

2007 No. 3398

PREVENTION AND SUPPRESSION OF TERRORISM

**The Terrorism Act 2000 and Proceeds of Crime Act 2002
(Amendment) Regulations 2007**

<i>Made</i>	- - - -	<i>3rd December 2007</i>
<i>Laid before Parliament</i>		<i>5th December 2007</i>
<i>Coming into force</i>	- -	<i>26th December 2007</i>

The Secretary of State makes these Regulations in exercise of the powers conferred by section 2(2) of the European Communities Act 1972(a). The Secretary of State has been designated for the purposes of section 2(2) of the European Communities Act 1972 in relation to the prevention of money laundering and terrorist financing(b).

Citation and commencement

1.—(1) These Regulations may be cited as the Terrorism Act 2000 and Proceeds of Crime Act 2002 (Amendment) Regulations 2007.

(2) They come into force on 26th December 2007.

Amendments of the Terrorism Act 2000

2. Schedule 1 contains amendments of the Terrorism Act 2000(c).

Amendments of the Proceeds of Crime Act 2002

3. Schedule 2 contains amendments of the Proceeds of Crime Act 2002(d).

Home Office
3rd December 2007

Tony McNulty
Minister of State

(a) 1972 c.68. The enabling powers of section 2(2) of that Act were extended by virtue of the amendment of section 1(2) by section 1 of the European Economic Area Act 1993 (c.51).

(b) See the European Communities (Designation) (No. 4) Order 2007 (S.I. 2007/2133).

(c) 2000 c.11.

(d) 2002 c.29.

AMENDMENTS OF THE TERRORISM ACT 2000

1. The Terrorism Act 2000 is amended as follows.
2. After section 21 (cooperation with police) insert—

“21ZA Arrangements with prior consent

(1) A person does not commit an offence under any of sections 15 to 18 by involvement in a transaction or an arrangement relating to money or other property if, before becoming involved, the person—

- (a) discloses to an authorised officer the person’s suspicion or belief that the money or other property is terrorist property and the information on which the suspicion or belief is based, and
- (b) has the authorised officer’s consent to becoming involved in the transaction or arrangement.

(2) A person is treated as having an authorised officer’s consent if before the end of the notice period the person does not receive notice from an authorised officer that consent is refused.

(3) The notice period is the period of 7 working days starting with the first working day after the person makes the disclosure.

(4) A working day is a day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day that is a bank holiday under the Banking and Financial Dealings Act 1971 (c.80) in the part of the United Kingdom in which the person is when making the disclosure.

(5) In this section “authorised officer” means a member of the staff of the Serious Organised Crime Agency authorised for the purposes of this section by the Director General of that Agency.

(6) The reference in this section to a transaction or arrangement relating to money or other property includes a reference to use or possession.

21ZB Disclosure after entering into arrangements

(1) A person does not commit an offence under any of sections 15 to 18 by involvement in a transaction or an arrangement relating to money or other property if, after becoming involved, the person discloses to an authorised officer—

- (a) the person’s suspicion or belief that the money or other property is terrorist property, and
- (b) the information on which the suspicion or belief is based.

(2) This section applies only where—

- (a) there is a reasonable excuse for the person’s failure to make the disclosure before becoming involved in the transaction or arrangement, and
- (b) the disclosure is made on the person’s own initiative and as soon as it is reasonably practicable for the person to make it.

(3) This section does not apply to a person if—

- (a) an authorised officer forbids the person to continue involvement in the transaction or arrangement to which the disclosure relates, and
- (b) the person continues that involvement.

(4) In this section “authorised officer” means a member of the staff of the Serious Organised Crime Agency authorised for the purposes of this section by the Director General of that Agency.

(5) The reference in this section to a transaction or arrangement relating to money or other property includes a reference to use or possession.

21ZC Reasonable excuse for failure to disclose

It is a defence for a person charged with an offence under any of sections 15 to 18 to prove that—

- (a) the person intended to make a disclosure of the kind mentioned in section 21ZA or 21ZB, and
- (b) there is a reasonable excuse for the person's failure to do so."

3.—(1) Section 21A (failure to disclose: regulated sector)(a) is amended as follows.

(2) In subsection (2), after "committed" insert "or attempted to commit".

(3) In subsection (5)—

- (a) in paragraph (b), after "a professional legal adviser" insert "or relevant professional adviser", and
- (b) at the end of that paragraph insert—

“; or

- (c) subsection (5A) applies to him.”

(4) After that subsection insert—

“(5A) This subsection applies to a person if—

- (a) the person is employed by, or is in partnership with, a professional legal adviser or relevant professional adviser to provide the adviser with assistance or support,
- (b) the information or other matter comes to the person in connection with the provision of such assistance or support, and
- (c) the information or other matter came to the adviser in privileged circumstances.”

(5) In subsection (8), after "a professional legal adviser" insert "or relevant professional adviser".

(6) After subsection (14) insert—

“(15) In this section “relevant professional adviser” means an accountant, auditor or tax adviser who is a member of a professional body which is established for accountants, auditors or tax advisers (as the case may be) and which makes provision for—

- (a) testing the competence of those seeking admission to membership of such a body as a condition for such admission; and
- (b) imposing and maintaining professional and ethical standards for its members, as well as imposing sanctions for non-compliance with those standards.”

4. In section 21B(3) (protected disclosures)(b), after “committed” insert “or attempted to commit”.

5. After that section insert—

“21C Disclosures to SOCA

(1) Where a disclosure is made under a provision of this Part to a constable, the constable must disclose it in full as soon as practicable after it has been made to a member of staff of the Serious Organised Crime Agency authorised for the purposes of that provision by the Director General of that Agency.

(a) Section 21A was inserted by Schedule 2 to the Anti-terrorism, Crime and Security Act 2001 (c.24).

(b) Section 21B was inserted by Schedule 2 to the Anti-terrorism, Crime and Security Act 2001.

(2) Where a disclosure is made under section 21 (cooperation with police) to a constable, the constable must disclose it in full as soon as practicable after it has been made to a member of staff of the Serious Organised Crime Agency authorised for the purposes of this subsection by the Director General of that Agency.

21D Tipping off: regulated sector

(1) A person commits an offence if—

- (a) the person discloses any matter within subsection (2);
- (b) the disclosure is likely to prejudice any investigation that might be conducted following the disclosure referred to in that subsection; and
- (c) the information on which the disclosure is based came to the person in the course of a business in the regulated sector.

(2) The matters are that the person or another person has made a disclosure under a provision of this Part—

- (a) to a constable,
- (b) in accordance with a procedure established by that person's employer for the making of disclosures under that provision,
- (c) to a nominated officer, or
- (d) to a member of staff of the Serious Organised Crime Agency authorised for the purposes of that provision by the Director General of that Agency,

of information that came to that person in the course of a business in the regulated sector.

(3) A person commits an offence if—

- (a) the person discloses that an investigation into allegations that an offence under this Part has been committed is being contemplated or is being carried out;
- (b) the disclosure is likely to prejudice that investigation; and
- (c) the information on which the disclosure is based came to the person in the course of a business in the regulated sector.

(4) A person guilty of an offence under this section is liable—

- (a) on summary conviction to imprisonment for a term not exceeding three months, or to a fine not exceeding level 5 on the standard scale, or to both;
- (b) on conviction on indictment to imprisonment for a term not exceeding two years, or to a fine, or to both.

(5) This section is subject to—

- (a) section 21E (disclosures within an undertaking or group etc),
- (b) section 21F (other permitted disclosures between institutions etc), and
- (c) section 21G (other permitted disclosures etc).

21E Disclosures within an undertaking or group etc

(1) An employee, officer or partner of an undertaking does not commit an offence under section 21D if the disclosure is to an employee, officer or partner of the same undertaking.

(2) A person does not commit an offence under section 21D in respect of a disclosure by a credit institution or a financial institution if—

- (a) the disclosure is to a credit institution or a financial institution,
- (b) the institution to whom the disclosure is made is situated in an EEA State or in a country or territory imposing equivalent money laundering requirements, and
- (c) both the institution making the disclosure and the institution to whom it is made belong to the same group.

(3) In subsection (2) “group” has the same meaning as in Directive 2002/87/EC of the European Parliament and of the Council of 16th December 2002^(a) on the supplementary supervision of credit institutions, insurance undertakings and investment firms in a financial conglomerate.

(4) A professional legal adviser or a relevant professional adviser does not commit an offence under section 21D if—

- (a) the disclosure is to a professional legal adviser or a relevant professional adviser,
- (b) both the person making the disclosure and the person to whom it is made carry on business in an EEA state or in a country or territory imposing equivalent money laundering requirements, and
- (c) those persons perform their professional activities within different undertakings that share common ownership, management or control.

21F Other permitted disclosures between institutions etc

(1) This section applies to a disclosure—

- (a) by a credit institution to another credit institution,
- (b) by a financial institution to another financial institution,
- (c) by a professional legal adviser to another professional legal adviser, or
- (d) by a relevant professional adviser of a particular kind to another relevant professional adviser of the same kind.

(2) A person does not commit an offence under section 21D in respect of a disclosure to which this section applies if—

- (a) the disclosure relates to—
 - (i) a client or former client of the institution or adviser making the disclosure and the institution or adviser to whom it is made,
 - (ii) a transaction involving them both, or
 - (iii) the provision of a service involving them both;
- (b) the disclosure is for the purpose only of preventing an offence under this Part of this Act;
- (c) the institution or adviser to whom the disclosure is made is situated in an EEA State or in a country or territory imposing equivalent money laundering requirements; and
- (d) the institution or adviser making the disclosure and the institution or adviser to whom it is made are subject to equivalent duties of professional confidentiality and the protection of personal data (within the meaning of section 1 of the Data Protection Act 1998^(b)).

21G Other permitted disclosures etc

(1) A person does not commit an offence under section 21D if the disclosure is—

- (a) to the authority that is the supervisory authority for that person by virtue of the Money Laundering Regulations 2007 (S.I. 2007/2157); or
- (b) for the purpose of—
 - (i) the detection, investigation or prosecution of a criminal offence (whether in the United Kingdom or elsewhere),
 - (ii) an investigation under the Proceeds of Crime Act 2002^(c), or

^(a) OJ L 35, 11.2.2003, p.1.

^(b) 1998 c.29.

^(c) 2002 c.29.

(iii) the enforcement of any order of a court under that Act.

(2) A professional legal adviser or a relevant professional adviser does not commit an offence under section 21D if the disclosure—

- (a) is to the adviser's client, and
- (b) is made for the purpose of dissuading the client from engaging in conduct amounting to an offence.

(3) A person does not commit an offence under section 21D(1) if the person does not know or suspect that the disclosure is likely to have the effect mentioned in section 21D(1)(b).

(4) A person does not commit an offence under section 21D(3) if the person does not know or suspect that the disclosure is likely to have the effect mentioned in section 21D(3)(b).

21H. Interpretation of sections 21D to 21G

(1) The references in sections 21D to 21G—

- (a) to a business in the regulated sector, and
- (b) to a supervisory authority,

are to be construed in accordance with Schedule 3A.

(2) In those sections—

“credit institution” has the same meaning as in Schedule 3A;

“financial institution” means an undertaking that carries on a business in the regulated sector by virtue of any of paragraphs (b) to (i) of paragraph 1(1) of that Schedule.

(3) References in those sections to a disclosure by or to a credit institution or a financial institution include disclosure by or to an employee, officer or partner of the institution acting on its behalf.

(4) For the purposes of those sections a country or territory imposes “equivalent money laundering requirements” if it imposes requirements equivalent to those laid down in Directive 2005/60/EC of the European Parliament and of the Council of 26th October 2005^(a) on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing.

(5) In those sections “relevant professional adviser” means an accountant, auditor or tax adviser who is a member of a professional body which is established for accountants, auditors or tax advisers (as the case may be) and which makes provision for—

- (a) testing the competence of those seeking admission to membership of such a body as a condition for such admission; and
- (b) imposing and maintaining professional and ethical standards for its members, as well as imposing sanctions for non-compliance with those standards.”

6.—(1) Section 39 (disclosure of information etc) is amended as follows.

(2) In subsection (3), for “21” substitute “21B”.

(3) After subsection (6) insert—

“(6A) Subsections (2) and (4) do not apply if—

- (a) the disclosure is of a matter within section 21D(2) or (3)(a) (terrorist property: tipping off), and
- (b) the information on which the disclosure is based came to the person in the course of a business in the regulated sector.”

(4) After subsection (8) insert—

^(a) OJ L 309, 25.11.2005, p.15.

“(9) The reference in subsection (6A) to a business in the regulated sector is to be construed in accordance with Schedule 3A.”

SCHEDULE 2

Regulation 3

AMENDMENTS OF THE PROCEEDS OF CRIME ACT 2002

1. The Proceeds of Crime Act 2002 is amended as follows.
2. In section 330 (failure to disclose: regulated sector)(a), in each of subsections (6)(b), (9A)(a) and (10), before “relevant professional adviser” omit “other”.
3. Omit section 333 (tipping off).
4. After section 333 insert—

“333A Tipping off: regulated sector

(1) A person commits an offence if—

- (a) the person discloses any matter within subsection (2);
- (b) the disclosure is likely to prejudice any investigation that might be conducted following the disclosure referred to in that subsection; and
- (c) the information on which the disclosure is based came to the person in the course of a business in the regulated sector.

(2) The matters are that the person or another person has made a disclosure under this Part—

- (a) to a constable,
- (b) to an officer of Revenue and Customs,
- (c) to a nominated officer, or
- (d) to a member of staff of the Serious Organised Crime Agency authorised for the purposes of this Part by the Director General of that Agency, of information that came to that person in the course of a business in the regulated sector.

(3) A person commits an offence if—

- (a) the person discloses that an investigation into allegations that an offence under this Part has been committed is being contemplated or is being carried out;
- (b) the disclosure is likely to prejudice that investigation; and
- (c) the information on which the disclosure is based came to the person in the course of a business in the regulated sector.

(4) A person guilty of an offence under this section is liable—

- (a) on summary conviction to imprisonment for a term not exceeding three months, or to a fine not exceeding level 5 on the standard scale, or to both;
- (b) on conviction on indictment to imprisonment for a term not exceeding two years, or to a fine, or to both.

(5) This section is subject to—

- (a) section 333B (disclosures within an undertaking or group etc),

(a) As amended by sections 102 and 104 to 106 of, and Schedule 17 to, the Serious Organised Crime and Police Act 2005 (c.15) and S.I. 2006/308.

- (b) section 333C (other permitted disclosures between institutions etc), and
- (c) section 333D (other permitted disclosures etc).

333B Disclosures within an undertaking or group etc

(1) An employee, officer or partner of an undertaking does not commit an offence under section 333A if the disclosure is to an employee, officer or partner of the same undertaking.

(2) A person does not commit an offence under section 333A in respect of a disclosure by a credit institution or a financial institution if—

- (a) the disclosure is to a credit institution or a financial institution,
- (b) the institution to whom the disclosure is made is situated in an EEA State or in a country or territory imposing equivalent money laundering requirements, and
- (c) both the institution making the disclosure and the institution to whom it is made belong to the same group.

(3) In subsection (2) “group” has the same meaning as in Directive 2002/87/EC of the European Parliament and of the Council of 16th December 2002 on the supplementary supervision of credit institutions, insurance undertakings and investment firms in a financial conglomerate.

(4) A professional legal adviser or a relevant professional adviser does not commit an offence under section 333A if—

- (a) the disclosure is to professional legal adviser or a relevant professional adviser,
- (b) both the person making the disclosure and the person to whom it is made carry on business in an EEA State or in a country or territory imposing equivalent money laundering requirements, and
- (c) those persons perform their professional activities within different undertakings that share common ownership, management or control.

333C Other permitted disclosures between institutions etc

(1) This section applies to a disclosure—

- (a) by a credit institution to another credit institution,
- (b) by a financial institution to another financial institution,
- (c) by a professional legal adviser to another professional legal adviser, or
- (d) by a relevant professional adviser of a particular kind to another relevant professional adviser of the same kind.

(2) A person does not commit an offence under section 333A in respect of a disclosure to which this section applies if—

- (a) the disclosure relates to—
 - (i) a client or former client of the institution or adviser making the disclosure and the institution or adviser to whom it is made,
 - (ii) a transaction involving them both, or
 - (iii) the provision of a service involving them both;
- (b) the disclosure is for the purpose only of preventing an offence under this Part of this Act;
- (c) the institution or adviser to whom the disclosure is made is situated in an EEA State or in a country or territory imposing equivalent money laundering requirements; and
- (d) the institution or adviser making the disclosure and the institution or adviser to whom it is made are subject to equivalent duties of professional confidentiality and the protection of personal data (within the meaning of section 1 of the Data Protection Act 1998).

333D Other permitted disclosures etc

- (1) A person does not commit an offence under section 333A if the disclosure is—
 - (a) to the authority that is the supervisory authority for that person by virtue of the Money Laundering Regulations 2007 (S.I. 2007/2157); or
 - (b) for the purpose of—
 - (i) the detection, investigation or prosecution of a criminal offence (whether in the United Kingdom or elsewhere),
 - (ii) an investigation under this Act, or
 - (iii) the enforcement of any order of a court under this Act.
- (2) A professional legal adviser or a relevant professional adviser does not commit an offence under section 333A if the disclosure—
 - (a) is to the adviser's client, and
 - (b) is made for the purpose of dissuading the client from engaging in conduct amounting to an offence.
- (3) A person does not commit an offence under section 333A(1) if the person does not know or suspect that the disclosure is likely to have the effect mentioned in section 333A(1)(b).
- (4) A person does not commit an offence under section 333A(3) if the person does not know or suspect that the disclosure is likely to have the effect mentioned in section 333A(3)(b).

333E Interpretation of sections 333A to 333D

- (1) For the purposes of sections 333A to 333D, Schedule 9 has effect for determining—
 - (a) what is a business in the regulated sector, and
 - (b) what is a supervisory authority.
 - (2) In those sections—

“credit institution” has the same meaning as in Schedule 9;

“financial institution” means an undertaking that carries on a business in the regulated sector by virtue of any of paragraphs (b) to (i) of paragraph 1(1) of that Schedule.
 - (3) References in those sections to a disclosure by or to a credit institution or a financial institution include disclosure by or to an employee, officer or partner of the institution acting on its behalf.
 - (4) For the purposes of those sections a country or territory imposes “equivalent money laundering requirements” if it imposes requirements equivalent to those laid down in Directive 2005/60/EC of the European Parliament and of the Council of 26th October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing.
 - (5) In those sections “relevant professional adviser” means an accountant, auditor or tax adviser who is a member of a professional body which is established for accountants, auditors or tax advisers (as the case may be) and which makes provision for—
 - (a) testing the competence of those seeking admission to membership of such a body as a condition for such admission; and
 - (b) imposing and maintaining professional and ethical standards for its members, as well as imposing sanctions for non-compliance with those standards.”
- 5.** In section 334(2) (penalties for offences under sections 330 to 333) for “, 332 or 333” substitute “or 332”.
- 6.** In section 338(3)(b) (disclosure after prohibited act: requirement for good reason for failure to disclose beforehand) for “there is a good reason” substitute “he has a reasonable excuse”.

7. After section 339 (form and manner of disclosures)(a) insert—

“339ZA Disclosures to SOCA

Where a disclosure is made under this Part to a constable or an officer of Revenue and Customs, the constable or officer of Revenue and Customs must disclose it in full to a person authorised for the purposes of this Part by the Director General of the Serious Organised Crime Agency as soon as practicable after it has been made.”.

8.—(1) Section 342 (offences of prejudicing investigation) is amended as follows.

(2) In subsection (3), at the end of paragraph (b) insert—

“(ba) the disclosure is of a matter within section 333A(2) or (3)(a) (money laundering: 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,”.

(3) In subsection (8), after paragraph (b) insert—

“(c) Schedule 9 has effect for determining what is a business in the regulated sector.”

EXPLANATORY NOTE

(This note is not part of the Regulations)

These regulations implement, in part, Directive 2005/60/EC of the European Parliament and of the Council of 26th October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing (“the Directive”). The regulations give effect to Chapter 3 of the Directive. Schedule 1 to the regulations makes amendments to the Terrorism Act 2000. Schedule 2 to the regulations makes amendments to the Proceeds of Crime Act 2002.

Paragraph 2 of Schedule 1 inserts three new sections into the Terrorism Act 2000 to cover the requirements of Article 24 of the Directive. Section 21ZA provides a defence to the offences in sections 15 to 18 of the Terrorism Act 2000, if the person has made a disclosure to an authorised officer before becoming involved in a transaction or an arrangement and the person acts with the consent of the authorised officer. Section 21ZB provides a further defence to the offences in sections 15 to 18 to cover those who become involved in a transaction or an arrangement and then make a disclosure, so long as there is a reasonable excuse for failure to make a disclosure in advance. Finally, section 21ZC provides a defence for those who have a reasonable excuse for failure to make a disclosure.

Article 28.1 of the Directive prohibits the persons covered by the Directive from disclosing to the customer concerned or to other third persons the fact that information about known or suspected money laundering or terrorist financing has been transmitted in accordance with Articles 22 and 23 or that a money laundering or terrorist financing investigation is being, or may be, carried out. The remainder of Article 28 provides a number of exceptions. Paragraph 5 of Schedule 1 to the regulations amends the Terrorism Act 2000 to give effect to Article 28. New section 21D contains a new offence of tipping off and new sections 21E to 21G set out the exceptions from Article 28. Paragraphs 3 and 4 of Schedule 2 to the regulations give effect to Article 28 in the Proceeds of Crime Act 2002. The existing offence of tipping off in section 333 of that Act is repealed by paragraph 3. Paragraph 4 inserts a new section 333A into the Proceeds of Crime Act 2002 to create a new offence of tipping off to cover the regulated sector. New sections 333B to 333D give effect to the exceptions in Article 28. The regulated sector is defined in Schedule 3A to the Terrorism Act 2000 (as amended by the Terrorism Act 2000 (Business in the Regulated Sector and Supervisory Authorities) Order 2007 (S.I. No. 2007/3288)) and Schedule 9 to the Proceeds of Crime Act 2002 (as amended by the Proceeds of Crime Act 2002 (Business in the Regulated Sector and Supervisory Authorities) Order 2007 (S.I. No 2007/3287)).

(a) Section 339A was inserted by section 103 of the Serious Organised Crime and Police Act 2005 (c.15).

Article 21 of the Directive requires Member States to establish a Financial Intelligence Unit ("FIU"). The Serious Organised Crime Agency is the United Kingdom's FIU. This is further expanded on in Recital 29 of the Directive. Recital 29 makes it clear that reports of suspicious activity may be made to persons other than the FIU so long as the information is forwarded promptly and unfiltered to the FIU. Both the Terrorism Act 2000 and the Proceeds of Crime Act 2002 allow disclosures to be made to a person other than the Serious Organised Crime Agency and so new section 21C of the Terrorism Act 2000 (inserted by paragraph 5 of Schedule 1) and section 339ZA of the Proceeds of Crime Act 2002 (inserted by paragraph 7 of Schedule 2) give effect to the requirements of Article 21 together with recital 29.

Paragraph 3(2) and paragraph 4 of Schedule 1 to the regulations amend sections 21A and 21B of the Terrorism Act 2000 respectively, in order to give full effect to the requirements of Article 22.1 of the Directive. Article 22.1 requires those covered by the Directive to make reports of knowledge and suspicions of money laundering and terrorist financing that have been attempted as well as committed.

Paragraph 3(3) to (6) of Schedule 1 amends section 21A of the Terrorism Act 2000 to give effect to Article 23.2 of the Directive, which provides that Member States are not required to apply the reporting obligations to legal and other professionals when giving legal advice.

The remaining amendments to the Terrorism Act 2000 and the Proceeds of Crime Act 2002 are consequential amendments. The relevant changes appear in paragraph 6 of Schedule 1 and paragraphs 2, 5, 6 and 8 of Schedule 2.