

2017 No. 1280

PROCEEDS OF CRIME

The Proceeds of Crime Act 2002 (Investigations in different parts of the United Kingdom) (Amendment) Order 2017

Made - - - - - *13th December 2017*

Laid before Parliament *20th December 2017*

Coming into force in accordance with article 1.

At the Court at Buckingham Palace, the 13th day of December 2017

Present,

The Queen's Most Excellent Majesty in Council

Her Majesty, in pursuance of section 443(1)(ca), (d) and (e), and (4)(a) and 459(2) of the Proceeds of Crime Act 2002^(a), is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows.

Citation and commencement

1.—(1) This Order may be cited as the Proceeds of Crime Act 2002 (Investigations in different parts of the United Kingdom) (Amendment) Order 2017.

(2) Paragraph 2(a), (d) and (e) of the Schedule to this Order comes into force on 16th April 2018 so far as it relates to detained property investigations.

(3) Otherwise, this Order comes into force on 31st January 2018.

Amendments to the Proceeds of Crime Act 2002 (Investigations in different parts of the United Kingdom) Order 2003

2. The Schedule to this Order amends the Proceeds of Crime Act 2002 (Investigations in different parts of the United Kingdom) Order 2003^(b) (“the Investigations Order”).

Ceri King
Deputy Clerk of the Privy Council

(a) 2002 c. 29. Section 443 was amended by paragraph 137 of Part 6 of Schedule 8 to the Serious Crime Act 2007 (c. 27); by paragraph 148 of Part 2 of Schedule 8 to the Crime and Courts Act 2013 (c. 22); and by paragraph 83 of Schedule 5 to the Criminal Finances Act 2017 (c. 22).

(b) S.I. 2003/425. Article 2 was amended by S.I. 2015/925 and 2016/291.

Amendments to the Table of Contents in the Investigations Order

1. In the Table of Contents in the Investigations Order—
 - (a) after the reference to paragraph 12 (Scottish account monitoring orders) insert—
 - “**12A.** Northern Ireland further information orders
 - 12B.** Scottish further information orders
 - 12C.** Scottish moratorium extension orders”.
 - (b) After the reference to paragraph 22 (Scottish account monitoring orders) insert—
 - “**22A.** English or Welsh further information orders
 - 22B.** Scottish further information orders”.
 - (c) After the reference to paragraph 32 (Scottish account monitoring orders) insert—
 - “**32A.** English or Welsh further information orders
 - 32B.** Northern Ireland further information orders
 - 32C.** English or Welsh moratorium extension orders”.

Amendments to Part 1 of the Investigations Order

2. Article 2 (Interpretation) is amended as follows—
 - (a) after paragraph (c) insert—
 - “(d) in relation to a detained property investigation—
 - (i) a constable of a police force in England and Wales;
 - (ii) an accredited financial investigator; or
 - (iii) an officer of Revenue and Customs;
 - (e) in relation to a frozen funds investigation—
 - (i) a constable of a police force in England and Wales;
 - (ii) an accredited financial investigator; or
 - (iii) an officer of Revenue and Customs;”;
 - (b) in the definition of “an English or Welsh disclosure order”, after “confiscation investigation” insert “or, for the purposes of Part 4 of this Order (Enforcement in Scotland of English, Welsh and Northern Ireland orders and warrants), a money laundering investigation”;
 - (c) after the definition of “an English or Welsh disclosure order”, insert—
 - ““an English or Welsh further information order” means an order made by a court in England or Wales under section 339ZH of the Act (further information orders);
 - “an English or Welsh moratorium extension order” means an order made by a court in England or Wales under section 336A of the Act (power of court to extend the moratorium period);”;
 - (d) in the definition of “an English or Welsh production order”, for “or a detained cash investigation” substitute “, a detained cash investigation, or for the purposes of Part 4 of this Order (Enforcement in Scotland of English, Welsh and Northern Ireland orders and warrants) a detained property investigation or a frozen funds investigation”;

- (e) in the definition of “an English or Welsh search and seizure warrant”, for “or a detained cash investigation” substitute “, a detained cash investigation, or for the purposes of Part 4 of this Order (Enforcement in Scotland of English, Welsh and Northern Ireland orders and warrants) a detained property investigation or a frozen funds investigation”;
- (f) after the definition of “an English or Welsh search and seizure warrant”, insert-
 - ““an English or Welsh senior officer” means an officer of a description listed in section 336D(7) of the Act (sections 336A to 336C: interpretation);”;
- (g) after the definition of “a Northern Ireland disclosure order”, insert-
 - ““a Northern Ireland further information order” means an order made by a court in Northern Ireland under section 339ZH of the Act (further information orders);”;
- (h) in the definition of “a Scottish disclosure order”, after “confiscation investigation” insert “or, for the purposes of part 2 of this Order (Enforcement in England and Wales of Scottish and Northern Ireland orders and warrants), a money laundering investigation”;
- (i) after the definition of “a Scottish disclosure order”, insert—
 - ““a Scottish further information order” means an order made by a court in Scotland under section 339ZH of the Act (further information orders);
 - “a Scottish moratorium extension order” means an order made by a court in Scotland under section 336A of the Act (power of court to extend the moratorium period);”.

Amendments to Part 2 of the Investigations Order

3. After article 12 (Scottish account monitoring orders) insert—

“Northern Ireland further information orders

12A.—(1) This article applies where a Northern Ireland further information order is made in respect of a person in England and Wales.

(2) The further information order may be served—

- (a) by sending it by post, facsimile transmission or electronic mail to the respondent; or
- (b) personally by the Director General of the National Crime Agency or any other National Crime Agency officer authorised by the Director General (whether generally or specifically) for this purpose,

and any rules of court (other than rules of court made by virtue of section 339ZK(5) of the Act) as to the service of documents or other requirements in law as to the service of documents do not apply.

(3) Section 339ZI of the Act (statements) applies in relation to criminal proceedings brought in England and Wales, as well as criminal proceedings brought in Northern Ireland.

Scottish further information orders

12B.—(1) This article applies where a Scottish further information order is made in respect of a person in England and Wales.

(2) The further information order may be served—

- (a) by sending it by post, facsimile transmission or electronic mail to the respondent; or
- (b) personally by the Director General of the National Crime Agency or any other National Crime Agency officer authorised by the Director General (whether generally or specifically) for this purpose, or by a constable of a police force in Scotland,

and the Summary Jurisdiction (Process) Act 1881^(a), any rules of court as to the service of documents (other than rules of court made by virtue of section 339ZK(5) of the Act) and any other requirements in law as to the service of documents do not apply.

(3) Section 339ZI of the Act (statements) applies in relation to criminal proceedings brought in England and Wales, as well as criminal proceedings brought in Scotland.

Scottish moratorium extension orders

12C.—(1) This article applies where a Scottish moratorium extension order is made in respect of a person in England and Wales.

(2) The moratorium extension order may be served—

- (a) by sending it by post, facsimile transmission or electronic mail to each interested person^(b); or
- (b) personally by an English or Welsh senior officer, or by a constable of a police force in Scotland,

and the Summary Jurisdiction (Process) Act 1881, any rules of court as to the service of documents and any other requirements in law as to the service of documents do not apply.”.

Amendments to Part 3 of the Investigations Order

4. After article 22 (Scottish account monitoring orders) insert—

“English or Welsh further information orders

22A.—(1) This article applies where an English or Welsh further information order is made in respect of a person in Northern Ireland.

(2) The further information order may be served—

- (a) by sending it by post, facsimile transmission or electronic mail to the respondent; or
- (b) personally by the Director General of the National Crime Agency or any other National Crime Agency officer authorised by the Director General (whether generally or specifically) for this purpose,

and any rules of court as to the service of documents (other than rules of court made by virtue of section 339ZK(5) of the Act) and other requirements in law as to the service of documents do not apply.

(3) Section 339ZI of the Act (statements) applies in relation to criminal proceedings brought in Northern Ireland, as well as criminal proceedings brought in England and Wales.

Scottish further information orders

22B.—(1) This article applies where a Scottish further information order is made in respect of a person in Northern Ireland.

(2) The further information order may be served—

- (a) by sending it by post, facsimile transmission or electronic mail to the respondent; or
- (b) personally by the Director General of the National Crime Agency or any other National Crime Agency officer authorised by the Director General (whether

(a) 1881 c. 24 (44 & 45 Vict).

(b) “Interested person” is defined in section 336D(3) of the Proceeds of Crime Act 2002, which was inserted by section 10 of the Criminal Finances Act 2017.

generally or specifically) for this purpose, or by a constable of a police force in Scotland,

and any rules of court as to the service of documents (other than rules of court made by virtue of section 339ZK(5) of the Act) and any other requirements in law as to the service of documents do not apply.

(3) Section 339ZI of the Act (statements) applies in relation to criminal proceedings brought in Northern Ireland, as well as criminal proceedings brought in Scotland.”.

Amendments to Part 4 of the Investigations Order

5. After article 32 (Northern Ireland account monitoring orders) insert—

“English or Welsh further information orders

32A.—(1) This article applies where an English or Welsh further information order is made in respect of a person in Scotland.

(2) The further information order may be served—

- (a) by sending it by post, facsimile transmission or electronic mail to the respondent;
or
- (b) personally by a constable of a police force in Scotland or by the Director General of the National Crime Agency or any other National Crime Agency officer authorised by the Director General (whether generally or specifically) for this purpose,

and any rules of court as to the service of documents (other than rules of court made by virtue of section 339ZK(5) of the Act) or other requirements in law as to the service of documents do not apply.

(3) Section 339ZI of the Act (statements) applies in relation to criminal proceedings brought in Scotland, as well as criminal proceedings brought in England and Wales.

Northern Ireland further information orders

32B.—(1) This article applies where a Northern Ireland further information order is made in respect of a person in Scotland.

(2) The further information order may be served—

- (a) by sending it by post, facsimile transmission or electronic mail to the respondent;
or
- (b) personally by a constable of a police force in Scotland or by the Director General of the National Crime Agency or any other National Crime Agency officer authorised by the Director General (whether generally or specifically) for this purpose,

and any rules of court as to the service of documents (other than rules of court made by virtue of section 339ZK(5) of the Act) or other requirements in law as to the service of documents do not apply.

(3) Section 339ZI of the Act (statements) applies in relation to criminal proceedings brought in Scotland, as well as criminal proceedings brought in Northern Ireland.

English or Welsh moratorium extension orders

32C.—(1) This article applies where an English or Welsh moratorium extension order is made in respect of a person in Scotland.

(2) The moratorium extension order may be served—

- (a) by sending it by post, facsimile transmission or electronic mail to each interested person; or
- (b) personally by a constable of a police force in Scotland or by an English or Welsh senior officer,

and any rules of court as to the service of documents and any other requirements in law as to the service of documents do not apply.”.

Amendment to Part 5 of the Investigations Order

6. In article 33(1), for “or a detained cash investigation” substitute “, a detained cash investigation, a detained property investigation or a frozen funds investigation”.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends the Proceeds of Crime Act 2002 (Investigations in different parts of the United Kingdom) Order 2003 (S.I. 2003/425) (“the Investigations Order”), which contains the enforcement procedures within the United Kingdom for orders made and search and seizure warrants issued relating to certain investigations under Part 8 of the Proceeds of Crime Act 2002 (c. 29) (“POCA”). The Investigations Order provides the appropriate enforcement procedures where section 18 of the Civil Jurisdiction and Judgments Act 1982 (c. 27) (“CJJA”) (enforcement of UK judgments in other parts of UK) does not apply.

Paragraphs 2(b) and (h) of the Schedule to this Order provide that disclosure orders can be obtained in England and Wales and Scotland in the context of a money laundering investigation, as a result of the amendments made to POCA by sections 7 and 8 of the Criminal Finances Act 2017 (c. 22) (“CFA”). These sections removed the restriction preventing disclosure orders from being available in money laundering investigations. These provisions in the CFA are not being commenced in Northern Ireland at this time.

Paragraphs 2(c), (g) and (i), and 3 to 5 of the Schedule to this Order amend the Investigations Order to include references to further information orders (as provided for by section 10 of the CFA) and moratorium extension orders (as provided for by section 12 of the CFA), and to allow them to be given effect in other jurisdictions within the United Kingdom. Under Part 7 of POCA, an entity in the regulated sector (as defined in Schedule 9 to POCA) must report a suspicion of money laundering, and must seek consent from a nominated officer, a constable or a customs officer to carry out a particular related transaction. Where that consent is refused, the entity is currently prohibited from carrying out the transaction for a period of 31 days (“the moratorium period”). Section 10 of the CFA introduces a new power for a senior officer (as defined in section 336D(7) of POCA) to apply to the court for an order extending the moratorium period. This power is not being commenced in Northern Ireland at this time.

Section 12 of the CFA provides for further information orders, which require the respondent in the regulated sector to provide further information relating to a matter arising from a disclosure made under Part 7 of POCA, where that further information would assist in investigating whether a person is engaged in money laundering, or whether an investigation of that kind should be started.

The CFA amends POCA to create two new categories of investigation which support the new powers to forfeit certain listed items of property and to forfeit funds in bank accounts. Law enforcement officers can apply to the relevant court (the magistrates’ court in England and Wales and Northern Ireland and the sheriff’s court in Scotland) for an order under the investigatory powers provisions in Part 8 of POCA. These are detained property investigations and frozen funds investigations respectively (“the new investigations”). Paragraphs 2(a), (d) and (e) of this Order amend the Investigations Order to include references to the new investigations. As with detained cash investigations, the CJJA will not apply in respect of orders obtained under Part 8 of POCA in the new investigations in England and Wales.

Paragraph 2(d) and (e) of the Schedule to this Order provide respectively that production orders and search and seizure warrants made in England and Wales in the course of the new investigations will fall within the definition of “English and Welsh production orders” and “English and Welsh search warrants” in the Investigations Order. No equivalent definition is required for Scotland, as the CJJA will apply where an order is sought under Part 8 of POCA in the course of the new investigations in Scotland, as is currently the case for detained cash investigations. No equivalent provision is needed for Northern Ireland for the reasons set out above.

Paragraph 6 of the Schedule to this Order ensures that the same approach will be taken to applications to vary or discharge orders under Part 8 of POCA which were obtained in the course of the new investigations, and which are to be enforced in a different jurisdiction. The effect of the amendment is that such applications must be made in the jurisdiction in which the order was obtained, in keeping with the approach currently taken for orders in detained cash investigations.

A full impact assessment has not been produced for this instrument as no, or no significant, impact on the private, voluntary or public sectors is foreseen.

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