

## Proceeds of Crime Act 2002.

Part 7 of the Proceeds of Crime Act 2002 ("PoCA") has recently been amended by the Proceeds of Crime Act 2002 (Money Laundering: Exceptions to Overseas Conduct Defence) Order 2006 ("the Order"). The Order amends the definition of "criminal conduct" as defined by section 340(2) PoCA. The Order creates a number of defences in respect of sections 327(1), 328(1) and 329(1) PoCA offences. However, those defences do not apply to criminal conduct described in sections 327(2A)(b)(ii), 328(3)(b)(ii) and 329(2A)(b)(ii) PoCA.

These amendments are identified in the following document through the use of a colour co-ordinated key.

Amendments	Key	
Font colour and shading	Legislation	In force on
Black text	Part 7 Proceeds of Crime Act 2002.	
<b>Black text</b> (Additions)	The Serious Organised Crime and Police Act 2005 (Commencement No. 1, Transitional and Transitory Provisions) Order 2005.	1 <sup>st</sup> July 2005
<del>Blue text</del> (Deletions)	The Serious Organised Crime and Police Act 2005 (Commencement No. 1, Transitional and Transitory Provisions) Order 2005.	1 <sup>st</sup> July 2005
<u>White text</u>	Proceeds of Crime and Money Laundering Regulations 2003 (Amendments) Order 2006. Sl. No. 308 of 2006.	21 <sup>st</sup> February 2006
<b><u>Bold Red text</u></b>	Schedule 4 to the Serious Organised Crime and Police Act 2005	1 <sup>st</sup> April 2006
<b>Bold Red text</b>	Proceeds of Crime Act 2002 (Money Laundering: Exceptions to Overseas Conduct Defence) Order 2006.	15 <sup>th</sup> May 2006

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**PART 7**

**Money Laundering**

**Offences**

**327. Concealing etc**

- (1) A person commits an offence if he:
- (a) conceals criminal property;
  - (b) disguises criminal property;
  - (c) converts criminal property;
  - (d) transfers criminal property;
  - (e) removes criminal property from England and Wales or from Scotland or from Northern Ireland.
- (2) But a person does not commit such an offence if:
- (a) he makes an authorised disclosure under section 338 and (if the disclosure is made before he does the act mentioned in subsection (1)) he has the appropriate consent;
  - (b) he intended to make such a disclosure but had a reasonable excuse for not doing so;
  - (c) the act he does is done in carrying out a function he has relating to the enforcement of any provision of this Act or of any other enactment relating to criminal conduct or benefit from criminal conduct.

**(2A) + (2B) To be inserted later.**

**(2A) Nor does a person commit an offence under subsection (1) if-**

**(a) he knows, or believes on reasonable grounds, that the relevant criminal conduct occurred in a particular country or territory outside the United Kingdom, and**

**(b) the relevant criminal conduct-**

**(i) was not, at the time it occurred, unlawful under the criminal law then applying in that country or territory, and**

**(ii) is not of a description prescribed by an order made by the Secretary of State.**

**(2B) In subsection (2A) "the relevant criminal conduct" is the criminal conduct by reference to which the property concerned is criminal property.**

**(2C) A deposit-taking body that does an act mentioned in paragraph (c) or (d) of subsection (1) does not commit an offence under that subsection if:**

**(a) it does the act in operating an account maintained with it; and**

**(b) the value of the criminal property concerned is less than the threshold amount determined under section 339A for the act.**

- (3) Concealing or disguising criminal property includes concealing or disguising its nature, source, location, disposition, movement or ownership or any rights with respect to it.

### **328. Arrangements**

- (1) A person commits an offence if he enters into or becomes concerned in an arrangement which he knows or suspects facilitates (by whatever means) the acquisition, retention, use or control of criminal property by or on behalf of another person.

- (2) But a person does not commit such an offence if:

- (a) he makes an authorised disclosure under section 338 and (if the disclosure is made before he does the act mentioned in subsection (1)) he has the appropriate consent;
- (b) he intended to make such a disclosure but had a reasonable excuse for not doing so;
- (c) the act he does is done in carrying out a function he has relating to the enforcement of any provision of this Act or of any other enactment relating to criminal conduct or benefit from criminal conduct.

**(3) + (4) To be inserted later.**

**(3) Nor does a person commit an offence under subsection (1) if-**

**(a) he knows, or believes on reasonable grounds, that the relevant criminal conduct occurred in a particular country or territory outside the United Kingdom, and**

**(b) the relevant criminal conduct-**

**(i) was not, at the time it occurred, unlawful under the criminal law then applying in that country or territory, and**

**(ii) is not of a description prescribed by an order made by the Secretary of State.**

**(4) In subsection (3) "the relevant criminal conduct" is the criminal conduct by reference to which the property concerned is criminal property.**

**(5) A deposit-taking body that does an act mentioned in subsection (1) does not commit an offence under that subsection if:**

**(a) it does the act in operating an account maintained with it; and**

**(b) the arrangement facilitates the acquisition, retention, use or control of criminal property of a value that is less than the threshold amount determined under section 339A for the act.**

**329. Acquisition, use and possession**

- (1) A person commits an offence if he:
- (a) acquires criminal property;
  - (b) uses criminal property;
  - (c) has possession of criminal property.
- (2) But a person does not commit such an offence if:
- (a) he makes an authorised disclosure under section 338 and (if the disclosure is made before he does the act mentioned in subsection (1)) he has the appropriate consent;
  - (b) he intended to make such a disclosure but had a reasonable excuse for not doing so;
  - (c) he acquired or used or had possession of the property for adequate consideration;
  - (d) the act he does is done in carrying out a function he has relating to the enforcement of any provision of this Act or of any other enactment relating to criminal conduct or benefit from criminal conduct.

**(2A) + (2B) To be inserted later.**

**(2A) Nor does a person commit an offence under subsection (1) if-**

**(a) he knows, or believes on reasonable grounds, that the relevant criminal conduct occurred in a particular country or territory outside the United Kingdom, and**

**(b) the relevant criminal conduct-**

**(i) was not, at the time it occurred, unlawful under the criminal law then applying in that country or territory, and**

**(ii) is not of a description prescribed by an order made by the Secretary of State.**

**(2B) In subsection (2A) "the relevant criminal conduct" is the criminal conduct by reference to which the property concerned is criminal property.**

**(2C) A deposit-taking body that does an act mentioned in subsection (1) does not commit an offence under that subsection if:**

**(a) it does the act in operating an account maintained with it; and**

**(b) the value of the criminal property concerned is less than the threshold amount determined under section 339A for the act.**

- (3) For the purposes of this section:
- (a) a person acquires property for inadequate consideration if the value of the consideration is significantly less than the value of the property;

- (b) a person uses or has possession of property for inadequate consideration if the value of the consideration is significantly less than the value of the use or possession;
- (c) the provision by a person of goods or services which he knows or suspects may help another to carry out criminal conduct is not consideration.

**330. Failure to disclose: regulated sector**

(1) A person commits an offence if ~~each of the following three conditions is satisfied~~ **the conditions in subsections (2) to (4) are satisfied:**

(2) The first condition is that he:

- (a) knows or suspects; or
- (b) has reasonable grounds for knowing or suspecting, that another person is engaged in money laundering.

(3) The second condition is that the information or other matter:

- (a) on which his knowledge or suspicion is based; or
- (b) which gives reasonable grounds for such knowledge or suspicion, came to him in the course of a business in the regulated sector.

~~(4) The third condition is that he does not make the required disclosure as soon as is practicable after the information or other matter comes to him.~~

~~(5) The required disclosure of the information or other matter:~~

- ~~(a) to a nominated officer or a person authorised for the purposes of this Part by the Director General of the National Criminal Intelligence Service;~~
- ~~(b) in the form and manner (if any) prescribed for the purposes of this subsection by order under section 339.~~

~~(6) But a person does not commit an offence under this section if:~~

- ~~(a) (he has a reasonable excuse for not disclosing the information or other matter;~~
- ~~(b) he is a professional legal adviser and the information or other matter came to him in privileged circumstances;~~

~~(c) subsection (7) applies to him.~~

**(3A) The third condition is:**

(a) that he can identify the other person mentioned in subsection (2) or the whereabouts of any of the laundered property; or

(b) that he believes, or it is reasonable to expect him to believe, that the information or other matter mentioned in subsection (3) will or may assist in identifying the other person or the whereabouts of any of the laundered property.

(4) The fourth condition is that he does not make the required disclosure to:

(a) a nominated officer; or

(b) a person authorised for the purposes of this Part by the Director General of the Serious Organised Crime Agency, as soon as is practicable after the information or other matter mentioned in subsection (3) comes to him.

(5) The required disclosure is a disclosure of:

(a) the identity of the other person mentioned in subsection (2), if he knows it;

(b) the whereabouts of the laundered property, so far as he knows it; and

(c) the information or other matter mentioned in subsection (3).

(5A) The laundered property is the property forming the subject-matter of the money laundering that he knows or suspects, or has reasonable grounds for knowing or suspecting, that other person to be engaged in.

(6) But he does not commit an offence under this section if:

(a) he has a reasonable excuse for not making the required disclosure;

(b) he is a professional legal adviser or other relevant professional adviser; and

(i) if he knows either of the things mentioned in subsection (5)(a) and (b), he knows the thing because of information or other matter that came to him in privileged circumstances, or

(ii) the information or other matter mentioned in subsection (3) came to him in privileged circumstances, or

(c) subsection (7) or (7B) applies to him.

(7) This subsection applies to a person if:

(a) he does not know or suspect that another person is engaged in money laundering; and

- (b) he has not been provided by his employer with such training as is specified by the Secretary of State by order for the purposes of this section.

**(7A) To be inserted later.**

**(7A) Nor does a person commit an offence under this section if-**

- (a) he knows, or believes on reasonable grounds, that the money laundering is occurring in a particular country or territory outside the United Kingdom, and**
- (b) the money laundering-**
- (i) is not unlawful under the criminal law applying in that country or territory, and**
  - (ii) is not of a description prescribed in an order made by the Secretary of State.**

**(7B) This subsection applies to a person if:**

- (a) he is employed by, or is in partnership with, a professional legal adviser or a relevant professional adviser to provide the adviser with assistance or support;**
- (b) the information or other matter mentioned in subsection (3) 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**

(8) In deciding whether a person committed an offence under this section the court must consider whether he followed any relevant guidance which was at the time concerned:

- (a) issued by a supervisory authority or an appropriate body;
- (b) approved by the Treasury; and
- (c) published in a manner it approved as appropriate in its opinion to bring the guidance to the attention of persons likely to be affected by it.

(9) Disclosure to a nominated officer is a disclosure which:

- (a) is made to a person nominated by the alleged offender's employer to receive disclosures under this section; and
- (b) is made in the course of the alleged offender's employment. ~~and in accordance with the procedure established by the employer for the purpose.~~

**(9A) But a disclosure which satisfies paragraphs (a) and (b) of subsection (9) is not to be taken as a disclosure to a nominated officer if the person making the disclosure:**

**(a) is a professional legal adviser or other relevant professional adviser.**

**(b) makes it for the purpose of obtaining advice about making a disclosure under this section, and**

**(c) does not intend it to be a disclosure under this section.**

(10) Information or other matter comes to a professional legal adviser or other relevant professional adviser in privileged circumstances if it is communicated or given to him:

- (a) by (or by a representative of) a client of his in connection with the giving by the adviser of legal advice to the client;
- (b) by (or by a representative of) a person seeking legal advice from the adviser; or
- (c) by a person in connection with legal proceedings or contemplated legal proceedings.

(11) But subsection (10) does not apply to information or other matter which is communicated or given with the intention of furthering a criminal purpose.

(12) Schedule 9 has effect for the purpose of determining what is:

- (a) a business in the regulated sector;
- (b) a supervisory authority.

(13) An appropriate body is any body which regulates or is representative of any trade, profession, business or employment carried on by the alleged offender.

**(14) A relevant professional adviser is 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.**

### **331. Failure to disclose: nominated officers in the regulated sector**

(1) A person nominated to receive disclosures under section 330 commits an offence if the conditions in subsections (2) to (4) are satisfied.

(2) The first condition is that he:

- (a) knows or suspects; or

- (b) has reasonable grounds for knowing or suspecting that another person is engaged in money laundering.
- (3) The second condition is that the information or other matter:
  - (a) on which his knowledge or suspicion is based; or
  - (b) which gives reasonable grounds for such knowledge or suspicion, came to him in consequence of a disclosure made under section 330.
- ~~(4) The third condition is that he does not make the required disclosure as soon as is practicable after the information or other matter comes to him.~~
- ~~(5) The required disclosure is a disclosure of the information or other matter:
  - ~~(a) to a person authorised for the purposes of this Part by the Director General of the National Criminal Intelligence Service;~~
  - ~~(b) in the form and manner (if any) prescribed for the purposes of this subsection by order under section 339.~~~~
- ~~(6) But a person does not commit an offence under this section if he has a reasonable excuse for not disclosing the information or other matter.~~

**(3A) The third condition is:**

**(a) that he knows the identity of the other person mentioned in subsection (2), or the whereabouts of any of the laundered property, in consequence of a disclosure made under section 330.**

**(b) that that other person, or the whereabouts of any of the laundered property, can be identified from the information or other matter mentioned in subsection (3), or**

**(c) that he believes, or it is reasonable to expect him to believe, that the information or other matter will or may assist in identifying that other person or the whereabouts of any of the laundered property.**

**(4) The fourth condition is that he does not make the required disclosure to a person authorised for the purposes of this Part by the Director General of the Serious Organised Crime Agency as soon as is practicable after the information or other matter mentioned in subsection (3) comes to him.**

**(5) The required disclosure is a disclosure of:-**

**(a) the identity of the other person mentioned in subsection (2), if disclosed to him under section 330,**

**(b) the whereabouts of the laundered property, so far as disclosed to him under section 330, and**

**(c) the information or other matter mentioned in subsection (3).**

**(5A) The laundered property is the property forming the subject-matter of the money laundering that he knows or suspects, or has reasonable grounds for knowing or suspecting, that other person to be engaged in.**

**(6) But he does not commit an offence under this section if he has a reasonable excuse for not making the required disclosure.**

**(6A) To be inserted later.**

**(6A) Nor does a person commit an offence under this section if-**

**(a) he knows, or believes on reasonable grounds, that the money laundering is occurring in a particular country or territory outside the United Kingdom, and**

**(b) the money laundering-**

**(i) is not unlawful under the criminal law applying in that country or territory, and**

**(ii) is not of a description prescribed in an order made by the Secretary of State.**

(4) In deciding whether a person committed an offence under this section the court must consider whether he followed any relevant guidance which was at the time concerned:

(a) issued by a supervisory authority or any other appropriate body;

(b) approved by the Treasury; and

(c) published in a manner it approved as appropriate in its opinion to bring the guidance to the attention of the persons likely to be affected by it.

(5) Schedule 9 has effect for the purpose of determining what is a supervisory authority.

(6) An appropriate body is a body which regulates or is representative of a trade, profession, business or employment.

### **332. Failure to disclose: other nominated officers**

(1) A person nominated to receive disclosures under section 337 or 338 commits an offence if the conditions in subsections (2) to (4) are satisfied.

(2) The first condition is that he knows or suspects that another person is engaged in money laundering.

(3) The second condition is that the information or other matter on which his knowledge or suspicion is based came to him in consequence of a disclosure made under ~~section 338 or 338~~ **the applicable section.**

~~(4) The third condition is that he does not make the required disclosure as soon as is practicable after the information or other matter comes to him.~~

- ~~(5) The required disclosure is a disclosure of the information or other matter;~~
- ~~(a) to a person authorised for the purposes of this Part by the Director General of the National Criminal Intelligence Service;~~
  - ~~(b) in the form and manner (if any) prescribed for the purposes of this subsection by order under section 339.~~
- ~~(6) but a person does not commit an offence under this section if he has a reasonable excuse for not disclosing the information or other matter.~~

**(3A) The third condition is:-**

- (a) that he knows the identity of the other person mentioned in subsection (2), or the whereabouts of any of the laundered property, in consequence of a disclosure made under the applicable section,**
- (b) that that other person, or the whereabouts of any of the laundered property, can be identified from the information or other matter mentioned in subsection (3), or**
- (c) that he believes, or it is reasonable to expect him to believe, that the information or other matter will or may assist in identifying that other person or the whereabouts of any of the laundered property.**

**(4) The fourth condition is that he does not make the required disclosure to a person authorised for the purposes of this Part by the Director General of the Serious Organised Crime Agency as soon as is practicable after the information or other matter mentioned in subsection (3) comes to him.**

**(5) The required disclosure is a disclosure of:**

- (a) the identity of the other person mentioned in subsection (2), if disclosed to him under the applicable section;**
- (b) the whereabouts of the laundered property, so far as disclosed to him under the applicable section; and**
- (c) the information or other matter mentioned in subsection (3).**

**(5A) The laundered property is the property forming the subject-matter of the money laundering that he knows or suspects that other person to be engaged in.**

**(5B) The applicable section is section 337 or, as the case may be, section 338.**

**(6) But he does not commit an offence under this section if he has a reasonable excuse for not making the required disclosure.**

**(7) To be inserted later.**

**(7) Nor does a person commit an offence under this section if-**

**(a) he knows, or believes on reasonable grounds, that the money laundering is occurring in a particular country or territory outside the United Kingdom, and**

**(b) the money laundering-**

**(i) is not unlawful under the criminal law applying in that country or territory, and**

**(ii) is not of a description prescribed in an order made by the Secretary of State.**

**333. Tipping off**

- (1) A person commits an offence if:
- (a) he knows or suspects that a disclosure falling within section 337 or 338 has been made; and
  - (b) he makes a disclosure which is likely to prejudice any investigation which might be conducted following the disclosure referred to in paragraph (a).
- (2) But a person does not commit an offence under subsection (1) if:
- (a) he did not know or suspect that the disclosure was likely to be prejudicial as mentioned in subsection (1);
  - (b) the disclosure is made in carrying out a function he has relating to the enforcement of any provision of this Act or of any other enactment relating to criminal conduct or benefit from criminal conduct;
  - (c) he is a professional legal adviser and the disclosure falls within subsection (3).
- (3) A disclosure falls within this subsection 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.
- (4) But a disclosure does not fall within subsection (3) if it is made with the intention of furthering a criminal purpose.

**334. Penalties**

- (1) A person guilty of an offence under section 327, 328 or 329 is liable:
- (a) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum or to both; or

- (b) on conviction on indictment, to imprisonment for a term not exceeding 14 years or to a fine or to both.
- (2) A person guilty of an offence under section 330, 331, 332 or 333 is liable:
  - (a) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum or to both; or
  - (b) on conviction on indictment, to imprisonment for a term not exceeding five years or to a fine or to both.

**(3) A person guilty of an offence under section 339(1A) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.**

### Consent

#### **335. Appropriate consent**

- (1) The appropriate consent is:
  - (a) the consent of a nominated officer to do a prohibited act if an authorised disclosure is made to the nominated officer;
  - (b) the consent of a constable to do a prohibited act if an authorised disclosure is made to a constable;
  - (c) the consent of a customs officer to do a prohibited act if an authorised disclosure is made to a customs officer.
- (2) A person must be treated as having the appropriate consent if:
  - (a) he makes an authorised disclosure to a constable or a customs officer, and
  - (b) the condition in subsection (3) or the condition in subsection (4) is satisfied.
- (3) The condition is that before the end of the notice period he does not receive notice from a constable or customs officer that consent to the doing of the act is refused.
- (4) The condition is that:
  - (a) before the end of the notice period he receives notice from a constable or customs officer that consent to the doing of the act is refused; and
  - (b) the moratorium period has expired.

- (5) The notice period is the period of seven working days starting with the first working day after the person makes the disclosure.
- (6) The moratorium period is the period of 31 days starting with the day on which the person receives notice that consent to the doing of the act is refused.
- (7) A working day is a day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day which 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 he makes the disclosure.
- (8) References to a prohibited act are to an act mentioned in section 327(1), 328(1) or 329(1) (as the case may be).
- (9) A nominated officer is a person nominated to receive disclosures under section 338.
- (10) Subsections (1) to (4) apply for the purposes of this Part.

### **336. Nominated officer: consent**

- (1) A nominated officer must not give the appropriate consent to the doing of a prohibited act unless the condition in subsection (2), the condition in subsection (3) or the condition in subsection (4) is satisfied.
- (2) The condition is that:
  - (a) he makes a disclosure that property is criminal property to a person authorised for the purposes of this Part by the Director General of the ~~National Criminal Intelligence Service~~ **Serious Organised Crime Agency**; and
  - (b) such a person gives consent to the doing of the act.
- (3) The condition is that:
  - (a) he makes a disclosure that property is criminal property to a person authorised for the purposes of this Part by the Director General of the ~~National Criminal Intelligence Service~~ **Serious Organised Crime Agency**; and
  - (b) before the end of the notice period he does not receive notice from such a person that consent to the doing of the act is refused.
- (4) The condition is that:
  - (a) he makes a disclosure that property is criminal property to a person authorised for the purposes of this Part by the Director General of the ~~National Criminal Intelligence Service~~ **Serious Organised Crime Agency**;
  - (b) before the end of the notice period he receives notice from such a person that consent to the doing of the act is refused; and

- (c) the moratorium period has expired.
- (5) A person who is a nominated officer commits an offence if:
  - (a) he gives consent to a prohibited act in circumstances where none of the conditions in subsections (2), (3) and (4) is satisfied; and
  - (b) he knows or suspects that the act is a prohibited act.
- (6) A person guilty of such an offence is liable:
  - (a) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum or to both, or
  - (b) on conviction on indictment, to imprisonment for a term not exceeding five years or to a fine or to both.
- (7) The notice period is the period of seven working days starting with the first working day after the nominated officer makes the disclosure.
- (8) The moratorium period is the period of 31 days starting with the day on which the nominated officer is given notice that consent to the doing of the act is refused.
- (9) A working day is a day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday under the Banking and Financial Dealings Act 1971 (c. 80) in the part of the United Kingdom in which the nominated officer is when he gives the appropriate consent.
- (10) References to a prohibited act are to an act mentioned in section 327(1), 328(1) or 329(1) (as the case may be).
- (11) A nominated officer is a person nominated to receive disclosures under section 338.

## **Disclosures**

### **337. Protected disclosures**

- (1) A disclosure which satisfies the following three conditions is not to be taken to breach any restriction on the disclosure of information (however imposed).
- (2) The first condition is that the information or other matter disclosed came to the person making the disclosure (the discloser) in the course of his trade, profession, business or employment.
- (3) The second condition is that the information or other matter:
  - (a) causes the discloser to know or suspect; or
  - (b) gives him reasonable grounds for knowing or suspecting;that another person is engaged in money laundering.

- (4) The third condition is that the disclosure is made to a constable, a customs officer or a nominated officer as soon as is practicable after the information or other matter comes to the discloser.

**(4A) Where a disclosure consists of a disclosure protected under subsection (1) and a disclosure of either or both of -**

- (a) the identity of the other person mentioned in subsection (3), and**
- (b) the whereabouts of property forming the subject-matter of the money laundering that the discloser knows or suspects, or has reasonable grounds for knowing or suspecting, that other person to be engaged in the disclosure of the thing mentioned in paragraph (a) or (b) (as well as the disclosure protected under subsection (1)) is not to be taken to breach any restriction on the disclosure of information (however imposed).**

- (5) A disclosure to a nominated officer is a disclosure which:
- (a) is made to a person nominated by the disclosure's employer to receive disclosures under **section 330 or** this section; and
- (b) is made in the course of the disclosers employment ~~and in accordance with the procedure established by the employer for the purpose.~~

**338. Authorised disclosures**

- (1) For the purposes of this Part a disclosure is authorised if:
- (a) it is a disclosure to a constable, a customs officer or a nominated officer by the alleged offender that property is criminal property, **and**
- ~~(b) —(it is made in the form and manner (if any) prescribed for the purposes of this subsection by order under section 339; and~~
- ~~(c)~~**(b)** the first ~~or second,~~ **second or third** condition set out below is satisfied.
- (2) The first condition is that the disclosure is made before the alleged offender does the prohibited act.

**(2A) The second condition is that:-**

- (a) the disclosure is made while the alleged offender is doing the prohibited act,**
- (b) he began to do the act at a time when, because he did not then know or suspect that the property constituted or represented a person's benefit from criminal conduct, the act was not a prohibited act, and**
- (c) the disclosure is made on his own initiative and as soon as is practicable after he first knows or suspects that the property**

**constitutes or represents a person's benefit from criminal conduct.**

- (3) The ~~second~~ **third** condition is that:
  - (a) the disclosure is made after the alleged offender does the prohibited act;
  - (b) there is a good reason for his failure to make the disclosure before he did the act; and
  - (c) the disclosure is made on his own initiative and as soon as it is practicable for him to make it.
- (4) An authorised disclosure is not to be taken to breach any restriction on the disclosure of information (however imposed).
- (5) A disclosure to a nominated officer is a disclosure which:
  - (a) is made to a person nominated by the alleged offender's employer to receive authorised disclosures; and
  - (b) is made in the course of the alleged offender's employment ~~and in accordance with the procedure established by the employer for the purpose.~~
- (6) Reference to the prohibited act are to an act mentioned in section 327(1), 328(1) or 329(1) (as the case may be).

**339. Form and manner of disclosures**

- (1) The Secretary of State may by order prescribe the form and manner in which a disclosure under section 300, 331, 332 or 338 must be made.
- ~~(2) An order under this section may also provide that the form may include a request to the discloser to provide additional information specified in the form.~~
- ~~(3) The additional information must be information which is necessary to enable the person to whom the disclosure is made to decide whether to start a money laundering investigation.~~

**(1A) A person commits an offence if he makes a disclosure under section 330, 331, 332 or 338 otherwise than in the form prescribed under subsection (1) or otherwise than in the manner so prescribed.**

**(1B) But a person does not commit an offence under subsection (1A) if he has a reasonable excuse for making the disclosure otherwise than in the form prescribed under subsection (1) or (as the case may be) otherwise than in the manner so prescribed.**

**(2) The power under subsection (1) to prescribe the form in which a disclosure must be made includes power to provide for the form to include a request to a person making a disclosure that the person**

**provide information specified or described in the form if he has not provided it in making the disclosure.**

**(3) Where under subsection (2) a request is included in a form prescribed under subsection (1), the form must:-**

**(a) state that there is no obligation to comply with the request, and**

**(b) explain the protection conferred by subsection (4) on a person who complies with the request.**

- (4) A disclosure made in pursuance of a request under subsection (2) is not to be taken to breach any restriction on the disclosure of information (however imposed).
- (5) The discloser is the person making a disclosure mentioned in subsection (1).
- (6) Money laundering investigation must be construed in accordance with section 341(4).
- (7) Subsection (2) does not apply to a disclosure made to a nominated officer.

### **339A. Threshold amounts**

**(1) This section applies for the purposes of sections 327(2C), 328(5) and 329(2C).**

**(2) The threshold amount for acts done by a deposit-taking body in operating an account is £250 unless a higher amount is specified under the following provisions of this section (in which event it is that higher amount).**

**(3) An officer of Revenue and Customs, or a constable, may specify the threshold amount for acts done by a deposit-taking body in operating an account:**

**(a) when he gives consent, or gives notice refusing consent, to the deposit-taking body's doing of an act mentioned in section 327(1), 328(1) or 329(1) in opening, or operating, the account or a related account; or**

**(b) on a request from the deposit-taking body.**

**(4) Where the threshold amount for acts done in operating an account is specified under subsection (3) or this subsection, an officer of Revenue and Customs, or a constable, may vary the amount (whether on a request from the deposit-taking body or otherwise) by specifying a different amount.**

**(5) Different threshold amounts may be specified under subsections (3) and (4) for different acts done in operating the same account.**

**(6) The amount specified under subsection (3) and (4) as the threshold amount for acts done in operating an account must, when specified, not be less than the amount specified in subsection (2) -**

**(7) The Secretary of State may by order vary the amount for the time being specified in subsection (2).**

**(8) For the purposes of this section, an account is related to another if each is maintained with the same deposit-taking body and there is a person who, in relation to each account, is the person or one of the persons entitled to instruct the body as respects the operation of the account.**

## Interpretation

### 340. Interpretation

- (1) This section applies for the purposes of this Part.
- (2) Criminal conduct is conduct which:
  - (a) Constitutes an offence in any part of the United Kingdom; or
  - (b) would constitute an offence in any part of the United Kingdom if it occurred there.
- (3) Property is criminal property if:
  - (a) it constitutes a person's benefit from criminal conduct or its represents such a benefit (in whole or part and whether directly or indirectly); and
  - (b) the alleged offender knows or suspects that it constitutes or represents such a benefit.
- (4) It is immaterial:
  - (a) who carried out the conduct;
  - (b) who benefited from it;
  - (c) whether the conduct occurred before or after the passing of this Act.
- (5) A person benefits from conduct if he obtains property as a result of or in connection with the conduct.
- (6) If a person obtains a pecuniary advantage as a result of or in connection with the conduct, he is to be taken to obtain as a result of or in connection with the conduct a sum of money equal to the value of the pecuniary advantage.
- (7) 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.

- (8) If a person benefits from conduct his benefit is the property obtained as a result of or in connection with the conduct.
- (9) Property is all property wherever situated and includes:
- (a) money;
  - (b) all forms of property, real or personal, heritable or moveable;
  - (c) things in action and other intangible or incorporeal property.
- (10) The following rules apply in relation to property:
- (a) property is obtained by a person if he obtains an interest in it;
  - (b) references to an interest, in relation to land in England and Wales or Northern Ireland, are to any legal estate or equitable interest or power;
  - (c) references to an interest, in relation to land in Scotland, are to any estate, interest, servitude or other heritable right in or over land, including a heritable security;
  - (d) references to an interest, in relation to property other than land, include references to a right (including a right to possession).
- (11) Money laundering is an act which:
- (a) constitutes an offence under section 327, 328 and 329;
  - (b) constitutes an attempt, conspiracy or incitement to commit an offence specified in paragraph (a);
  - (c) constitutes aiding, abetting, counselling or procuring the commission of an offence specified in paragraph (a); or
  - (d) would constitute an offence specified in paragraph (a), (b) or (c) if done in the United Kingdom.
- (12) For the purposes of a disclosure to a nominated officer:
- (a) references to a person's employer include any body, association or organisation (including a voluntary organisation) in connection with whose activities the person exercises a function (whether or not for gain or reward); and
  - (b) references to employment must be construed accordingly.
- (13) References to a constable include references to a person authorised for the purposes of this Part by the Director General of the ~~National Criminal Intelligence Service~~ **Serious Organised Crime Agency**.

**(14) “Deposit-taking body” means:**

**(a) a business which engages in the activity of accepting deposits;**  
**or**

**(b) The National Savings Bank.**

**Part 8**  
**Investigations**

**Chapter 1**  
**Introduction**

**341 Investigations**

- (1) For the purposes of this Part a confiscation investigation is an investigation into –
  - (a) whether a person has benefited from his criminal conduct, or
  - (b) the extent or whereabouts of this benefit from his criminal conduct.
  
- (2) For the purposes of this Part a civil recovery investigation is an investigation into –
  - (a) whether property is recoverable property or associated property,
  - (b) who holds the property, or
  - (c) is 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,
  - (c) an interim administration order applies to the property in question, or
  - (d) the property in question is detained under section 295.
  
- (4) For the purposes of this Part a money laundering investigation is an investigation into whether a person has committed a money laundering offence.

### **342 Offences of prejudicing investigation**

- (1) This section applies if a person knows or suspects that an appropriate officer or (in Scotland) a proper person is acting (or proposing to act) in connection with a confiscation investigation, a civil recovery investigation or a money laundering investigation which is being or is about to be conducted.
  
- (2) The person commits an offence if –
  - (a) he makes a disclosure which is likely to prejudice the investigation, or
  - (b) he 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 subsection (2)(a) if –
  - (a) he 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 Act or any other enactment relating to criminal conduct or benefit from criminal conduct or in compliance with a requirement imposed under or by virtue of this Act, or
  - (c) he is a professional legal adviser and the disclosure falls within subsection (4).
  
- (4) A disclosure falls within this subsection 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 subsection (4) if it is made with the intention of furthering a criminal purpose.
  
- (6) A person does not commit an offence under subsection (2)(b) if –
  - (a) he does not know or suspect that the documents are relevant to the investigation, or

- (b) he does not intend to conceal any facts disclosed by the documents from any appropriate officer or (in Scotland) proper person carrying out the investigation.
  
- (7) A person guilty of an offence under subsection (2) is liable –
  - (a) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum or to both, or
  - (b) on conviction on indictment, to imprisonment for a term not exceeding five years or to a fine or to both.
  
- (8) For the purposes of this section –
  - (a) “appropriate officer” must be construed in accordance with section 378;
  - (b) “proper person” must be construed in accordance with section 412.

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