



PROCEEDS OF CRIME (EXTERNAL INVESTIGATIONS) ORDER 2011

Index

Article	Page
GENERAL PROVISIONS	
GENERAL PROVISIONS	
1 Title	3
2 Commencement	3
INTERPRETATION	
INTERPRETATION	
3 “External investigation” and “overseas authority”	3
4 “Appropriate officers”	3
5 Courts	4
6 Criminal conduct	4
7 Property	4
8 Money laundering offences	5
9 General interpretation	5
INTRODUCTION	
INTRODUCTION	
10 Introduction	7
11 Subordinate legislation	7
INVESTIGATIONS	
INVESTIGATIONS	
12 Investigations	8
13 Offences of prejudicing investigation	8
ORDERS AND WARRANTS	
ORDERS AND WARRANTS	
14 Production orders	9
15 Requirements for making of production order	10
16 Production orders: order to grant entry	11
17 Production orders: further provisions	11
18 Production orders: computer information	12
19 Production orders: Government departments, etc.	12
20 Production orders: applications	13
21 Production orders: supplementary	13
22 Search and seizure warrants	13

23	Requirements where production order not available	14
24	Further provisions; general.....	17
25	Further provisions: confiscation and money laundering	17
26	Further provisions: civil recovery and detained cash	18
27	Disclosure orders.....	18
28	Requirements for making of disclosure order	19
29	Disclosure orders: offences	20
30	Disclosure orders: statements.....	20
31	Disclosure orders: further provisions.....	21
32	Disclosure orders: supplementary	22
33	Customer information orders.....	22
34	Meaning of customer information	23
35	Requirements for making of customer information order	25
36	Customer information orders: offences	25
37	Customer information orders: statements.....	26
38	Customer information orders: disclosure of information	26
39	Customer information orders: supplementary	26
40	Account monitoring orders.....	27
41	Requirements for making of account monitoring order.....	28
42	Account monitoring orders: statements.....	28
43	Account monitoring orders: application.....	29
44	Account monitoring orders: disclosure of information	29
45	Account monitoring orders: supplementary.....	29
CODE OF PRACTICE		30
46	Code of practice	30
ENDNOTES		31
TABLE OF ENDNOTE REFERENCES		31

Statutory Document No. 2011/0862



Proceeds of Crime Act 2008

PROCEEDS OF CRIME (EXTERNAL INVESTIGATIONS) ORDER 2011¹

*Approved by Tynwald: 18 October 2011
Coming into operation in accordance with article 2*

Following consultation with the Attorney General¹, the Council of Ministers makes this Order under section 216 of the Proceeds of Crime Act 2008².

GENERAL PROVISIONS

1 Title

This Order is the Proceeds of Crime (External Investigations) Order 2011.

2 Commencement

If approved by Tynwald³, this Order comes into operation —

- (a) for the purposes of making subordinate legislation, on 21 October 2011; and
- (b) for all other purposes, on 1 January 2012.

INTERPRETATION

3 “External investigation” and “overseas authority”

“External investigation” has the same meaning as in section 218(3) of the Act (interpretation of Part 7), and “overseas authority” has the same meaning as in section 218(11) of the Act.

4 “Appropriate officers”

(1) In relation to a civil recovery investigation, an appropriate officer is —

¹ As required by section 216(4) of the Act

² 2008 c.13

³ As required by section 223(3) of the Act

- (a) the Attorney General; or
 - (b) a person authorised in writing as such by the Attorney General.
- (2) In relation to a confiscation investigation, a detained cash investigation and a money laundering investigation, an appropriate officer is –
- (a) a constable;
 - (b) a customs officer.

5 Courts

In this Order, references to the court are to –

- (a) the Court of General Gaol Delivery, in relation to an order for the purposes of a confiscation investigation or a money laundering investigation;
- (b) the High Court, in relation to an order for the purposes of a civil recovery investigation or a detained cash investigation.

6 Criminal conduct

- (1) For the purposes of this Order, criminal conduct is conduct which –
- (a) constitutes an offence in the Island; or
 - (b) would constitute an offence in the Island if it occurred there.
- (2) A person benefits from conduct if the person obtains property or a pecuniary advantage as a result of or in connection with the conduct.
- (3) References to property or a pecuniary advantage obtained in connection with conduct include references to property or a pecuniary advantage obtained in both that connection and some other.
- (4) If a person benefits from conduct that person's benefit is the property or pecuniary advantage obtained as a result of or in connection with the conduct.
- (5) It is immaterial –
- (a) whether conduct occurred before or after the passing of the Act; and
 - (b) whether property or a pecuniary advantage constituting a benefit from conduct was obtained before or after the passing of the Act.

7 Property

- (1) Property is all property wherever situated and includes –
- (a) money;
 - (b) all forms of real or person property;
 - (c) things in action and other intangible or incorporeal property.

- (2) “Recoverable property” and “associated property” have the same meanings as in Part 1 (civil recovery of the proceeds etc of unlawful conduct).
- (3) The following rules apply in relation to property —
 - (a) property is obtained by a person if the person obtains an interest in it;
 - (b) references to an interest, in relation to land, are to any legal estate or equitable interest or power;
 - (c) references to an interest, in relation to property other than land, include references to a right (including a right to possession).

8 Money laundering offences

- (1) An offence under —
 - (a) section 139, 140 or 141 of the Act; or
 - (b) section 10 of the Anti-Terrorism and Crime Act 2003⁴,is a money laundering offence.
- (2) Each of the following is also a money laundering offence —
 - (a) an offence under section 17A, 17B or 17C of the Criminal Justice Act 1990⁵;
 - (b) an offence under section 45, 46 or 47 of the Drug Trafficking Act 1996⁶.
- (3) Each of the following is a money laundering offence —
 - (a) an attempt, conspiracy or incitement to commit an offence specified in paragraph (1);
 - (b) aiding, abetting, counselling or procuring the commission of an offence specified in paragraph (1).

9 General interpretation

- (1) In this Order —

“**the Act**” means the Proceeds of Crime Act 2008;

“**document**”, “**excluded material**” and “**premises**” have the same meanings as in the Police Powers and Procedures Act 1998⁷;

“**External Requests Order**” means the Proceeds of Crime (External Requests and Orders) Order 2009⁸;

⁴ 2003 c.6

⁵ 1990 c.1

⁶ 1996 c.3

⁷ 1998 c.9

⁸ SD 687/09

“**Part**”, except in a reference to a Part of the External Requests Order, means the relevant Part of the Act;

“**Recovery order**” and “interim receiving order” have the same meanings as in Part 1 (civil recovery of the proceeds etc of unlawful conduct);

“**subordinate legislation**” has the meaning given by article 11(1);

“**unlawful conduct**” has the meaning given by section 2 (unlawful conduct) of the Act.

(2) The following table shows where the expressions mentioned are defined —

- (a) “account information” : article 40(5);
- (b) “account monitoring order” : article 40(7);
- (c) “civil recovery investigation” : article 12(2) and (3);
- (d) “confiscation investigation” : article 12(1);
- (e) “customer information” : article 34;
- (f) “customer information order” : article 33(6);
- (g) “detained cash investigation” : article 12(4);
- (h) “disclosure order” : article 27(4);
- (i) “money laundering investigation” : article 12(5);
- (j) “order to grant entry” : article 16(3);
- (k) “production order” : article 14(4);
- (l) “search and seizure warrant” : article 22(5).

(3) In this Order, reference to a “Part” means reference to a Part of the Act, except in a reference to a Part of the External Requests Order.

(4) In the application of this Order, these expressions are to be construed in accordance with the provision shown opposite the expression in question —

“a business in the regulated sector” : section 142(17);

“financial institution” : an order⁹ made under section 149(5).

(5) A business is not in the regulated sector to the extent that it engages in any activity prescribed by order made by the Department of Home Affairs.

But a person who for any reason 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) a customer information order; or
- (b) an account monitoring order,

⁹ SD 458/09

to provide information which relates to a time when the person was a financial institution.

- (6) References to notice in writing include references to notice given by electronic means.

INTRODUCTION

10 Introduction

- (1) This Order has effect for the Attorney General to carry out or direct an appropriate officer to carry out, an investigation into —
- (a) whether property has been obtained as a result of or in connection with criminal conduct; or
 - (b) whether a money laundering offence has been committed, where a request is received from an overseas authority.
- (2) The Attorney General may carry out, or direct an appropriate officer to carry out, an investigation if the Attorney General is satisfied that an investigation is being carried out in a country or territory outside the Island.
- (3) This Order also has effect for —
- (a) the purpose of enabling orders equivalent to those under Part 4 (investigations) for the purposes of an external investigation; and
 - (b) creating offences in relation to external investigations which are equivalent to those offences created by Part 4 (investigations).

11 Subordinate legislation

- (1) In this article “subordinate legislation” means an order made under this Order by the Department of Home Affairs.
- (2) Subordinate legislation —
- (a) may make different provisions for different purposes; and
 - (b) may include supplementary, incidental, saving or transitional provisions.
- (3) Subordinate legislation must not come into operation until it is approved by Tynwald.

INVESTIGATIONS

12 Investigations

- (1) For the purposes of this Order, a confiscation investigation is an investigation into —
 - (a) whether a person has benefited from that person's criminal conduct; or
 - (b) the extent or whereabouts of the benefit from that person's criminal conduct.
- (2) For the purposes of this Order, a civil recovery investigation is an investigation into —
 - (a) whether property is recoverable property or associated property;
 - (b) who holds the property; or
 - (c) its extent or whereabouts.
- (3) But an investigation is not a civil recovery investigation if —
 - (a) proceedings for a recovery order have been started in respect of the property in question;
 - (b) an interim receiving order applies to the property in question; or
 - (c) the property in question is detained under section 47 (detention of seized cash) of the Act.
- (4) For the purposes of this Order, a detained cash investigation is —
 - (a) an investigation for the purposes of Chapter 3 (recovery of cash in summary proceedings) of Part 1 into the derivation of cash detained under section 47 (detention of seized cash) of the Act or a part of such cash; or
 - (b) an investigation for the purposes of Chapter 3 of Part 1 into whether cash detained under section 47 of the Act, or a part of such cash, is intended by any person to be used in unlawful conduct.
- (5) For the purposes of this Order, a money laundering investigation is an investigation into whether a person has committed a money laundering offence.

13 Offences of prejudicing investigation

- (1) This article applies if a person knows or suspects that an appropriate officer is acting (or proposing to act) in connection with a confiscation investigation, a civil recovery investigation, a detained cash investigation or a money laundering investigation which is being or is about to be conducted.
- (2) The person commits an offence if —

- (a) the person makes a disclosure which is likely to prejudice the investigation; or
 - (b) the person falsifies, conceals, destroys or otherwise disposes of, or causes or permits the falsification, concealment, destruction or disposal of, documents which are relevant to the 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 investigation;
 - (b) the disclosure is made in the exercise of a function under this Order 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 this Order; or
 - (c) 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.
- (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 who —
- (a) does not know or suspect that the documents are relevant to the investigation; or
 - (b) does not intend to conceal any facts disclosed by the documents from any appropriate officer carrying out the investigation,
- does not commit an offence under paragraph (2)(b).
- (7) A person guilty of an offence under paragraph (2) is liable —
- (a) on summary conviction, to custody for a term not exceeding 6 months, or to a fine not exceeding £5,000, or to both; or
 - (b) on conviction on information, to custody for a term not exceeding 5 years, or to a fine, or to both.

ORDERS AND WARRANTS

14 Production orders

- (1) A Deemster may, on an application made by an appropriate officer, make a production order if the Deemster 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) a person specified in the application is subject to a confiscation investigation or a money laundering investigation; or
 - (b) property specified in the application is subject to a civil recovery investigation or a detained cash investigation.
- (3) The application must also state that —
 - (a) the order is sought for the purposes of the investigation;
 - (b) the order is sought in relation to material, or material of a description, specified in the application;
 - (c) a person specified in the application appears to be in possession or control of the material.
- (4) 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 material to produce it to an appropriate officer for the 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.
- (5) 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 a Deemster that a longer or shorter period would be appropriate in the particular circumstances.

15 Requirements for making of production order

- (1) These are the requirements for the making of a production order.
- (2) There must be reasonable grounds for suspecting that —
 - (a) in the case of a confiscation investigation, the person the application for the order specifies as being subject to the investigation has benefited from that person's criminal conduct;
 - (b) in the case of a civil recovery investigation, the property the application for the order specifies as being subject to the investigation is recoverable property or associated property;
 - (c) in the case of a detained cash investigation into the derivation of cash, the property the application for the order specifies as being subject to the investigation, or a part of it, is recoverable property;
 - (d) in the case of a detained cash investigation into the intended use of cash, the property the application for the order specifies as being subject to the investigation, or a part of it, is intended by any person to be used in unlawful conduct;

- (e) in the case of a money laundering investigation, the person the application for the order specifies as being subject to the investigation has committed a money laundering offence.
- (3) There must be reasonable grounds for believing that 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.
- (4) There must be reasonable grounds for believing that the material is likely to be of substantial value (whether or not by itself) to the investigation for the purposes of which the order is sought.
- (5) There must be reasonable grounds for believing that it is in the public interest for the material to be produced or for access to it to be given, having regard to —
 - (a) the benefit likely to accrue to the investigation if the material is obtained;
 - (b) the circumstances under which the person the application specifies as appearing to be in possession or control of the material holds it.

16 Production orders: order to grant entry

- (1) This article applies if a Deemster makes a production order requiring a person to give an appropriate officer access to material on any premises.
- (2) The Deemster may, on an application made 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 officer to enter the premises to obtain access to the material.

17 Production orders: further provisions

- (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 in the High Court.
- (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 investigation for the purposes of which the order was made.
- (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
 - (b) it might otherwise be unavailable for those purposes,it may be retained until the proceedings are concluded.

18 Production orders: computer information

- (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 is an order requiring a person to produce the material to an appropriate officer for the officer to take away, it has effect as an order to produce the material in a form in which it can be taken away by the officer and in which it is visible and legible.
- (3) If the order is an order requiring a person to give an appropriate officer access to the material, it has effect as an order to give the officer access to the material in a form in which it is visible and legible.

19 Production orders: Government departments, etc.

- (1) A production order may be made in relation to material in the possession or control of a Department or Statutory Board.
- (2) An order so made may require any officer of the Department or Statutory Board (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 or Statutory Board.
- (4) If an order contains such a requirement —
 - (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 or Statutory Board 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 14(4) the person on whom it is served must report the reasons for the failure to a Deemster.

20 Production orders: applications

An application for a production order or an order to grant entry may be made *ex parte* in chambers.

21 Production orders: supplementary

- (1) Rules of court may make provision as to the practice and procedure to be followed in connection with proceedings relating to production orders and orders to grant entry.
- (2) This article applies to orders made for the purposes of a confiscation investigation or a money laundering investigation.
- (3) If no rules of court have been made the court may adopt such practice and procedure as it thinks fit.
- (4) An application to discharge or vary a production order to an order to grant entry may be made to the court by —
 - (a) the person who applied for the order; or
 - (b) any person affected by the order.
- (5) The court —
 - (a) may discharge the order; or
 - (b) may vary the order.
- (6) If a constable or a customs officer applies for a production order or an order to grant entry, an application to discharge or vary the order need not be made by the same constable or officer.
- (7) References to a person who applied for a production order or an order to grant entry must be construed accordingly.
- (8) Production orders and orders to grant entry have effect as if they were orders of the court.

22 Search and seizure warrants

- (1) A Deemster may, on an application made by an appropriate officer, issue a search and seizure warrant if the Deemster is satisfied that either of the requirements in paragraph (2) for the issuing of the warrant are fulfilled.
- (2) 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 23 (requirements where production order not available) is satisfied in relation to the warrant.
- (3) The application for a search and seizure warrant must state that —

- (a) a person specified in the application is subject to a confiscation investigation or a money laundering investigation; or
 - (b) property specified in the application is subject to a civil recovery investigation or a detained cash investigation.
- (4) The application must also state —
- (a) that the warrant is sought —
 - (i) for the purposes of the investigation;
 - (ii) in relation to the premises specified in the application; and
 - (iii) in relation to material specified in the application; or
 - (b) that there are reasonable grounds for believing that there is material on the premises falling within section 170(6), (7), (8), (9) or (10) of the Act.
- (5) A search and seizure warrant is a warrant authorising an appropriate person —
- (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 investigation for the purposes of which the application is made.
- (6) An appropriate person is —
- (a) a constable or a customs officer, if the warrant is sought for the purposes of a confiscation investigation or a money laundering investigation;
 - (b) a person authorised by the Attorney General, if the warrant is sought for the purposes of a civil recovery investigation;
 - (c) a constable or a customs officer, if the warrant is sought for the purposes of a detained cash investigation.

23 Requirements where production order not available

- (1) This article is satisfied in relation to a search and seizure warrant if —
- (a) paragraph (2) applies; and
 - (b) either the first or the second set of conditions is met.
- (2) This paragraph applies if there are reasonable grounds for suspecting that —
- (a) in the case of a confiscation investigation, the person specified in the application for the warrant has benefited from that person's criminal conduct;
 - (b) in the case of a civil recovery investigation, the property specified in the application for the warrant is recoverable property or associated property;

- (c) in the case of a detained cash investigation into the derivation of cash, the property specified in the application for the warrant, or a part of it, is recoverable property;
 - (d) in the case of a detained cash investigation into the intended use of cash, the property specified in the application for the warrant, or a part of it, is intended by any person to be used in unlawful conduct;
 - (e) in the case of a money laundering investigation, the person specified in the application for the warrant has committed a money laundering offence.
- (3) 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 investigation for the purposes of which the warrant is sought;
 - (b) it is in the public interest for the material to be obtained, having regard to the benefit likely to accrue to the 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 (4).
- (4) 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 investigation might be seriously prejudiced unless an appropriate person is able to secure immediate access to the material.
- (5) 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 paragraphs (6), (7), (8), (9) or (10);
 - (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 investigation if the material is obtained; and
 - (c) any one or more of the requirements of paragraph (11) is met.
- (6) In the case of a confiscation investigation, material falls within this paragraph if it cannot be identified at the time of the application but it —
- (a) relates to the person specified in the application, the question whether that person has benefited from that person's criminal

- conduct or any question as to the extent or whereabouts of that benefit; and
- (b) is likely to be of substantial value (whether or not by itself) to the investigation for the purposes of which the warrant is sought.
- (7) In the case of a civil recovery investigation, material falls within this paragraph if it cannot be identified at the time of the application but it —
- (a) relates to the property specified in the application, the question whether it is recoverable property or associated property, the question as to who holds any such property, any question as to whether the person who appears to hold any such property holds other property which is recoverable property, or any question as to the extent or whereabouts of any property mentioned in this paragraph; and
- (b) is likely to be of substantial value (whether or not by itself) to the investigation for the purposes of which the warrant is sought.
- (8) In this case of a detained cash investigation into the derivation of cash, material falls within this paragraph if it cannot be identified at the time of the application but it —
- (a) relates to the property specified in the application, the question whether the property, or a part of it, is recoverable property or any other question as to its derivation; and
- (b) is likely to be of substantial value (whether or not by itself) to the investigation for the purposes of which the warrant is sought.
- (9) In the case of a detained cash investigation into the intended use of cash, material falls within this paragraph if it cannot be identified at the time of the application but it —
- (a) relates to the property specified in the application or the question whether the property, or a part of it, is intended by any person to be used in unlawful conduct; and
- (b) is likely to be of substantial value (whether or not by itself) to the investigation for the purposes of which the warrant is sought.
- (10) In the case of a money laundering investigation, material falls within this paragraph if it cannot be identified at the time of the application but it —
- (a) relates to the person specified in the application or the question whether the person has committed a money laundering offence; and
- (b) is likely to be of substantial value (whether or not by itself) to the investigation for the purposes of which the warrant is sought.
- (11) 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;
 - (c) that the investigation might be seriously prejudiced unless an appropriate person arriving at the premises is able to secure immediate entry to them.
- (12) An appropriate person is —
- (a) a constable or a customs officer, if the warrant is sought for the purposes of a confiscation investigation or a money laundering investigation;
 - (b) a person authorised by the Attorney General, if the warrant is sought for the purposes of a civil recovery investigation;
 - (c) a constable or a customs officer, if the warrant is sought for the purposes of a detained cash investigation.

24 Further provisions; general

- (1) A search and seizure warrant does not confer the right to seize privileged material.
- (2) Privileged material is any material which a person would be entitled to refuse to produce on grounds of legal professional privilege in proceedings in the High Court.
- (3) A search and seizure warrant does not confer the right to seize excluded material.

25 Further provisions: confiscation and money laundering

- (1) This article applies to —
 - (a) search and seizure warrants sought for the purposes of a confiscation investigation or a money laundering investigation; and
 - (b) powers of seizure under them.
- (2) In relation to such warrants and powers, the Department of Home Affairs may make an order which applies the provisions in paragraph (3) subject to any specified modifications.
- (3) The provisions are —
 - (a) section 18 (search warrants – safeguards);
 - (b) section 19 (execution of warrants);
 - (c) section 24 (access and copying); or
 - (d) section 25 (retention),of the Police Powers and Procedures Act 1998.

26 Further provisions: civil recovery and detained cash

- (1) This article applies to search and seizure warrants sought for the purposes of civil recovery investigations or detained cash investigations.
- (2) An application for a warrant may be made *ex parte* to a Deemster in chambers.
- (3) A warrant may be issued subject to conditions.
- (4) A warrant continues in force until the end of the period of one month starting with the day on which it is issued.
- (5) 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 investigation, to be produced in a form —
 - (a) in which it can be taken away; and
 - (b) in which it is visible and legible.
- (6) If, in the case of civil recovery investigations —
 - (a) the Attorney General gives written authority for persons to accompany the person a warrant names when executing it; and
 - (b) a warrant issued,those authorised persons have the same powers under it as the person it names
- (7) 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.
- (8) Copies may be taken of any material seized under a warrant.
- (9) 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 investigation for the purposes of which the warrant was issued.
- (10) 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
 - (b) it might otherwise be unavailable for those purposes,it may be retained until the proceedings are concluded.

27 Disclosure orders

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

- (2) No application for a disclosure order may be made in relation to a detained cash investigation or a money laundering investigation.
- (3) The application for a disclosure order must state that —
 - (a) a person specified in the application is subject to a confiscation investigation and the order is sought for the purposes of the investigation; or
 - (b) property specified in the application is subject to a civil recovery investigation and the order is sought for the purposes of the investigation.
- (4) A disclosure order is an order authorising a person referred to in paragraph (7) to give to any person the appropriate officer considers has relevant information notice in writing requiring the person to do, with respect to any matter relevant to the investigation for the purposes of which the order is sought, 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.
- (5) Relevant information is information (whether or not contained in a document) which the person authorised under paragraph (4) considers to be relevant to the investigation.
- (6) 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 the person.
- (7) A disclosure order may authorise any of the following persons for the purposes of paragraph (4) —
 - (a) a person authorised by the Attorney General, if the order is sought for the purposes of a civil recovery investigation;
 - (b) a police officer of at least the rank of inspector or a customs officer who is not below such grade as is designated by the Collector of Customs and Excise for the purpose of the Police Powers and Procedures Act 1998¹⁰ as equivalent to the rank of chief inspector, if the warrant is sought for the purposes of a confiscation investigation.

28 Requirements for making of disclosure order

- (1) These are the requirements for the making of a disclosure order.

¹⁰ 1998 c.9

- (2) There must be reasonable grounds for suspecting that —
 - (a) in the case of a confiscation investigation, the person specified in the application for the order has benefited from that person's criminal conduct;
 - (b) in the case of a civil recovery investigation, the property specified in the application for the order is recoverable property or associated property.
- (3) There must be reasonable grounds for believing that 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 investigation for the purposes of which the order is sought.
- (4) There must be reasonable grounds for believing that it is in the public interest for the information to be provided, having regard to the benefit likely to accrue to the investigation if the information is obtained.

29 Disclosure orders: offences

- (1) A person commits an offence who, without reasonable excuse, fails to comply with a requirement imposed under a disclosure order.
- (2) A person guilty of an offence under paragraph (1) is liable on summary conviction to custody for a term not exceeding 6 months, or to a fine not exceeding £5,000, or both.
- (3) A person commits an offence who, in purported compliance with a requirement imposed under a disclosure order —
 - (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 custody for a term not exceeding 6 months, or to a fine not exceeding £5,000, or both; or
 - (b) on conviction on indictment, to custody for a term not exceeding 2 years, or to a fine, or both.

30 Disclosure orders: statements

- (1) A statement made by a person in response to a requirement imposed under a disclosure order may not be used in evidence against that person in criminal proceedings.
- (2) But paragraph (1) does not prevent a statement being adduced —
 - (a) in the case of civil recovery proceedings in the High Court under —
 - (i) Part 2, or

- (ii) Part 2 of the External Requests Order;
 - (b) in a prosecution for an offence under article 29(1) or (3);
 - (c) in a prosecution for an offence under section 5 of the Perjury Act 1952¹¹ (false statements); or
 - (d) in 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)(d) against a person unless –
- (a) evidence relating to it is adduced; or
 - (b) a question relating to it is asked,
- by that person or on that person's behalf in the proceedings arising out of the prosecution.

31 Disclosure orders: further provisions

- (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 a client.
- (2) A privileged question is a question which the person would be entitled to refuse to answer on the grounds of legal professional privilege in proceedings in the High Court.
- (3) Privileged information is any information which the person would be entitled to refuse to provide on grounds of legal professional privilege in proceedings in the High Court.
- (4) Privileged material is any material which the person would be entitled to refuse to produce on grounds of legal professional privilege in proceedings in the High Court.
- (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) A person to whom documents are to be produced under a disclosure order may take copies of any documents produced in compliance with a requirement to produce them which is imposed under the 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 investigation for the purposes of which the order was made.

¹¹ Vol. XVIII, p.86

- (9) But if the person to whom documents are produced under a disclosure order has reasonable grounds for believing that —
- (a) the documents may need to be produced for the purposes of any legal proceedings; and
 - (b) they might otherwise be unavailable for those purposes, they may be retained until the proceedings are concluded.

32 Disclosure orders: supplementary

- (1) An application for a disclosure order may be made *ex parte* to a Deemster in chambers.
- (2) Paragraphs (3) to (6) do not apply to orders made for the purposes of a civil recovery investigation.
- (3) Rules of court may make provision as to the practice and procedure to be followed in connection with proceedings relating to disclosure orders.
- (4) If no rules of court have been made the court may adopt such practice and procedure as it thinks fit.
- (5) An application to discharge or vary a disclosure order may be made to the court by —
 - (a) an appropriate officer;
 - (b) any person affected by the order.
- (6) The court —
 - (a) may discharge the order;
 - (b) may vary the order.

33 Customer information orders

- (1) A Deemster may, on an application made by an appropriate officer, make a customer information order if the Deemster is satisfied that each of the requirements for the making of the order is fulfilled.
- (2) No application for a customer information order may be made in relation to a detained cash investigation.
- (3) The application for a customer information order must state that —
 - (a) a person specified in the application is subject to a confiscation investigation or a money laundering investigation; or
 - (b) property specified in the application is subject to a civil recovery investigation and a person specified in the application appears to hold the property.
- (4) The application must also state that —
 - (a) the order is sought for the purposes of the investigation;

- (b) the order is sought against the financial institution or financial institutions specified in the application.
- (5) 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.
- (6) A customer information order is an order that a financial institution specified in 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.
- (7) 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.
- (8) 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.

34 Meaning of customer information

- (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 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 a similar body incorporated or otherwise established outside the Island.
- (2) The matters referred to in paragraph (1)(a) are —
 - (a) the account number or numbers;
 - (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) the date or dates on which the person began to hold the account or accounts and, if the person has ceased to hold the account or any of the accounts, the date or dates of cessation;
 - (f) such evidence of the person’s identity as was obtained by the financial institution under or for the purposes of any legislation relating to money laundering;

- (g) 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 the first person;
 - (h) 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;
 - (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 under the statutory provision under which it is incorporated or established or corresponding legislation of any country or territory outside the Island;
 - (e) any number assigned to it for the purposes of value added tax in the Island or the United Kingdom;
 - (f) its registered office, and any previous registered offices, the statutory provision under which it is incorporated or established or anything similar under corresponding legislation of any country or territory outside the Island;
 - (g) 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;
 - (h) such evidence of its identity as was obtained by the financial institution under or for the purposes of any legislation relating to money laundering;
 - (i) 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) The Department of Home Affairs may by order provide for information of a description specified in the order —
- (a) to be customer information; or
 - (b) no longer to be customer information.
- (5) Money laundering is an act which —
- (a) constitutes an offence under —
 - (i) section 139, 140 or 141 of the Act; or
 - (ii) section 10 of the Anti-Terrorism and Crime Act 2003¹²; or

¹² 2003 c.6

- (b) would constitute an offence specified in sub-paragraph (a) if done in the Island.

35 Requirements for making of customer information order

- (1) These are the requirements for the making of a customer information order.
- (2) In the case of any investigation, there must be reasonable grounds for believing that it is in the public interest for the customer information to be provided, having regard to the benefit likely to accrue to the investigation if the information is obtained.
- (3) In the case of a confiscation investigation, there must be reasonable grounds for suspecting that the person specified in the application for the order has benefited from that person's criminal conduct.
- (4) In the case of a civil recovery investigation, there must be reasonable grounds for suspecting that —
 - (a) the property specified in the application for the order is recoverable property or associated property;
 - (b) the person specified in the application holds all or some of the property.
- (5) In the case of a money laundering investigation, there must be reasonable grounds for suspecting that the person specified in the application for the order has committed a money laundering offence.
- (6) In the case of any investigation, there must be reasonable grounds for believing that 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 investigation for the purposes of which the order is sought.

36 Customer information orders: offences

- (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 £5,000.
- (3) A financial institution guilty 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
 - (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 £5,000; or
- (b) on conviction on information, to a fine.

37 Customer information orders: statements

- (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 1 (civil recovery of the proceeds etc of unlawful conduct) or Part 2 of the External Requests Order;
 - (b) on a prosecution for an offence under article 36(1) or (3) or section 183(10 or (3) of the Act (customer information orders: offences); or
 - (c) 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)(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.

38 Customer information orders: disclosure of information

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

39 Customer information orders: supplementary

- (1) An application for a customer information order may be made *ex parte* in chambers.
- (2) A constable or a customs officer may not make an application for a customer information order or an application to vary such an order unless that person is an appropriate officer or is authorised to do so by an appropriate officer.
- (3) Paragraphs (4) to (9) do not apply to orders made for the purposes of a civil recovery investigation.
- (4) Rules of court may make provision as to the practice and procedure to be followed in connection with proceedings relating to customer information orders.

- (5) If no rules of court have been made the court may adopt such practice and procedure as it thinks fit.
- (6) An application to discharge or vary a customer information order may be made to the High Court by —
 - (a) the person who applied for the order;
 - (b) any person affected by the order.
- (7) The court —
 - (a) may discharge the order;
 - (b) may vary the order.
- (8) If a constable or a customs officer applies for a customer information order, an application to discharge or vary the order need not be by the same constable or customs officer.
- (9) References to a person who applied for a customer information order must be construed accordingly.

40 Account monitoring orders

- (1) A Deemster may, on an application made by an appropriate officer, make an account monitoring order if the Deemster is satisfied that each of the requirements for the making of the order is fulfilled.
- (2) No application for an account monitoring order may be made in relation to a detained cash investigation.
- (3) The application for an account monitoring order must state that —
 - (a) a person specified in the application is subject to a confiscation investigation or a money laundering investigation; or
 - (b) property specified in the application is subject to a civil recovery investigation and a person specified in the application appears to hold the property.
- (4) The application must also state that —
 - (a) the order is sought for the purposes of the investigation;
 - (b) the order is sought against the financial institution specified in the application in relation to account information of the description so specified.
- (5) 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).
- (6) 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.
- (7) 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.
- (8) 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.

41 Requirements for making of account monitoring order

- (1) These are the requirements for the making of an account monitoring order.
- (2) In the case of any investigation, there must be reasonable grounds for believing that 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 investigation for the purposes of which the order is sought.
- (3) In the case of any investigation, there must be reasonable grounds for believing that it is in the public interest for the account information to be provided, having regard to the benefit likely to accrue to the investigation if the information is obtained.
- (4) In the case of a confiscation investigation, there must be reasonable grounds for suspecting that the person specified in the application for the order has benefited from that person's criminal conduct.
- (5) In the case of a civil recovery investigation, there must be reasonable grounds for suspecting that —
- (a) the property specified in the application for the order is recoverable property or associated property;
 - (b) the person specified in the application holds all or some of the property.
- (6) In the case of a money laundering investigation, there must be reasonable grounds for suspecting that the person specified in the application for the order has committed a money laundering offence.

42 Account monitoring orders: statements

- (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 prevent a statement being adduced —
- (a) in the case of proceedings under —

- (i) Part 1 (civil recovery of the proceeds etc of unlawful conduct); or
 - (ii) Part 2 of the External Requests Order;
 - (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.

43 Account monitoring orders: application

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

44 Account monitoring orders: disclosure of information

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

45 Account monitoring orders: supplementary

- (1) This article applies to orders made for the purposes of a confiscation investigation or a money laundering investigation.
- (2) Rules of court may make provision as to the practice and procedure to be followed in connection with proceedings relating to account monitoring orders.
- (3) If no rules of court have been made the court may adopt such practice and procedure as it thinks fit.
- (4) An application to discharge or vary an account monitoring order may be made to the High Court by —
 - (a) the person who applied for the order;
 - (b) any person affected by the order.
- (5) The court —
 - (a) may discharge the order;
 - (b) may vary the order.

- (6) If a constable or a customs officer applies for an account monitoring order, an application to discharge or vary the order need not be the same constable or customs officer.
- (7) References to a person who applied for an account monitoring order must be construed accordingly.
- (8) Account monitoring orders have effect as if they were orders of the court.

CODE OF PRACTICE

46 Code of practice

- (1) The code of practice prepared by the Department of Home Affairs under section 194 of the Act and brought into operation by order¹³ under subsection (4) shall apply to the exercise by all of the following of functions they have under this Order —
 - (a) the Attorney General;
 - (b) constables; and
 - (c) customs officers,with a reference in the code of practice to a provision of the Act to be read as a reference to the equivalent provision of this Order.
- (2) A person specified in paragraph (1)(a) to (c) must comply with a code of practice which is in operation under this article in the exercise of any function that person has under this Order.
- (3) A person who fails to comply with any provision of such a code of practice is not by reason only of that failure liable in any criminal or civil proceedings.
- (4) But the code of practice is admissible in evidence in such proceedings and a court may take account of any failure to comply with its provisions in determining any question in the proceedings.
- (5) Section 76(5) of the Police Powers and Procedures Act 1998 (application of codes of practice under that Act to persons other than police officers)¹⁴ does not apply to an appropriate officer in the exercise of any function under this Order.

MADE 26 SEPTEMBER 2011

¹³ SD 455/09

¹⁴ 1998 c.9



ENDNOTES

Table of Endnote References

¹ The format of this legislation has been changed as provided for under section 75 of, and paragraph 2 of Schedule 1 to, the Legislation Act 2015. The changes have been approved by the Attorney General after consultation with the Clerk of Tynwald as required by section 76 of the Legislation Act 2015.