

# CRIMINAL FINANCES BILL

## EXPLANATORY NOTES ON LORDS AMENDMENTS

### What these notes do

- 1 These Explanatory Notes relate to the Lords amendments to the Criminal Finances Bill as brought from the House of Lords on 25 April 2017.
- 2 These Explanatory Notes have been prepared by the Home Office in order to assist the reader of the Bill and the Lords amendments, and to help inform debate on the Lords amendments. They do not form part of the Bill and have not been endorsed by Parliament.
- 3 These Explanatory Notes, like the Lords amendments themselves, refer to Bill 104, the Bill as first printed for the Lords.
- 4 These Explanatory Notes need to be read in conjunction with the Lords amendments and the text of the Bill. They are not, and are not meant to be, a comprehensive description of the Lords amendments.
- 5 All Lords Amendments were tabled in the name of the Minister.

### Commentary on Lords amendments

#### Lords Amendments to Clause 1, Clause 4 and Schedule 5

##### Lords Amendment 1 to 3, 5 to 10, 12 to 14, 16 to 19, 31 to 32, 142 and 143

- 6 Lords Amendments 1 to 3, 5 to 10, 12 to 14, 16 to 19, 31 to 32, 142 and 143 would extend the scope of Unexplained Wealth Orders (UWOs) so as to ensure their applicability to property held in trusts and corporate structures, and also to persons who hold such property even though they may not be the ultimate beneficial owner, but are connected to them in some way.
- 7 Lords Amendments 10 and 32 would also clarify that UWOs can be served upon those who own property in the UK through an overseas company.

##### Lords Amendments 4 and 15

- 8 Lords Amendments 4 and 15 would reduce the financial threshold for UWOs from £100,000 to £50,000. This threshold relates to the minimum value of property that can be considered in order for a UWO to be made.

#### Lords Amendments to Clause 2 and 5

##### Lords Amendments 11 and 33

- 9 Lords Amendment 11 and 33 would create an express compensation scheme in relation to interim freezing orders, which are available where a court has ordered a UWO.

## **Lords Amendments to Clause 4, Clause 11 and Schedule 5**

### **Lords Amendments 20 to 30, 42, 43, part of 144, and 145**

- 10 Lords Amendments 20 to 30, 42, 43, part of amendment 144, and 145 would provide for Scottish Ministers to disclose information obtained as a result of a UWO (and the investigation powers in Part 8 more generally), and would also clarify the interaction of Scottish Ministers and the Lord Advocate in relation to considering the information received in response to a UWO. They would ensure that there is no suggestion that Scottish Ministers are directing or tasking the Lord Advocate when they disclose information received in response to a UWO.

## **Lords Amendments after Clause 8 and to Clause 55**

### **Lords Amendments 34 and 110**

- 11 Lords Amendments 34 and 110 would provide for the publication and laying before Parliament, by 1 July 2019, of a report on the effectiveness of the bilateral arrangements in place between the UK and the governments of relevant Overseas Territories with financial centres and of the Crown Dependencies on the exchange of beneficial ownership information.

## **Lords Amendments to Clause 9**

### **Lords Amendments 35**

- 12 Lords Amendments 35 would allow for only the Procurator Fiscal, rather than the agencies previously listed, to put in moratorium extension applications in Scotland.

## **Lords Amendments to Clause 10 and Clause 34**

### **Lords Amendment 36**

- 13 Lords Amendment 36 would increase the current time limit in the Bill for banks and other regulated sector entities to share information. The current limit specified in the Bill is 28 days, and this would increase it to 84 days. This would give regulated sector entities more time to develop joint information on money laundering.

### **Lords Amendments 37, 38, 81 and 82**

- 14 Lords Amendments 37, 38, 81 and 82 would provide clarification on the operation of the information sharing. Where a regulated sector entity seeks information from another, the requestor must notify the National Crime Agency (NCA) if they intend to do so. If this notification does not take place, the requested party would be at risk of providing information without having the intended legal protections. This amendment would provide those protections if the disclosure is made in good faith, even if the notification has not been made. These amendments make similar provisions, in clause 43, in relation to terrorist financing.

## **Lords Amendments to Clause 11, Clause 35 and Schedule 5**

### **Lords Amendments 39 to 41, 44 to 46, 83 to 90 and 141**

- 15 Lords Amendments 39 to 41, 44 to 46, 83 to 90 and 141 would remove the need for further

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information notices. At present, clause 11 allows the NCA and police to direct that further information is provided through issuing a further information notice. If the information is not provided in accordance with the notice, the NCA will be able to apply to a court for a further information order to require the person to provide the information requested. These amendments would remove further information notices as part of the process. The NCA would still be able to request information under existing powers. These amendments would be replicated in relation to terrorist financing.

## **Lords Amendments to Clause 13 and Clause 36**

### **Lords Amendments 47 to 49 and 91 to 93**

- 16 Lords Amendments 47 to 49 and 91 to 93 would include betting receipts in the list of items subject to forfeiture where they are either recoverable property or intended for use in unlawful conduct. This would permit law enforcement agencies to seize these items where they have reasonable grounds to suspect that they are recoverable property or are intended for use in unlawful conduct, and then to seek their forfeiture. These amendments make similar provisions, in clause 36, in relation to terrorist financing.

## **Lords Amendments to Clause 14 and Schedule 3**

### **Lords Amendments 50 to 62 and 112 to 126**

- 17 Lords Amendments 50 to 62 and 112 to 126 would allow for legal expenses to be deducted from recovered sums, following the forfeiture of the item. Where appropriate, the court would determine whether legal expenses should be paid, and would provide for that as part of the forfeiture order. These amendments make similar provisions, in Schedule 3, in relation to items seized where there is a suspicion of terrorist financing.

## **Lords Amendments to Clause 24 and Clause 40**

### **Lords Amendments 63, 94 and 96**

- 18 Lords Amendments 63, 94 and 96 are minor and technical, and would bring penalties and fines in line with similar offences in the Proceeds of Crime Act 2002 (POCA).

## **Lords Amendments to Clause 25 and Clause 32**

### **Lords Amendments 64 to 65 and 75 to 80**

- 19 Lords Amendments 64 to 65 and 75 to 80 would amend the definition of "free property" within POCA to exclude cash detained awaiting forfeiture under terrorism legislation. These changes would prevent the same property being liable for recovery under two separate powers. The amendments to clause 25 remove a provision which had previously applied to the seized money provisions in POCA, as this is no longer required following the general amendments to the definition of "free property". These amendments should be read in conjunction with similar amendments made to POCA in Schedule 5 (see paragraph 31 below).
- 20 Lords Amendments 75 to 80 also contain minor and technical changes that would ensure consistent language regarding the definition of "free property".

## **Lords Amendments to Clause 26**

### **Lords Amendments 66 to 68**

- 21 Lords Amendments 66 to 68 would allow the magistrates courts in Northern Ireland to order the payment of a wider scope of cash belonging to a convicted criminal with an outstanding confiscation order, in payment of that order. This is an extension of the current power so as to apply to cash seized and detained under any criminal power, or POCA, which is being held either physically or in an account by any law enforcement authority. The amendments correspond to similar provisions for England and Wales.
- 22 Lords Amendment 68 would update the definition of the term "bank" in line with other legislation. This amendment corresponds to similar provisions for England and Wales.

## **Lords Amendments to Clause 27**

### **Lords Amendments 69 to 71**

- 23 Lords Amendments 69 to 71 would apply to the seized money provisions for Scotland. They would extend the scope of circumstances in which a Court can order that cash held by a law enforcement agency, but belonging to a defendant with an outstanding confiscation order, be paid in settlement of the confiscation order. The amendments would clarify the circumstances in which the power can be used, specifically that the power would apply where the cash is seized by a constable or any other person who is lawfully exercising a relevant seizure power.

## **Lords Amendments to Clause 28 and Schedule 5**

### **Lords Amendments 72, 73 and 147**

- 24 Lords Amendments 72, 73 and 147 would provide safeguards for legitimate tenants of heritable property (e.g. house, flat or commercial services) in cases where they are being recovered. These would ensure that any legitimate tenants receive fair notice that a recovery order is being sought in respect of the property concerned and that, if granted, they would have to vacate the property within a certain period of time. They would also ensure that legitimate tenants receive adequate support to safeguard against homelessness.

## **Lords Amendments after Clause 30, Clause 54 and Clause 55**

### **Lords Amendments 74 and 105 to 109**

- 25 Lords Amendments 74 and 105 to 109 would allow for the reconsideration of discharged confiscation orders where further evidence comes to light of the defendant having additional assets. This would be in circumstances either where a criminal is subsequently known to have further proceeds of their crimes not originally identified or they have additional assets to meet the value of their benefit from their crimes where the court had originally decided to set a lesser amount on the confiscation order as they were satisfied that the defendant did not have sufficient finances to pay the full amount.

## **Lords Amendments to Clause 40**

### **Lords Amendment 95**

- 26 Lords Amendment 95 would amend the Terrorism Act 2000 (TACT) to include TACT disclosure orders within the assault and obstruction offences. This would mean extending the

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existing assault and obstruction offences in respect of Counter-Terrorism Financial Investigators (CTFIs), and it would make it an offence to assault or obstruct CTFIs who are exercising powers in relation to Disclosure Orders.

## **Lords Amendments after Clause 40**

### **Lords Amendment 97**

- 27 Lords Amendment 97 would amend TACT to provide a mechanism for cross-border enforcement of criminal orders. This would ensure that relevant orders made in one part of the UK could be enforced in another part, and so relevant orders made by a court in England could be enforced by courts in Scotland or Northern Ireland and vice versa.

## **Lords Amendments to Clause 51**

### **Lords Amendments 98 to 104**

- 28 Lords Amendments 98 to 104 would enable Scottish Ministers and the Department of Justice in Northern Ireland, where they have legislative competence, to make consequential amendments upon appropriate provisions in this Bill, including all relevant UK legislation. Scottish and the Department of Justice in Northern Ireland would need to consult the Secretary of State before making any such amendments to UK legislation, in order to avoid the creation of any unforeseen inconsistencies.

## **Lords Amendments to Clause 55**

### **Lords Amendment 111**

- 29 Lords Amendment 111 would clarify that measures in this Bill can be commenced at different times in different areas of the UK.

## **Lords Amendments to Schedule 5**

### **Lords Amendments 127 and 128**

- 30 Lords Amendment 127 and 128 would amend the provisions of the Civil Jurisdiction and Judgements Act 1982 so that the new civil orders created by the Bill could be recognised and enforced throughout the UK.

### **Lords Amendments 129 to 140**

- 31 Lords Amendments 129 to 140 make a series of minor and technical changes:
- a. They would insert correct references to section 303R(3) within Schedule 5 of the Bill.
  - b. They would allow the exclusion of property which has been forfeited under section 303R(3) from sections 7, 93 and 157 of POCA so that it could not be subject to double recovery.
  - c. They would remove potentially ambiguous language.
  - d. They would insert a correct reference for an 'SFO officer'.

### **Part of Lords Amendments 144 and 145**

- 32 Lords Amendments 144 and 145 would add HM Revenue and Customs (HMRC) and the

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Financial Conduct Authority (FCA) to the information gateway provisions in Part 10 of POCA. Clauses 18 and 19 provide HMRC and the FCA new civil recovery proceedings and civil recovery investigations functions. These amendments would ensure they have the ability to disclose and receive information in respect of their new civil recovery powers.

### Lords Amendment 146

- 33 Lords Amendment 146 would allow for further information orders and the moratorium extension issued in one part of the UK to be recognised in all the other parts of the UK. This would bring Part 7 powers into line with those in other parts of POCA.



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