

Subsidiary Legislation made under ss.184 & 184B.

**Proceeds of Crime Act 2015 (External Investigations  
Ancillary to a Criminal Investigation or Proceeding)  
Order 2019**

**LN.2019/067**

	<i>Commencement</i>	<b>28.3.2019</b>
Amending enactments	Relevant current provisions	Commencement date
LN. 2019/226    Art. 2		7.11.2019

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*In exercise of the powers conferred on it by sections 184 and 184B of the Proceeds of Crime Act 2015 the Government has made this Order-*

#### **Title and commencement.**

1.(1) This Order may be cited as the Proceeds of Crime Act 2015 (External Investigations Ancillary to a Criminal Investigation or Proceeding) Order 2019.

(2) This Order comes into operation on the day of publication.

#### **Interpretation.**

2.(1) In this Order—

“account monitoring order” has the same meaning as in article 29;

“the Act” means the Proceeds of Crime Act 2015;

“appropriate officer” means the Attorney General, a police officer or a customs officer;

“Central Authority” means the Minister with responsibility for Justice or any other person or body as may be determined by the Minister for Justice;

“customer information order” has the same meaning as in article 22;

“disclosure order” has the same meaning as in article 16;

“document”, “excluded material” and “premises” have the same meanings as in section 181 of the Act;

“financial institution” means a person carrying on a business in the regulated sector, but a person who ceases to carry on a business in the regulated sector is to continue to be treated as a financial institution for the purposes of any requirement under a customer information order or an account monitoring order to provide information which relates to a time when the person was a financial institution;

“judge” means a judge of the Supreme Court;

“money laundering offence” means doing any act which—

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- (a) constitutes an offence under section 2, 3 or 4 of the Act;
- (b) constitutes an offence under section 35, 36, 37 or 39 of the Terrorism Act 2018,
- (c) constitutes an offence under any other enactment that applies in Gibraltar and that offence relates to terrorism or the financing of terrorism,

or in the case of an act done otherwise than in Gibraltar, would constitute such an offence if done in Gibraltar.

“production order” has the same meaning as in article 6;

“search and seizure warrant” has the same meaning as in article 13;

- (2) In this Order references to—
  - (a) a “relevant financial business” and “business in the regulated sector” must be construed in accordance with the Act;
  - (b) “notice in writing” includes reference to notice given by electronic means.

**Scope of this Order**

3.(1) This Order has effect for the purpose of enabling an appropriate officer to assist an external investigation by obtaining orders and warrants in Gibraltar.

(2) The powers conferred by this Order are exercisable only if the appropriate officer believes that the external investigation relates to a criminal investigation or criminal proceedings in the country or territory of the overseas authority carrying out the external investigation.

(3) For the purpose of paragraph (2), criminal proceedings include proceedings to remove from a person the benefit of that person’s criminal conduct following that person’s conviction for an offence or offences.

**Action on receipt of a request in relation to an external investigation**

4.(1) The Central Authority may refer a request for assistance in relation to an external investigation to, the Attorney General, a police officer or customs officer.

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(2) The Attorney General, police officer or customs officer may, on receipt of the request for assistance, act under this Order.

#### **Offences of prejudicing an external investigation**

5.(1) This article applies if a person knows or suspects that an appropriate officer is acting (or proposing to act) in connection with an external investigation.

- (2) A person commits an offence if the person—
- (a) makes a disclosure which is likely to prejudice the external investigation, or
  - (b) falsifies, conceals, destroys or otherwise disposes of, or causes or permits the falsification, concealment, destruction or disposal of, documents which are relevant to the external investigation.
- (3) A person does not commit an offence under paragraph (2)(a) if—
- (a) the person does not know or suspect that the disclosure is likely to prejudice the external investigation,
  - (b) the disclosure is made in the exercise of a function under the Act or any other enactment relating to criminal conduct or benefit from criminal conduct or in compliance with a requirement imposed under or by virtue of the Act,
  - (c) the disclosure is of a matter within section 5(7) of the Act (Tipping-off) and the information on which the disclosure is based came to the person in the course of a business in the regulated sector, or,
  - (d) the person is a professional legal adviser and the disclosure falls within paragraph (4).
- (4) A disclosure falls within this paragraph if it is a disclosure—
- (a) to (or to a representative of) a client of the professional legal adviser in connection with the giving by the adviser of legal advice to the client, or
  - (b) to any person in connection with legal proceedings or contemplated legal proceedings.

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- (5) But a disclosure does not fall within paragraph (4) if it is made with the intention of furthering a criminal purpose.
- (6) A person does not commit an offence under paragraph (2)(b) if the person—
- (a) does not know or suspect that the documents are relevant to the external investigation, or
  - (b) does not intend to conceal any facts disclosed by the documents from any appropriate officer acting in connection with the external investigation.
- (7) A person guilty of an offence under paragraph (2) is liable—
- (a) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum or to both, or
  - (b) on conviction on indictment, to imprisonment for a term not exceeding five years or to a fine or to both.
- (8) For the purposes of this section a business is in the regulated sector if it is engaged in relevant financial business under section 9 of the Act.

**PART 1**

**Production orders**

**Production orders**

- 6.(1) A judge may, on an application made to the judge by an appropriate officer, make a production order if the judge is satisfied that each of the requirements for the making of the order is fulfilled.
- (2) The application for a production order must state that—
- (a) article 3(2) is satisfied,
  - (b) the order is sought for the purposes of the external investigation,
  - (c) the order is sought in relation to material, or material of a description, specified in the application,

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- (d) a person specified in the application appears to be in possession or control of the material.
- (3) A production order is an order either—
  - (a) requiring the person the application for the order specifies as appearing to be in possession or control of the material to produce it to an appropriate officer for the appropriate officer to take away, or
  - (b) requiring that person to give an appropriate officer access to the material,

within the period stated in the order.

(4) The period stated in a production order must be a period of seven days beginning with the day on which the order is made, unless it appears to the judge by whom the order is made that a longer or shorter period would be appropriate in the particular circumstances.

#### **Requirements for making of production order**

- 7.(1) These are the requirements for the making of a production order.
- (2) There must be reasonable grounds for suspecting that the application relates to an external investigation.
  - (3) There must be reasonable grounds for believing that—
    - (a) the person the application specifies as appearing to be in possession or control of the material so specified is in possession or control of it,
    - (b) the material is likely to be of substantial value (whether or not by itself) to the external investigation, and
    - (c) it is in the public interest for the material to be produced or for access to it to be given, having regard to—
      - (i) the benefit likely to accrue to the external investigation if the material is obtained;



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- (ii) the circumstances under which the person the application specifies as appearing to be in possession or control of the material holds it.

**Order to grant entry**

8.(1) This article applies if a judge makes a production order requiring a person to give an appropriate officer access to material on any premises.

(2) The judge may, on an application made to the judge by an appropriate officer and specifying the premises, make an order to grant entry in relation to the premises.

(3) An order to grant entry is an order requiring any person who appears to an appropriate officer to be entitled to grant entry to the premises to allow the appropriate officer to enter the premises to obtain access to the material.

**Further provisions**

9.(1) A production order does not require a person to produce, or give access to, privileged material.

(2) Privileged material is any material which the person would be entitled to refuse to produce on grounds of legal professional privilege in proceedings.

(3) A production order does not require a person to produce, or give access to, excluded material.

(4) A production order has effect in spite of any restriction on the disclosure of information (however imposed).

(5) An appropriate officer may take copies of any material which is produced, or to which access is given, in compliance with a production order.

(6) Material produced in compliance with a production order may be retained for so long as it is necessary to retain it (as opposed to copies of it) in connection with the external investigation.

(7) But if an appropriate officer has reasonable grounds for believing that—

- (a) the material may need to be produced for the purposes of any legal proceedings; and

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(b) it might otherwise be unavailable for those purposes,  
it may be retained until the proceedings are concluded.

(8) Material produced in compliance with a production order may be sent to the overseas authority which made the request for assistance or to the Central Authority for forwarding to that overseas authority.

#### **Computer information**

10.(1) This article applies if any of the material specified in an application for a production order consists of information contained in a computer.

(2) If the order requires a person to produce the material to an appropriate officer for the appropriate officer to take away, it has effect as an order to produce the material in a form in which it—

(a) can be taken away by the appropriate officer and,

(b) is visible and legible.

(3) If the order requires a person to give an appropriate officer access to the material, it has effect as an order to give the appropriate officer access to the material in a form in which it is visible and legible.

#### **Government departments**

11.(1) A production order may be made in relation to material in the possession or control of a Government department.

(2) An order so made may require any officer of the department (whether named in the order or not) who may for the time being be in possession or control of the material to comply with it.

(3) An order containing such a requirement must be served as if the proceedings were civil proceedings against the department.

(4) If an order contains such a requirement—

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- (a) the person on whom it is served must take all reasonable steps to bring it to the attention of the officer concerned,
  - (b) any other officer of the department who is in receipt of the order must also take all reasonable steps to bring it to the attention of the officer concerned.
- (5) If the order is not brought to the attention of the officer concerned within the period stated in the order (in pursuance of article 6(4)) the person on whom it is served must report the reasons for the failure to a judge.

**Supplementary**

- 12.(1) An application for a production order or an order to grant entry may be made ex parte to a judge in chambers.
- (2) An application to discharge or vary a production order or an order to grant entry may be made to the court by—
- (a) the person who applied for the order,
  - (b) any person affected by the order.
- (3) The court—
- (a) may discharge the order,
  - (b) may vary the order.
- (4) If an appropriate officer applies for a production order or an order to grant entry, an application to discharge or vary the order need not be by the same appropriate officer.
- (5) References to a person who applied for a production order or an order to grant entry must be construed accordingly.
- (6) Production orders and orders to grant entry have effect as if they were orders of the court.

**PART 2**

**Search and seizure warrants**

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**Search and seizure warrants**

13.(1) A judge may, on an application made to the judge by an appropriate officer, issue a search and seizure warrant if the judge is satisfied—

- (a) that article 3(2) is satisfied, and
  - (b) either of the requirements in paragraph (4) is fulfilled.
- (2) The application must also state—
- (a) the warrant is sought for the purposes of the external investigation,
  - (b) the warrant is sought in relation to the premises specified in the application,
  - (c) the warrant is sought in relation to material specified in the application, or that there are reasonable grounds for believing that there is material falling within article 14(5) on the premises.
- (3) A search and seizure warrant is a warrant authorising an appropriate officer—
- (a) to enter and search the premises specified in the application for the warrant, and
  - (b) to seize and retain any material found there which is likely to be of substantial value (whether or not by itself) to the external investigation.
- (4) The requirements for the issue of a search and seizure warrant are—
- (a) that a production order made in relation to material has not been complied with and there are reasonable grounds for believing that the material is on the premises specified in the application for the warrant, or
  - (b) that article 14 is satisfied in relation to the warrant.

**Requirements where production order not available**

14.(1) This article is satisfied in relation to a search and seizure warrant if—

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- (a) there are reasonable grounds for suspecting that the application relates to an external investigation, and
  - (b) either the first or the second set of conditions is complied with.
- (2) The first set of conditions is that there are reasonable grounds for believing that—
- (a) any material on the premises specified in the application for the warrant is likely to be of substantial value (whether or not by itself) to the external investigation,
  - (b) it is in the public interest for the material to be obtained, having regard to the benefit likely to accrue to the external investigation if the material is obtained, and
  - (c) it would not be appropriate to make a production order for any one or more of the reasons in paragraph (3).
- (3) The reasons are—
- (a) that it is not practicable to communicate with any person against whom the production order could be made,
  - (b) that it is not practicable to communicate with any person who would be required to comply with an order to grant entry to the premises,
  - (c) that the external investigation might be seriously prejudiced unless an appropriate officer is able to secure immediate access to the material.
- (4) The second set of conditions is that—
- (a) there are reasonable grounds for believing that there is material on the premises specified in the application for the warrant and that the material falls within paragraph (5),
  - (b) there are reasonable grounds for believing that it is in the public interest for the material to be obtained, having regard to the benefit likely to accrue to the external investigation if the material is obtained, and
  - (c) any one or more of the requirements in paragraph (6) is satisfied.

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(5) Material falls within this paragraph if it cannot be identified at the time of the application but it—

- (a) relates to the person who is the subject of the external investigation, and
  - (b) is likely to be of substantial value (whether or not by itself) to the external investigation for the purposes of which the warrant is sought.
- (6) The requirements are—
- (a) that it is not practicable to communicate with any person entitled to grant entry to the premises,
  - (b) that entry to the premises will not be granted unless a warrant is produced, and
  - (c) that the external investigation might be seriously prejudiced unless an appropriate officer arriving at the premises is able to secure immediate entry to them.

**Further provisions: general**

15.(1) This article applies to—

- (a) search and seizure warrants sought for the purposes of an external investigation, and
  - (b) powers of seizure under them.
- (2) An application for a warrant may be made ex parte to a judge in chambers.
- (3) A warrant may be issued subject to conditions.
- (4) A search and seizure warrant does not confer the right to seize privileged material.
- (5) Privileged material is any material which a person would be entitled to refuse to produce on grounds of legal professional privilege in proceedings.
- (6) A search and seizure warrant does not confer the right to seize excluded material.
- (7) A warrant continues in force until the end of the period of one month starting with the day on which it is issued.

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(8) A warrant authorises the person it names to require any information which is held in a computer and is accessible from the premises specified in the application for the warrant, and which the named person believes relates to any matter relevant to the external investigation, to be produced in a form—

- (a) in which it can be taken away and is visible and legible, or
- (b) from which it can readily be produced in a visible and legible form.

(9) A warrant may include provision authorising a person who is exercising powers under it to do other things which—

- (a) are specified in the warrant, and
- (b) need to be done in order to give effect to it.

(10) Copies may be taken of any material seized under a warrant.

(11) Material seized under a warrant may be retained for so long as it is necessary to retain it (as opposed to copies of it) in connection with the external investigation.

(12) But if the appropriate officer has reasonable grounds for believing that—

- (a) the material may need to be produced for the purposes of any legal proceedings, and
- (b) it might otherwise be unavailable for those purposes,

it may be retained until the proceedings are concluded.

(13) Material seized under a warrant may be sent to the overseas authority which made the request for assistance or to the Central Authority for forwarding to that overseas authority.

### **PART 3**

#### **Disclosure orders**

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16.(1) A judge may, on an application made to the judge by an appropriate officer, make a disclosure order if the judge is satisfied that each of the requirements for the making of the order is fulfilled.

- (2) The application for a disclosure order must state that—
  - (a) the order is sought for the purposes of the external investigation, and
  - (b) article 3(2) is satisfied.
- (3) A disclosure order is an order authorising an appropriate officer to give to a person the appropriate officer considers has relevant information, notice in writing requiring the person to do, with respect to any matter relevant to the external investigation, any or all of the following—
  - (a) answer questions, either at a time specified in the notice or at once, at a place so specified,
  - (b) provide information specified in the notice, by a time and in a manner so specified,
  - (c) produce documents, or documents of a description, specified in the notice, either at or by a time so specified or at once, and in a manner so specified.
- (4) Relevant information is information (whether or not contained in a document) which the appropriate officer concerned considers to be relevant to the external investigation.
- (5) A person is not bound to comply with a requirement imposed by a notice given under a disclosure order unless evidence of authority to give the notice is produced to them.

### **Requirements for making of disclosure order**

- 17.(1) These are the requirements for the making of a disclosure order.
- (2) There must be reasonable grounds for suspecting that the application relates to an external investigation.
  - (3) There must be reasonable grounds for believing that—



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- (a) information which may be provided in compliance with a requirement imposed under the order is likely to be of substantial value (whether or not by itself) to the external investigation, and
- (b) it is in the public interest for the information to be provided, having regard to the benefit likely to accrue to the external investigation if the information is obtained.

**Offences**

18.(1) A person commits an offence if, without reasonable excuse the person fails to comply with a requirement imposed on the person under a disclosure order.

(2) A person guilty of an offence under paragraph (1) is liable on summary conviction to—

- (a) imprisonment for a term not exceeding six months,
- (b) a fine not exceeding the statutory maximum, or
- (c) both.

(3) A person commits an offence if, in purported compliance with a requirement imposed on the person under a disclosure order, the person—

- (a) makes a statement which the person knows to be false or misleading in a material particular, or
- (b) recklessly makes a statement which is false or misleading in a material particular.

(4) A person guilty of an offence under paragraph (3) is liable—

- (a) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum or to both, or
- (b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both.

**Statements**

19.(1) A statement made by a person in response to a requirement imposed on them under a disclosure order may not be used in evidence against them in criminal proceedings.

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- (2) But paragraph (1) does not apply—
- (a) in the case of proceedings under Part 2 of the Act,
  - (b) in the case of proceedings under Part 2 or 4 of the Proceeds of Crime Act 2015 (External Requests and Orders) Order 2019,
  - (c) on a prosecution for an offence under article 18(1) or (3) of this Order,
  - (d) on a prosecution for an offence under section 163(1) or (3) of the Act,
  - (e) on a prosecution for an offence for perjury or false statements, or
  - (f) on a prosecution for some other offence where, in giving evidence, the person makes a statement inconsistent with the statement mentioned in paragraph (1).
- (3) A statement may not be used by virtue of paragraph (2)(f) against a person unless—
- (a) evidence relating to it is adduced, or
  - (b) a question relating to it is asked,

by them or on their behalf in the proceedings arising out of the prosecution.

#### **Further provisions**

20.(1) A disclosure order does not confer the right to require a person to answer any privileged question, provide any privileged information or produce any privileged document, except that a lawyer may be required to provide the name and address of their client.

(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.

(3) Privileged information is any information which the person would be entitled to refuse to provide on grounds of legal professional privilege in proceedings.

(4) Privileged material is any material which the person would be entitled to refuse to produce on grounds of legal professional privilege in proceedings.

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(5) A disclosure order does not confer the right to require a person to produce excluded material.

(6) A disclosure order has effect in spite of any restriction on the disclosure of information (however imposed).

(7) An appropriate officer may take copies of any documents produced in compliance with a requirement to produce them which is imposed under a disclosure order.

(8) Documents so produced may be retained for so long as it is necessary to retain them (as opposed to a copy of them) in connection with the external investigation.

(9) But if an appropriate officer has reasonable grounds for believing that—

(a) the documents may need to be produced for the purposes of any legal proceedings, and

(b) the appropriate officer might otherwise be unavailable for those purposes,

the documents may be retained until the proceedings are concluded.

(10) Material produced in compliance with a disclosure order may be sent to the overseas authority which made the request for assistance or to the Central Authority for forwarding to that overseas authority.

**Supplementary**

21.(1) An application for a disclosure order may be made ex parte to a judge.

(2) An application to discharge or vary a disclosure order may be made to the court by—

(a) the person who applied for the order,

(b) any person affected by the order.

(3) The court—

(a) may discharge the order,

(b) may vary the order.

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(4) If an appropriate officer applies for a disclosure order, an application to discharge or vary the order need not be by the same appropriate officer.

(5) References to a person who applied for a disclosure order must be construed accordingly.

#### **PART 4**

##### **Customer information orders**

##### **Customer information orders**

22.(1) A judge may, on an application made to the judge by an appropriate officer, make a customer information order if the judge is satisfied that each of the requirements for the making of the order is fulfilled.

- (2) The application for a customer information order must state that—
- (a) article 3(2) is satisfied,
  - (b) the order is sought for the purposes of the external investigation,
  - (c) the order is sought against the financial institution or financial institutions specified in the application.
- (3) An application for a customer information order may specify—
- (a) all financial institutions,
  - (b) a particular description, or particular descriptions, of financial institutions, or
  - (c) a particular financial institution or particular financial institutions.

(4) A customer information order is an order that a financial institution covered by the application for the order must, on being required to do so by notice in writing given by an appropriate officer, provide any such customer information as it has relating to the person specified in the application.

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(5) A financial institution which is required to provide information under a customer information order must provide the information to an appropriate officer in such manner, and at or by such time, as an appropriate officer requires.

(6) If a financial institution on which a requirement is imposed by a notice given under a customer information order requires the production of evidence of authority to give the notice, it is not bound to comply with the requirement unless evidence of the authority has been produced to it.

**Meaning of customer information**

23.(1) “Customer information”, in relation to a person and a financial institution, is information whether the person holds, or has held, an account or accounts or any safe deposit box at the financial institution (whether solely or jointly with another) and (if so) information as to—

- (a) the matters specified in paragraph (2) if the person is an individual,
  - (b) the matters specified in paragraph (3) if the person is a company or limited liability partnership or a similar body incorporated or otherwise established outside Gibraltar.
- (2) The matters referred to in paragraph (1)(a) are—
- (a) the account number or numbers or the number of any safe deposit box,
  - (b) the person’s full name,
  - (c) the person’s date of birth,
  - (d) the person’s most recent address and any previous addresses,
  - (e) in the case of an account or accounts, the date or dates on which the person began to hold the account or accounts and, if the person ceased to hold the account or any of the accounts, the date or dates on which the person did so,
  - (f) in the case of any safe deposit box, the date on which the box was made available to them and if the box has ceased to be available to them the date on which it so ceased,

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- (g) such evidence of identity as was obtained by the financial institution under or for the purposes of any legislation relating to money laundering,
  - (h) the full name, date of birth and most recent address, and any previous addresses, of any person who holds, or has held, an account at the financial institution jointly with them,
  - (i) the account number or numbers of any other account or accounts held at the financial institution to which the person is a signatory and details of the person holding the other account or accounts.
- (3) The matters referred to in paragraph (1)(b) are—
- (a) the account number or numbers or the number of any safe deposit box,
  - (b) the person's full name,
  - (c) a description of any business which the person carries on,
  - (d) the country or territory in which it is incorporated or otherwise established and any number allocated to it by virtue of section 15 of the Companies Act 2014 or corresponding legislation of any country or territory outside Gibraltar,
  - (e) any number assigned to it for the purposes of income or other tax,
  - (f) its registered office, and any previous registered offices, under the Companies Act 2014 (or corresponding earlier legislation) or anything similar under corresponding legislation of any country or territory outside the Gibraltar,
  - (g) its registered office, and any previous registered offices, under the Limited Liability Partnerships Act 2008 or anything similar under corresponding legislation of any country or territory outside Gibraltar,
  - (h) in the case of an account or accounts, the date or dates on which it began to hold the account or accounts and, if it has ceased to hold the account or any of the accounts, the date or dates on which it did so,
  - (i) in the case of any safe deposit box, the date on which the box was made available to it and if the box has ceased to be available to it the date on which it so ceased,

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- (j) such evidence of identity as was obtained by the financial institution under or for the purposes of any legislation relating to money laundering,
  - (k) the full name, date of birth and most recent address and any previous addresses of any person who is a signatory to the account or any of the accounts.
- (4) A “safe deposit box” includes any procedure under which a financial institution provides a facility to hold items for safe keeping on behalf of another person.

**Requirements for making of customer information order**

24.(1) These are the requirements for the making of a customer information order.

- (2) There must be reasonable grounds for suspecting that the application relates to an external investigation.
- (3) There must be reasonable grounds for believing that—
  - (a) customer information which may be provided in compliance with the order is likely to be of substantial value (whether or not by itself) to the external investigation, and
  - (b) it is in the public interest for the customer information to be provided, having regard to the benefit likely to accrue to the external investigation if the information is obtained.

**Offences**

25.(1) A financial institution commits an offence if without reasonable excuse it fails to comply with a requirement imposed on it under a customer information order.

(2) A financial institution guilty of an offence under paragraph (1) is liable on summary conviction to a fine not exceeding the statutory maximum.

(3) A financial institution commits an offence if, in purported compliance with a customer information order, it—

- (a) makes a statement which it knows to be false or misleading in a material particular, or

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- (b) recklessly makes a statement which is false or misleading in a material particular.
- (4) A financial institution guilty of an offence under paragraph (3) is liable—
  - (a) on summary conviction, to a fine not exceeding the statutory maximum, or
  - (b) on conviction on indictment, to a fine.

### **Statements**

26.(1) A statement made by a financial institution in response to a customer information order may not be used in evidence against it in criminal proceedings.

- (2) But paragraph (1) does not apply—
  - (a) in the case of proceedings under Part 2 of the Act,
  - (b) on a prosecution for an offence under article 25(1) or (3) of this Order,
  - (c) on a prosecution for an offence under section 170(1) or (3) of the Act, or
  - (d) on a prosecution for some other offence where, in giving evidence, the financial institution makes a statement inconsistent with the statement mentioned in paragraph (1).
- (3) A statement may not be used by virtue of paragraph (2)(d) against a financial institution unless—
  - (a) evidence relating to it is adduced, or
  - (b) a question relating to it is asked,

by or on behalf of the financial institution in the proceedings arising out of the prosecution.

### **Disclosure of information**

27. A customer information order has effect in spite of any restriction on the disclosure of information (however imposed).

### **Supplementary**



28.(1) An application for a customer information order may be made ex parte to a judge in chambers.

(2) An application to discharge or vary a customer information order may be made to the court by—

(a) the person who applied for the order,

(b) any person affected by the order.

(3) The court—

(a) may discharge the order,

(b) may vary the order.

(4) If an appropriate officer applies for a customer information order, an application to discharge or vary the order need not be by the same appropriate officer.

(5) References to a person who applied for a customer information order must be construed accordingly.

## **PART 5**

### **Account monitoring orders**

#### **Account monitoring orders**

29.(1) A judge may, on an application made to the judge by an appropriate officer, make an account monitoring order if the judge is satisfied that each of the requirements for the making of the order is fulfilled.

(2) The application for an account monitoring order must state that—

(a) article 3(2) is satisfied,

(b) the order is sought for the purposes of the external investigation,

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- (c) the order is sought against the financial institution specified in the application in relation to account information of the description so specified.
- (3) Account information is information relating to an account or accounts held at the financial institution specified in the application by the person so specified (whether solely or jointly with another).
- (4) The application for an account monitoring order may specify information relating to—
  - (a) all accounts held by the person specified in the application for the order at the financial institution so specified,
  - (b) a particular description, or particular descriptions, of accounts so held, or
  - (c) a particular account, or particular accounts, so held.
- (5) An account monitoring order is an order that the financial institution specified in the application for the order must, for the period stated in the order, provide account information of the description specified in the order to an appropriate officer in the manner, and at or by the time or times, stated in the order.
- (6) The period stated in an account monitoring order must not exceed the period of 90 days beginning with the day on which the order is made.

#### **Requirements for making of account monitoring order**

- 30.(1) These are the requirements for the making of an account monitoring order.
- (2) There must be reasonable grounds for suspecting that the application relates to an external investigation.
  - (3) There must be reasonable grounds for believing that—
    - (a) account information which may be provided in compliance with the order is likely to be of substantial value (whether or not by itself) to the external investigation, and
    - (b) it is in the public interest for the account information to be provided, having regard to the benefit likely to accrue to the external investigation if the information is obtained.

### **Statements**

31.(1) A statement made by a financial institution in response to an account monitoring order may not be used in evidence against it in criminal proceedings.

(2) But paragraph (1) does not apply—

- (a) in the case of proceedings under Part 2 of the Act,
- (b) in the case of proceedings for contempt of court, or
- (c) on a prosecution for an offence where, in giving evidence, the financial institution makes a statement inconsistent with the statement mentioned in paragraph (1).

(3) A statement may not be used by virtue of paragraph (2)(c) against a financial institution unless—

- (a) evidence relating to it is adduced, or
- (b) a question relating to it is asked,

by or on behalf of the financial institution in the proceedings arising out of the prosecution.

### **Applications**

32. An application for an account monitoring order may be made ex parte to a judge in chambers.

### **Disclosure of information**

33. An account monitoring order has effect in spite of any restriction on the disclosure of information (however imposed).

### **Supplementary**

34.(1) An application to discharge or vary an account monitoring order may be made to the court by—

- (a) the person who applied for the order,

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- (b) any person affected by the order.
- (2) The court—
  - (a) may discharge the order,
  - (b) may vary the order.
- (3) If an appropriate officer applies for an account monitoring order, an application to discharge or vary the order need not be made by the same appropriate officer.
- (4) References to a person who applied for an account monitoring order must be construed accordingly.
- (5) Account monitoring orders have effect as if they were orders of the court.