.I. 2005/1521, art. 5(1)

### 88 Offences of disclosing information relating to persons assuming new identity

- (1) A person (P) commits an offence if—
- (a) P is or has been a protected person,
  - (b) P assumed a new identity in pursuance of arrangements made under section 82(1),
  - (c) P discloses information which indicates that he assumed, or might have assumed, a new identity, and
  - (d) P knows or suspects that the information disclosed by him indicates that he assumed, or might have assumed, a new identity.
- (2) A person (D) commits an offence if—
- (a) D discloses information which relates to a person (P) who is or has been a protected person,
  - (b) P assumed a new identity in pursuance of arrangements made under section 82(1),
  - (c) the information disclosed by D indicates that P assumed, or might have assumed, a new identity, and
  - (d) D knows or suspects—
    - (i) that P is or has been a protected person, and
    - (ii) that the information disclosed by D indicates that P assumed, or might have assumed, a new identity.
- (3) A person who commits an offence under this section is liable—
- (a) on conviction on indictment, to imprisonment for a term not exceeding two years, to a fine or to both;
  - (b) on summary conviction, to imprisonment for a term not exceeding 12 months, to a fine not exceeding the statutory maximum or to both.
- (4) In the application of this section to Scotland or Northern Ireland, the reference in subsection (3)(b) to 12 months is to be read as a reference to 6 months.

#### Commencement Information

**I44** S. 88 in force at 1.4.2006 except to the extent that it extends to S. by S.I. 2005/1521, art. 5(1)

**I45** S. 88 in force at 1.4.2006 for S. by S.S.I. 2006/166, art. 2(1)(b)

### 89 Defences to liability under section 88

- (1) P is not guilty of an offence under section 88(1) if, at the time when he disclosed the information, it was not likely that its disclosure would endanger the safety of any person.
- (2) D is not guilty of an offence under section 88(2) if—
- (a) D disclosed the information with the agreement of P, and



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- (b) at the time when D disclosed the information, it was not likely that its disclosure would endanger the safety of any person.
- (3) D is not guilty of an offence under section 88(2) if he disclosed the information for the purposes of safeguarding national security or for the purposes of the prevention, detection or investigation of crime.
- (4) D is not guilty of an offence under section 88(2) if—
  - (a) at the time when he disclosed the information, he was a protection provider or involved in the making of arrangements under section 82(1) or in the implementation, variation or cancellation of such arrangements, and
  - (b) he disclosed the information for the purposes of the making, implementation, variation or cancellation of such arrangements.
- (5) The Secretary of State may by order make provision prescribing circumstances in which a person who discloses information as mentioned in subsection (1) or (2) of section 88 is not guilty in England and Wales or in Northern Ireland of an offence under that subsection.
- (6) The Scottish Ministers may by order make provision prescribing circumstances in which a person who discloses information as mentioned in subsection (1) or (2) of section 88 is not guilty in Scotland of an offence under that subsection.
- (7) If sufficient evidence is adduced to raise an issue with respect to a defence under or by virtue of this section, the court or jury must assume that the defence is satisfied unless the prosecution proves beyond reasonable doubt that it is not.

#### Commencement Information

**I46** S. 89 in force at 1.4.2006 except to the extent that it extends to S. by S.I. 2005/1521, art. 5(1)

**I47** S. 89 in force at 1.4.2006 for S. by S.S.I. 2006/166, art. 2(1)(b)

## 90 Protection from liability

- (1) This section applies if—
  - (a) arrangements are made for the protection of a person under section 82(1), and
  - (b) the protected person assumes a new identity in pursuance of the arrangements.
- (2) No proceedings (whether civil or criminal) may be brought against a person to whom this section applies in respect of the making by him of a false or misleading representation if the representation—
  - (a) relates to the protected person, and
  - (b) is made solely for the purpose of ensuring that the arrangements made for him to assume a new identity are, or continue to be, effective.
- (3) The persons to whom this section applies are—
  - (a) the protected person;
  - (b) a person who is associated with the protected person;
  - (c) a protection provider;
  - (d) a person involved in the making of arrangements under section 82(1) or in the implementation, variation or cancellation of such arrangements.

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#### **Commencement Information**

- I48** S. 90 in force at 1.4.2006 except to the extent that it extends to S. by [S.I. 2005/1521, art. 5\(1\)](#)  
**I49** S. 90 in force at 1.4.2006 for S. by [S.S.I. 2006/166, art. 2\(1\)\(b\)](#)

### **91 Transitional provision**

- (1) This section applies to arrangements which were, at any time before the commencement of section 82, made by a protection provider, or any person acting with his authority, for the purpose of protecting a person of a description specified in Schedule 5.
- (2) If the following three conditions are satisfied, the arrangements are to be treated as having been made by the protection provider under section 82(1).
- (3) The first condition is that the protection provider could have made the arrangements under section 82(1) had it been in force at the time when the arrangements were made.
- (4) The second condition is that the arrangements were in operation immediately before the commencement of section 82.
- (5) The third condition is that the protection provider determines that it is appropriate to treat the arrangements as having been made under section 82(1).
- (6) A determination under subsection (5) may be made at any time before the end of the period of six months beginning with the day on which section 82 comes into force.
- (7) A protection provider must make a record of a determination under subsection (5).
- (8) Subsection (9) applies if—
  - (a) at any time before the commencement of section 82, arrangements were made by a person specified in subsection (11), or any person acting with the authority of such a person, for the purpose of protecting a person of a description specified in Schedule 5, and
  - (b) functions in relation to the arrangements are, at any time before the end of the period of six months mentioned in subsection (6), exercisable by a protection provider.
- (9) The provision made by subsections (1) to (7) applies in relation to the arrangements as if they had been made by the protection provider.
- (10) Accordingly, if the three conditions mentioned in subsections (3) to (5) are satisfied in relation to the arrangements, they are to be treated, by virtue of subsection (2), as having been made by the protection provider under section 82(1).
- (11) The persons specified in this subsection are—
  - (a) the Director General of the National Criminal Intelligence Service;
  - (b) the Director General of the National Crime Squad;
  - (c) any of the Commissioners of Her Majesty's Customs and Excise.

#### **Commencement Information**

- I50** S. 91 in force at 1.4.2006 except to the extent that it extends to S. by [S.I. 2005/1521, art. 5\(1\)](#)

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**I51** S. 91 in force at 1.4.2006 for S. by [S.S.I. 2006/166, art. 2\(1\)\(b\)](#)

## 92 Transitional provision: supplemental

- (1) In this section—
  - (a) “the arrangements” are arrangements which are treated as having been made by a protection provider by virtue of section 91(2), and
  - (b) “the relevant date” is the date of the record made by the protection provider, in relation to the arrangements, in pursuance of section 91(7).
- (2) A person does not commit an offence under section 86(1) by disclosing information relating to the arrangements unless the information is disclosed on or after the relevant date.
- (3) But it is immaterial whether the information relates to something done in connection with the arrangements before or on or after the relevant date.
- (4) A person does not commit an offence under section 88(1) or (2) by disclosing information relating to a person who assumed a new identity in pursuance of the arrangements unless the information is disclosed on or after the relevant date.
- (5) But it is immaterial whether the person assumed a new identity before or on or after the relevant date.
- (6) Section 90 applies in relation to a false or misleading representation relating to a person who assumed a new identity in pursuance of the arrangements only if the false or misleading representation is made on or after the relevant date.
- (7) But it is immaterial whether the person assumed a new identity before or on or after the relevant date.

### Commencement Information

**I52** S. 92 in force at 1.4.2006 for S. by [S.S.I. 2006/166, art. 2\(1\)\(b\)](#)

**I53** S. 92 in force at 1.4.2006 except to the extent that it extends to S. by [S.I. 2005/1521, art. 5\(1\)](#)

## 93 Provision of information

- (1) This section applies if—
  - (a) a protection provider makes arrangements under section 82(1), or
  - (b) a protection provider determines under section 91(5) that it is appropriate to treat arrangements to which that section applies as having been made under section 82(1).
- (2) The protection provider must inform the person to whom the arrangements relate of the provisions of this Chapter as they apply in relation to the arrangements.
- (3) If the protection provider considers that the person would be unable to understand the information, by reason of his age or of any incapacity, the information must instead be given to a person who appears to the protection provider—
  - (a) to be interested in the welfare of the person to whom the arrangements relate, and
  - (b) to be the appropriate person to whom to give the information.

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- (4) If arrangements are made jointly under section 82(1) (by virtue of section 83), the protection providers involved in the arrangements must nominate one of those protection providers to perform the duties imposed by this section.

#### **Commencement Information**

**I54** S. 93 in force at 1.4.2006 except to the extent that it extends to S. by [S.I. 2005/1521, art. 5\(1\)](#)

**I55** S. 93 in force at 1.4.2006 for S. by [S.S.I. 2006/166, art. 2\(1\)\(b\)](#)

## **94 Interpretation of Chapter 4**

- (1) This section applies for the purposes of this Chapter.
- (2) “Protection provider” is to be construed in accordance with section 82.
- (3) A person is a protected person if—
- (a) arrangements have been made for his protection under subsection (1) of section 82, and
  - (b) the arrangements have not been cancelled under subsection (2) of that section.
- (4) A person is associated with another person if any of the following apply—
- (a) they are members of the same family;
  - (b) they live in the same household;
  - (c) they have lived in the same household.
- (5) A person assumes a new identity if either or both of the following apply—
- (a) he becomes known by a different name;
  - (b) he makes representations about his personal history or circumstances which are false or misleading.
- (6) A reference to a person who is a witness in legal proceedings includes a reference to a person who provides any information or any document or other thing which might be used in evidence in those proceedings or which (whether or not admissible as evidence in those proceedings)—
- (a) might tend to confirm evidence which will or might be admitted in those proceedings,
  - (b) might be referred to in evidence given in those proceedings by another witness, or
  - (c) might be used as the basis for any cross examination in the course of those proceedings,
- and a reference to a person who might be, or to a person who has been, a witness in legal proceedings is to be construed accordingly.
- (7) A reference to a person who is a witness in legal proceedings does not include a reference to a person who is an accused person in criminal proceedings unless he is a witness for the prosecution and a reference to a person who might be, or to a person who has been, a witness in legal proceedings is to be construed accordingly.
- (8) A reference to a person who is or has been a member of staff of an organisation includes a reference to a person who is or has been seconded to the organisation to serve as a member of its staff.

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- (9) “The Scottish Drug Enforcement Agency” and “the Director” of that Agency have the meanings given by section 42(2).

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**Commencement Information**

- I56** S. 94 in force at 1.4.2006 except to the extent that it extends to S. by S.I. 2005/1521, art. 5(1)  
**I57** S. 94 in force at 1.4.2006 for S. by S.I. 2006/166, art. 2(1)(b)

## CHAPTER 5

### INTERNATIONAL OBLIGATIONS

#### 95 Enforcement of overseas forfeiture orders

In section 9 of the Criminal Justice (International Co-operation) Act 1990 (c. 5) (enforcement of overseas forfeiture orders), for subsection (6) (offences to which section applies) substitute—

- “(6) This section applies to any offence that corresponds to or is similar to—
- (a) an offence under the law of England and Wales;
  - (b) an offence under the law of Scotland; or
  - (c) an offence under the law of Northern Ireland.”

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**Commencement Information**

- I58** S. 95 in force at 1.7.2005 by S.I. 2005/1521, art. 2(1)(a)

#### 96 Mutual assistance in freezing property or evidence

- (1) The Secretary of State or the Scottish Ministers may by order make provision—
- (a) for the purpose of implementing any obligation of the United Kingdom created or arising by or under the Decision or enabling any such obligation to be implemented,
  - (b) for the purpose of enabling any rights enjoyed or to be enjoyed by the United Kingdom under or by virtue of the Decision to be exercised, or
  - (c) for the purpose of dealing with matters arising out of or related to any such obligation or rights.
- (2) In subsection (1) “the Decision” means Council Framework Decision 2003/577/JHA of 22 July 2003 on the execution in the European Union of orders freezing property or evidence.
- (3) The provision that may be made under subsection (1) by the Secretary of State includes, subject to subsections (5) and (7), any provision (of any extent) that might be made by Act of Parliament.
- (4) The provision that may be made under subsection (1) by the Scottish Ministers includes, subject to subsections (6) and (7), any provision that might be made by Act of the Scottish Parliament.

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- (5) The power conferred by subsection (1) on the Secretary of State does not include power to make provision that would be within the legislative competence of the Scottish Parliament if it were included in an Act of that Parliament.
- (6) The power conferred by subsection (1) on the Scottish Ministers is limited to the making of provision that would be within the legislative competence of the Scottish Parliament if it were included in an Act of that Parliament.
- (7) The powers conferred by subsection (1) do not include power—
- (a) to make any provision imposing or increasing taxation,
  - (b) to make any provision taking effect from a date earlier than that of the making of the instrument containing the provision,
  - (c) to confer any power to legislate by means of orders, rules, regulations or other subordinate instrument, other than rules of procedure for a court or tribunal, or
  - (d) to create criminal offences.
- (8) Subsection (7)(c) does not preclude—
- (a) the modification of a power to legislate conferred otherwise than under subsection (1), or
  - (b) the extension of any such power to purposes of the like nature as those for which it was conferred,
- and a power to give directions as to matters of administration is not to be regarded as a power to legislate within the meaning of subsection (7)(c).

#### **Commencement Information**

**159** S. 96 in force at 1.7.2005 for specified purposes by S.I. 2005/1521, art. 3(2)

**160** S. 96 in force at 1.7.2005 in so far as not already in force by S.S.I. 2005/358, art. 2(a)

## **CHAPTER 6**

### PROCEEDS OF CRIME

#### **97 Confiscation orders by magistrates' courts**

- (1) The Secretary of State may by order make such provision as he considers appropriate for or in connection with enabling confiscation orders under—
- (a) Part 2 of the Proceeds of Crime Act 2002 (c. 29) (confiscation: England and Wales), or
  - (b) Part 4 of that Act (confiscation: Northern Ireland),
- to be made by magistrates' courts in England and Wales or Northern Ireland (as the case may be).
- (2) But an order under subsection (1) may not enable such a confiscation order to be made by any magistrates' court in respect of an amount exceeding £10,000.
- (3) An order under subsection (1) may amend, repeal, revoke or otherwise modify any provision of Part 2 or 4 of the 2002 Act or any other enactment relating to, or to things done under or for the purposes of, either (or any provision) of those Parts.

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#### Commencement Information

**I61** S. 97 in force at 1.7.2005 by S.I. 2005/1521, art. 3(1)(a)

## 98 Civil recovery: freezing orders

(1) In the Proceeds of Crime Act 2002 (c. 29), after section 245 insert—

*“Property freezing orders (England and Wales and Northern Ireland)*

### 245A Application for property freezing order

- (1) Where the enforcement authority may take proceedings for a recovery order in the High Court, the authority may apply to the court for a property freezing order (whether before or after starting the proceedings).
- (2) A property freezing order is an order that—
  - (a) specifies or describes the property to which it applies, and
  - (b) subject to any exclusions (see section 245C(1)(b) and (2)), prohibits any person to whose property the order applies from in any way dealing with the property.
- (3) An application for a property freezing order may be made without notice if the circumstances are such that notice of the application would prejudice any right of the enforcement authority to obtain a recovery order in respect of any property.
- (4) The court may make a property freezing order on an application if it is satisfied that the condition in subsection (5) is met and, where applicable, that the condition in subsection (6) is met.
- (5) The first condition is that there is a good arguable case—
  - (a) that the property to which the application for the order relates is or includes recoverable property, and
  - (b) that, if any of it is not recoverable property, it is associated property.
- (6) The second condition is that, if—
  - (a) the property to which the application for the order relates includes property alleged to be associated property, and
  - (b) the enforcement authority has not established the identity of the person who holds it,the authority has taken all reasonable steps to do so.

### 245B Variation and setting aside of order

- (1) The court may at any time vary or set aside a property freezing order.
- (2) If the court makes an interim receiving order that applies to all of the property to which a property freezing order applies, it must set aside the property freezing order.

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- (3) If the court makes an interim receiving order that applies to some but not all of the property to which a property freezing order applies, it must vary the property freezing order so as to exclude any property to which the interim receiving order applies.
- (4) If the court decides that any property to which a property freezing order applies is neither recoverable property nor associated property, it must vary the order so as to exclude the property.
- (5) Before exercising power under this Chapter to vary or set aside a property freezing order, the court must (as well as giving the parties to the proceedings an opportunity to be heard) give such an opportunity to any person who may be affected by its decision.
- (6) Subsection (5) does not apply where the court is acting as required by subsection (2) or (3).

### **245C Exclusions**

- (1) The power to vary a property freezing order includes (in particular) power to make exclusions as follows—
  - (a) power to exclude property from the order, and
  - (b) power, otherwise than by excluding property from the order, to make exclusions from the prohibition on dealing with the property to which the order applies.
- (2) Exclusions from the prohibition on dealing with the property to which the order applies (other than exclusions of property from the order) may also be made when the order is made.
- (3) An exclusion may, in particular, make provision for the purpose of enabling any person—
  - (a) to meet his reasonable living expenses, or
  - (b) to carry on any trade, business, profession or occupation.
- (4) An exclusion may be made subject to conditions.
- (5) Where the court exercises the power to make an exclusion for the purpose of enabling a person to meet legal expenses that he has incurred, or may incur, in respect of proceedings under this Part, it must ensure that the exclusion—
  - (a) is limited to reasonable legal expenses that the person has reasonably incurred or that he reasonably incurs,
  - (b) specifies the total amount that may be released for legal expenses in pursuance of the exclusion, and
  - (c) is made subject to the required conditions (see section 286A) in addition to any conditions imposed under subsection (4).
- (6) The court, in deciding whether to make an exclusion for the purpose of enabling a person to meet legal expenses of his in respect of proceedings under this Part—
  - (a) must have regard (in particular) to the desirability of the person being represented in any proceedings under this Part in which he is a participant, and



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- (b) must, where the person is the respondent, disregard the possibility that legal representation of the person in any such proceedings might, were an exclusion not made, be funded by the Legal Services Commission or the Northern Ireland Legal Services Commission.
- (7) If excluded property is not specified in the order it must be described in the order in general terms.
- (8) The power to make exclusions must, subject to subsection (6), be exercised with a view to ensuring, so far as practicable, that the satisfaction of any right of the enforcement authority to recover the property obtained through unlawful conduct is not unduly prejudiced.
- (9) Subsection (8) does not apply where the court is acting as required by section 245B(3) or (4).

#### **245D Restriction on proceedings and remedies**

- (1) While a property freezing order has effect—
- (a) the court may stay any action, execution or other legal process in respect of the property to which the order applies, and
  - (b) no distress may be levied against the property to which the order applies except with the leave of the court and subject to any terms the court may impose.
- (2) If a court (whether the High Court or any other court) in which proceedings are pending in respect of any property is satisfied that a property freezing order has been applied for or made in respect of the property, it may either stay the proceedings or allow them to continue on any terms it thinks fit.
- (3) If a property freezing order applies to a tenancy of any premises, no landlord or other person to whom rent is payable may exercise the right of forfeiture by peaceable re-entry in relation to the premises in respect of any failure by the tenant to comply with any term or condition of the tenancy, except with the leave of the court and subject to any terms the court may impose.
- (4) Before exercising any power conferred by this section, the court must (as well as giving the parties to any of the proceedings concerned an opportunity to be heard) give such an opportunity to any person who may be affected by the court's decision.”
- (2) In the Proceeds of Crime Act 2002 (c. 29), after section 255 insert—

*“Prohibitory property orders (Scotland)*

#### **255A Application for prohibitory property order**

- (1) Where the enforcement authority may take proceedings for a recovery order in the Court of Session, the authority may apply to the court for a prohibitory property order (whether before or after starting the proceedings).
- (2) A prohibitory property order is an order that—
- (a) specifies or describes the property to which it applies, and

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- (b) subject to any exclusions (see section 255C(1)(b) and (2)), prohibits any person to whose property the order applies from in any way dealing with the property.
- (3) An application for a prohibitory property order may be made without notice if the circumstances are such that notice of the application would prejudice any right of the enforcement authority to obtain a recovery order in respect of any property.
- (4) The court may make a prohibitory property order on an application if it is satisfied that the condition in subsection (5) is met and, where applicable, that the condition in subsection (6) is met.
- (5) The first condition is that there is a good arguable case—
  - (a) that the property to which the application for the order relates is or includes recoverable property, and
  - (b) that, if any of it is not recoverable property, it is associated property.
- (6) The second condition is that, if—
  - (a) the property to which the application for the order relates includes property alleged to be associated property, and
  - (b) the enforcement authority has not established the identity of the person who holds it,
 the authority has taken all reasonable steps to do so.

### **255B Variation and recall of prohibitory property order**

- (1) The court may at any time vary or recall a prohibitory property order.
- (2) If the court makes an interim administration order that applies to all of the property to which a prohibitory property order applies, it must recall the prohibitory property order.
- (3) If the court makes an interim administration order that applies to some but not all of the property to which a prohibitory property order applies, it must vary the prohibitory property order so as to exclude any property to which the interim administration order applies.
- (4) If the court decides that any property to which a prohibitory property order applies is neither recoverable property nor associated property, it must vary the order so as to exclude the property.
- (5) Before exercising power under this Chapter to vary or recall a prohibitory property order, the court must (as well as giving the parties to the proceedings an opportunity to be heard) give such an opportunity to any person who may be affected by its decision.
- (6) Subsection (5) does not apply where the court is acting as required by subsection (2) or (3).

### **255C Exclusions**

- (1) The power to vary a prohibitory property order includes (in particular) power to make exclusions as follows—

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- (a) power to exclude property from the order, and
  - (b) power, otherwise than by excluding property from the order, to make exclusions from the prohibition on dealing with the property to which the order applies.
- (2) Exclusions from the prohibition on dealing with the property to which the order applies (other than exclusions of property from the order) may also be made when the order is made.
- (3) An exclusion may, in particular, make provision for the purpose of enabling any person—
  - (a) to meet his reasonable living expenses, or
  - (b) to carry on any trade, business, profession or occupation.
- (4) An exclusion may be made subject to conditions.
- (5) An exclusion may not be made for the purpose of enabling any person to meet any legal expenses in respect of proceedings under this Part.
- (6) If excluded property is not specified in the order it must be described in the order in general terms.
- (7) The power to make exclusions must be exercised with a view to ensuring, so far as practicable, that the satisfaction of any right of the enforcement authority to recover the property obtained through unlawful conduct is not unduly prejudiced.
- (8) Subsection (7) does not apply where the court is acting as required by section 255B(3) or (4).

#### **255D Restriction on proceedings and remedies**

- (1) While a prohibitory property order has effect the court may sist any action, execution or other legal process in respect of the property to which the order applies.
- (2) If a court (whether the Court of Session or any other court) in which proceedings are pending in respect of any property is satisfied that a prohibitory property order has been applied for or made in respect of the property, it may either sist the proceedings or allow them to continue on any terms it thinks fit.
- (3) Before exercising any power conferred by this section, the court must (as well as giving the parties to any of the proceedings concerned an opportunity to be heard) give such an opportunity to any person who may be affected by the court's decision.

#### **255E Arrestment of property affected by prohibitory property order**

- (1) On the application of the enforcement authority the Court of Session may, in relation to moveable recoverable property to which a prohibitory property order applies (whether generally or to such of it as is specified in the application), grant warrant for arrestment.

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- (2) An application under subsection (1) may be made at the same time as the application for the prohibitory property order or at any time thereafter.
- (3) Such a warrant for arrestment may be granted only if the property would be arrestable if the person entitled to it were a debtor.
- (4) A warrant under subsection (1) has effect as if granted on the dependence of an action for debt at the instance of the enforcement authority against the person and may be executed, recalled, loosed or restricted accordingly.
- (5) An arrestment executed under this section ceases to have effect when, or in so far as, the prohibitory property order ceases to apply in respect of the property in relation to which the warrant for arrestment was granted.
- (6) If an arrestment ceases to have effect to any extent by virtue of subsection (5) the enforcement authority must apply to the Court of Session for an order recalling or, as the case may be, restricting the arrestment.

#### **255F Inhibition of property affected by prohibitory property order**

- (1) On the application of the enforcement authority, the Court of Session may, in relation to the property mentioned in subsection (2), grant warrant for inhibition against any person specified in a prohibitory property order.
- (2) That property is heritable property situated in Scotland to which the prohibitory property order applies (whether generally or to such of it as is specified in the application).
- (3) The warrant for inhibition—
  - (a) has effect as if granted on the dependence of an action for debt by the enforcement authority against the person and may be executed, recalled, loosed or restricted accordingly, and
  - (b) has the effect of letters of inhibition and must forthwith be registered by the enforcement authority in the register of inhibitions and adjudications.
- (4) Section 155 of the Titles to Land Consolidation (Scotland) Act 1868 (c. 101) (effective date of inhibition) applies in relation to an inhibition for which warrant is granted under subsection (1) as it applies to an inhibition by separate letters or contained in a summons.
- (5) An inhibition executed under this section ceases to have effect when, or in so far as, the prohibitory property order ceases to apply in respect of the property in relation to which the warrant for inhibition was granted.
- (6) If an inhibition ceases to have effect to any extent by virtue of subsection (5) the enforcement authority must—
  - (a) apply for the recall or, as the case may be, the restriction of the inhibition, and
  - (b) ensure that the recall or restriction is reflected in the register of inhibitions and adjudications.”

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#### Commencement Information

**I62** S. 98(1) in force at 1.1.2006 by S.I. 2005/3136, art. 3(a)

**I63** S. 98(2) in force at 1.1.2006 by S.I. 2005/3136, art. 2(a)

### 99 Civil recovery: interim receivers' expenses etc.

- (1) The Proceeds of Crime Act 2002 (c. 29) is amended as follows.
- (2) In section 280 (civil recovery orders: applying realised proceeds), after subsection (2) insert—
  - “(3) The Director may apply a sum received by him under subsection (2) in making payment of the remuneration and expenses of—
    - (a) the trustee, or
    - (b) any interim receiver appointed in, or in anticipation of, the proceedings for the recovery order.
  - (4) Subsection (3)(a) does not apply in relation to the remuneration of the trustee if the trustee is a member of the staff of the Agency.”
- (3) In section 284 (payment of interim administrator or trustee (Scotland))—
  - (a) the existing words become subsection (1), and
  - (b) after that subsection insert—
    - “(2) The Scottish Ministers may apply a sum received by them under section 280(2) in making payment of such fees or expenses.
    - (3) Subsection (2) does not apply in relation to the fees of a trustee for civil recovery if the trustee is a member of their staff.”
- (4) In paragraph 5 of Schedule 1 (finances of the Assets Recovery Agency), after sub-paragraph (1) (paragraph (b) of which provides for the expenses of the Director and staff of the Agency to be paid out of money provided by Parliament) insert—
  - “(1A) Sub-paragraph (1)(b) has effect subject to anything in this Act.”

#### Commencement Information

**I64** S. 99(1)(4) in force at 1.7.2005 by S.I. 2005/1521, art. 3(1)(b)

**I65** S. 99(2)(3) in force at 1.7.2005 by S.I. 2005/1521, art. 2(1)(b)

### 100 Detention of seized cash: meaning of “48 hours”

- (1) In the Proceeds of Crime Act 2002 (c. 29), Chapter 3 of Part 5 (civil recovery of cash in summary proceedings) is amended as follows.
- (2) In section 295 (detention of seized cash, initially for 48 hours), after subsection (1) insert—
  - “(1A) The period of 48 hours mentioned in subsection (1) is to be calculated in accordance with subsection (1B).

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(1B) In calculating a period of 48 hours in accordance with this subsection, no account shall be taken of—

- (a) any Saturday or Sunday,
- (b) Christmas Day,
- (c) Good Friday,
- (d) any day that is a bank holiday under the Banking and Financial Dealings Act 1971 in the part of the United Kingdom within which the cash is seized, or
- (e) any day prescribed under section 8(2) of the Criminal Procedure (Scotland) Act 1995 as a court holiday in a sheriff court in the sheriff court district within which the cash is seized.”

(3) In sections 290(6), 296(1) and 302(2), after “48 hours” insert “ (calculated in accordance with section 295(1B)) ”.

**Commencement Information**

**I66** S. 100 in force at 1.7.2005 by S.I. 2005/1521, art. 2(1)(c)

**101 Appeal in proceedings for forfeiture of cash**

(1) For section 299 of the Proceeds of Crime Act 2002 (appeal against forfeiture of cash) substitute—

**“299 Appeal against decision under section 298**

- (1) Any party to proceedings for an order for the forfeiture of cash under section 298 who is aggrieved by an order under that section or by the decision of the court not to make such an order may appeal—
  - (a) in relation to England and Wales, to the Crown Court;
  - (b) in relation to Scotland, to the Sheriff Principal;
  - (c) in relation to Northern Ireland, to a county court.
- (2) An appeal under subsection (1) must be made before the end of the period of 30 days starting with the day on which the court makes the order or decision.
- (3) The court hearing the appeal may make any order it thinks appropriate.
- (4) If the court upholds an appeal against an order forfeiting the cash, it may order the release of the cash.”

(2) This section does not apply to a decision of a court not to order the forfeiture of cash under section 298 of that Act taken before this section comes into force.

**Commencement Information**

**I67** S. 101 in force at 1.7.2005 by S.I. 2005/1521, art. 2(1)(d) (with art. 2(2))

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VALID FROM 15/05/2006

## 102 Money laundering: defence where overseas conduct is legal under local law

(1) In the Proceeds of Crime Act 2002 (c. 29), Part 7 (money laundering) is amended as follows.

(2) In section 327 (concealing etc.), after subsection (2) insert—

“(2A) Nor does a person commit an offence under subsection (1) if—

- (a) he knows, or believes on reasonable grounds, that the relevant criminal conduct occurred in a particular country or territory outside the United Kingdom, and
- (b) the relevant criminal conduct—
  - (i) was not, at the time it occurred, unlawful under the criminal law then applying in that country or territory, and
  - (ii) is not of a description prescribed by an order made by the Secretary of State.

(2B) In subsection (2A) “the relevant criminal conduct” is the criminal conduct by reference to which the property concerned is criminal property.”

(3) In section 328 (arrangements), after subsection (2) insert—

“(3) Nor does a person commit an offence under subsection (1) if—

- (a) he knows, or believes on reasonable grounds, that the relevant criminal conduct occurred in a particular country or territory outside the United Kingdom, and
- (b) the relevant criminal conduct—
  - (i) was not, at the time it occurred, unlawful under the criminal law then applying in that country or territory, and
  - (ii) is not of a description prescribed by an order made by the Secretary of State.

(4) In subsection (3) “the relevant criminal conduct” is the criminal conduct by reference to which the property concerned is criminal property.”

(4) In section 329 (acquisition, use and possession), after subsection (2) insert—

“(2A) Nor does a person commit an offence under subsection (1) if—

- (a) he knows, or believes on reasonable grounds, that the relevant criminal conduct occurred in a particular country or territory outside the United Kingdom, and
- (b) the relevant criminal conduct—
  - (i) was not, at the time it occurred, unlawful under the criminal law then applying in that country or territory, and
  - (ii) is not of a description prescribed by an order made by the Secretary of State.

(2B) In subsection (2A) “the relevant criminal conduct” is the criminal conduct by reference to which the property concerned is criminal property.”

(5) In section 330 (failure to disclose: regulated sector), after subsection (7) insert—

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“(7A) Nor does a person commit an offence under this section if—

- (a) he knows, or believes on reasonable grounds, that the money laundering is occurring in a particular country or territory outside the United Kingdom, and
- (b) the money laundering—
  - (i) is not unlawful under the criminal law applying in that country or territory, and
  - (ii) is not of a description prescribed in an order made by the Secretary of State.”

(6) In section 331 (failure to disclose: nominated officers in the regulated sector), after subsection (6) insert—

“(6A) Nor does a person commit an offence under this section if—

- (a) he knows, or believes on reasonable grounds, that the money laundering is occurring in a particular country or territory outside the United Kingdom, and
- (b) the money laundering—
  - (i) is not unlawful under the criminal law applying in that country or territory, and
  - (ii) is not of a description prescribed in an order made by the Secretary of State.”

(7) In section 332 (failure to disclose: other nominated officers), after subsection (6) insert—

“(7) Nor does a person commit an offence under this section if—

- (a) he knows, or believes on reasonable grounds, that the money laundering is occurring in a particular country or territory outside the United Kingdom, and
- (b) the money laundering—
  - (i) is not unlawful under the criminal law applying in that country or territory, and
  - (ii) is not of a description prescribed in an order made by the Secretary of State.”

### **103 Money laundering: threshold amounts**

(1) The Proceeds of Crime Act 2002 (c. 29) is amended as follows.

(2) In section 327 (concealing etc.), after subsection (2B) (which is inserted by section 102 of this Act) insert—

“(2C) A deposit-taking body that does an act mentioned in paragraph (c) or (d) of subsection (1) does not commit an offence under that subsection if—

- (a) it does the act in operating an account maintained with it, and
- (b) the value of the criminal property concerned is less than the threshold amount determined under section 339A for the act.”

(3) In section 328 (arrangements), after subsection (4) (which is inserted by section 102 of this Act) insert—



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- “(5) A deposit-taking body that does an act mentioned in subsection (1) does not commit an offence under that subsection if—
- (a) it does the act in operating an account maintained with it, and
  - (b) the arrangement facilitates the acquisition, retention, use or control of criminal property of a value that is less than the threshold amount determined under section 339A for the act.”
- (4) In section 329 (acquisition, use and possession), after subsection (2B) (which is inserted by section 102 of this Act) insert—
- “(2C) A deposit-taking body that does an act mentioned in subsection (1) does not commit an offence under that subsection if—
- (a) it does the act in operating an account maintained with it, and
  - (b) the value of the criminal property concerned is less than the threshold amount determined under section 339A for the act.”
- (5) In Part 7 (money laundering), after section 339 insert—

*“Threshold amounts*

**339A Threshold amounts**

- (1) This section applies for the purposes of sections 327(2C), 328(5) and 329(2C).
- (2) The threshold amount for acts done by a deposit-taking body in operating an account is £250 unless a higher amount is specified under the following provisions of this section (in which event it is that higher amount).
- (3) An officer of Revenue and Customs, or a constable, may specify the threshold amount for acts done by a deposit-taking body in operating an account—
  - (a) when he gives consent, or gives notice refusing consent, to the deposit-taking body's doing of an act mentioned in section 327(1), 328(1) or 329(1) in opening, or operating, the account or a related account, or
  - (b) on a request from the deposit-taking body.
- (4) Where the threshold amount for acts done in operating an account is specified under subsection (3) or this subsection, an officer of Revenue and Customs, or a constable, may vary the amount (whether on a request from the deposit-taking body or otherwise) by specifying a different amount.
- (5) Different threshold amounts may be specified under subsections (3) and (4) for different acts done in operating the same account.
- (6) The amount specified under subsection (3) or (4) as the threshold amount for acts done in operating an account must, when specified, not be less than the amount specified in subsection (2).
- (7) The Secretary of State may by order vary the amount for the time being specified in subsection (2).
- (8) For the purposes of this section, an account is related to another if each is maintained with the same deposit-taking body and there is a person who, in

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relation to each account, is the person or one of the persons entitled to instruct the body as respects the operation of the account.”

(6) In section 340 (interpretation of Part 7), after subsection (13) insert—

“(14) “Deposit-taking body” means—

- (a) a business which engages in the activity of accepting deposits, or
- (b) the National Savings Bank.”

(7) In section 459(4)(a) and (6)(a) (provision for certain orders to be subject to affirmative procedure), after “309,” insert “ 339A(7), ”.

#### **Commencement Information**

**I68** S. 103 in force at 1.7.2005 by S.I. 2005/1521, art. 3(1)(c)

### **104 Money laundering: disclosures to identify persons and property**

(1) In the Proceeds of Crime Act 2002 (c. 29), Part 7 (money laundering) is amended as follows.

(2) In section 330(1) (regulated sector: failure to disclose: offence committed if three conditions satisfied), for “each of the following three conditions is satisfied” substitute “ the conditions in subsections (2) to (4) are satisfied ”.

(3) For section 330(4) to (6) (the required disclosure) substitute—

“(3A) The third condition is—

- (a) that he can identify the other person mentioned in subsection (2) or the whereabouts of any of the laundered property, or
- (b) that he believes, or it is reasonable to expect him to believe, that the information or other matter mentioned in subsection (3) will or may assist in identifying that other person or the whereabouts of any of the laundered property.

(4) The fourth condition is that he does not make the required disclosure to—

- (a) a nominated officer, or
- (b) a person authorised for the purposes of this Part by the Director General of the Serious Organised Crime Agency,

as soon as is practicable after the information or other matter mentioned in subsection (3) comes to him.

(5) The required disclosure is a disclosure of—

- (a) the identity of the other person mentioned in subsection (2), if he knows it,
- (b) the whereabouts of the laundered property, so far as he knows it, and
- (c) the information or other matter mentioned in subsection (3).

(5A) The laundered property is the property forming the subject-matter of the money laundering that he knows or suspects, or has reasonable grounds for knowing or suspecting, that other person to be engaged in.

(6) But he does not commit an offence under this section if—

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- (a) he has a reasonable excuse for not making the required disclosure,
  - (b) he is a professional legal adviser and—
    - (i) if he knows either of the things mentioned in subsection (5)(a) and (b), he knows the thing because of information or other matter that came to him in privileged circumstances, or
    - (ii) the information or other matter mentioned in subsection (3) came to him in privileged circumstances, or
  - (c) subsection (7) applies to him.”
- (4) For section 331(4) to (6) (failure to disclose: nominated officers in the regulated sector: the required disclosure) substitute—
- “(3A) The third condition is—
- (a) that he knows the identity of the other person mentioned in subsection (2), or the whereabouts of any of the laundered property, in consequence of a disclosure made under section 330,
  - (b) that that other person, or the whereabouts of any of the laundered property, can be identified from the information or other matter mentioned in subsection (3), or
  - (c) that he believes, or it is reasonable to expect him to believe, that the information or other matter will or may assist in identifying that other person or the whereabouts of any of the laundered property.
- (4) The fourth condition is that he does not make the required disclosure to a person authorised for the purposes of this Part by the Director General of the Serious Organised Crime Agency as soon as is practicable after the information or other matter mentioned in subsection (3) comes to him.
- (5) The required disclosure is a disclosure of—
- (a) the identity of the other person mentioned in subsection (2), if disclosed to him under section 330,
  - (b) the whereabouts of the laundered property, so far as disclosed to him under section 330, and
  - (c) the information or other matter mentioned in subsection (3).
- (5A) The laundered property is the property forming the subject-matter of the money laundering that he knows or suspects, or has reasonable grounds for knowing or suspecting, that other person to be engaged in.
- (6) But he does not commit an offence under this section if he has a reasonable excuse for not making the required disclosure.”
- (5) In section 332(3) (failure to disclose: other nominated officers: the second condition), for “section 337 or 338” substitute “ the applicable section ”.
- (6) For section 332(4) to (6) (the required disclosure) substitute—
- “(3A) The third condition is—
- (a) that he knows the identity of the other person mentioned in subsection (2), or the whereabouts of any of the laundered property, in consequence of a disclosure made under the applicable section,
  - (b) that that other person, or the whereabouts of any of the laundered property, can be identified from the information or other matter mentioned in subsection (3), or

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- (c) that he believes, or it is reasonable to expect him to believe, that the information or other matter will or may assist in identifying that other person or the whereabouts of any of the laundered property.
- (4) The fourth condition is that he does not make the required disclosure to a person authorised for the purposes of this Part by the Director General of the Serious Organised Crime Agency as soon as is practicable after the information or other matter mentioned in subsection (3) comes to him.
- (5) The required disclosure is a disclosure of—
  - (a) the identity of the other person mentioned in subsection (2), if disclosed to him under the applicable section,
  - (b) the whereabouts of the laundered property, so far as disclosed to him under the applicable section, and
  - (c) the information or other matter mentioned in subsection (3).
- (5A) The laundered property is the property forming the subject-matter of the money laundering that he knows or suspects that other person to be engaged in.
- (5B) The applicable section is section 337 or, as the case may be, section 338.
- (6) But he does not commit an offence under this section if he has a reasonable excuse for not making the required disclosure.”
- (7) In section 337 (protected disclosures), after subsection (4) insert—
  - “(4A) Where a disclosure consists of a disclosure protected under subsection (1) and a disclosure of either or both of—
    - (a) the identity of the other person mentioned in subsection (3), and
    - (b) the whereabouts of property forming the subject-matter of the money laundering that the discloser knows or suspects, or has reasonable grounds for knowing or suspecting, that other person to be engaged in,
 the disclosure of the thing mentioned in paragraph (a) or (b) (as well as the disclosure protected under subsection (1)) is not to be taken to breach any restriction on the disclosure of information (however imposed).”

#### **Commencement Information**

**I69** S. 104 in force at 1.7.2005 by S.I. 2005/1521, art. 3(1)(c) (with art. 3(4))

### **105 Money laundering: form and manner of disclosures**

- (1) In the Proceeds of Crime Act 2002 (c. 29), Part 7 (money laundering) is amended as follows.
- (2) In each of sections 330(9)(b), 337(5)(b) and 338(5)(b) (disclosure to nominated officer is ineffective if employer's procedures not followed), omit “and in accordance with the procedure established by the employer for the purpose”.
- (3) In section 334 (penalties), after subsection (2) insert—
  - “(3) A person guilty of an offence under section 339(1A) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.”

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- (4) In section 338(1) (authorised disclosures), omit paragraph (b) (disclosure must be made in prescribed form and manner) but not the “and” at the end.
- (5) In section 339 (form and manner of disclosures), for subsections (2) and (3) substitute—
  - “(1A) A person commits an offence if he makes a disclosure under section 330, 331, 332 or 338 otherwise than in the form prescribed under subsection (1) or otherwise than in the manner so prescribed.
  - (1B) But a person does not commit an offence under subsection (1A) if he has a reasonable excuse for making the disclosure otherwise than in the form prescribed under subsection (1) or (as the case may be) otherwise than in the manner so prescribed.
  - (2) The power under subsection (1) to prescribe the form in which a disclosure must be made includes power to provide for the form to include a request to a person making a disclosure that the person provide information specified or described in the form if he has not provided it in making the disclosure.
  - (3) Where under subsection (2) a request is included in a form prescribed under subsection (1), the form must—
    - (a) state that there is no obligation to comply with the request, and
    - (b) explain the protection conferred by subsection (4) on a person who complies with the request.”

**Commencement Information**

**I70** S. 105 in force at 1.7.2005 by S.I. 2005/1521, art. 3(1)(c)

## 106 Money laundering: miscellaneous amendments

- (1) In the Proceeds of Crime Act 2002, Part 7 (money laundering) is amended as follows.
- (2) In section 330 (regulated sector: failure to disclose), after subsection (9) insert—
  - “(9A) But a disclosure which satisfies paragraphs (a) and (b) of subsection (9) is not to be taken as a disclosure to a nominated officer if the person making the disclosure—
    - (a) is a professional legal adviser,
    - (b) makes it for the purpose of obtaining advice about making a disclosure under this section, and
    - (c) does not intend it to be a disclosure under this section.”
- (3) In section 337(5)(a) (disclosure to person nominated to receive disclosures under section 337), after “disclosures under” insert “ section 330 or ”.
- (4) In section 338(1)(c) (first or second condition must be satisfied for disclosure to be authorised), for “or second” substitute “ , second or third ”.
- (5) In section 338 (authorised disclosures), after subsection (2) insert—
  - “(2A) The second condition is that—

*Status: Point in time view as at 13/04/2006. This version of this part contains provisions that are not valid for this point in time.*

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- (a) the disclosure is made while the alleged offender is doing the prohibited act,
- (b) he began to do the act at a time when, because he did not then know or suspect that the property constituted or represented a person's benefit from criminal conduct, the act was not a prohibited act, and
- (c) the disclosure is made on his own initiative and as soon as is practicable after he first knows or suspects that the property constitutes or represents a person's benefit from criminal conduct.”

(6) In section 338(3) (the second condition), for “second” substitute “ third ”.

**Commencement Information**

I71 S. 106 in force at 1.7.2005 by S.I. 2005/1521, art. 3(1)(c)

**107 Money laundering offences**

- (1) The Proceeds of Crime Act 2002 (c. 29) is amended as follows.
- (2) In section 364 (meaning of customer information) in subsection (5)—
  - (a) after paragraph (a) insert—
    - “(aa) constitutes an offence specified in section 415(1A) of this Act.”;
  - (b) in paragraph (b) after “paragraph (a)” insert “ or (aa) ”.
- (3) In section 398 (meaning of customer information: Scotland) in subsection (5)—
  - (a) after paragraph (a) insert—
    - “(aa) constitutes an offence specified in section 415(1A) of this Act.”;
  - (b) in paragraph (b) after “paragraph (a)” insert “ or (aa) ”.
- (4) In section 415 (money laundering offences) after subsection (1) insert—
  - “(1A) Each of the following is a money laundering offence—
    - (a) an offence under section 93A, 93B or 93C of the Criminal Justice Act 1988;
    - (b) an offence under section 49, 50 or 51 of the Drug Trafficking Act 1994;
    - (c) an offence under section 37 or 38 of the Criminal Law (Consolidation) (Scotland) Act 1995;
    - (d) an offence under article 45, 46 or 47 of the Proceeds of Crime (Northern Ireland) Order 1996.”

**Commencement Information**

I72 S. 107 in force at 1.7.2005 by S.I. 2005/1521, art. 2(1)(e)

**108 International co-operation**

- (1) Part 11 of the Proceeds of Crime Act 2002 (c. 29) (co-operation) is amended as follows.

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(2) In section 444 (external requests and orders), for subsection (3)(a) (Order under the section may include provision about the functions of the Secretary of State, the Lord Advocate, the Scottish Ministers and the Director of the Assets Recovery Agency) substitute—

“(a) provision about the functions of any of the listed persons in relation to external requests and orders;”.

(3) In that section, after subsection (3) insert—

“(4) For the purposes of subsection (3)(a) “the listed persons” are—

- (a) the Secretary of State;
- (b) the Lord Advocate;
- (c) the Scottish Ministers;
- (d) the Director;
- (e) the Director of Public Prosecutions;
- (f) the Director of Public Prosecutions for Northern Ireland;
- (g) the Director of the Serious Fraud Office; and
- (h) the Director of Revenue and Customs Prosecutions.”

(4) In section 447(3) (meaning of “external investigation”), after paragraph (a) insert—

“(aa) the extent or whereabouts of property obtained as a result of or in connection with criminal conduct, or”.

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**Commencement Information**

**I73** S. 108 in force at 1.7.2005 by S.I. 2005/1521, art. 3(1)(d)

## 109 Minor and consequential amendments relating to Chapter 6

Schedule 6, which contains minor and consequential amendments relating to provisions of this Chapter, has effect.

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**Commencement Information**

**I74** S. 109 in force at 1.8.2005 for specified purposes by S.I. 2005/2026, art. 2(a)

**I75** S. 109 in force at 1.1.2006 for specified purposes by S.I. 2005/3136, art. 2(c)

**I76** S. 109 in force at 1.1.2006 in so far as not already in force by S.I. 2005/3136, art. 3(b)

**Status:**

Point in time view as at 13/04/2006. This version of this part contains provisions that are not valid for this point in time.

**Changes to legislation:**

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