

# CRIMINAL FINANCES BILL

## EXPLANATORY NOTES

### What these notes do

These Explanatory Notes relate to the Criminal finances Bill as introduced in the House of Commons on 13 October 2016 (Bill 75).

- These Explanatory Notes have been prepared by the Home Office in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by Parliament.
- These Explanatory Notes explain what each part of the Bill will mean in practice; provide background information on the development of policy; and provide additional information on how the Bill will affect existing legislation in this area.
- These Explanatory Notes might best be read alongside the Bill. They are not, and are not intended to be, a comprehensive description of the Bill.

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## Overview of the Bill

- 1 The Criminal Finances Bill will make the legislative changes necessary to give law enforcement agencies, and partners, the capabilities and powers to recover the proceeds of crime, tackle money laundering and corruption, and counter terrorist financing.
- 2 The measures in the Bill aim to: improve cooperation between public and private sectors; enhance the UK law enforcement response; improve our capability to recover the proceeds of crime, including international corruption; and combat the financing of terrorism.
- 3 Financial profit is the driver for almost all serious and organised crime, and other lower-level acquisitive crime. The best available estimate of the amounts laundered globally are equivalent to 2.7% of global GDP, or US\$1.6 trillion in 2009, while the National Crime Agency (NCA) assesses that billions of pounds of proceeds of international corruption are laundered into, or through the UK. Her Majesty's Revenue and Customs (HMRC) estimate that over £4.4bn was lost to attacks against the tax system in 2013/14. The UK's drug trade is estimated to generate revenues of nearly £4bn each year. Serious and Organised Crime Strategy 2013 and Strategic Defence and Security Review 2015 (SDSR) set a goal of working with the private sector to make the UK a more hostile place for those seeking to move, hide or use the proceeds of crime or corruption. The Criminal Finances Bill will be an essential part of achieving that objective.
- 4 The Bill is in 4 parts.
- 5 Part 1 deals with the proceeds of crime, money laundering, civil recovery, enforcement powers and related offences and creates a range of new powers for law enforcement agencies to request information and seize, monies stored in bank accounts and mobile stores of value.
- 6 Part 2 will ensure that relevant money laundering and asset recovery powers will be extended to apply to investigations under the Terrorism Act 2000 (TACT), as well as the Proceeds of Crime Act 2002 (POCA).
- 7 Part 3 will create two new corporate offences of failure to prevent facilitation of tax evasion.
- 8 Part 4 includes minor and consequential amendments to POCA and other enactments.

## Policy background

- 9 The Government's strategic response to money laundering is founded upon a risk-based approach. The 2013 Serious and Organised Crime Strategy aims to substantially reduce the level of serious and organised crime affecting the UK and its interests. The 2015 SDSR set out the Government's intention to introduce new measures to make the UK a more hostile place for those seeking to move, hide or use the proceeds of crime or corruption or to evade sanctions.
- 10 In October 2015, the Government published the National Risk Assessment for Money Laundering and Terrorist Financing (NRA), which identified areas of risk and how the current regimes for combating these threats could be strengthened.
- 11 In April 2016, the Government published an Action Plan for Anti-Money Laundering and Counter-Terrorist Finance, setting out the steps that it will take to address the weaknesses identified in the National Risk Assessment. It focused on three priorities: a more robust law enforcement response; reforming the supervisory regime; and increasing our international reach. All three are underpinned by a commitment to building a new and powerful partnership with the private sector. The Bill is the vehicle to implement the legislative

elements of the Action Plan, which included a consultation document on legislative proposals. The proposals outlined below have been developed through that consultation and through wider discussion. A summary of the responses to the consultation was published on 13 October 2016.

## Unexplained Wealth Orders

- 12 The Bill would create Unexplained Wealth Orders (UWOs) that require a person who is suspected of involvement in or association with serious criminality to explain the origin of assets that appear to be disproportionate to their known income. A failure to provide a response would give rise to a presumption that the property was recoverable, in order to assist any subsequent civil recovery action. A person could also be convicted of a criminal offence, if they make false or misleading statements in response to a UWO. Law enforcement agencies often have reasonable grounds to suspect that identified assets of such persons are the proceeds of serious crime. However, they are unable to freeze or recover the assets under the current provisions in POCA due to an inability to obtain evidence (often due to the inability to rely on full cooperation from other jurisdictions to obtain evidence).
- 13 The Bill would also allow for this power to be applied to foreign politicians or officials or those associated to them i.e. Politically Exposed Persons (PEPs). A UWO made in relation to an overseas PEP would not require suspicion of serious criminality. This measure reflects the concern about those involved in corruption overseas laundering the proceeds of crime in the UK; and the fact that it may be difficult for law enforcement agencies to satisfy any evidential standard at the outset of such an investigation given that all relevant information may be outside of the jurisdiction.

## Enabling disclosure orders for money laundering investigations

- 14 A disclosure order is an order authorising a law enforcement officer to require anyone that they think has relevant information to an investigation, to answer questions, provide information or to produce documents. They are used to gather the information required for a successful criminal investigation, although the compelled evidence may not be used in criminal proceedings against the person who gave the information.
- 15 Disclosure orders are already used in confiscation investigations and by the Serious Fraud Office (SFO) in fraud investigations. The Bill would extend their use to money laundering investigations. The Bill would also amend the application authorisation process that exists in England, Wales and Northern Ireland by transferring this function from a prosecutor to a senior officer in the investigator's own organisation (this arrangement does not apply in Scotland).

## Suspicious Activity Reports

- 16 Where a regulated company – that is one subject to the Money Laundering Regulations 2007 (MLRs), such as a bank, accountancy firm, legal firm or estate agent – suspects that a transaction relates to money laundering, they must submit details to the NCA to avoid committing an offence under section 330 of POCA. This is known as a “Suspicious Activity Report” (SAR). SARs are a critical intelligence resource. They provide important opportunities for law enforcement agencies to intervene to disrupt money laundering and terrorist financing, and build investigations against those involved. Over 381,000 SARs were received by the NCA in the period September 2014 – October 2015.
- 17 Under section 335 of POCA, the SARs regime currently allows the NCA to allow or refuse

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consent to the person making an authorised disclosure (the reporter) to undertake activity involving property suspected of being the proceeds of crime – these are consent SARs. 14,672 of the SARs received in 2014/15 were consent SARs. Where the NCA refuses consent, the regulated company loses the statutory defence provided to the money laundering offences (s327 – s329 of POCA) for a period of 31 days from the date of the refusal. This has the effect of preventing the activity from going ahead during that period. This is known as the ‘moratorium period’. The purpose of the moratorium period is to allow investigators time to gather evidence to determine whether further action, such as restraint of the funds, should take place. This period, which is not currently renewable, often does not allow sufficient time to develop the evidence, particularly where it must be sought from overseas through mutual legal assistance. The Bill would amend this provision to allow for extensions of up to 31 days, totalling a period of no more than 186 days from the end of the initial 31 day moratorium period.

- 18 In order to enhance the effectiveness of this regime, the Bill would also create a power for the NCA to request further information from any person in the regulated sector (as defined by section 9 of POCA), following receipt of a SAR; or where they have received a request from a Financial Intelligence Unit (FIU) in another country. The Bill would amend Part 7 of POCA to allow the NCA to direct the reporter, or another regulated sector entity, to provide further information relating to the SAR. If it is not provided, the NCA could apply to a magistrates or sheriff’s court for an order compelling the person to provide it; and failure to comply would result in a fine. This power is required to allow the NCA to perform its analytical functions. The decision of the court would be appealable in the normal way.
- 19 There are appropriate exemptions relating to the provision of legally privileged information. Any information provided would be given immunity from any restriction on the disclosure of information, such as confidentiality clauses in contracts or the law of confidence. The compelled information could not be used in criminal proceedings against the person who made the statement.

## Information Sharing

- 20 The Bill would provide for a legal gateway for the sharing of information between entities within the regulated sector (e.g. banks), in order to encourage better use of public and private sector resources to combat money laundering.
- 21 The private sector holds data on financial transactions and related personal data; the law enforcement agencies hold details of criminals, and intelligence on crime. When this data has been shared, such as under the Joint Money Laundering Intelligence Taskforce (JMLIT) pilot, there have been positive outcomes for both sectors. Although existing data protection legislation allows for the sharing of information for the prevention and detection of crime, regulated companies are concerned that there should be express legal cover that is directly related to the anti-money laundering regime, in order to reduce the risk of civil litigation for breach of confidentiality.
- 22 The Bill would allow for regulated bodies to share information with each other, where they have notified the NCA that they suspect activity is related to money laundering. This measure will enable the submission of “super SARs”, which bring together information from multiple reporters into a single SAR that provides the whole picture to law enforcement agencies. To begin with, this measure will extend to financial sector organisations – some of which are already part of the JMLIT – but will be extended to all of the regulated sector in due course.

## **Seizure and forfeiture powers**

- 23 The Bill would create new civil powers, similar to the existing cash seizure and forfeiture scheme in Chapter 3, Part 5 of POCA, to enable the forfeiture of monies stored in bank accounts and items of personal property, like precious metals and jewels. There is evidence that these items are being used to move value, both domestically and across international borders. There will be a list of items specified in the Bill, which can be amended by affirmative order as required. The power will be exercisable where there is reasonable suspicion that the property is the proceeds of crime, or that it will be used in unlawful conduct in a manner similar to cash.

## **Other provisions**

### **Granting Civil Recovery powers to the Financial Conduct Authority and HMRC**

- 24 POCA contains a set of provisions for the recovery of property in cases where there has not been a conviction, but where it can be shown on the balance of probabilities that that property has been obtained through unlawful conduct. These powers are known as “civil recovery”. The Bill would extend powers to the Financial Conduct Authority (FCA) and HMRC to allow proceedings to be taken in the High Court to recover criminal property, without the need for the owner of the property to be convicted of a criminal offence (and to the supporting investigation powers). At present, the NCA, SFO and Crown Prosecution Service (CPS) (or Public Prosecution Service of Northern Ireland) have access to these powers. Only Scottish Ministers can pursue civil recovery in the Scottish courts and the amendments to POCA will not alter that position.

### **Extending Investigation powers to members of staff at the Serious Fraud Office**

- 25 Staff at the SFO do not have direct access to the investigative powers in POCA, unlike officers of all other national law enforcement agencies. The Bill would grant them direct access to those powers.

### **Making it a criminal offence to obstruct/assault law enforcement officers**

- 26 Officers from a range of agencies – Immigration Enforcement, the CPS, the SFO and others – are able to use the various search and seizure powers as defined in POCA. Currently, there are criminal offences of obstruction or assault which apply in respect of some officers who are carrying out duties under POCA, but not all officers are captured. The Bill would ensure that all officers are afforded the same degree of protection, while exercising powers under POCA. This will bring consistency of approach and ensure that all users of POCA powers are protected.

### **Enabling the use of POCA investigation powers for confiscation order “re-visits”**

- 27 Confiscation orders are made to recover the financial benefit that a criminal obtained from their crimes. However, they are made not for the full amount of the benefit, but for the amount that is available at the time the order is made. This is to ensure that orders are not made in unrealistic amounts that exceed the sum which is actually recoverable from the

offender. However, POCA also contains a provision to enable investigators to “re-visit” any confiscation order that has been paid off but was made for an amount lower than the total criminal benefit figure. This means that, if a criminal pays off an order but goes on to make more money in the future, the court can consider whether it would be proportionate to recover more money or property.

- 28 At present, the financial investigation powers in POCA – for example, powers to monitor bank accounts, search property, or require the production of evidence – are not available for investigations linked to re-visits. The Bill would extend these powers to ensure they are available for re-visits.

## **Allow the writing-off of orders made under the Drug Trafficking Offences Act 1986 in the same way as orders made under POCA**

- 29 The Serious Crime Act 2015 allowed for confiscation orders made against people who have subsequently died to be written off. This only covered orders made under POCA. There are still some orders made under earlier legislation – the Drug Trafficking Offences Act 1986 – to which the amendment did not apply. The Bill would address this gap.

## **Amending the levels of authorisation needed for the use of POCA search and seizure powers**

- 30 POCA contains search and seizure powers to prevent the dissipation of property that may be used to satisfy a future confiscation order following a conviction. Their use must be authorised by a senior officer. At present, AFIs can only obtain that authorisation from a senior civilian AFI, working for a police force, not from a senior police officer. The Bill would allow for AFIs to receive authorisation from a senior police officer.

## **Expand the circumstances in which “mixed property” is recoverable**

- 31 The existing civil recovery provisions within POCA allow for other property to be recovered when the criminal property has been mixed with “clean property”.
- 32 POCA contains a non-exhaustive list of situations where so called “mixed property” (i.e. where “clean property” is associated with that connected to criminal conduct) can be recovered. The Bill would add to that list to include property that has been used to redeem a mortgage, providing greater clarity of the extent of civil recovery powers.

## **Scotland-focused provisions**

- 33 Operational agencies in Scotland have identified two bespoke amendments to POCA to reflect the nuances of the Scottish criminal justice system. The Bill would:
- a. allow the High Court of Justiciary and the Sheriff Court the power to order money in accounts and money held as cash productions to be paid in satisfaction of a confiscation order.
  - b. give the Court of Session the power to grant the trustee for civil recovery a decree of removing and a warrant for ejection to recover possession of heritable property;

## **Definitions**

- 34 The Bill would clarify minor and technical inconsistencies in various definitions in existing legislation – the concept of “distress”, a mechanism for taking control of goods; the definition of a bank (where POCA refers to the now-repealed Banking Act 1987); and the definition of “free property” in POCA.

## Terrorist finance

- 35 Countering terrorist finance is an important part of the Government's response to terrorism and financial investigation is a key tool in the investigation of a number of terrorism offences. The vulnerabilities in the financial sector which are at risk of being exploited are broadly the same as those for the proceeds of crime. For that reason, the following powers in the Bill would also be extended to apply to investigations in relation to under terrorist property and terrorist financing, as well as POCA:
- a. The powers to enhance the SARs regime;
  - b. Information sharing;
  - c. Seizure and forfeiture powers – for bank accounts and mobile stores of value; and
  - d. Disclosure orders.
- 36 The Bill would also extend a number of powers under TACT and the Anti-Terrorism, Crime and Security Act 2001, which are currently only available to constables, to civilian Accredited Financial Investigators (AFIs) employed by the police. Counter-terrorism policing indicate that the extension of these powers to AFIs will increase the capacity of the police to apply for the orders in question by over 50%. AFIs are currently used frequently in proceeds of crime investigations.

## Corporate failure to prevent tax evasion

- 37 There are a range of statutory offences of “fraudulently evading” taxes. For example, section 72 of the Value Added Tax Act 1994 makes it a crime to be knowingly concerned in, or take steps with a view to, the fraudulent evasion of Value Added Tax. Section 106A of the Taxes Management Act 1970 creates a similar offence in relation to income tax. Beyond these statutory offences of fraudulent evasion, there is a common law offence of cheating the public revenue, committed by a person who engages in any fraudulent conduct that tends to divert funds from the public revenue.
- 38 It is also a crime to facilitate deliberately another person to commit tax evasion. The above offences are committed where a person is knowingly concerned in, or takes steps with a view to, the fraudulent evasion of a tax owed by another. Moreover, like any offence, it is a crime to aid and abet another person to commit a tax evasion offence and as such where a banker, accountant, or any other person, deliberately facilitates a client to commit a tax evasion offence, the banker or accountant commits a crime.
- 39 At present, where a banker or accountant criminally facilitates a customer to commit a tax evasion offence, the taxpayer and the banker or accountant commit criminal offences but the company employing the banker or accountant does not. Even in cases where the company tacitly encourages its staff to maximise the company's profits by assisting customers to evade tax, the company remains safely beyond the reach of the criminal law.
- 40 The new offences in Part 3 will aim to hold these organisations and corporations to account for the actions of their employees. This power will give effect to the former Prime Minister's commitment to legislate following the International Consortium of Investigative Journalist's (ICIJ) publication of what are known as the “Panama Papers”. The clauses have been developed following a pair of consultations on the broad approach, and then the detail, of the proposed offences. Rather than focusing on attributing the criminal act to the company, the offences focus on – and criminalise – the company's failure to prevent those who act for or on its behalf from criminally facilitating tax evasion when acting in that capacity.

- 41 Therefore, where a person acting for or on behalf of a relevant body, acting in that capacity, criminally facilitates a tax evasion offence by another person, the relevant body would be guilty of the corporate failure to prevent the facilitation of tax evasion offence, unless the relevant body can show that it had in place reasonable prevention procedures (or that it was not reasonable to expect such procedures).
- 42 The new corporate offences cannot be committed by individuals; they can only be committed by “relevant bodies”, that is, legal persons (companies and partnerships). Moreover, they are only committed in circumstances where a person acting for or on behalf of that body, acting in that capacity, criminally facilitates a tax evasion offence committed by another person. Thus where the taxpayer commits a tax evasion offence contrary to the existing criminal law, and a person acting for or on behalf of the relevant body also commits a tax evasion facilitation offence contrary to the existing law by criminally facilitating the taxpayer’s crime, the relevant body commits the new offence. However, absent an existing offence at the taxpayer and associated person level, the new offences cannot be committed. Where a company’s staff member commits a tax fraud in relation to another’s tax without facilitating another, the offence is not committed. It is an offence to unreasonably fail to prevent the criminal facilitation of tax evasion, not tax evasion itself.
- 43 The new offences do not make companies responsible for the crimes of their customers (unless those who act for or on behalf of the company criminally facilitate such crimes). Nor are the new offences committed:
- a. Where the taxpayer engages in aggressive avoidance falling short of fraudulent evasion or is otherwise non-compliant.
  - b. Where the person acting for or on behalf of the relevant body inadvertently or negligently facilitates the taxpayer’s fraudulent evasion of tax.
  - c. Where the taxpayer’s fraudulent evasion is facilitated by a person who is not acting for or on behalf of the relevant body at the time of doing the facilitating act (for example if an employee, in their private life, criminally facilitates his or her partner’s fraudulent evasion of their tax; or where a sub-contractor criminally facilitates tax fraud when working for an entirely different contractor during work unconnected to the relevant body). The new offences are only about ensuring that relevant bodies have reasonable procedures to prevent those acting for or on their behalf from criminally facilitating the fraudulent evasion of tax, when acting in that capacity.
  - d. Every time somebody acting for or on behalf of the relevant body criminally facilitates another’s tax crime (only reasonable procedures, not fail proof procedures, are required: a risk based, rather than zero tolerance, approach is adopted).
  - e. Where tax evasion offences are currently being committed by those acting for or on behalf of a company, the new offences will require nothing more than for that company to have reasonable procedures in place to prevent such offences being committed by those acting for or on its behalf.

## Legal background

- 44 In 2002, Parliament enacted POCA, which contains provisions to allow the investigation and recovery of property obtained through unlawful conduct, or which is intended to be used for unlawful conduct. For any type of recovery action under POCA there must be sufficient evidence to indicate, through a judicial process, that the property is related to unlawful activity.

- 45 A summary of the criminal confiscation and civil powers in POCA is at Annex B.
- 46 TACT provides the core of our legislative framework on counter-terrorism. It introduced for the first time a statutory definition of terrorism, which underpins the application of other terrorism offences and powers. It provides powers to proscribe terrorist organisations, and creates a range of offences relating to support for such an organisation. It provides various powers and offences relating to terrorist property and finance, which is amended as Part 2 of this Bill. It provides police powers to support counter-terrorism investigations, including a power of arrest on suspicion of being a terrorist and a pre-charge police detention regime. It provides a range of offences relating to terrorist activity. And it provides powers for examining officers to stop, search, question and detain a person travelling through a port, airport or border area, in order to determine whether they are or have been involved in the commission, preparation or instigation of acts of terrorism.
- 47 The First EU Money Laundering Directive applies the Financial Action Task Force (FATF) recommendations to financial institutions and require the criminalisation of money laundering. This directive was transposed through the Criminal Justice Act 1991, the Drug Trafficking Act 1994 and the Money Laundering Regulations 1993.
- 48 The Second Money Laundering Directive extended the anti-money laundering obligations to a defined set of activities provided by a number of non-financial services. Those services included independent legal professionals, accountants, real estate agents and tax advisors. This directive was transposed through POCA and the Money Laundering Regulations 2003.
- 49 The Third Money Laundering Directive incorporated special recommendations on terrorist financing. This directive was transposed through POCA, TACT and the Money Laundering Regulations 2007. The 2007 Regulations define the regulated sector, and the requirements on the regulated sector in respect of the action they must take to ensure due diligence in relation to their customers, and the actions they must take to prevent money laundering.
- 50 The Fourth Money Laundering Directive and the accompanying Wire Transfer Regulations is under consultation and will come into force in June 2017.

## Territorial extent and application

- 51 The majority of the provisions in the Bill extend to the UK.
- 52 The table in Annex A provides a summary of the position regarding territorial extent and application in the United Kingdom. The table also summarises the position regarding legislative consent motions and matters relevant to Standing Orders Nos. 83J to 83X of the Standing Orders of the House of Commons relating to Public Business.

# Commentary on provisions of Bill

## Part 1: Proceeds of crime

### Chapter 1: Investigations

#### Unexplained wealth orders: England Wales and Northern Ireland

##### Clause 1: Unexplained wealth orders: England Wales and Northern Ireland

- 53 Clause 1 inserts new sections 362A – 362H into POCA, which make provision for the court to make an Unexplained Wealth order (UWO). A UWO is defined (s362A(3)) as an order requiring an individual to set out the nature and extent of their interest in the property in question, and to explain how they obtained that property in cases where that person's known income does not explain ownership of that property. It therefore allows an enforcement authority to require an individual to explain the origin of assets that appear to be disproportionate to their income.
- 54 Applications for UWOs may be made to the High Court by an enforcement authority. An enforcement authority is defined in s362A(7), and includes the NCA, the SFO, the CPS, the Public Prosecution Service for Northern Ireland, HMRC and the Financial Conduct Authority. The High Court may make an order provided it is satisfied that each of the requirements for making or the order is fulfilled (see section 362B). In particular, the High Court must be satisfied that the respondent is a "Politically Exposed Person" or PEP, or there are reasonable grounds for suspecting that the respondent is, or has been, involved in serious crime (or a person connected with the respondent is, or has been so involved. A UWO made in relation to an overseas PEP does not also require suspicion of serious criminality.
- 55 The definition of a PEP is given in section 362B(7), and means an individual who has been entrusted with prominent public functions by an international organisation or a State outside of the UK or the EEA. It also includes family members and close associates.
- 56 The subject of the order – the respondent – and the property in question, must be specified in the order. The form and manner in which the respondent is to provide the explanation relating to the property must also be specified (section 362A(2) and 4). The order must also specify the person to whom the notice is to be given and give details of where the notice is to be sent.
- 57 Section 362A(6) places an obligation on the respondent to explain the source of the specified asset(s) within a time period that the court may specify.
- 58 Section 362B (1)-(10) sets out the requirements for making an unexplained wealth order. A key requirement is that the value of the property subject to an order is greater than £100,000 (sub-section (2)). The court must be satisfied that the respondent is a PEP or that there are reasonable grounds to suspect that the respondent or a person connected to them is (or has been) involved in serious crime (sub-sections (3) to (4) ("serious crime" is defined as a list of offences as set out in Schedule 1 to the Serious Crime Act 2007 and includes drug trafficking, arms trafficking and money laundering)). It is not necessary to prove to the criminal standard that the respondent, or other persons, are involved in such offences. This suspicion need not be restricted to the respondent alone. An order may be made in respect of a person who is (or has been) involved in serious crime as long as that person is associated with the respondent.
- 59 New section 362C applies if a respondent fails to provide information, documents or other material specified in an unexplained wealth order. As mentioned in section 362A(6), a respondent has a certain period of time specified by the court to respond to an order. If,

following the expiry of the response period, a respondent fails to comply without reasonable excuse, the property concerned is to be treated as “recoverable property”. “Recoverable property” means property obtained through unlawful conduct. In this case, the enforcement authority must consider what action it intends to take against the property. This may include recovering the property using the civil recovery powers provided by Part 5 of POCA. If proceedings are commenced, the respondent can provide evidence to rebut the presumption that their property is recoverable.

- 60 If, however, the respondent replies within the response period, the law enforcement agency has 30 days to consider the evidence put forward. During this period, which is known as the “review period”, the enforcement authority must decide whether to take no further action, begin a civil recovery investigation or apply for a recovery order under section 266 of POCA.
- 61 By virtue of section 362E, a person commits an offence if, in purported compliance with a requirement under an unexplained wealth order, the person makes a statement that the person knows to be false or misleading in a material way, or recklessly makes a statement that is false or misleading in a material way. A person guilty of an offence is liable to conviction on indictment to imprisonment not exceeding two years, or a fine, or on summary conviction, to imprisonment not exceeding twelve months, or a fine.
- 62 In addition to the specific criminal offence of making a false or misleading statement, a law enforcement agency may alternatively elect to bring contempt of court proceedings if an individual fails to comply with a UWO.
- 63 By virtue of section 362F, a person making a statement in response to an order is protected from having that statement used in evidence against them in criminal proceedings. The exceptions to this protection are listed in sub-sections (2) and (3).
- 64 New section 362G details the copying and retention of documents obtained under a UWO. Sub-section (3) allows the enforcement authority to copy any document supplied under the requirements of an order and they may be retained for as long as necessary in connection with a civil recovery, confiscation or money laundering investigation (as defined in section 341 POCA) to which the property is connected.
- 65 Section 362H provides the procedure for making an application for a UWO, which may be made to a judge in chambers without notice, for example, to prevent the property from being dissipated. The enforcement authority and the respondent may apply to vary or discharge the order by virtue of sub-section (4).
- 66 362H also makes explicit powers in Northern Ireland for the making of rules of court relating to practice and procedure unexplained wealth orders. In relation to England and Wales, the Civil Procedure Rules already provide the necessary general provision and specific provision respectively. The rule making powers and general application of the Civil Procedure Act 1997 are sufficient for these purposes in England and Wales.

## Clause 2: Interim freezing orders

- 67 Clause 2 inserts new sections 362I – 362P into POCA. These provisions allow for the freezing of property identified in an unexplained wealth order, thereby preventing the property being dissipated while it is subject to the order. An application for an interim freezing order may be made to the High Court as a subsidiary part of the UWO proceedings, but it must be made at the same time as the application for the UWO.
- 68 An interim freezing order may only be made if the court has made a UWO in respect of the property in question (section 362I(1)). It cannot be made in advance of a UWO and it is not an

alternative to freezing orders made under other provisions. In the case of no response to an order, an interim freezing order lasts for 48 hours from the end of the response period. If a response is forthcoming in the response time, the interim freezing order lasts for 48 hours after the response is received. The High Court must lift the interim freezing order on expiry of either 48 hour period (section 362(J)).

- 69 Section 362(K) provides that an interim freezing order may be varied, in particular to exclude certain property from the order, or to make provision for reasonable legal expenses, living expenses, or to carry on a trade, business, profession or occupation.
- 70 The High Court can also stay any other actions or legal processes that are ongoing whilst the interim freezing order is in place (section 362L).
- 71 Sections 362(M)-(O) cover the appointment and powers of a receiver.

### Clause 3: External assistance

- 72 New sections 362Q and 362R provide for the enforcement of a UWO overseas.
- 73 Section 362Q allows the enforcement authority may to a request for assistance in relation to the property to the Secretary of State with a view to it being forwarded to the overseas authority. The Secretary of State may forward the request to the government of the receiving country.
- 74 Section 362R provides for when an interim freezing order is in effect and a receiver has been appointed and the receiver may send a request for assistance to the Secretary of State with a view to it being forwarded to the overseas authority. The Secretary of State must forward the request for assistance. There is no discretion on the part of the Secretary of State. This is considered appropriate as the receiver is an officer of the court.

### Unexplained wealth orders: Scotland

#### Clauses 4-6: Unexplained wealth orders: Scotland

- 75 Clauses 4-6 insert new sections 396A - 396S into POCA and make equivalent provision for UWOs in Scotland.

### Disclosure orders

#### Clause 7: Disclosure orders: England, Wales and Northern Ireland

- 76 A disclosure order enables a law enforcement officer to issue a notice requiring any person who has relevant information to provide information or documents in connection with inter alia a confiscation investigation. Clause 7 amends section 357 ((a-c) and adds a new sub-section (ba)), and section 358 (adding a new sub-section (ba)) and 362 of POCA to allow an "appropriate officer", on the authority of a "senior appropriate officer", to apply for disclosure orders in both confiscation and money laundering investigations. An appropriate officer is defined in section 378 and is an investigator such as a constable, officer of HMRC, an Immigration Officer, a NCA officer or an AFI. A senior appropriate officer is also defined in section 378 of POCA. Previously the application for a disclosure order for a confiscation investigation could be made only by a prosecutor. The amendment to section 357 alters removes that power. Amended section 358 allows the making of a disclosure order if there are reasonable grounds to suspect that the person specified in the application has committed a

money laundering offence.

- 77 Clause 7 also amends section 362 of POCA to clarify that an appropriate officer applying to for vary or discharge a disclosure order need not be the same officer who applied for the order.

## Clause 8: Disclosure orders: Scotland

- 78 Clause 8 makes equivalent amendments to the disclosure order provisions for Scotland in Part 8 of POCA.

## Chapter 2: Money Laundering

### Disclosure of information

#### Clause 9: Power to extend moratorium period

- 79 The money laundering offences are contained in sections 327-329 of POCA. The acts referred to in these offences are known collectively as “prohibited acts” and include concealing, arranging for the transfer of; or acquiring and using criminal property. There is a defence to each of these offences where a person has made an “authorised disclosure” and they have not been refused consent to carry out a “prohibited act”. Where consent is refused, then the person making the report may not rely upon the defence should they carry out a “prohibited act” for a period of 31 days from the date of the notice of refusal. This is known as the “moratorium period”. Clause 9 inserts, in Part 7 of POCA sections 335(6A), 336(8A) and 336A to 336C, which provide a scheme for the extension of the moratorium period beyond 31 days.
- 80 Amendments to section 335 and 336 provide that the moratorium period may be extended by court order. Section 336A provides that, to extend the moratorium period, an application must be made to the relevant court before the end of an existing moratorium period. The court may only grant an extension where it is satisfied that: an investigation is being conducted diligently and expeditiously; further time is required; and the extension is reasonable. The court may extend the moratorium period for up to 31 days. The Court may not grant an extension if the effect would be to extend the period by more than 186 days (in total) beginning with the day after the end of the 31 day period mentioned in section 335(6) or (as the case may be) section 336(8) of POCA 2002.
- 81 Section 336B provides that an interested person or their representative may be excluded from extension proceedings and provides a process for withholding specified information from an interested person or their representative during extension proceedings. An application may be made to the relevant court to withhold information from any interested person or their representative. Where such an application is made, the court must exclude any interested person or their representative from the hearing, to determine whether the material should be withheld. The relevant court may order that material is withheld where there are reasonable grounds to believe that disclosure would lead to evidence of an offence being interfered with or harmed, the gathering of information about the possible commission of an offence would be interfered with, a person would be interfered with or physically injured, the recovery of property would be hindered, or national security would be put at risk. This section also provides for further rules of court, to make provision as to the practice and procedure to be followed in relation to these proceedings.
- 82 Section 336C provides a number of definitions. An “interested person” is defined as the person who made the relevant disclosure and any person who appears to have an interest in

the property that would be subject to the prohibited act. The section provides a list of who may make an application under for a moratorium extension and/or application to withhold of material, including authorities which may be conducting an investigation domestically or on behalf of an overseas authority.

## Clause 10: Sharing of information between bodies in the regulated sector

- 83 Clause 10 inserts, in Part 7 of the POCA, after s339ZA, new sections 339ZB – 339ZG, which make provision for the voluntary sharing of information between bodies in the regulated sector (as defined by Schedule 9 of POCA), and between those bodies and the NCA, in connection with suspicions of money laundering.
- 84 Section 339ZB allows a person in a regulated sector business to disclose information, on a voluntary basis, which came to them in the course of their business, with another person in regulated sector business, where the person has suspicion that the information may assist in identifying whether a person is engaged in money laundering. Section 339ZB also allows an authorised officer of the NCA to request a person in a regulated sector business to provide information on the grounds of another person being engaged in money laundering. The section sets out the conditions for the information sharing to take place, including the requirement for the information sharing between regulated sector businesses to be notified to the NCA when the information sharing begins.
- 85 Section 339ZC sets out the requirements for a request to disclose information. It also sets out the requirements for a notification to the NCA to be made where information sharing takes place.
- 86 Section 339ZD sets out that the notification of information sharing by regulated sector businesses to the NCA satisfies the reporting requirements of section 330 (Failure to disclose: regulated sector). The notification takes place at the start of the process of sharing, and provides legal cover from civil liability. This includes the provision of a joint disclosure report in the NCA by two or more regulated sector businesses, where those businesses have been sharing information, at the closure of the sharing of information. The joint disclosure report must be approved by the nominated officer of each organisation involved in sharing information. The section also sets out the timeframe for information sharing to take place. Where the request is made by the NCA, the applicable period will be specified by the NCA. Where the request is made by the regulated sector business, the applicable period is 28 days.
- 87 Section 339ZE set out that the reporting requirements of section 330 are only met for the suspicion in connection with which the required notification is made, or matters known, suspected, or believed as a result of making the disclosure request. Where there is suspicion outside this, the provisions pf 339ZD do not apply.
- 88 Section 339ZF provides that a disclosure made in accordance with these provisions will not breach an obligation of confidence owed by the disclosing entity, or any other restriction on the disclosure of information.
- 89 Section 339ZG provides interpretation of the terms used in this clause.

## Clause 11: Further information notices and orders

- 90 Clause 11 inserts new sections 339ZH to 339ZM into Part 7 of POCA, to allow an authorised officer of the NCA to require any person in the regulated sector to provide further information in relation to a disclosure made to the NCA under sections 330, 331 and 338 of

POCA.

- 91 Section s339ZH allow the authorised officer to direct the further information by way of a “further information notice”, and if this information is not provided, to be able to apply for a “further information order” from a magistrates’ court (or sheriff’s court in Scotland). The information requested must be that which would be necessary for the purposes of the NCA’s investigative functions, including to assist in investigating whether a person is engaged in money laundering, or whether a money laundering investigation should be started. The order must specify how the further information is to be provided, and the date by which it is to be provided. A further information order requires the person to provide further information in relation to anything contained in the initial disclosure. The information requested must be that which would be necessary to assist the authorities.
- 92 Section 339ZI applies where the NCA has received a request from an overseas authority, and provides that the NCA can give a further information notice to a person carrying on business in the regulated sector in pursuance to that request, providing certain requirements are met. These include there being a corresponding disclosure arrangement in that country, and a corresponding money laundering offence.
- 93 Section 339ZJ provides for a court to make a further information order, if the further information notice is not complied with. If a person fails to comply with the further information order, then they may be ordered to pay a monetary penalty of up to £5000.
- 94 Section 339ZK provides that such statements made by a person, in response to a further information notice or order, may not be used in evidence against that person in criminal proceedings, unless the limited exceptions provisions in sub-section (2) apply.
- 95 Section 339ZL sets out the process for appeals against a decision on an application for a further information order. The appeal can be made by any person who was a party to the proceedings on the application. On appeal, the relevant court may make, discharge or vary an order. Section 339ZM provides that a further information order does not oblige the person to provide legally privileged information. Sub-section (3) also provides that any information provided is given immunity from any restriction on the disclosure of information.
- 96 Section 339ZM provides for exemptions from the further information order for provision of privileged information. By virtue of sub-section (3), any information provided is given immunity from any restriction on the disclosure of information such as confidentiality clauses in contracts or the law of confidence. It also provides for the discharge or variance of a further information order.

## Chapter 3: Civil Recovery

### Clause 12: Forfeiture of certain personal (or moveable) property

- 97 Clause 12 inserts, in Part 5 of POCA, a new Chapter 3A, which make provision for the seizure and recovery of listed types personal or moveable property (“listed assets”) that are the proceeds of unlawful conduct or intended for use in such conduct. The provisions build on existing powers in Chapter 3, to seize and recover cash that is the proceeds of unlawful conduct or intended for use in such conduct. The definition of unlawful conduct can be found in section 241.
- 98 Listed assets are defined by section 303B. This section also provides that the Secretary of State, following consultation with Scottish Ministers, may proscribe by order additional assets by regulations. The new powers may only be exercised where the suspected listed asset or assets

exceed the threshold set under 303Y.

- 99 Section 303C provides that the search powers will only be exercisable on private premises where the constable, customs officer or AFI has lawful authority to be present. Sub-sections (5) and (6) include the power to search vehicles and persons.
- 100 Section 303D sets out the conditions under which the powers of search may be used.
- 101 Section 303E provides that the search powers may only be used where prior judicial authority has been obtained or, if that is not practicable, with the approval of a senior officer.
- 102 Section 303F provides that where the search powers are not approved by a judicial authority prior to the search, and any listed asset is either not seized or is released before the matter comes before a court, the constable, customs officer or AFI must prepare a written report and submit it to an independent person, appointed by the Secretary of State, in relation to England and Wales, by Scottish Ministers in relation to Scotland, or by the Department of Justice in relation to Northern Ireland. This report must state why the constable, customs officer or AFI believed that the powers were exercisable and why it was not practicable to obtain judicial authority for the search.
- 103 Section 303G provides that a code of practice must be made by the Secretary of State in connection with the exercise of the search powers in 303C.
- 104 Section 303H provides that a code of practice must be made by the Scottish Ministers in connection with the exercise of the search powers in 303C in Scotland.
- 105 Section 303I provides that a code of practice must be made by the Department of Justice in connection with the exercise of the search powers in 303C in Northern Ireland.
- 106 Section 303J provides that a constable, customs officer or AFI may seize any listed asset or assets found, if he has reasonable grounds for suspecting that the listed asset or assets are recoverable property or intended for use in unlawful conduct and where the value the listed asset or aggregate value of listed assets exceeds the minimum threshold (under 303Y). Under sub-section (2) a constable, customs officer or AFI may seize a listed asset where that asset cannot reasonably be divided and only part of that asset is under suspicion (provided that part meets the minimum threshold).
- 107 Section 303K provides that any listed asset seized by a constable, customs officer or AFI may only be detained for an initial period of six hours. It may be further detained for a period of 42 hours with the approval of a senior officer.
- 108 Section 303L provides that the detention of any listed asset may be extended by a judicial authority up to a maximum of two years (from the first order). To make such an order, the judicial authority must be satisfied that there are reasonable grounds for suspecting that the continued detention is justified, for the purposes of investigating the property's origin or the property's intended use, or continued detention is justified because consideration is being given to the bringing of criminal proceedings or such proceedings have been commenced and not concluded.
- 109 Section 303M provides for the testing of the listed property to determine whether it is a listed asset, and that it must be safely stored while this is done.
- 110 Section 303N provides that the listed assets may be released to the person from whom they were seized where a judicial authority is satisfied, on application by the person from whom the property was seized, it is not recoverable property or is not intended for use in unlawful conduct.

- 111 Section 303O provides that a judicial authority may order the forfeiture of property or any part of it if satisfied that it is recoverable property or is intended for use in unlawful conduct, and defines who may apply for forfeiture.
- 112 Sections 303P to 303R explain how associated property and joint property are to be dealt with when forfeiture is ordered.
- 113 Section 303P defines “associated property” (sub-section (3)) and defines an “excepted joint owner” for the purpose of considering forfeitable property of a joint tenant.
- 114 Section 303Q provides that a judicial authority may order that a person who holds associated property or who is an excepted joint owner may retain the property but must pay the law enforcement agency a sum equivalent to the value of the recoverable share. This section applies where there is agreement amongst the parties as to the extent of the recoverable portion of the property.
- 115 Section 303R describes how a judicial authority can deal with a person who holds associated property or who is an excepted joint owner but where there is no agreement under section 303Q. If an order for forfeiture of part of the property is made, and the court considers it is “just and equitable” to do so, it may also order that the excepted joint owner’s interest will be extinguished, or that the excepted joint owner’s interest will be severed, and it may order that a payment be made to that individual.
- 116 Section 303S provides for a right of appeal against a forfeiture decision made under sections 303O and 303R.
- 117 Section 303T provides that the relevant law enforcement agency property must realise the property or make arrangements for its realisation, subject to any appeal rights against the forfeiture being exhausted.
- 118 Section 303U sets out the order in which the proceeds realised should be applied.
- 119 Section 303V provides for the true owner of the property to apply for its release.
- 120 Section 303W provides that where no forfeiture is made, following seizure, the person from whom the property was seized, or the person to whom the cash belongs, may apply to the court for compensation, where the circumstances are exceptional.
- 121 Section 303X provides for prosecutors to appear in proceedings.
- 122 Section 303Y sets the minimum value threshold below which these powers do not apply. It also provides a power for the Secretary of State to amend this figure by Regulations.
- 123 Section 303Z specifies that where an AFI makes an application under this section, subsequent steps in any proceedings can be taken a different AFI of the same description.

### Clause 13: Forfeiture of money held in bank and building society accounts

- 124 Clause 13 inserts, in Part 5 of POCA, new sections 303Z1 – 303Z19, which make provision for the freezing and forfeiture of bank and building society accounts, where those accounts contain the proceeds of unlawful conduct (i.e. criminality).
- 125 Section 303Z1 allows a senior officer (as defined in 303Z2(7)) to apply for an account freezing order (AFO) on bank and building society accounts, where there are reasonable grounds to suspect that the money in them is recoverable property or is intended by any person for use in unlawful conduct. The AFO can be made without notice, if notice of application would prejudice the taking of any steps to later forfeit monies under this section.

- 126 The AFO prohibits any person from dealing with the account to which the order applies. The AFO must be applied for at a magistrates' court in England, Wales and Northern Ireland, or to the Sheriff in Scotland. The funds within the account remain with the bank or building society.
- 127 Section 303Z2 sets out a number of restrictions on applications for the AFO, including where an account is excluded, or where the amount is below the minimum amount set by the Secretary of State, as defined in section 303Z8.
- 128 Section 303Z3 provides that the court may make the order, if is satisfied that the funds in the account (whether all or in part), are either recoverable property, or are intended for use in unlawful conduct. The court sets the timeframe for the freezing order which must be no more than two years.
- 129 Section 303Z4 allows a court to vary or set aside an account freezing order at any time, and can also do so upon application by any person affected by such an order. This is at the discretion of the court.
- 130 Section 303Z5 allows the court to make exclusions from the restriction on activity on the account for the purpose of meeting living expenses or to allow a person to carry on a business or trade. It also permits exclusions for legal expenses.
- 131 Section 303Z6 provides that a court can stay any other legal process in relation to the account to which the AFO applies.
- 132 Section 303Z7 defines the term "bank".
- 133 Section 303Z8 defines that the minimum amount of funds that an account must contain will be specified in regulations made by the Secretary of State, after consultation with the Scottish Ministers and with the Department of Justice in Northern Ireland.
- 134 Section 303Z9 allows a senior officer to issue an "account forfeiture notice", which is a notice for the purposes of forfeiting the funds in an account. The funds must be subject to an account freezing order for an account forfeiture notice to be served. This is an administrative procedure.
- 135 The senior officer may give a notice that they intend to seek forfeiture of the balance of the account, provided that they are satisfied that the contents are either recoverable property, or are intended to be used in unlawful conduct. The account forfeiture notice must set out the amount to be forfeited, the period for objecting to the forfeiture, and the address to which any objections must be sent. The period for objecting must be at least 30 days. An objection may be made by anyone, in writing. If no objection is received, at the end of the period the amount of money stated in the account forfeiture notice will be forfeited, and the bank or building society must transfer that money into the interest bearing account nominated by the senior officer. An objection does not prevent forfeiture of the money by court order under section 303Z14. It is not necessary for an account forfeiture notice to be sought if the senior officer wishes to seek forfeiture of the money by order of a court under section 303Z14.
- 136 Section 303Z10 requires the Secretary of State to make regulations about how an account forfeiture notice is to be given to the interested parties.
- 137 Section 303Z11 sets out the conditions under which an account forfeiture notice lapses. The AFN lapses if an objection is received; an application for forfeiture is made; or if the AFO is recalled or set aside. The section provides for a senior officer to either extend the period of the AFO, or to seek forfeiture of the money under 303Z14.
- 138 Section 303Z12 sets out the procedure for applying for an administrative forfeiture to be set

aside. The application must be made before the end of the objection period. It can be made after a longer period if the court is satisfied there are exceptional circumstances. The court must consider whether the forfeiture should be set aside, and if it determines that this is the case, it must consider whether the money should be forfeited through a forfeiture order under Section 303Z14. If the court determines that the funds should not be forfeited it must order the release of that money.

- 139 Section 303Z13 provides that any money forfeited under an account forfeiture notice is paid into the Consolidated Fund.
- 140 Section 303Z14 defines the procedure for the relevant court to order the forfeiture of the money in an account if the court is satisfied that the money is recoverable property, or it is intended for use in unlawful conduct. If the court determines that the money meets the criteria, the bank or building society must transfer the funds to an interest bearing account.
- 141 Section 303Z15 provides that, where a court declines to order the forfeiture of an asset, and the law enforcement agency appeals, it may also apply for an extension of the account freezing order pending the appeal.
- 142 Section 303Z16 provides for an appeal to be made against the forfeiture order. The time period for the lodging of an appeal is 30 days from the day that the court makes the order. If the appeal is upheld, it may order the release of the whole or part of the funds.
- 143 Section 303Z17 provides that any funds forfeited under order is paid into the Consolidated Fund.
- 144 Section 303Z18 provides that if an account freezing order is made and none of that money is later forfeited, the person by or for whom the account is operated may make an application to court for compensation. The amount of compensation is the amount the relevant court thinks reasonable, having regard to the loss suffered and any other relevant circumstances.
- 145 Section 303Z19 provides for prosecutors to appear in proceedings, if asked to and they consider it appropriate.

## **Chapter 4: Enforcement Powers and Related Offences**

### **Extension of powers**

#### **Clause 14: Serious Fraud Office**

- 146 Clause 14 makes a technical amendments to a number of provisions in sections of POCA, which allow the SFO officers to directly access to the asset preservation powers under Part 2 and 4 of POCA, the civil recovery powers under Part 5 and the investigation powers in Part 8.
- 147 Schedule 1 contains the consequential amendments to POCA.
- 148 The inclusion of SFO staff in the “appropriate officer”, “senior officer” and “senior appropriate officer” definitions under various provisions grant them direct access to asset preservation powers in confiscation proceedings, recovery of cash and investigatory powers.

#### **Clause 15: Her Majesty’s Revenue and Customs (HMRC)**

- 149 Clause 15 makes amendments to section 316 of POCA in relation to England, Wales and Northern Ireland to include HMRC in the definition of “enforcement authority”. This allows a member of staff of HMRC to bring forward civil recovery proceedings against property or any

person who they think holds recoverable property. “Recoverable property” is defined in sections 304 to 310 of POCA and essentially means the proceeds of crime or property that directly represents such. The amendment provides HMRC with the powers to bring civil recovery proceedings (section 243) and to make applications in connection with civil recovery proceedings such as: property freezing orders (section 245A) and interim receiving orders (section 246).

150 The inclusion of HMRC staff in the definition of “appropriate officer” and “senior appropriate officer” in Part 8 section 378 of POCA will allow them to apply for the orders and warrants to build a case for civil recovery proceedings.

### Clause 16: Financial Conduct Authority (FCA)

151 Clause 16 makes similar amendments to section 316 of POCA in relation to England, Wales and Northern Ireland, to include the FCA in the definition of “enforcement authority”.

152 The inclusion of FCA staff in the definition of “appropriate officer” and “senior appropriate officer” in Part 8 section 378 of POCA 2002 will allow them to apply for the orders and warrants to build a case for civil recovery proceedings.

### Assault and obstruction offences

#### Clause 17: Search and seizure warrants: assault and obstruction offences

153 Clause 17 inserts new section 356A into POCA, making it an offence to assault or willfully obstruct an appropriate person who is acting under the authority of a search and seizure warrant issued under section 352 of POCA. The definition of an appropriate person includes a NCA officer discharging a warrant in connection with two specified investigations, namely a civil recovery investigation or an exploitation proceeds investigation. It also includes an officer of the FCA and a member of staff of the CPS or the Public Prosecution Service for Northern Ireland, in relation to civil recovery investigations.

#### Clause 18: Assault and obstruction offence in relation to SFO officers

154 Clause 18 inserts new section 453B into POCA. This creates an offence of assaulting or obstructing an officer of the SFO who is exercising a relevant POCA search and seizure power. The “relevant powers” are detailed in sub-section (5).

#### Clause 19: Obstruction offence in relation to immigration officers

155 Clause 19 inserts new section 453C into POCA, providing an offence for resisting or wilfully obstructing immigration officers exercising a relevant POCA search and seizure power. The “relevant powers” are listed in sub-section (3).

#### Clause 20: External requests, orders and investigations: assault and obstruction offences

156 Clause 20 amends sections 444 and 445 of POCA to create offences of obstructing and assaulting AFIs who are exercising powers under those sections and Orders in Council made under those sections, namely the Proceeds of Crime Act 2002 (External Requests and Orders)

Order 2005 (SI 2005 No. 3181 as amended), The Proceeds of Crime Act 2002 (External Investigations) Order 2013 (SI 2013 No. 2605 as amended) and The Proceeds of Crime Act 2002 (External Investigations) Order 2014 (SI 2014 No. 1893 as amended).

157 Section 444 relates to external (overseas) requests and orders – for example the freezing of property in the United Kingdom which may be needed to satisfy overseas orders – and section 445 makes provision for investigative powers to be made available for in respect of overseas investigations.

## Chapter 5: Miscellaneous

### Meaning of “bank” etc.

#### Clause 21: Seized money (England and Wales)

158 Clause 21 is a technical amendment to section 67 of POCA (which deals with money held in a bank or building society account that may be used to satisfy a confiscation order) to provide a definition of “bank” following the repeal of the provision in the Banking Act 1987 that previously provided the definition.

#### Clause 22: Seized Money: Northern Ireland

159 This clause extends the powers in clause 21 to Northern Ireland.

### Miscellaneous provisions relating to Scotland

#### Clause 23: Seized money

160 Clause 23 inserts a new section 131ZA into Part 3 of POCA (confiscation: Scotland). This is intended to replicate in Scotland the effect of section 67 for England and Wales, and section 215 for Northern Ireland, although with certain modifications. It does that by providing for the High Court of Justiciary or the sheriff (as the case may be) to order any realisable property in the form of money held in a bank or building society account to be paid to the appropriate clerk of court in satisfaction of all or part of a confiscation order. The power is available only if (a) a confiscation order is made against the person holding the money concerned, and (b) an enforcement administrator has not been appointed under section 128 of POCA in relation to the money.

161 Unlike sections 67 and 215 of POCA, new section 131ZA will only apply to bank or building society accounts which are maintained by the person against whom the confiscation order is made, not accounts held in the name of third parties. It is anticipated that the recovery of any money held in an account maintained by a third party would, instead, be sought by (a) the prosecutor applying for the appointment of an enforcement administrator under section 128 of POCA, or (b) the enforcing court pursuing civil diligence under section 221 of the Criminal Procedure (Scotland) Act 1995, as applied by section 118 of POCA.

162 In addition, and subject to the same conditions, new section 131ZA allows the High Court of Justiciary or the sheriff (as the case may be) to order money which has been seized from an accused person to be paid to the appropriate clerk of court in satisfaction of all or part of a confiscation order made against that person. Such seized money takes the form of cash that is being detained by the Police Service of Scotland or HMRC for the purposes of, or in connection with, a criminal investigation or prosecution. This reflects “the best evidence rule” in Scottish criminal proceedings, which requires cash detained in connection with a criminal

investigation or prosecution to be lodged as a production in its original form (i.e. the actual notes seized) for use in court as evidence.

- 163 Any wilful failure to comply with such an order of the court will be dealt with as contempt of court.
- 164 The new section confers on the Scottish Ministers the power to amend it, by regulations, so as to apply the power to money held in an account maintained with other financial institutions or to other realisable cash or cash-like instruments or products, and to make the necessary provision for any such financial instrument or product to be realised into cash. This regulation-making power is subject to the affirmative procedure.

#### Clause 24: Recovery orders relating to heritable property

- 165 Clause 24 amends sections 266 and 267 in Part 5 of POCA (civil recovery of the proceeds etc. of unlawful conduct). This is to remove existing jurisdictional and procedural barriers that can delay the recovery of possession of heritable property (e.g. a house, flat or commercial premises) to which a recovery order applies. It provides a more efficient and effective means for the trustee for civil recovery to recover possession of heritable property in Scotland where the Court of Session makes a recovery order in respect of that property under section 266.
- 166 When a recovery order is granted, the property automatically vests in the trustee for civil recovery and the previous owner-occupier loses his/her title. Since the owner-occupier of property that is subject to a recovery order has no right or title to occupy the property, the appropriate way to recover possession in these circumstances is by warrant for ejection. However, a decree of removing will also be required to remove any sitting tenant(s) from heritable property to which a recovery order applies.
- 167 At present, the trustee for civil recovery has to seek recovery of possession through a separate process in the Sheriff Court. This process can take as long as a year and can lead to defenders rehashing arguments that were unsuccessful before the (superior) Court of Session. There is also a risk of the degeneration of the heritable property and that respondents in civil recovery proceedings will build up mortgage arrears which ultimately compromise the amount recovered. Such delays also permit those involved in criminality to continue to occupy the property, despite the fact that the Court of Session has determined that it was obtained through unlawful conduct. From a public policy perspective, this does not maximize the disruption of serious organised crime.
- 168 The amendments to sections 266 and 267 of POCA allow for the recovery of possession to be dealt with as part of the civil recovery proceedings (which themselves can take up to two years to conclude). New section 266(8ZA) requires the Court of Session, on the application of the Scottish Ministers (as the enforcement authority), to grant decree of removing and warrant for ejection in relation to any persons occupying heritable property in respect of which it makes a recovery order. New section 267(3)(ba) confers the function of enforcing such a decree and warrant on the trustee for civil recovery, in whom the property vests by virtue of the recovery order.

#### Clause 25: Money received by administrators

- 169 Clause 25 is a technical amendment to Paragraph 6 of Schedule 3 of POCA (which deals with money received by an administrator in Scotland) to provide a definition of “bank” following the repeal of the provision in the Banking Act 1987 that previously provided the definition.

## Other miscellaneous provisions

### Clause 26: Accredited financial investigators (AFIs)

- 170 Sections 47A-47S of POCA, which provide search and seizure powers in England and Wales prevent the dissipation of realisable property that may be used to satisfy a future confiscation order. Clause 26 amends section 47G to allow a civilian AFIs in a police force to obtain approval to use search and seizure powers from a senior police officer (an inspector). Such approval may be sought in cases where seeking the appropriate approval of a justice of the peace is not practicable. The amendment provided by clause 26 enables an AFI to seek the approval of a senior police officer as is the case with a constable.
- 171 Clause 26 makes a similar amendment to section 290 of POCA relating to civilian AFIs in a police force. It provides that they now have the powers to search for cash with the approval of a senior police officer (of at least inspector level). This replaces the need to define by secondary legislation authorising officers for police searches undertaken by civilian staff.
- 172 Clause 26 also makes equivalent amendments for Northern Ireland.

### Clause 27: Confiscation investigations: determination of the available amount

- 173 Clause 27 amends section 341(1) of POCA to extend the definition of a confiscation investigation so as to include the ability to investigate the amount available to a defendant for satisfying a confiscation order. This amount is known as the “available amount” and is the value of all the defendant’s property, minus certain prior obligations of the defendant’s such as earlier fines, plus the value of all tainted gifts made by the defendant (see section 9 of POCA). In considering the value of the confiscation order made against a defendant, the court will set an amount equivalent to the defendant’s benefit from their crime(s) unless the “available amount” is shown to be less, and in those cases the defendant is ordered to pay that lesser amount.
- 174 The extension of investigation powers will allow the police and others to test the “available amount” claimed made by a defendant. The requirement to prove to the court that the available amount to settle a confiscation order is less than the benefit figure is with the defendant, see section 7(2) of POCA. The amendment will also allow the police and others to investigate the financial position of a defendant in cases of a reconsideration under section 22 of POCA. Section 22 applies where the court made a confiscation order in an amount lower than the defendant’s assessed benefit because there was insufficient property at that time to satisfy an order in the full amount. An application can be subsequently made to the Crown Court for the court to recalculate the available amount in cases where the defendant is known to have obtained further property that could be used to satisfy a confiscation order up to the value, as previously assessed by the court, of the benefit they made from their criminality.
- 175 When calculating the amount that is available for a confiscation order, a court will take account of the factors in section 9 of POCA and will make a determination of the available amount based on the evidence provided. If a revisit is sought under section 22 of POCA by a relevant applicant, the court must make a new calculation of the available amount by applying section 9 as if it were making a determination under at the time of the original order. It is then for the court to determine in all the circumstances whether to vary the confiscation order (see section 22(3)).
- 176 This amendment has the effect that investigatory powers in Part 8 of POCA can be used to obtain evidence in support of an application under section 22, to enable the court to reapply

section 9 as required.

### Clause 28: Confiscation orders and civil recovery: minor amendments

177 Clause 28 makes minor amendments to sections 82, 245D and section 306 of POCA and section 8 of the Serious Crime Act 2015. These amendments seek to clarify the definition of “free property” in section 82 of POCA, update POCA to ensure that it is consistent with legislative changes to the concept of “distress”, and extend the list of situations whereby mixed property – i.e. criminal property mixed with “clean” property – can be recovered. The non-exhaustive list now includes property that has been used to redeem a mortgage.

178 The amendments also include extend the provisions in the Serious Crime Act 2015 that allow for the writing-off of orders to include orders made under the Drug Trafficking Offences Act 1986.

## Part 2: Terrorist property

### Disclosures of information

#### Clause 29: Disclosure orders

- 179 Clause 29 and Schedule 2 introduce a disclosure order regime under TACT. Schedule 2 amends TACT by inserting a new Schedule 5A. Schedule 5A makes provision for the making of disclosure orders in connection with investigations into terrorist financing offences. Part 1 of the Schedule makes provision for England and Wales and Northern Ireland, and Part 2 of the Schedule makes equivalent provision for Scotland. Paragraph numbers below refer to paragraphs in the new Schedule 5A Part 1 of TACT.
- 180 Paragraphs 1 to 8 of Part 1 provide a number of interpretations. A judge to whom, and the court in which, an application for disclosure order is made in the context of England, Wales and Northern Ireland. Paragraph 4 defines a terrorist financing investigation as a terrorist investigation into the commission, preparation or instigation of an offence under any of sections 15 to 18, or the identification of terrorist property or its movement or use.
- 181 Paragraph 9 allows an appropriate officer to apply to a Crown Court judge for a disclosure order so far as relating to a terrorist finance investigation.
- 182 Sub-paragraph 9(3) defines a disclosure order as an order authorising an officer to give anyone he thinks has relevant information a written notice requiring that person to answer questions, provide information or to produce documents on any matter that is relevant to the confiscation investigation.
- 183 Sub-paragraph 10(2) sets out the requirements for making a disclosure order, which include that there must be reasonable grounds for suspecting that a person has committed an offence under any of sections 15 to 18, or that the property specified in the application is terrorist property. There must also 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 to the terrorist financing investigation concerned; and 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.
- 184 Paragraph 11 inserts the offences for failing to comply with the requirements imposed by a disclosure order. The offences are committed if, without reasonable excuse, the person fails to comply with a requirement imposed under a disclosure order. A person guilty of an offence under paragraph 11 is liable on summary conviction in England and Wales, to either or both imprisonment for a term not exceeding 51 weeks, or a fine. A person guilty of an offence under paragraph 11 is liable on summary conviction in Northern Ireland, to either or both imprisonment for a term not exceeding six months; or a fine not exceeding level 5 on the standard scale.
- 185 Paragraph 12 preserves the privilege against self-incrimination by providing that a statement made in response to a disclosure order may not be used in evidence against the statement maker in criminal proceedings. Paragraph 12(2) sets out certain exceptions to this rule. Paragraph 12 does not make any reference to limitations of use of other information or material produced by that person in response to the disclosure order.
- 186 Sub-paragraph 13(1) provides that a disclosure order does not confer the right to adduce information or material from a person which would come within the scope of legal professional privilege (LPP), save that a lawyer can be required to provide the name and address of a client.

- 187 Paragraph 14 makes supplementary provisions in relation to disclosure orders. Paragraph 14(1) provides that an application for a disclosure order may be made ex parte to a judge in chambers. Paragraph 14(4) makes provision for the court to vary or discharge a disclosure order, whilst paragraph 14(3) provides that an application for variation or discharge can be made either by the person who applied for the order or any person affected by the order.
- 188 Part 1 of the Schedule makes provision for disclosure orders in England and Wales and Northern Ireland. Part 2 of the Schedule makes equivalent provision for Scotland. The approach in Scotland varies from that in England, Wales and Northern Ireland in some aspects, for example, applications for disclosure orders in Scotland are made to the High Court of Justiciary.

### Clause 30: Sharing of information within the regulated sector

- 189 Clause 30 inserts, after section 21C of TACT, new sections 21CA – 21CF, which make provision for the voluntary sharing of information between bodies in the regulated sector, and between those bodies and the police or the NCA, in connection with suspicions of terrorist financing or the identification of terrorist property or its movement or use.
- 190 Section 21CA allows a person (A) in a regulated sector business to disclose information, which came to them in the course of their business, with another person in regulated sector business (in response to a request from them or the police), where (A) is satisfied that disclosing the information may assist in determining any matter in connection with a suspicion that a person is involved in the commission of a terrorist financing offence or identifying terrorist property. The person making the request must notify a constable that a request is to be made, unless a constable has asked requested the disclosure.
- 191 Section 21CB specifies the information to be provided in a disclosure request or the notification to a constable.
- 192 Section 21CC specifies the effect of section 21CA on disclosures under 21A of TACT, in particular that the making of a notification in good faith under 21CA or the making of a joint disclosure report in good faith satisfies the requirement on specified persons to make a required disclosure. Section 21CC also sets out the information to be provided as part of the disclosure, and the timeframe for information sharing to take place. Where the request is made by a constable, the applicable period will be specified by a constable. Where the request is made by the regulated sector business, the applicable period is 28 days, however a constable may vary the period of 28 days by giving written notice to the person who made the required notification.
- 193 Section 21CD provide some limitations on the provisions within section 21CC, in particular the fact that the provisions in 21CC do not remove the requirement to make disclosures under 21A of the Terrorism Act 2000 on matters which are wider than the disclosure request.
- 194 Section 21CE provides that those regulated sector businesses which share information under the provisions in good faith do not breach any restrictions on the disclosure of information (however imposed). This section also clarifies that that a relevant disclosure may not include information obtained from a UK law enforcement agency (as defined within the section) unless that agency consents to the disclosure. See also consequential amendments to section 21G (tipping off: other permitted disclosures) of TACT and to the Data Protection Act 1998 which are contained within paragraphs 3 to 7 of Schedule 5.
- 195 Section 21CF provides interpretation of terms within this clause.

## Clause 31: Further information notices and orders

- 196 Clause 31 inserts, after section 22A of TACT, new sections 22B – 22G, which make provisions for a law enforcement officer to request and then require more information from the regulated sector in relation to a disclosure made to them under Part 3 of TACT, about a suspicion that any money or other property is terrorist property or is derived from terrorist property.
- 197 Section 22B allows a law enforcement officer to give a further information notice to the person who made the disclosure or any other person carrying out business in the regulated sector. The notice must be given in writing and specify what information is to be provided, how and by when and explain that failure to comply may result in a further information order. Under Section 22B a law enforcement officer includes a constable, an authorised NCA officer or a designated financial investigator. .
- 198 Section 22C allows for a further information notice to be served by an authorised NCA officer (only) to the regulated sector where the NCA have received a request from an authority of a foreign country. The NCA authorised officer must be satisfied that the request relates to a corresponding disclosure requirement in place in that country, that the person to whom the notice is given is in possession of all or part of the information and that the information is likely to be of substantial value.
- 199 Section 22D allows for a magistrates' court or the sheriff (in Scotland), on receipt of an application authorised by a senior law enforcement officer, to make a further information order where a further information notice has not been responded to within the time specified and where it is reasonable in the circumstances for the further information required to be provided. The order must specify what is to be provided, how and by when. Failure to comply with an order can result in a fine not exceeding £5,000. The Secretary of State may, by regulations made by statutory instrument change this amount.
- 200 Section 22E specifies that a statement made by a person in response to these provisions may not be used in evidence against the person in criminal proceedings and sets out some exceptions to this.
- 201 Section 22F allows for an appeal against a further information order to be made and specifies the relevant appeal court and allows for an order to be discharged or varied.
- 202 Section 22G provides supplementary provisions in relation to privileged information, restrictions on disclosure of information, hearings in private and allows for rules of court to specify the proceedings to be applied in such cases.

## Civil recovery

### Clause 32: Forfeiture of Certain Personal (or Moveable) Property

- 203 Clause 32 and inserts, in Schedule 3 insert into Schedule 1 of the Anti-Terrorism, Crime and Security Act 2001 (ATCSA) new sections into Part 4A, which make provision for the seizure and recovery of listed types personal or moveable property (“illicit assets”). The property may be seized where it is intended to be used for the purposes of terrorism, or consists of resources of an organisation which is a proscribed organisation, or where it is property which is earmarked as terrorist property (by reference to Part 5 of Schedule 1 to ATCSA ). These are new provisions in ATCSA, but build on existing powers in Part 5 Chapter 3 of POCA to seize and recover cash that is the proceeds of unlawful conduct or intended for use in such conduct.
- 204 In paragraph 10A, listed assets are defined by sub-paragraph (1). This also provides that the Secretary of State may by regulations add or remove items

- 205 Paragraph 10B provides that an authorised officer may seize any listed assets (as defined by sub-paragraph (1) to (5)), if he has reasonable grounds for suspecting that the listed asset or assets is intended for use in terrorism, consists of the resources of a proscribed organisation, or is property which is earmarked for terrorism within the meaning of Part 5 of Schedule 1 to ATCSA (sub-paragraph 10B(1)). Under sub-paragraph 10B(2), an authorised officer may seize a listed asset where that asset cannot reasonably be divided and only part of that asset is under suspicion.
- 206 Paragraph 10C provides that any listed asset seized by a constable, customs officer or immigration officer may only be detained for an initial 48 hours.
- 207 Paragraph 10D provides that the detention of any listed asset may be extended by a judicial authority initially for three months, and up to a maximum of two years (from the first order). To make such an order, the judicial authority must be satisfied that there are reasonable grounds to suspect that the item is a terrorist asset and that the continued detention is justified, for the purposes of investigating the property's origin or the property's intended use, or continued detention is justified because consideration is being given to the bringing of criminal proceedings or such proceedings have been commenced and not concluded.
- 208 Paragraph 10E provides that an authorised officer may carry out tests of any item of property seized under these powers for the purpose of establishing whether it is a listed asset. Paragraph 10E(2) provides that the property must be safely stored throughout the period during which it is detained.
- 209 Paragraph 10F provides that the listed assets may be released to the person from whom they were seized. The listed assets may be released where a judicial authority is satisfied, on application by the person from whom the property was seized, that the conditions for detention are no longer met. A constable, customs officer or immigration officer may release all or part of the property if the detention can no longer be justified (providing the judicial authority has been notified).
- 210 Paragraph 10G provides that a judicial authority may order the forfeiture of property or any part of it if satisfied that it is intended for use in terrorism, that it is the resources of a proscribed organisation, or that it is property earmarked as terrorist property.
- 211 Paragraphs 10H to 10K explain how associated property and joint property are to be dealt with when forfeiture is ordered.
- 212 Paragraph 10H defines "associated property" (at sub-paragraph (3)) and defines an "excepted joint owner" (at sub-paragraph (5)) for the purpose of considering forfeitable property of a joint tenant.
- 213 Paragraph 10I provides that a judicial authority may order that a person who holds associated property or who is an excepted joint owner may retain the property but must pay the law enforcement agency a sum equivalent to the value of the recoverable share. This section applies where there is agreement amongst the parties as to the extent of the recoverable portion of the property. Sub-paragraph (2) provides for the amount that should be paid. Sub-paragraph (5) provides that the order may include any provision vesting, creating or extinguishing any interest in property. Where there has been a loss as result of seizure and subsequent detention, sub-paragraph (3) provides that the parties may agree a reasonable reduction in the payment. Where there is more than one item of associated property or excepted joint owner, under sub-paragraph (6) the payment to be made is to be agreed between all parties and law enforcement agency seeking forfeiture. Sub-paragraph (8) provides for how the amount received must be applied.

- 214 Paragraph 10J describes how a judicial authority can deal with a person who holds associated property or who is an excepted joint owner but where there is no agreement under sub-paragraph 10I. If the court considers it is “just and equitable” to do so (sub-paragraph (2) it may order for the forfeiture of the associated property or for the excepted joint owner’s interest to be extinguished, or order for the excepted joint owner’s interest be severed (sub-paragraph (1)). Where the court orders that interest to be extinguished it may order that the person who holds the associated property or who is an excepted joint owner pay the law enforcement agency on whose behalf the constable, customs officer or AFI sought forfeiture, In making these decisions the court must have regard to the rights of the persons and the value to them of the property, as well as the interest of the relevant law enforcement agency in receiving the realised proceeds (sub-paragraph (4)). Where there has been a loss as result of seizure and subsequent detention, sub-paragraph (5) and (6) provide that the court must require reasonable compensation by the relevant law enforcement agency.
- 215 Paragraph 10K provides for a right of appeal against a forfeiture decision made under Paragraph 10G. Paragraph 10L sets out how the right of appeal will operate in certain circumstances where an organisation is challenging its status as a proscribed organisation, as defined by section 3 of the Terrorism Act 2000.
- 216 Paragraph 10M provides that the relevant law enforcement agency property must realise the property or make arrangements for it realisation, subject to any appeal rights against the forfeiture being exhausted.
- 217 Paragraph 10N sets out the order in which the proceeds realised should be applied.
- 218 Paragraph 10O provides for the true owner of the property to apply for its release.
- 219 Paragraph 10P provides that where no forfeiture is made, following seizure, the person from whom the property was seized, or the person to whom the cash belongs, may apply to the court for compensation.

### Clause 33: Forfeiture of money held in bank and building society accounts

- 220 Clause 33 and Schedule 4 insert into Schedule 1 of ATCSA new Part 4B, which make provision for the freezing and forfeiture of bank and building society accounts, where those accounts contain monies which are intended to be used for terrorism, the resources of a proscribed organisation or monies earmarked as terrorist property (by reference to Part 1 and Part 5 of Schedule 1 to ATCSA).
- 221 Section 10Q allows a “senior officer” , or an “enforcement officer” with senior officer approval, (as these terms are defined in sub-paragraph 7) to apply for an AFO on bank and building society accounts, where there are reasonable grounds to suspect that the money in them meets the definition above. The AFO can be made without notice, if notice of application would prejudice the taking of any steps to later forfeit monies under this section.
- 222 The AFO prohibits each person by or for who the account to which the order applies is operated, from making withdrawals or payments from the account. The AFO must be applied for at a magistrates’ court in England, Wales and Northern Ireland, or to the Sheriff in Scotland. The funds within the account remain with the bank or building society.
- 223 Section 10R defines the term “bank”.
- 224 Section 10S provides that the court may make the order, if is satisfied that the funds in the account (whether all or in part) meet the relevant definition in 10Q.

- 225 The court sets the timeframe for the freezing order which may not exceed two years.
- 226 Section 10T allows a court to vary or set aside an account freezing order at any time, and can also do so upon application by any person affected by such an order. This is at the discretion of the court. It also allows the court to make exclusions from the restriction on activity on the account for the purpose of meeting living expenses or to allow a person to carry on a business or trade. It also permits exclusions for legal expenses.
- 227 Section 10U allows the court to make exclusions from the restriction on activity on the account for the purpose of meeting living expenses or to allow a person to carry on a business or trade. It also permits exclusions for legal expenses.
- 228 Section 10V provides that a court can stay any other legal process in relation to the account to which the AFO applies.
- 229 Section 10W allows a senior officer to give an “account forfeiture notice”, which is a notice for the purposes of forfeiting the funds in an account by administrative procedures. The funds must be subject to an account freezing order for an account forfeiture notice to be served.
- 230 The senior officer may give a notice that they intend to seek forfeiture of the balance of the account, provided that they are satisfied that the contents are intended to be used for terrorism, consists of the resources of a proscribed organisation or monies earmarked as terrorist property (by reference to Part 1 and Part 5 of Schedule 1 to ATCSA). The account forfeiture notice must set out the amount to be forfeited, the period for objecting to the forfeiture, and the address to which any objections must be sent. The period for objecting must be at least 30 days. An objection may be made by anyone, in writing. If no objection is received, at the end of the period the amount of money stated in the account forfeiture notice will be forfeited, and the bank or building society must transfer that money into the interest bearing account nominated by an enforcement senior officer. An objection does not prevent forfeiture of the money under section 10Z2. It is not necessary for an account forfeiture notice to be sought if the law enforcement agency decides instead to seek forfeiture of the money by order of a court under sub-section 10Z2(2).
- 231 Section 10X requires the Secretary of State to make regulations about how an account forfeiture notice is to be given.
- 232 Section 10Y sets out the conditions under which an account forfeiture notice lapses. The account forfeiture notice lapses if an objection is received; an application for forfeiture is made; or if the AFO is recalled or set aside. The section provides for a senior officer to either extend the period of the AFO under section 10T, or to seek forfeiture of the money under 10Z2.
- 233 Section 10Z sets out the procedure for applying for a forfeiture under the administrative procedure to be set aside. The application must be made before the end of the objection period. It can be made after a longer period if the court is satisfied there are exceptional circumstances. The court must consider whether the forfeiture should be set aside, and if it determines that this is the case, it must consider whether the money should be forfeited through a forfeiture order under section 10Z2. If the court determines that the funds should not be forfeited it must order the release of that money.
- 234 Section 10Z1 sets out the application of money forfeited under an account forfeiture notice.
- 235 Section 10Z2 defines the procedure for the relevant court to order the forfeiture of the money in an account if the court is satisfied that the money is recoverable property, or it is intended for use in unlawful conduct. If the court determines that the money meets the criteria, the bank or building society must transfer the funds to an interest bearing account.

- 236 Section 10Z3 provides that there will be a continuation of an account freezing order pending an appeal.
- 237 Section 10Z4 provides for an appeal to be made against the forfeiture order. The time period for the lodging of an appeal is 30 days from the day that the court makes the order. If the appeal is upheld, it may order the release of the whole or part of the funds.
- 238 Section 10Z5 provides for an extension to the time allowed for appeal in certain cases where a deproscription order is made.
- 239 Section 10Z6 provides that any funds forfeited under the order are paid into the Consolidated Fund.
- 240 Section 10Z7 provides that if an account freezing order is made and none of that money is later forfeited, the person by or for whom the account is operated may make an application to court for compensation. Section 10Z7(3) provides that the court may make an order to pay compensation if the applicant has suffered loss and if the circumstances are exceptional. The amount of compensation is the amount the relevant court thinks reasonable, having regard to the loss suffered and any other relevant circumstances.

## Accredited financial investigators

### Clause 34: Extension of powers to Accredited financial investigators (AFI)

- 241 Sub-section (1) provides that TACT is to be amended as set out in sub-sections (2) to (5).
- 242 Sub-section (2) inserts a new section 63F (designation of accredited financial investigators) into TACT, which make provision for civilian police staff in England and Wales or the Police Service of Northern Ireland who have been accredited under section 3 of POCA to be designated in relation to TACT or ATCSA, or in relation to particular provisions of either of those Acts, by a police officer of at least the rank of superintendent (who himself has been designated for this purpose by a “relevant senior officer”). The designation may be limited to specified purposes.
- 243 Sub-section (3) amends Part 1 of Schedule 5 to TACT to allow an appropriate officer to apply to a Circuit judge for an order for the purposes of a terrorist investigation so far as relating to terrorist property. The definition of an appropriate officer will extend to a designated AFI, within the meaning of new section 63F.
- 244 Sub-section (4) amends Schedule 6 to TACT to enable designated AFIs (within the meaning of new section 63F) to apply to a Circuit judge for a financial information order for the purposes of a terrorist investigation so far as relating to terrorist property.
- 245 Sub-section (5) amends Schedule 6A of TACT to enable designated AFIs (within the meaning of new section 63F) to apply for an account monitoring order for the purposes of a terrorist investigation so far as relating to terrorist property.
- 246 It also provides that, where an application for an account monitoring order was made by a designated AFI, the description of information specified in that order may be varied by a different designated AFI, and similarly that an application to discharge or vary an account monitoring order may be made by a different designated AFI.
- 247 Sub-section (6) inserts new paragraph 7A in Schedule 1 to ATCSA (forfeiture of terrorist cash).

## Clause 35: Offences in relation to financial investigators

- 248 Clause 35(1) inserts new section 120B into TACT. New section 120B of TACT inserts new Part 4C into Schedule 1 to ATCSA which provides for equivalent offences of assaulting or obstructing a designated financial officer who is exercising a power conferred on them under ATCSA.
- 249 This clause specifies that the offence of assaulting an AFI carries a sentence on summary conviction in England and Wales of imprisonment for a term not exceeding 51 weeks and in Northern Ireland, 6 months or a fine not exceeding level 5 on the standard scale.
- 250 Section 120B(5) defines the “relevant powers” that can be exercised by an AFI under TACT.
- 251 Section 120B(6) allows for changes to penalties for certain summary offences, in relation to the coming into force of the Criminal Justice Act 2003.
- 252 Clause 36(2) inserts a new paragraph 10A into Schedule 1 of ATCSA. This provides for equivalent offences of assaulting or obstructing an AFI who is exercising a power conferred on them under ATCSA.

## Part 3: Corporate offences of failure to prevent facilitation of tax evasion

### Preliminary

#### Clause 36: Meaning of relevant body acting in the capacity of an associated person

253 Clause 36 defines essential terms used in Part 3 of the Act and the new Corporate Failure to Prevent offences.

254 “Relevant Body” is defined in sub-section (2) as any corporation or partnership. Only relevant bodies can commit the new offences. They cannot be committed by an individual.

255 “Associated Person” is defined in sub-section (4). A person is associated with a relevant body if he or she performs services for or on behalf of that relevant body. Whether a person is associated is a question of function rather than form. The capacity in which the person acts is not determinative, the person may act as an employee, agent, contractor, sub-contractor, or consultant. What determines whether a person is associated is whether they act for or on behalf of the relevant body. Thus where a person does something on behalf of a relevant body, or does something for the relevant body that it needed to do, that person will be a person associated with the relevant body.

### Failure of relevant bodies to prevent tax evasion facilitation offences by associated persons

#### Clause 37: Failure to prevent facilitation of UK tax evasion offences

256 Clause 37, sub-section (1) creates the offence of corporate failure to prevent the facilitation of tax evasion in relation to UK taxes. The offence is committed by a relevant body where a person acting in the capacity of an associated person commits a tax evasion facilitation offence, that is, criminally facilitates another’s offence of tax evasion.

257 Tax evasion facilitation offence is defined in sub-section (5) as any offence under the law of any part of the UK committed by facilitating a UK tax evasion offence. It thus comprises being knowingly concerned in, or taking steps with a view to, the tax evasion of another, as well as aiding and abetting another person’s offence of tax evasion. However, the associated person does not commit a tax evasion facilitation offence when he or she inadvertently, or even negligently, facilitates another’s tax evasion. The facilitation by the associated person must be criminal under the existing law.

258 Moreover, the associated person must commit the tax evasion facilitation offence in the capacity of associated person. Where an employee criminally facilitates his or her partner’s tax evasion in the course of their private life and as a frolic of their own, they commit a tax evasion facilitation offence but not in the capacity of person associated with their employer. Therefore the employing relevant body does not commit the new offence.

259 Tax evasion offence is defined in sub-section (4), as an offence amounting to a cheat of the public revenue or any offence consisting of being knowingly concerned in or taking steps with a view to the fraudulent evasion of tax. It thus comprises conduct currently capable of being indicted as a cheat of the public revenue, or as a statutory fraudulent evasion offence, such as those found in section 72 of the Value Added Tax Act 1994 or section 106A of the Taxes Management Act 1970. The new offence is only committed where such a UK tax evasion offence has been committed. Where the taxpayer is non-compliant or engaged in avoidance

(even aggressive avoidance) falling short of fraud the new offence will not be committed.

260 Where a tax evasion offence has been committed and a person acting in the capacity of a person associated with the relevant body has committed a tax evasion facilitation offence, the relevant body will be guilty of the sub-section 7(1) offence, unless it can raise the defence in sub-section (2). This provides a defence where the relevant body has in force reasonable prevention procedures, that is, procedures designed to prevent persons associated with it from committing tax evasion facilitation offences (sub-section (3)). The defence is also available where it is not reasonable to expect the relevant body to have such procedures. It is only reasonable or proportionate procedures, as opposed to fool-proof or excessively burdensome procedures, that are required.

261 Guidance will be published to assist relevant bodies to devise reasonable prevention procedures (see clause 39 below).

### Clause 38: Failure to prevent facilitation of foreign tax evasion offences

262 Clause 38 creates an offence of corporate failure to prevent the facilitation of foreign tax evasion offences.

263 This offence is broadly similar to the offence created in clause 37 in relation to UK taxes. It is slightly narrower in scope, in that only certain relevant bodies can commit the foreign revenue offence. Clause 38(2) states that the offence can only be committed where the relevant body is incorporated under the law of the UK, the relevant body carries on part of its business from the UK, or where the associated person does the facilitating criminal act in the UK. Where a relevant body incorporated outside of the UK, that conducts no business from the UK, has an associated person carry out a criminal act abroad, the clause 38 foreign tax offence will not be committed.

264 Sub-section (5) gives effect to the requirement that there be “dual criminality”. A foreign tax evasion offence is defined as conduct that is criminal under the foreign law in question and would also be regarded by the UK courts as amounting to an offence of being knowingly concerned in, or taking steps with a view to, the fraudulent evasion of the tax. Thus the clause 39 offence cannot be committed where the acts of the associated person would not be criminal if committed in the UK, regardless of what the foreign criminal law may be.

265 Sub-section (6) likewise confirms the requirement of “dual criminality” in relation to the associated person’s act of facilitation. Even where the foreign criminal law renders inadvertent or negligent facilitation of a crime criminal, the new offence will not be committed as the requirement for “dual criminality” will not be met as UK law renders criminal only deliberate acts of facilitation.

## Guidance about prevention procedures

### Clause 39: Guidance about preventing the facilitation of tax evasion offences

266 Clause 39 requires the Chancellor of the Exchequer to publish guidance about the procedures that relevant bodies might put in place. This requirement is similar to the requirement in Bribery Act 2010 to publish guidance on how to prevent bribery.

267 Sub-section (7) enables the Chancellor to endorse guidance prepared and published by others. It will thus be possible for guidance prepared by, for example, a trade association addressing the particular risks arising within that sector of industry, to be endorsed by Government. This

would result in the overarching guidance under sub-section (1) being supported by consistent guidance more closely tailored to the sector of industry at hand.

## **Offences: general and supplementary provision**

### **Clause 40: Offences: extra-territorial application and jurisdiction**

268 Clause 40 confirms that (except in relation to scope for the foreign revenue offence – see sub-section (1)) it does not matter where any act or omission takes place. It does not matter whether the relevant body is formulated under the law of another country, or that the associated person does their criminal act of facilitation overseas, the new offences will be committed.

269 Thus, where a person acting in the capacity of a person associated to an overseas relevant body commits a tax evasion facilitation offence in relation to a UK taxpayer's tax evasion offence the new offence clause 37 offence will be committed and can be tried by the courts of the United Kingdom. The situation is just the same as where an individual abroad engages in criminal conduct that has its result in the United Kingdom or attempts such an offence from abroad. There are existing laws dealing with the trial of companies that would apply in the usual fashion.

270 Similarly, where a person acting in the capacity of a person associated to an UK relevant body commits a foreign tax evasion facilitation offence in relation to a foreign taxpayer's foreign tax evasion offence, the new clause 38 offence will be committed and can be tried by the courts of the UK. However, it is foreseen that in many cases it will be preferable for legal action to be taken in the foreign country suffering the tax loss, that being the convenient forum for such action.

### **Clause 41: Consent to prosecution under section 38**

271 Clause 41 requires the personal consent of the DPP, Director for Public Prosecution in Northern Ireland, or Director of the SFO before any prosecution is brought for the foreign revenue offence. Such a prosecution may raise complex issues around the public interest and the relationship of the United Kingdom with other countries necessitating this safeguard.

### **Clause 42: Offences by partnerships: supplementary**

272 Clause 42 makes procedural provision for prosecutions of partnerships and applies laws applying to the prosecution of companies to such cases.

## **Consequential amendments and interpretation**

### **Clause 43: Consequential amendments**

273 Clause 43 makes consequential amendments to various Acts governing criminal justice:

274 Sub-section (1) extends the investigatory powers in Part 2 of the Serious Organised Crime and Police Act 2005 to the new offences. For example, it will therefore be possible for the CPS to issue disclosure notices requiring people to provide evidence of the new offences.

275 Sub-section (2) amends the Serious Crime Act 2007 so as to make it possible to impose a Serious Crime Prevention Order upon a relevant body convicted of the new offences. Such an order can contain such prohibitions, restrictions or requirements as the court considers

appropriate for the purpose of protecting the public by preventing, restricting or disrupting involvement by the relevant body in serious crime.

276 Sub-section (3) amends the Crime and Courts Act 2013 so as to make Deferred Prosecution Agreements available for the new offences.

### Clause 44: Interpretation of Part 3

277 Clause 44 defines terms used in Part 3.

## Part 4: General

### Clause 45: Minor and consequential amendments

278 This clause gives effect to Schedule 5 which contains minor and consequential amendments to other enactments.

### Clauses 46 and 47: Power to make consequential provisions

279 Clause 46 enables, by regulations, to make further provision consequential upon the Bill, including consequential amendments to other enactments. Regulations can be made by the Secretary of State, Scottish Ministers and the Department of Justice in Northern Ireland.

280 Clause 47 provides that any such regulations which amend, repeal, revoke or otherwise modify provision in primary legislation are be subject to the affirmative resolution procedure, otherwise the negative resolution procedure applies. Sub-sections (2) and (3) require Scottish Ministers and the Department of Justice in Northern Ireland to consult with the Secretary of State before making regulations.

### Clause 48: Financial provisions

281 This clause sets out financial provisions relating to the Bill.

### Clause 49: Extent

282 This clause sets out the extent of the provisions in the Bill.

### Clause 50: Commencement

283 This clause provides for commencement.

284 Sub-section (8) to (11) enables the Secretary of State, the Scottish Ministers, the Department of Justice in Northern Ireland and The Treasury by regulations, to make transitional, transitory or saving provisions in connection with the coming into force of the provisions of the Act. Such regulations are not subject to any parliamentary procedure.

## Commencement

285 Clause 50(6) provides for itself the general provisions in clauses 46 to 49 and any other necessary provisions to come into force on Royal Assent. This clause provides for the provisions in clause 34 (extension of powers of AFIs) to come into force two months after Royal Assent. All other provisions will be brought into force by commencement regulations made by the Treasury (in relation to Part 3), the Scottish Ministers (in relation to clauses 23 and 25), the Department of Justice in Northern Ireland (in relation to paragraph 7-10 of Schedule 1 and clauses 22 and 26(3)) and the Secretary of State (in relation to all other provisions).

## Parliamentary approval for financial costs or for charges imposed

286 The additional expenditure arising from the Bill is subject to a Money Resolution. The House of Commons will be asked to agree that any expenditure arising out of the Bill that is incurred by the Government will be taken out of the money provided by Parliament. The Money Resolution will also authorise payments into the Consolidated Fund.

## Compatibility with the European Convention on Human Rights

287 The Home Secretary, the Rt Hon Amber Rudd MP, has made the following statement under section 19(1)(a) of the Human Rights Act 1998:

“In my view, the provisions of the Criminal Finances Bill are compatible with the Convention rights”

288 The Government will publish a separate memorandum with its assessment of compatibility of the Bill’s provisions with the Convention rights.

## Related documents

289 The following documents are relevant to the Bill and can be read at the stated locations:

- The Serious and Organised Crime Strategy 2013  
([https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/248645/Serious\\_and\\_Organised\\_Crime\\_Strategy.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/248645/Serious_and_Organised_Crime_Strategy.pdf))
- The National Risk Assessment 2015  
([https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/468210/UK\\_NRA\\_October\\_2015\\_final\\_web.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/468210/UK_NRA_October_2015_final_web.pdf))
- The Action Plan for anti-money laundering and counter-terrorist finance 2016  
([https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/517992/6-2118-Action\\_Plan\\_for\\_Anti-Money\\_Laundrying\\_web\\_.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/517992/6-2118-Action_Plan_for_Anti-Money_Laundrying_web_.pdf))

## Annex A: Glossary

**ATCSA:** Anti-terrorism, Crime and Security Act 2001

**AFIs:** Accredited Financial Investigators

**Affirmative procedure:** Statutory instruments that are subject to the "affirmative procedure" must be approved by both the House of Commons and House of Lords to become law.

**CPS:** Crown Prosecution Service

**DPP:** Director of Public Prosecutions

**ECHR:** European Court of Human Rights

**EU:** European Union

**FIU:** Financial Investigation Units

**FCA:** Financial Conduct Authority

**HMRC:** Her Majesty's Revenue and Customs

**JMLIT:** Joint Money Laundering Intelligence Unit

**LPP:** Legal Professional Privilege

**MLRs:** Money Laundering Regulations

**NCA:** National Crime Agency

**PEPs:** Politically Exposed Persons

**POCA:** The Proceeds of Crime Act 2002

**SAR:** Suspicious Activity Report

**SDSR:** The Strategic Defence and Security Review

**SFO:** Senior Fraud Office

**SI:** Statutory Instrument

**TACT:** Terrorism Act 2000

**UWO:** Unexplained Wealth Order

## Annex B: POCA Summary

290 The Proceeds of Crime Act 2002 (POCA) was introduced to provide new, extensive powers to trace and recover criminal assets.

291 POCA provides four main routes for the recovery of assets:

- a. criminal confiscation (post-conviction);
- b. civil Recovery (used where no conviction has taken place);
- c. cash seizure and forfeiture; and
- d. taxation.

292 Criminal confiscation is the most commonly used power. POCA also provides powers to restrain assets which are suspected to derive from criminal conduct. A brief description of these powers appears below:

### Confiscation

293 Confiscation orders are made following conviction for an offence. A confiscation order does not provide for the confiscation of particular property, but rather orders the defendant to pay a set amount of whatever resources are available to him or her. The defendant is given a set time to pay the order after which he or she is liable for interest and may be subject to a default sentence for failing to pay. Before making an order, the court must be satisfied that the defendant has benefited from criminality and must determine the extent to which he/she has benefited.

### Restraint

294 Restraint orders prevent a person subject to a criminal investigation or criminal proceedings dealing with any realisable property (e.g. by freezing a bank account) to prevent the dissipation of assets that may be subject to a confiscation order. Restrained assets may be used to satisfy a confiscation order or returned to the individual(s). Even if they are returned they can still have a disruptive effect as the criminals are deprived of those funds while they are restrained.

### Civil Recovery

295 This permits the recovery of criminal assets where no conviction has been possible, for example because individuals avoided conviction because they were remote from the crimes committed (but nonetheless benefited – e.g. a drugs lord) or fled abroad.

### Cash Forfeiture

296 Cash over £1,000 can be seized if it suspected to be unlawful in origin or purpose. This is also prosecuted civilly and it is not necessary to arrest the person carrying the cash. Cash can be detained for a maximum period of two years while its origin and purpose are investigated. Ultimately the cash is either given back or forfeited at a magistrates' court or (if certain

conditions are met) administratively. Once forfeited it is brought to account and paid into a central fund.

## Revenue Functions

- 297 The NCA has revenue functions under POCA which enables them to make a tax assessment where the source of income cannot be identified but are suspected to be criminal assets. These powers are separate from those of HMRC
- 298 POCA also provides for a number of investigative powers, such as search and seizure, and powers to apply for production orders and disclosure orders.
- 299 POCA remains an effective piece of legislation, but it is subject to sustained legal challenge from criminals seeking to avoid its reach and frustrate asset recovery.
- 300 In October 2015, the Government published the National Risk Assessment for Money Laundering and Terrorist Financing. This identified a number of risks and areas which required a strengthening of the response to criminal finances. The Action Plan for anti-money laundering and counter-terrorist finance, published in April 2016, sets out the action needed to strengthen the UK's anti-money laundering and terrorist financing regime. The Criminal Finances Bill gives effect to key elements of the Action Plan.

## Annex C - Territorial extent and application in the United Kingdom

301 Subject to certain exceptions, the provisions of the Bill extend and apply to England and Wales, Scotland and Northern Ireland. The commentary on individual provisions of the Bill includes a paragraph explaining their extent and application. The exceptions are set out below. For this purpose, minor and consequential effects are outlined in a separate section following the table.

- a. Clauses 14 (paragraphs 3-6 of Schedule 1, serious fraud office), 21 (seized money: Meaning of “bank”), 26(2) (approval of exercise of powers by AFIs), 28(2) and (6) (confiscation orders and civil recovery: minor amendments) and 43(3) (offences in relation to which deferred prosecution agreements may be entered into) – these provisions extend and apply to England and Wales only;
- b. Clauses 1 to 3 (unexplained wealth orders), 7 (disclosure orders), 14 (serious fraud office), 15(3) (appropriate officers and senior appropriate officers for purposes of investigations under Part 8), 16(3)-(6) (financial conduct authority), 17 (search and seizure warrants: assault and obstruction offences), 18 (assault and obstruction offence in relation to SFO officers), 34(3) (extension of powers of AFIs under Part 1 of Schedule 5 to the Terrorism Act 2000), 35 (offences in relation to accredited financial investigators) and Schedule 2 (paragraph 3) (terrorist financing investigations: disclosure orders) and - these provisions extend and apply to England and Wales, and Northern Ireland;
- c. Clauses 4 to 6 (unexplained wealth orders), 8 (disclosure orders), 23 (seized money), and 25 (money received by administrators) and paragraph 4 of Schedule 2 – these provisions extend and apply to Scotland only;
- d. Clauses 14 (paragraphs 7-10 of Schedule 1, serious fraud office), 22 (seized money: meaning of “bank”) and 26(3) (accredited financial investigators) – this provision extends and applies to Northern Ireland only.

302 In the view of the Government of the United Kingdom, none of the clauses of or Schedules to the Bill relate exclusively to England or to England and Wales and would be within the legislative competence of the Scottish Parliament, National Assembly for Wales or Northern Ireland Assembly to make corresponding provision.

Provision	Extends to E & W and applies to England?	Extends to E & W and applies to Wales?	Would corresponding provision be within competence of Welsh Assembly for Wales?	Extends and applies to Scotland?	Would corresponding provision be within competence of Scottish Parliament?	Extends and applies to Northern Ireland?	Would corresponding provision be within competence of Northern Ireland Assembly?	Legislative Consent Motion needed?
Part 1: Proceeds of crime – Chapter 1: Investigations								
Clauses 1 to 3	Yes	Yes	N/A	No	N/A	Yes	N/A	Yes (NI)
Clauses 4 to 6	No	No	N/A	Yes	N/A	No	N/A	Yes (S)
Clause 7	Yes	Yes	N/A	No	N/A	Yes	N/A	Yes (NI)
Clause 8	No	No	N/A	Yes	N/A	No	N/A	Yes (S)
Part 1: Proceeds of crime – Chapter 2: Money laundering								
Clauses 9 to 11	Yes	Yes	N/A	Yes	N/A	Yes	N/A	No
Part 1: Proceeds of crime – Chapter 3: Civil recovery								
Clause 12	Yes	Yes	N/A	Yes	N/A	Yes	N/A	Yes (S and NI)
Clause 13	Yes	Yes	N/A	Yes	N/A	Yes	N/A	Yes (S and NI)
Part 1: Proceeds of crime – Chapter 4: Enforcement powers and related offences								
Clause 14	Yes	Yes	N/A	No	N/A	Yes	N/A	No
Schedule 1	Yes	Yes	N/A	No	N/A	Yes	N/A	No
Clause 15	Yes	Yes	N/A	Yes	N/A	Yes	N/A	No
Clause 16	Yes	Yes	N/A	No	N/A	Yes	N/A	No
Clause 17	Yes	Yes	N/A	No	N/A	Yes	N/A	Yes
Clause 18	Yes	Yes	N/A	No	N/A	Yes	N/A	Yes
Clause 19	Yes	Yes	N/A	Yes	N/A	Yes	N/A	Yes
Clause 20	Yes	Yes	N/A	Yes	N/A	Yes	N/A	Yes
Part 1: Proceeds of crime – Chapter 5: Miscellaneous								
Clause 21	Yes	Yes	No	No	No	No	No	No
Clause 22	No	No	N/A	No	N/A	Yes	N/A	Yes (NI)
Clause 23	No	No	N/A	Yes	N/A	No	N/A	Yes (S)
Clause 24	No	No	N/A	Yes	N/A	No	N/A	Yes (S)
Clause 25	No	No	N/A	Yes	N/A	No	N/A	Yes (S)

*These Explanatory Notes relate to the Criminal Finances Bill as introduced in the House of Commons on 13 October 2016 (Bill 75)*

Provision	Extends to E & W and applies to England?	Extends to E & W and applies to Wales?	Would corresponding provision be within competence of Welsh Assembly for Wales?	Extends and applies to Scotland?	Would corresponding provision be within competence of Scottish Parliament?	Extends and applies to Northern Ireland?	Would corresponding provision be within competence of Northern Ireland Assembly?	Legislative Consent Motion needed?
Clause 26	Yes	Yes	No	No	No	No	No	No
Clause 27	Yes	Yes	N/A	Yes	N/A	Yes	N/A	Yes (S and NI)
Clause 28	Yes	Yes	N/A	In part	N/A	In part	N/A	Yes (S and NI)
Part 2: Terrorist property								
Clauses 29 to 33 and Schedules 2 to 4	Yes	Yes	N/A	Yes	N/A	Yes	N/A	No
Clause 34	Yes	Yes	N/A	In part	N/A	Yes	N/A	No
Clause 35	Yes	Yes	N/A	No	N/A	Yes	N/A	No
Part 3: Corporate offences of failure to prevent facilitation of tax evasion								
Clauses 36 to 42	Yes	Yes	N/A	Yes	N/A	Yes	N/A	No
Clause 43-44	Yes	Yes	N/A	In part	N/A	In part	N/A	No
Part 4: General								
Clause 45-50 and Schedule 5	Yes	Yes	N/A	In part	N/A	In part	N/A	Yes (S and NI)

## Minor or consequential effects

303 Clause 27 makes further provision in respect of AFIs. Sub-section (2) amends section 290 of POCA to define a senior officer for the purposes of giving prior approval for the exercise of the section 289 search powers by an AFI where that investigator is a member of the civilian staff of a police force in England and Wales. Sub-section (2) has UK-wide extent to match the extent of section 290 of POCA, however, as the provision relates to police forces in England and Wales only it does not apply to Scotland or Northern Ireland.

## Subject matter and legislative competence of devolved legislatures

Whether or not the recovery of the proceeds of crime is devolved or transferred is dependent upon the subject matter of the predicate offending. Where the predicate offences are devolved subject matter, so will the recovery of their proceeds. Crime and justice are generally devolved matters in Scotland and Northern Ireland and, indeed, POCA makes separate provision in England and Wales, Scotland and Northern Ireland in respect of the making of confiscation orders following conviction (see Parts 2 to 4 of POCA). However, where the predicate offence relates to a reserved or an excepted matter, for example money laundering, terrorism, immigration-related offences, provision for recovery of the proceeds of that crime (including confiscation orders) would be a reserved or excepted matter. Accordingly, the Scottish Parliament and Northern Ireland Assembly would not have the power to make provision for corresponding to clauses 14 (paragraphs 3-6 of Schedule 1, serious fraud office), 21 (seized money: Meaning of “bank”), 26(2) (approval of exercise of powers by AFIs), 28(2) and (6) (confiscation orders and civil recovery: minor amendments). They would also not have the power to make provision corresponding to that in Part 3, Cl. 43(3) (offences in relation to which deferred prosecution agreements may be entered into) for analogous reasons.



# CRIMINAL FINANCES BILL

## EXPLANATORY NOTES

These Explanatory Notes relate to the Criminal finances Bill as introduced in the House of Commons on 13 October 2016 (Bill 75).

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