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SCOTTISH STATUTORY INSTRUMENTS

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**2003 No. 93**

**PROCEEDS OF CRIME**

**The Proceeds of Crime Act 2002 (Disclosure of Information to and by Lord Advocate and Scottish Ministers) Order 2003**

*Made - - - - 13th February 2003*

*Coming into force in accordance with article 1*

The Scottish Ministers, in exercise of the powers conferred by sections 439(6) and 441(9) of the Proceeds of Crime Act 2002<sup>(1)</sup> and all other powers enabling them in that behalf, hereby make the following Order, a draft of which has, in accordance with section 459(6)(b) of that Act, been laid before and approved by resolution of the Scottish Parliament:

**Citation, commencement and interpretation**

1.—(1) This Order may be cited as the Proceeds of Crime Act 2002 (Disclosure of Information to and by Lord Advocate and Scottish Ministers) Order 2003.

(2) This Order shall come into force on 24th February 2003 or, if this Order has not been made by 23rd February 2003, on the day after the day on which it is made.

(3) In this Order “the Act” means the Proceeds of Crime Act 2002.

**Disclosure of information to Lord Advocate and to Scottish Ministers**

2. For the purposes of section 439 of the Act, the persons listed in column 1 of the Schedule are designated as permitted persons in respect of the functions specified in relation to those persons in column 2 of the Schedule, being functions which the Scottish Ministers believe are of a public nature.

**Disclosure of information by Lord Advocate and by Scottish Ministers**

3. The functions designated for the purposes of section 441 of the Act, being functions which the Scottish Ministers think are of a public nature, are—

- (a) protecting public health;
- (b) the functions of the Financial Services Authority under the Financial Services and Markets Act 2000<sup>(2)</sup>.

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(1) 2002 c. 29. The power in section 439(6) is qualified by section 439(7) of the Act.

(2) 2000 c. 8.

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**Status:** This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

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St Andrew's House, Edinburgh  
13th February 2003

*HUGH HENRY*  
A member of the Scottish Executive

SCHEDULE

Article 2

PERSONS DESIGNATED AS PERMITTED PERSONS  
FOR THE PURPOSES OF SECTION 439 OF THE ACT

<i>Column 1 (permitted persons)</i>	<i>Column 2 (functions specified)</i>
The Secretary of State	<p>Functions exercised for the purposes of—</p> <p>(a) the prevention, detection, investigation or prosecution of offences relating to a social security matter or a scheme or arrangement under section 2 of the Employment and Training Act 1973<sup>(3)</sup>; or</p> <p>(b) checking the accuracy of any benefit, payment or advantage in a social security matter or a scheme or arrangement under section 2 of the Employment and Training Act 1973.</p> <p>Functions exercised for the purposes of the prevention, detection, investigation or prosecution of offences relating to the use of motor vehicles, passenger vehicles or goods vehicles.</p> <p>Functions under—</p> <p>(a) the Employment Agencies Act 1973<sup>(4)</sup>;</p> <p>(b) Part XIV of the Companies Act 1985<sup>(5)</sup>;</p> <p>(c) Part III of the Companies Act 1989<sup>(6)</sup>;</p> <p>(d) the Export of Goods (Control) Order 1994<sup>(7)</sup>;</p> <p>(e) Part XI of the Financial Services and Markets Act 2000<sup>(8)</sup>;</p> <p>(f) the Dual-Use Items (Export Control) Regulations 2000<sup>(9)</sup>.</p>
An officer authorised under section 9 of the Employment Agencies Act 1973	Functions under section 9 of the Employment Agencies Act 1973.
A person appointed or authorised to exercise powers under Part XIV of the Companies Act 1985	Functions under Part XIV of the Companies Act 1985.

(3) 1973 c. 50; section 2 was amended by section 25(1) of the Employment Act 1988 (c. 19), section 29(4) of and Schedule 7 to the Employment Act 1989 (c. 38) and section 47(1) of the Trade Union Reform and Employment Rights Act 1993 (c. 19).

(4) 1973 c. 35.

(5) 1985 c. 6.

(6) 1989 c. 40.

(7) S.I.1994/1191, which is amended by S.I. 1994/2711, 1996/2663, 1997/323 and 2758, 1999/63, 1777 and 3411, 2000/109, 1239, 2264 and 2618, 2001/729 and 3166 and 2002/2059.

(8) 2000 c. 8.

(9) S.I. 2000/2620 which is amended by S.I. 2000/3304, 2001/1344 and 2002/50 and 2033.

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<i>Column 1</i> <i>(permitted persons)</i>	<i>Column 2</i> <i>(functions specified)</i>
A person appointed to conduct an investigation under Part XI of the Financial Services and Markets Act 2000	Functions under Part XI of the Financial Services and Markets Act 2000.
The Civil Aviation Authority	Functions under— (a) the Civil Aviation Act 1982 <b>(10)</b> ; (b) Part IV and sections 69 and 73 of the Airports Act 1986 <b>(11)</b> ; and (c) Part I of the Transport Act 2000 <b>(12)</b>
The Gaming Board for Great Britain	Functions under the Gaming Act 1968 <b>(13)</b> and the Lotteries and Amusements Act 1976 <b>(14)</b> .
The Common Services Agency for the Scottish Health Service	Functions under article 3 of the National Health Service (Functions of the Common Services Agency) (Scotland) Order 1974 <b>(15)</b> exercised for the purposes of prevention, detection, investigation or prosecution of crime.
A financial investigator appointed under article 49 of the Proceeds of Crime (Northern Ireland) Order 1996 <b>(16)</b>	Functions under articles 50 and 51 of, and Schedule 2 to, the Proceeds of Crime (Northern Ireland) Order 1996 <b>(17)</b> .
The department for Social Development in Northern Ireland.	Functions exercised for the purposes of— (a) the prevention, detection, investigation or prosecution of offences relating to a social security matter; or (b) checking the accuracy of any benefit, payment or advantage in a social security matter.
The department for Employment and Learning in Northern Ireland	Functions exercised for the purposes of— (a) the prevention, detection, investigation or prosecution of offences relating to a scheme or arrangement under section 1 of the Employment and Training Act (Northern Ireland) 1950 <b>(18)</b> ; or (b) checking the accuracy of any benefit, payment or advantage in a scheme or arrangement under section 1 of the Employment and Training Act (Northern Ireland) 1950.

**(10)** 1982 c. 16.

**(11)** 1986 c. 31.

**(12)** 2000 c. 38.

**(13)** 1968 c. 65.

**(14)** 1976 c. 32.

**(15)** S.I. 1974/467. Article 3 is amended by S.I. 1991/900 and S.S.I.2000/224.

**(16)** S.I. 1996/1299.

**(17)** Articles 49, 50 and 51 and Schedule 2 are amended by the Financial Investigators (Northern Ireland) Order 2001 (S.I. 2001/1866) and the Proceeds of Crime Act 2002.

**(18)** 1950 c. 29; section 1 was extended by S.I. 1974/2144 and amended by S.I. 1988/1087 and 1990/1200. These functions were transferred under S.I. 1999/481.

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<i>Column 1 (permitted persons)</i>	<i>Column 2 (functions specified)</i>
The department of the Environment in Northern Ireland	Functions exercised for the purposes of the prevention, detection, investigation or prosecution of offences relating to the use of motor vehicles, passenger vehicles or goods vehicles.

### **EXPLANATORY NOTE**

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

This Order makes provision for the disclosure of information to and by the Lord Advocate and the Scottish Ministers in respect of their functions under the Proceeds of Crime Act 2002 (“the Act”), in relation to criminal confiscation and civil recovery of the proceeds of unlawful conduct. This Order has effect throughout the UK.

Article 2 designates as permitted persons, for the purposes of section 439 (disclosure of information to Lord Advocate and to Scottish Ministers) of the Act, the persons listed in column 1 of the Schedule to the Order. The designations are made in respect of the functions specified in relation to those persons in column 2 of the Schedule. The persons so designated are in addition to the permitted persons listed in section 439(5) of the Act.

Article 3 designates functions for the purposes of section 441 (disclosure of information by Lord Advocate and by Scottish Ministers) of the Act. The functions designated are in addition to those mentioned in section 441(2)(a) to (i) of the Act.

By virtue of sections 439(3) and 441(7) of the Act, this Order has effect subject to the provisions of the Data Protection Act 1998 and the Regulation of Investigatory Powers Act 2000.