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STATUTORY INSTRUMENTS

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**2003 No. 120 (C. 6)**

**PROCEEDS OF CRIME**

**The Proceeds of Crime Act 2002 (Commencement No. 4, Transitional Provisions and Savings) Order 2003**

*Made - - - - 23rd January 2003*

The Secretary of State, in exercise of the powers conferred on him by sections 458(1) and 459(2) of the Proceeds of Crime Act 2002<sup>(1)</sup>, and after consultation with the Scottish Ministers, hereby makes the following Order:

**Citation and interpretation**

**1.**—(1) This Order may be cited as the Proceeds of Crime Act 2002 (Commencement No. 4, Transitional Provisions and Savings) Order 2003.

(2) In this Order—

- (a) “the Act” means the Proceeds of Crime Act 2002;
- (b) “the new failure to disclose offences” means sections 330, 331 and 332 of the Act;
- (c) “the old failure to disclose offences” means—
  - (i) section 52 of the Drug Trafficking Act 1994<sup>(2)</sup>;
  - (ii) section 39 of the Criminal Law (Consolidation) (Scotland) Act 1995<sup>(3)</sup>; and
  - (iii) article 44 of the Proceeds of Crime (Northern Ireland) Order 1996<sup>(4)</sup>.
- (d) “the new principal money laundering offences” means sections 327, 328 and 329 of the Act;
- (e) “the old principal money laundering offences” means—
  - (i) sections 93A, 93B and 93C of the Criminal Justice Act 1988<sup>(5)</sup>;
  - (ii) section 14 of the Criminal Justice (International Co-operation) Act 1990<sup>(6)</sup>;
  - (iii) sections 49, 50 and 51 of the Drug Trafficking Act 1994;

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(1) 2002 c. 29.

(2) 1994 c. 37.

(3) 1995 c. 39.

(4) S.I. 1996/1299 (N.I. 9).

(5) 1988 c. 33; sections 93A, 93B and 93C were inserted by sections 29(1), 30 and 31, respectively, of the Criminal Justice Act 1993 (c. 36).

(6) 1990 c. 5; section 14 is partially repealed by the Criminal Justice Act 1993 (c. 36) and the Drug Trafficking Act 1994 (c. 37).

- (iv) sections 37 and 38 of the Criminal Law (Consolidation) (Scotland) Act 1995; and
- (v) articles 45, 46 and 47 of the Proceeds of Crime (Northern Ireland) Order 1996.

### **Commencement of provisions**

**2.—(1)** The provisions of the Act listed in column 1 of the Schedule to this Order shall come into force on 24th February 2003, subject to the transitional provisions and savings contained in this Order.

(2) But where a particular purpose is specified in relation to any such provision in column 2 of that Schedule, the provision concerned shall come into force only for that purpose.

### **Transitional provisions and savings for the principal money laundering offences**

**3.** The new principal money laundering offences shall not have effect where the conduct constituting an offence under those provisions began before 24th February 2003 and ended after that date and the old principal money laundering offences shall continue to have effect in such circumstances.

### **Transitional provisions and savings for the failure to disclose offences**

**4.** The new failure to disclose offences shall not have effect where the information or other matter on which knowledge or suspicion that another person is engaged in money laundering is based, or which gives reasonable grounds for such knowledge or suspicion, came to a person before 24th February 2003 and the old failure to disclose offences shall continue to have effect in such circumstances.

### **Transitional provisions and savings for the offences of tipping-off and prejudicing an investigation**

**5.—(1)** Section 342 of the Act shall not have effect where the conduct constituting an offence under that section began before 24th February 2003 and ended after that date and the following provisions shall continue to have effect in such circumstances—

- (a) sections 93D(1) of the Criminal Justice Act 1988<sup>(7)</sup>;
- (b) sections 53(1) and 58<sup>(8)</sup> of the Drug Trafficking Act 1994;
- (c) sections 36 and 40(1) of the Criminal Law (Consolidation) (Scotland) Act 1995<sup>(9)</sup>; and
- (d) articles 48(1) and 53<sup>(10)</sup> of the Proceeds of Crime (Northern Ireland) Order 1996.

(2) Section 93D(2) and (3) of the Criminal Justice Act 1988 shall continue to have effect where the disclosure mentioned in section 93D(2)(a) or 93D(3)(a), as the case may be, of that Act was made before 24th February 2003.

(3) Section 53(2) and (3) of the Drug Trafficking Act 1994 shall continue to have effect where the disclosure mentioned in section 53(2)(a) or 53(3)(a), as the case may be, of that Act was made before 24th February 2003.

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(7) Section 93D was inserted by section 32 of the Criminal Justice Act 1993 (c. 36).

(8) Section 58 will remain in force but its application will be more limited, by virtue of the more limited definition of “drug trafficking” inserted by paragraph 25(4) of Schedule 11 to the Proceeds of Crime Act 2002 (c. 29).

(9) 1995 c. 39.

(10) Article 53 will remain in force but its application will be more limited, by virtue of the more limited definition of “drug trafficking” inserted by paragraph 31(15) of Schedule 11 to the Proceeds of Crime Act 2002 (c. 29).

(4) Section 40(2) and (3) of the Criminal Law (Consolidation) (Scotland) Act 1995 shall continue to have effect where the disclosure mentioned in section 40(2)(a) or 40(3)(a), as the case may be, of that Act was made before 24th February 2003.

(5) Article 48(2) and (3) of the Proceeds of Crime (Northern Ireland) Order 1996 shall continue to have effect where the disclosure mentioned in article 48(2)(a) or 48(3)(a), as the case may be, of that Order was made before 24th February 2003.

### **Savings in relation to prosecution by Customs and Excise, application of offences to Crown servants and investigations**

6. The following provisions shall continue to have effect in respect of offences committed before 24th February 2003 and offences committed by virtue of articles 3 to 5 of this Order—

- (a) sections 93F to 93J of the Criminal Justice Act 1988(11);
- (b) sections 55 to 57 and 59 to 61 of the Drug Trafficking Act 1994;
- (c) sections 31 to 35 and 42 of the Criminal Law (Consolidation) (Scotland) Act 1995; and
- (d) articles 49 to 52, and 54 to 56 of and Schedule 2 to the Proceeds of Crime (Northern Ireland) Order 1996(12).

### **Transitional provision in relation to the Extradition Act 1989**

7. Notwithstanding paragraph 18 of Schedule 11 to the Act (which amends the Extradition Act 1989(13)), section 22(4)(h)(14) of, and paragraph 15 of Schedule 1(15) to, the Extradition Act 1989 shall have effect as if they continued to contain references to—

- (a) an offence under section 49, 50 or 51 of the Drug Trafficking Act 1994;
- (b) an offence under section 14 of the Criminal Justice (International Co-operation) Act 1990;
- (c) an offence under section 37 or 38 of the Criminal Law (Consolidation) (Scotland) Act 1995; and
- (d) an offence under article 45, 46 or 47 of the Proceeds of Crime (Northern Ireland) Order 1996(16),

where the conduct constituting such offences occurred before 24th February 2003 or constituted an offence by virtue of articles 3 to 5 of this Order.

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(11) Section 93F was inserted by section 35 of the Criminal Justice Act 1993, section 93G was inserted by paragraphs 1 and 3 of Schedule 4 to the Criminal Justice Act 1993, section 93H was inserted by section 11 of the Proceeds of Crime Act 1995 (c. 11), section 93I was inserted by section 12 of the Proceeds of Crime Act 1995, section 93J was inserted by section 13 of the Proceeds of Crime Act 1995.

(12) Articles 49 to 52 and Schedule 2 were amended by S.I. 2001/1866 (N.I. 1).

(13) 1989 c. 33.

(14) Section 22(4)(h) was inserted by section 22(3) of the Criminal Justice (International Co-operation) Act 1990 (c. 5) and amended by article 38 of and Schedule 2 to the Criminal Justice (Confiscation) (Northern Ireland) Order 1990 (S.I. 1990/2588 (N.I. 17)), section 65 of and Schedule 1 to the Drug Trafficking Act 1994 (c. 37), and article 57 of and Schedule 3 to the Proceeds of Crime (Northern Ireland) Order 1996 (S.I. 1996/1299 (N.I. 9)).

(15) The relevant provisions of paragraph 15 of Schedule 1 were amended by section 22(3) of the Criminal Justice (International Co-operation) Act 1990 (c. 5), article 38 of and Schedule 2 to the Criminal Justice (Confiscation) (Northern Ireland) Order 1990 (S.I. 1990/2588 (N.I. 17)), section 65 of and Schedule 1 to the Drug Trafficking Act 1994 (c. 37), and article 57 of and Schedule 3 to the Proceeds of Crime (Northern Ireland) Order 1996 (S.I. 1996/1299 (N.I. 9)).

(16) The offences in the Criminal Justice (International Co-operation) Act 1990 and the Drug Trafficking Act 1994 are referred to in the existing provisions by virtue of being drug trafficking offences within the meaning of the Drug Trafficking Act 1994. The offences in the Proceeds of Crime (Northern Ireland) Order 1996 are referred to in the existing provision by virtue of being drug trafficking offences within the meaning of that Order. The offences in the Criminal Law (Consolidation) (Scotland) Act 1995 are referred to in the existing provisions by virtue of being offences to which section 1 of the Criminal Justice (Scotland) Act 1987 (c. 41) relates (this is because section 2(4) of the Criminal Procedure (Consequential Provisions) (Scotland) Act 1995 (c. 40) has the effect that the references to section 42A and 43 of the Criminal Justice (Scotland) Act 1987 in section 1 of that Act are to be read as references to sections 37 and 38 of the Criminal Law (Consolidation) (Scotland) Act 1995).

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Home Office  
23rd January 2003

*Bob Ainsworth*  
Parliamentary Under-Secretary of State

THE SCHEDULE

Article 2

<i>Column 1</i>	<i>Column 2</i>
Chapter 2 of Part 5 (sections 243 to 288, including Schedules 6 and 7) (Civil Recovery in the High Court or Court of Session), except for section 270(4) and (5).	
Section 312 (Performance of functions of Scottish Ministers by constables in Scotland).	
Section 313 (Restriction on performance of Director’s functions by police).	
Part 6 (sections 317 to 326, including Schedule 8) (Revenue Functions).	
Part 7 (sections 327 to 340, including Schedule 9). (Money Laundering).	
Part 8 (sections 341 to 416) (Investigations).	
Part 10 (sections 435 to 442) (Information).	Commenced, except so far as it relates to disclosure of information to and by the Lord Advocate in connection with the exercise of any of his functions under Part 3 of the Act.
Section 443 (Enforcement in different parts of the United Kingdom).	
Section 446 (Rules of court).	
Section 448, including Schedule 10 (Tax).	
Section 449 (Agency staff: pseudonyms).	
Section 450 (Pseudonyms: Scotland).	
Section 451 (Customs and Excise prosecutions).	
Section 452 (Crown servants).	
Section 453 (References to financial investigators).	
Section 456 (Amendments).	Commenced for the purposes of the provisions of Schedule 11 to the Act commenced by this Order.
Section 457 (Repeals).	Commenced for the purposes of the provisions of Schedule 12 to the Act commenced by this Order.
In Schedule 11, paragraphs 2; 3; 6; 10(2); 13; 14(1) and (4); 17(1), (2), (3) and (5); 18; 19(1) and (4); 22; 23; 24; 25(2)(a) to (g), (3), (4), (5),	Paragraph 17(2) is commenced so far as it repeals sections 93A to 93J of the Criminal Justice Act 1988(17). Paragraph 25(2)(a) is commenced so far as it repeals sections 49

(17) 1988 c. 33.

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<i>Column 1</i>	<i>Column 2</i>
(6) and (7); 27; 28(1) and (2)(a); 30; 31(1), (2), (3)(c) to (h) and (4) to (18); 34; 35; 38 and 40.	to 54 of the Drug Trafficking Act 1994(18). Paragraph 27 is commenced so far as it repeals section 15(2) of the Proceeds of Crime Act 1995(19). Paragraph 28(2)(a) is commenced so far as it repeals sections 18 to 20 of the Proceeds of Crime (Scotland) Act 1995. Paragraph 31(2) is commenced so far as it repeals Part III of the Proceeds of Crime (Northern Ireland) Order 1996(20).
In Schedule 12, the following entries; the entry relating to the Misuse of Drugs Act 1971(21); in the entry relating to the Criminal Justice Act 1988, the entry in the second column concerning sections 71 to 102 of that Act; the entry relating to the Extradition Act 1989; in the entry relating to the Criminal Justice (International Co-operation) Act 1990(22), the entry in the second column concerning section 14 of that Act; in the entry relating to the Criminal Justice Act 1993(23), the entry in the second column concerning sections 27 to 35 of that Act, the entry in the second column concerning Schedule 4 of that Act and the entry in the second column concerning Schedule 5 of that Act; in the entry relating to the Drug Trafficking Act 1994, the entry in the second column concerning sections 1 to 54 of that Act, the entry in the second column concerning sections 55 and 56 of that Act, the entry in the second column concerning section 59 of that Act, the entries in the second column concerning section 60(6) of that Act, the entry in the second column concerning section 60(7) and (8) of that Act and the entry in the second column concerning section 61 of that Act; in the entry relating to the Proceeds of Crime Act 1995(24), the entry in the second column concerning sections 1 to 13 of that Act and the entry in the second column concerning section 15(1) to (3) of that Act; the entry relating to the Criminal Law (Consolidation) Scotland Act 1995(25); in the entry relating to the Proceeds of Crime (Scotland) Act 1995, the entry in the second column concerning Part I	In the case of the entry relating to sections 71 to 102 of the Criminal Justice Act 1988, it is commenced so far as it repeals sections 93A to 93J of that Act. In the case of the entry relating to sections 27 to 35 of the Criminal Justice Act 1993; it is commenced so far as it repeals sections 29 to 33 and section 35 of that Act. In the case of the entry relating to sections 1 to 54 of the Drug Trafficking Act 1994, it is commenced so far as it repeals sections 49 to 54 of that Act. In the case of the entry relating to sections 1 to 13 of the Proceeds of Crime Act 1995, it is commenced so far as it repeals sections 11 to 13 of that Act. In the case of the entry concerning section 15(1) to (3) of the Proceeds of Crime Act 1995, it is commenced so far as it repeals section 15(2) of that Act. In the case of the entry relating to the Criminal Law (Consolidation) Scotland Act 1995, it is commenced so far as it repeals sections 31 to 40 and 42 of that Act. In the case of the entry relating to Part I of the Proceeds of Crime (Scotland) Act 1995, it is commenced so far as it repeals sections 18 to 20 of that Act. In the case of the entry relating to Parts II and III of the Proceeds of Crime (Northern Ireland) Order 1996, it is commenced so far as it repeals Part III of that Order.

(18) 1994 c. 37.

(19) 1995 c. 43.

(20) S.I. 1996/1299 (N.I. 9).

(21) 1971 c. 38.

(22) 1990 c. 5.

(23) 1993 c. 36.

(24) 1995 c. 11.

(25) 1995 c. 39.

<i>Column 1</i>	<i>Column 2</i>
	of that Act; in the entry relating to the Proceeds of Crime (Northern Ireland) Order 1996, the entry in the second column concerning Parts II and III of that Order, the entry in the second column concerning article 49 of that Order, the entry in the second column concerning article 52 of that Order, the entry in the second column concerning article 54 of that Order, the entry in the second column concerning article 55 of that Order; the entry in the second column concerning article 56 of that Order and the entry in the second column concerning Schedule 2 to that Order, in the entry relating to the Access to Justice Act 1999, the entry concerning Schedule 2 to that Act; and the entry relating to the Financial Investigations (Northern Ireland) Order 2001(26).

## EXPLANATORY NOTE

*(This note is not part of the Order)*

This Order brings into force, on 24th February 2003, the following provisions of the Proceeds of Crime Act (“the Act”):

- (a) Chapter 2 of Part 5, which creates a new scheme for the civil recovery of the proceeds of unlawful conduct in the High Court or the Court of Session;
- (b) Part 6, which gives the Director of the Assets Recovery Agency certain revenue functions;
- (c) Part 7, which creates new money laundering offences;
- (d) Part 8, which creates new powers of investigation;
- (e) Part 10, which provides for the disclosure of information to and by the Director of the Assets Recovery Agency;
- (f) section 446, which permits rules of court to be made in relation to an order in council under Part 11;
- (g) section 448 and Schedule 10, which make provision about tax, mainly in relation to the new power of civil recovery;
- (h) sections 449 and 450, which allow staff of the Assets Recovery Agency and persons named by Scottish Ministers to use pseudonyms;
- (i) section 451, which enables the Commissioners of Customs and Excise to start proceedings for the money laundering offences and the offence of prejudicing an investigation;

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- (j) section 452, which gives the Secretary of State power to make regulations applying the money laundering offences and the offence of prejudicing an investigation to Crown servants;
- (k) section 453, which gives the Secretary of State power to make an order about financial investigators;
- (l) certain minor and consequential amendments in Schedule 11, together with entries in the repeals Schedule, Schedule 12;
- (m) other provisions which it is necessary to bring into force in order to give full effect to the provisions listed above.

Articles 3 to 7 make transitional provision and savings for the offences replaced by the new money laundering offences, the existing offence of prejudicing an investigation, proceedings brought by the Commissioners of Customs and Excise, the application of offences to Crown servants and the Extradition Act 1989.

#### **NOTE AS TO EARLIER COMMENCEMENT ORDERS**

*(This note is not part of the Order)*

The following provisions of the Proceeds of Crime Act 2002 have been brought into force by commencement order made before the date of this Order.

<i>Provision</i>	<i>Date of Commencement</i>	<i>S.I. No.</i>
Part 1 (sections 1 to 5, together with Schedule 1) (Assets Recovery Agency)	13th January 2003	<a href="#">2002/3055</a>
Section 89 (Procedure on appeal to the Court of Appeal) (for the purposes of making secondary legislation)	30th December 2002	<a href="#">2002/3015</a>
Section 90 (Procedure on appeal to the House of Lords) (for the purposes of making secondary legislation)	30th December 2002	<a href="#">2002/3015</a>
Chapter 1 of Part 5 (sections 240 to 242) (Civil recovery of the proceeds etc of unlawful conduct—introductory)	30th December 2002	<a href="#">2002/3015</a>
Section 270(4) and (5) (Associated and joint property)	30th December 2002	<a href="#">2002/3015</a>
Chapter 3 of Part 5 (sections 289 to 303) (Civil recovery of the proceeds etc of unlawful conduct—recovery of cash in summary proceedings)	30th December 2002	<a href="#">2002/3015</a>
Sections 304 to 311 (Civil recovery of the proceeds etc of unlawful conduct—general)	30th December 2002	<a href="#">2002/3015</a>



<i>Provision</i>	<i>Date of Commencement</i>	<i>S.I. No.</i>
Sections 314 to 316 (Interpretation)	30th December 2002	<a href="#">2002/3015</a>
Section 454 (Customs officers)	30th December 2002	<a href="#">2002/3015</a>
Section 455 (Enactment)	30th December 2002	<a href="#">2002/3015</a>
Section 456 (Amendments) (in part)	30th December 2002	<a href="#">2002/3015</a>
Section 457 (Repeals) (in part)	30th December 2002	<a href="#">2002/3015</a>
Paragraph 10(1), (3) and (4) of Schedule 11	30th December 2002	<a href="#">2002/3145</a>
Paragraphs 25(1) and (2)(a) and 36 of Schedule 11 (in part)	30th December 2002	<a href="#">2002/3015</a>