



EXPLANATORY NOTES

Criminal Finances Act 2017

Chapter 22

£10.00

CRIMINAL FINANCES ACT 2017

EXPLANATORY NOTES

What these notes do

These Explanatory Notes relate to the Criminal Finances Act 2017 (c. 22) which received Royal Assent on 27 April 2017.

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

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Overview of the Act

- 1 The Criminal Finances Act 2017 makes the legislative changes necessary to give law enforcement agencies and partners new capabilities and powers to recover the proceeds of crime, and to tackle money laundering, corruption and terrorist financing.
- 2 The measures in the Act 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. The 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 Act is a part of achieving that objective.
- 4 The Act 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 ensures that relevant investigatory, money laundering and civil recovery powers are extended to the Terrorism Act 2000 (TACT) and the Anti-terrorism, Crime and Security Act 2001 (ATCSA), as well as the Proceeds of Crime Act 2002 (POCA).
- 7 Part 3 creates 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 Serious and Organised Crime Strategy 2013 aims to substantially reduce the level of serious and organised crime affecting the UK and its interests. The SDSR 2015 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 would take to address the weaknesses identified in the NRA. 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 the Government's commitment to building a new and powerful partnership with the private sector. The Act has implemented the legislative elements of the Action Plan, which included a consultation document on legislative proposals. The measures in the Act were developed through that consultation and through wider discussion. A summary of the responses to the consultation was published on 13 October 2016.

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Unexplained Wealth Orders

- 12 The Act creates 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 full 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 often unable to freeze or recover the assets under the previous 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 Act also allows for this power to be applied to politicians or officials from outside the European Economic Area (EEA), or those associated with them i.e. Politically Exposed Persons (PEPs). A UWO made in relation to a non-EEA 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 the evidential standard at the outset of 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 statements made in response to an order may not – subject to certain exceptions – be used in criminal proceedings against the person who gave the information. A person subject to an order is not required to provide privileged or excluded material.
- 15 Disclosure orders are already used in confiscation investigations and a similar power is used by the Serious Fraud Office (SFO) in fraud investigations. The Act extends their use to money laundering investigations. The Act also amends 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).

Co-operation: beneficial ownership information

- 16 The UK negotiated bilateral arrangements on the exchange of beneficial ownership information with British Overseas Territories with a financial centre (OTs) and the Crown Dependencies (CDs) in the run-up to the Anti-Corruption Summit in May 2016. Under the arrangements – agreed in an Exchange of Notes – UK law enforcement authorities will have quick and unrestricted access to beneficial ownership information held in central registers, or similarly effective systems, on corporate and legal entities incorporated in these OTs and CDs. Section 9 provides for a report on the effectiveness of the Exchange of Notes to be published and laid before Parliament, before 1 July 2019. The report will cover the period from 1 July 2017 to 31 December 2018.

Suspicious Activity Reports

- 17 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.

- 18 Under section 335 of POCA, the SARs regime currently allows the NCA to allow or refuse 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 Act amends 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.
- 19 In order to enhance the effectiveness of this regime, the Act also creates a power for the NCA to seek an order compelling further information from any person in the regulated sector (as defined by Schedule 9 of POCA), following receipt of a SAR; or where they have received a request from a Financial Intelligence Unit (FIU) in another country. 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.
- 20 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 sections 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

- 21 The Act provides for a legal gateway for the sharing of information between entities within the regulated sector (e.g. banks) and between those entities and law enforcement, in order to encourage better use of public and private sector resources to combat money laundering.
- 22 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.
- 23 The Act allows 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 enables the submission of joint disclosure reports, 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 be applied to financial sector organisations – some of which are already part of the JMLIT – but it can be extended to all of the regulated sector in due course.

Seizure and forfeiture powers

- 24 The Act creates 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 is a list of items specified in the Act, which can be amended by affirmative order as required. The power is 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. The Act also expands the scope of the existing cash recovery powers to include betting receipts, fixed-value casino tokens and gaming vouchers.

Other provisions in Part 1

Civil recovery of the proceeds of gross human rights abuses or violations

- 25 This provision expands the definition of ‘unlawful conduct’ within Part 5 of POCA to include conduct outside the UK by a public official that constitutes gross human rights abuse (defined as torture or inhuman, cruel or degrading treatment) of a person on the grounds that they have been obtaining, exercising, defending or promoting human rights, or have sought to expose gross human rights abuse conducted by a public official. Activity by any person that is connected with such conduct is also caught within the expanded definition. As a result, any property obtained through this conduct will be subject to the existing civil recovery powers within Part 5 of POCA.

Granting Civil Recovery powers to the Financial Conduct Authority and HMRC

- 26 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 Act extends powers to the Financial Conduct Authority (FCA) and HMRC to allow proceedings to be taken in the High Court to recover criminal property (with the aid of the supporting investigation powers), without the need for the owner of the property to be convicted of a criminal offence. 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

- 27 Staff at the SFO did not previously have direct access to the investigative and ancillary asset recovery powers in POCA, unlike officers of all other national law enforcement agencies. The Act grants them direct access to those powers.

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

- 28 Officers from a range of agencies – Immigration Enforcement, the CPS, the SFO and others – are able to use the various search and seizure powers 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 Act ensures that all officers are

afforded the same degree of protection, while exercising powers under POCA. This brings consistency of approach and ensure that all users of POCA powers are protected.

Payment of a defendant's cash in settlement of a confiscation order

- 29 POCA previously allowed the payment of a defendant's cash which had been seized by the police or HMRC to be paid across by order of the court in settlement of an outstanding confiscation order. The Act extends the circumstances in which this power operates to include cash that has been seized by any law enforcement agency under a warrant or a statutory seizure power and whether it is being held by that agency or paid into an account.

Enabling the use of POCA powers for confiscation order "re-visits"

- 30 Confiscation orders are made to recover the financial benefit that a criminal obtained from their crimes. They are capped at an amount equivalent to the value of the assets available to the Defendant 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.
- 31 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 Act extends these powers to ensure they are available for re-visits.
- 32 The Act also allows for revisits on confiscation orders where additional evidence emerges after the order has been discharged. This allows for orders to be increased if evidence satisfies the court that either the defendant's benefit from their crime or amount available to pay an order is more than was identified at the time the confiscation order was made.

Allow the writing-off of orders made under the Drug Trafficking Offences Act 1986

- 33 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 in the Serious Crime Act 2015 did not apply. This Act addresses this gap.

Levels of authorisation needed for the use of POCA search and seizure powers

- 34 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. Previously, an Accredited Financial Investigator (AFI) could obtain that authorisation from a senior civilian AFI, working for a police force, but not from a senior police officer. The Act allows for AFIs to receive authorisation from a senior police officer.

Circumstances in which "mixed property" is recoverable

- 35 The existing civil recovery provisions within POCA allow for other property to be recovered when the criminal property has been mixed with "clean property".

- 36 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 Act adds to that list to include property that has been used to redeem a mortgage, providing greater clarity of the extent of civil recovery powers.

Miscellaneous provisions relating to Scotland

- 37 Operational agencies in Scotland identified two bespoke amendments to POCA to reflect the nuances of the Scottish legal system. The Act:
- a. allows, for the first time, 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 (note that a similar power already existed and is extended by this Act in relation to England, Wales and Northern Ireland); and
 - b. places a duty on the Court of Session to grant the trustee for civil recovery a decree of removing and a warrant for ejection to recover possession of heritable property in respect of which it makes a recovery order.

Definitions

- 38 The Act clarifies 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 previously referred to the now-repealed Banking Act 1987); and the definition of “free property” in POCA.

Terrorist finance

- 39 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 Act are also extended to apply to investigations under TACT in relation to terrorist property and terrorist financing, and to the civil recovery of terrorist property under ATCSA, as well as POCA:
- a. Disclosure orders;
 - b. Information sharing;
 - c. The powers to enhance the SARs regime; and
 - d. Seizure and forfeiture powers – for bank accounts and moveable stores of value.
- 40 The Act provides the power to designate civilian staff employed by the police as Counter Terrorism Financial Investigators (CTFIs) and extends a number of investigatory powers under TACT and civil recovery powers under ATCSA, which are currently only available to constables, to CTFIs. Counter-terrorism police officers indicate that the extension of these powers to CTFIs will increase the capacity of the police to apply for the orders in question by over 50%. Accredited Financial Investigators (AFIs) are currently used frequently in proceeds of crime investigations.
- 41 The Act also amends TACT to create a power so that court orders made in one part of the UK, for the purposes of or in connection with the investigation of terrorist financing, can be enforced in another part. This means, for example, that relevant orders made by a court in England can be enforced by courts in Scotland or Northern Ireland and vice versa.

Corporate failure to prevent tax evasion

- 42 There are a range of statutory offences of “fraudulently evading” taxes. 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.
- 43 It is also a crime to facilitate deliberately another person’s 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. 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.
- 44 Previously, where a banker or accountant criminally facilitated a customer to commit a tax evasion offence, the taxpayer and the banker or accountant committed a criminal offence but the company employing the banker or accountant did not. Even in cases where the company tacitly encouraged its staff to maximise the company’s profits by assisting customers to evade tax, the company remained safely beyond the reach of the criminal law.
- 45 The offences in Part 3 hold these organisations and corporations to account for the actions of their employees. This power gives 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”. 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.
- 46 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).
- 47 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.
- 48 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 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

- 49 In 2002, Parliament enacted POCA, which contains provisions to allow the investigation and recovery of any property obtained through unlawful conduct, and cash which is intended to be used for unlawful conduct. For a recovery order to be obtained, there must be sufficient evidence to indicate, through a judicial process, that the property is related to unlawful activity.
- 50 A summary of the criminal confiscation and civil powers in POCA is at Annex B.
- 51 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 Act. It also 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 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.
- 52 The Anti-Terrorism, Crime and Security Act 2001 (ATCSA) amended TACT further and created a range of powers that included freezing assets of suspected terrorists at the start of investigations to prevent their funds being moved or used; granted the police and security services including foreign agencies the power to ask public bodies, including schools, hospitals and HMRC to disclose personal records during terrorism and criminal investigations; enabled communication service providers to retain data to ensure it can be accessed by law enforcement agencies investigating terrorism or criminal activities and obliged financial institutions such as banks to contact law enforcement agencies where they had 'reasonable grounds' to suspect terrorist financing. Part 2 of this Act amends Schedule 1 to ATCSA by expanding the definition of terrorist cash to include betting receipts, gaming vouchers and casino tokens. Part 2 also amends Schedule 1 to provide wider civil recovery powers, including the administrative forfeiture of terrorist cash, the detention and forfeiture of moveable property which constitutes terrorist property, and the freezing and forfeiture of terrorist cash held in bank accounts or a building society.

- 53 The First EU Money Laundering Directive applies the Financial Action Task Force (FATF) recommendations to financial institutions and requires 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.
- 54 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.
- 55 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.
- 56 The Money Laundering, Terrorist Financing and Transfer of Funds Regulations 2017 have recently been consulted on and are due to come into force in 2017.

Territorial extent and application

- 57 Section 57 sets out the territorial extent of the Act – that is the jurisdictions of which the Act forms part of the law. The extent of the Act can be different from its application. Application is where an Act produces a practical effect. The majority of the provisions in the Act extend to the UK, but they have varying application.
- 58 The table in Annex C provides a summary of the position regarding territorial extent and application in the United Kingdom.

Commentary on provisions of Act

Part 1: Proceeds of crime

Chapter 1: Investigations

Unexplained wealth orders: England and Wales and Northern Ireland

Section 1: Unexplained wealth orders: England and Wales and Northern Ireland

- 59 Section 1 inserts new sections 362A – 362I into POCA, which make provision for the court to make an unexplained wealth order (UWO). A UWO is defined in section 362A(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 apply for an order requiring an individual to explain the origin of assets that appear to be disproportionate to their income.
- 60 Applications for UWOs may be made to the High Court by an enforcement authority. An enforcement authority is defined in section 362A(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 the order is fulfilled (see section 362B). In particular, the High Court must be satisfied that the respondent is a "Politically Exposed Person" (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 a non-EEA PEP does not also require suspicion of serious criminality.
- 61 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.
- 62 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 explanation is to be given and give details of where the explanation is to be sent.
- 63 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.
- 64 Section 362B (1)-(10) set 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 £50,000 (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.
- 65 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.

- 66 If, however, the respondent replies within the response period, the law enforcement agency has 60 days to consider the evidence put forward. During this period, the enforcement authority must decide whether to take no further action, or some other action such as applying for a further UWO, beginning a civil recovery investigation or applying for a recovery order under section 266 of POCA.
- 67 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 and/or a fine; or on summary conviction, to imprisonment not exceeding twelve months and/or a fine.
- 68 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.
- 69 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).
- 70 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.
- 71 Section 362H provides a broad definition of how an individual may “hold” property, for the purposes of sections 362A and 362B. The definition is specifically broad enough to address circumstances where property is held in trust or owned in a complex corporate structure arrangement.
- 72 Section 362H(5) clarifies that a UWO can be served in cases where property is registered in the name of an overseas company. This makes it explicit that the UWO provisions do extend to such cases. This does not cast doubt on the scope of other powers within POCA, such as section 84 and 414, which are already used in situations, as relevant, where property is held and registered in such a scenario.
- 73 Section 362I provides further details as to 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).
- 74 362I also ensures that court rules can be made in Northern Ireland relating to practice and procedure for 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.

Section 2: Interim freezing orders

- 75 Section 2 inserts new sections 362J– 362R into POCA. These provisions allow for the freezing of property identified in a UWO, 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 should be made at the same time as the application for the UWO.
- 76 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 362K).
- 77 Section 362L provides that an interim freezing order may be subject to exclusions so as to make provision for reasonable legal expenses, living expenses, or to carry on a trade, business, profession or occupation.
- 78 The High Court can also stay any other actions or legal processes that are ongoing whilst the interim freezing order is in place (section 362M).
- 79 Sections 362N-P cover the appointment and powers of a receiver. Section 362Q is to ensure that where an interim freezing order affecting land is applied for, its effect may be reinforced by taking action at the Land Registry to prevent the disposal of the land in question.
- 80 New section 362R provides a compensation scheme in relation to the interim freezing order. Compensation may be awarded by the court if the applicant has suffered loss and there was serious default on the part of the relevant enforcement authority. Applications must be made within three months of the discharge of the interim freezing order.

Section 3: External assistance

- 81 New sections 362S and 362T provide for the enforcement of a UWO overseas.
- 82 Section 362S allows the enforcement authority to make a request to the Secretary of State for assistance in relation to the property 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.
- 83 Section 362T provides for when an interim freezing order is in effect and a receiver has been appointed. 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

Sections 4-6: Unexplained wealth orders: Scotland

- 84 Sections 4-6 insert new sections 396A – 396U into POCA and make equivalent provision for UWOs in Scotland.

Disclosure orders

Section 7: Disclosure orders: England, Wales and Northern Ireland

- 85 A disclosure order enables a law enforcement officer to issue a notice requiring any person who has relevant information to answer questions, provide information or documents in connection with, among other things, a confiscation investigation.

- 86 Section 7 amends section 357, 358 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.
- 87 Previously the application for a disclosure order for a confiscation investigation could be made only by a prosecutor. The amendment to section 357 removes that restriction. Amended section 358 also 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.
- 88 A statement made by a person in response to a requirement imposed under a disclosure order may not be used in evidence against that person in criminal proceedings. There are, however, exceptions to this privilege and these are set out in section 360(2) and (3) of POCA. A disclosure order does not oblige a person to answer any privileged question, provide any privileged information or produce any privileged document, nor does it oblige a person to produce excluded material.
- 89 Section 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.

Section 8: Disclosure orders: Scotland

- 90 Section 8 makes equivalent amendments to the disclosure order provisions (in respect of money laundering investigations) for Scotland in Part 8 of POCA.

Beneficial ownership

Section 9: Co-operation: beneficial ownership information

- 91 Section 9 inserts section 445A into Part 11 of POCA, requiring the relevant Minister to prepare a report about the arrangements in place between the government of the United Kingdom, and the government of each relevant territory, for the sharing of beneficial ownership information as set out in an Exchange of Notes signed on behalf of the government of the United Kingdom and the government of a relevant territory (i.e. the British OTs and CDs).
- 92 These arrangements include the provision of beneficial ownership information about a person incorporated in a part of the United Kingdom to a law enforcement authority of the relevant territory at the request of the authority, and for the provision of beneficial ownership information about a person incorporated in a relevant territory to a law enforcement authority of the United Kingdom at the request of the authority.
- 93 Section 445A(2) requires that the report must include an assessment of the effectiveness of those arrangements, having regard to such international standards as appear to the relevant Minister to be relevant. Sub-sections (3) and (4) require that the relevant Minister publish the report and lay a copy of it before Parliament before 1 July 2019, and that the report must relate to the arrangements in place during the period of 18 months from 1 July 2017 to 31 December 2018.

Chapter 2: Money Laundering

Disclosure of information

Section 10: Power to extend moratorium period

- 94 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”. Section 10 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.

- 95 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 on any one application. 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 initial 31 day period mentioned in section 335(6) or (as the case may be) section 336(8) of POCA 2002.
- 96 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.
- 97 Section 336C provides for the extension of the moratorium period pending determination of proceedings. The moratorium period will be extended until the court has determined the application or it has been otherwise disposed of. The moratorium period will also be extended until the proceedings have been finally determined or disposed of i.e. where an appeal has been lodged. The maximum length of each such extension is 31 days. Section 336C also provides for a five day extension where a court refuses a moratorium extension application, for the purposes of enabling the applicant to bring appeal proceedings before the period would otherwise end.
- 98 Section 336D 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 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.
- 99 Paragraph 37 of Schedule 5 to the Act disapplies the “tipping off” offence for the purposes of proceedings under section 335A (power of court to extend moratorium period). This allows the regulated company to make reference to the fact that an application to extend the moratorium period has been made (thereby confirming that a suspicious activity report exists in relation to their transaction) – without being caught by the offence. However, those in the regulated sector are restricted to providing confirmation that an application to extend the moratorium period has been made. This ensures that ongoing investigations are not compromised.

Section 11: Sharing of information between bodies in the regulated sector

- 100 Section 11 inserts, in Part 7 of the POCA, after section 339ZA, 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.
- 101 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 a regulated sector business, where the person is satisfied that the sharing of the information will assist in determining any matter in connection with a suspicion that 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 to another person in such a business in connection with a suspicion that a person is engaged in money laundering. The section sets out the conditions for the information sharing to take place, including a requirement for notification to be provided to the NCA. This is dealt with in section 339ZC (3)-(5).
- 102 Section 339ZC(1)-(2) sets out the nature of information which a disclosure request must contain. Section 339ZC(3)-(5) provide that notification must be provided to the NCA – in the case of a request by an NCA Officer, by the person disclosing the information and in the case of a business to business request, by the person requesting the information. The notification must include categories of information which are set out at sub-section (5).
- 103 Section 339ZD provides that the making of a required notification in good faith will satisfy the requirement under section 330 or 331 of POCA. This is subject to the limits set out in section 339ZE(1)-(8).
- 104 Section 339ZD also provides for the exemption to apply to a joint disclosure report to the NCA by two or more regulated sector businesses following the disclosure of information in response to a request provided that is disclosed within the “applicable period” and various other conditions are complied with. 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 84 days.
- 105 Section 339ZE sets out limits on the exemption from the requirement in section 330 or 331. In particular it provides that the exemption applies only in relation to 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 in 339ZD do not apply.
- 106 Section 339ZF provides that a disclosure made in compliance with (or intended to be in compliance with) section 339ZB that is made in good faith will not breach an obligation of confidence owed by the disclosing entity, or any other restriction on the disclosure of information.
- 107 Section 339ZG provides interpretation of the terms used in this section.

Section 12: Further information orders

- 108 Section 12 inserts new sections 339ZH to 339ZK into Part 7 of POCA, which allow the relevant court to make a further information order.
- 109 Section 339ZH sets out the conditions for making such an order including that the information sought must relate to a matter arising from a disclosure under Part 7 of POCA or to a corresponding disclosure requirement under the law of a foreign state (where the information is sought by a foreign authority). If a person fails to comply with the further information order

in England, Wales or Northern Ireland, then they may be ordered to pay a monetary penalty of up to £5000 in Scotland, contempt proceedings would be the available penalty.

110 Section 339ZI provides that statements made by a person, in response to a further information order, may not be used in evidence against that person in criminal proceedings, unless the limited exceptions provisions in sub-section (2) apply.

111 Section 339ZJ 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.

112 Section 339ZK 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. It also provides for the discharge or variance of a further information order.

Chapter 3: Civil Recovery

Meaning of “unlawful conduct”: gross human rights abuses or violations

Section 13: Unlawful conduct: gross human rights abuses or violations

113 Section 13 provides for an expansion to the existing civil recovery provisions in POCA. This is so they can be relied upon to seek recovery of property obtained as a result of the conduct, outside the UK, of a public official which constitutes gross human rights abuses or violations (or conduct by any person that is connected with that abuse) of a person because they have whistle-blown in relation to conduct of a public official, or sought to obtain, exercise, defend or promote human rights where such conduct would be an offence (triable either way or on indictment) if it took place in the UK.

114 Sub-section (3) inserts a new section into POCA. New section 241A defines the nature of the “gross human rights abuse or violations” as torture or cruel, inhuman or degrading treatment or punishment by a public official (or a person acting in an official capacity or with the consent or acquiescence of a public official) of a person because they have sought to expose illegal activity of a public official or obtain, exercise, defend or promote human rights. Conduct connected with this is also captured, including a range of activity connected with such abuse or violations such as directing it, assisting or supporting anyone conducting it or anyone who profits from this activity is also subject to these provisions.

115 Sub-section (3) also outlines that torture is defined by intentional infliction of severe pain or suffering, can include both mental and physical pain, and can be caused by either act or omission.

116 Sub-sections (4) and (5) specify that this provision can apply to conduct constituting torture (or that connected with it) – an offence for which the UK applies universal jurisdiction – where it occurred prior to this enactment. Conduct constituting cruel, inhuman and degrading treatment will be caught only where it occurs after the coming into force of these provisions. The time period during which civil recovery claims must be brought is expressly limited so that a claim may not be brought in respect of any conduct occurring more than twenty years earlier (as per sub-section (5) and paragraphs 1, 2 and 5 of Schedule 5).

117 Sub-sections (6) and (7) set out the legal procedures for these measures within England, Wales, Northern Ireland and Scotland.

Forfeiture

Section 14: Forfeiture of cash

- 118 Chapter 3 of Part 5 of POCA contains cash seizure provisions which allow law enforcement agencies to seize items including cash, cheques and bearer bonds, where they believe that they are recoverable property, or is intended for use in unlawful conduct (“unlawful conduct” is defined in section 241 of POCA).
- 119 Section 14 inserts three new items to the list of items that may be seized under these provisions. Section 289(6) of POCA is amended to include betting slips, gaming vouchers and fixed value casino tokens. Gaming vouchers are defined as a voucher in physical form issued by a gaming machine, such as a fixed odds betting terminal, that represents a right to be paid the amount stated on it. Fixed value casino tokens mean a token, issued by a casino that represents a right to be paid the value stated on it. Betting slip means a receipt in physical form that represents a right to be paid an amount in respect of a bet placed with a person holding a betting licence.

Section 15: Forfeiture of certain personal (or moveable) property

- 120 Section 15 inserts, in Part 5 of POCA, a new Chapter 3A, which make provision for the seizure and recovery of listed types of 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.
- 121 Listed assets are defined by section 303B. This section also provides that the Secretary of State, following consultation with Scottish Ministers and the Department of Justice in Northern Ireland, may by regulations remove a description of property from the definition, or add a description of tangible personal (or corporeal moveable) property to the list.
- 122 Section 303C provides that the search powers are only exercisable on private premises where the relevant officer has lawful authority to be present. Sub-sections (5) and (6) include the power to search vehicles and persons. Section 303C(9) provides that constables, HMRC officers, SFO officers and AFIs are relevant officers for the purpose of these provisions. Section 303C(10) provides that the new powers may only be exercised where the suspected listed asset or assets exceed the threshold set under 303Y.
- 123 Section 303D sets out further detail as to the conditions under which the powers of search may be used.
- 124 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. “Senior officer” is defined in section 303E(4) for all of the agencies permitted to use these powers.
- 125 Section 303E(6) 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 officer exercising the power must prepare a written report and submit it to an independent person. The independent person is appointed by the Secretary of State, in relation to England and Wales, by the Scottish Ministers in relation to Scotland, or by the Department of Justice in relation to Northern Ireland.
- 126 Section 303F provides that the appointed person must provide a report, to be laid before Parliament, the Scottish Parliament and the Northern Ireland Assembly as appropriate. This report must give the appointed person’s opinion as to the circumstances in which the search powers were exercised in cases where the relevant officer was required to make a report under section 306E(6).

- 127 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. The provisions require consultation on the draft code with the Attorney General in relation to the use of the powers by the SFO.
- 128 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.
- 129 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.
- 130 Section 303J provides that a relevant officer 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 of the listed asset or aggregate value of listed assets exceeds the minimum threshold (£1,000, under section 303Y). Under sub-section (2) a relevant officer 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).
- 131 Section 303K provides that any listed asset seized by a relevant officer 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.
- 132 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.
- 133 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.
- 134 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, that they are not recoverable property or are not intended for use in unlawful conduct.
- 135 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. The section also provides that a relevant court may provide for the payment of reasonable legal expenses to the person from whom the property was seized from the proceeds of realisation.
- 136 Sections 303P to 303R explain how associated property and joint property are to be dealt with when forfeiture is ordered.
- 137 Section 303P sets out the circumstances in which the provisions on associated property and joint property in sections 303Q and 303R apply. The terms "associated property" and "joint property" are defined in section 316 of POCA. 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. The section also provides that a relevant court may provide for the payment of reasonable legal expenses to the person from whom the property was seized from the proceeds of realisation.

- 138 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.
- 139 Section 303S provides for a right of appeal against a forfeiture decision made under sections 303O to 303R.
- 140 Section 303T provides that the relevant law enforcement agency must realise the property or make arrangements for its realisation, subject to any appeal rights against the forfeiture being exhausted.
- 141 Section 303U sets out the order in which the proceeds realised should be applied.
- 142 Section 303V provides that the true owner of the property may apply for its release.
- 143 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 property belongs, may apply to the court for compensation, where the circumstances are exceptional.
- 144 Section 303X provides that the CPS or the Director for Public Prosecution in Northern Ireland (DPPNI) may appear in proceedings on behalf of a constable or an AFI, if asked to do so and if it is considered appropriate for them to do so.
- 145 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.
- 146 Section 303Z specifies that where an AFI makes an application under this section, subsequent steps in any proceedings can be taken by a different AFI of the same description.

Section 16: Forfeiture of money held in bank and building society accounts

- 147 Section 16 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 (as defined in section 241 of POCA), or funds which are intended for use in unlawful conduct.
- 148 Section 303Z1 provides that the powers can be exercised by constables, HMRC officers, SFO officers or AFIs. It allows a senior officer (as defined in 303Z2(4)), or an officer who is authorised by a senior officer, to apply for an account freezing order (AFO) in respect of bank and building society accounts, where there are reasonable grounds to suspect that the money in them is recoverable property (as defined in section 316 of POCA) 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.
- 149 The AFO prohibits each person by or for whom the account 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.
- 150 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.
- 151 Section 303Z3 provides that the court may make the order, if it 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.

- 152 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.
- 153 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.
- 154 Section 303Z6 provides that a court in which proceedings relating to a frozen account are pending can stay those proceedings, if it is satisfied that an AFO has been applied for or obtained. That court may also order that the proceedings can continue on any terms it thinks are appropriate.
- 155 Section 303Z7 defines the term “bank”.
- 156 Section 303Z8 provides that the minimum amount of funds that an account must contain is £1000. This amount can be amended in regulations made by the Secretary of State, after consultation with the Scottish Ministers and with the Department of Justice in Northern Ireland.
- 157 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.
- 158 The senior officer may give a notice that they intend to seek for 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.
- 159 Section 303Z10 requires the Secretary of State to make regulations about how an account forfeiture notice is to be given to the interested parties.
- 160 Section 303Z11 sets out the conditions under which an account forfeiture notice lapses. The 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 apply to extend the period of the AFO, or to seek forfeiture of the money under 303Z14.
- 161 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 money should be forfeited under section 303Z14 (forfeiture by court order). If it is satisfied that the funds should not be forfeited, it must order the release of that money.
- 162 Section 303Z13 provides that any money forfeited under an account forfeiture notice is paid into the Consolidated Fund.

- 163 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 nominated by the enforcement officer.
- 164 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.
- 165 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. If a forfeiture order is successfully appealed, and the funds are returned to the individual, any interest which accrued during the time that the funds were held by the police shall also be returned to the individual.
- 166 Section 303Z17 provides that any funds forfeited under an order should be paid into the Consolidated Fund.
- 167 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 court must be satisfied that the individual suffered loss as a result of the AFO being made, and that 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.
- 168 Section 303Z19 provides for prosecutors to appear in proceedings on behalf of a constable or an AFI, if asked to and they consider it appropriate.

Chapter 4: Enforcement Powers and Related Offences

Extension of powers

Section 17: Serious Fraud Office

- 169 Section 17 introduces Schedule 1, which makes a series of technical amendments to a number of provisions in POCA, in order to allow SFO officers to directly access 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.
- 170 Schedule 1 contains the consequential amendments to POCA.
- 171 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.

Section 18: Her Majesty’s Revenue and Customs: removal of restrictions

- 172 Officers of HMRC currently have various powers to enable them to investigate crimes, such as the power of arrest or the power to apply for a search warrant. However, these powers are unavailable in relation to offences committed against certain functions of HMRC (typically former Inland Revenue functions). Section 18 seeks to remove such restrictions, enabling officers of HMRC to use their existing criminal investigation powers in relation to crimes relating to any of HMRC’s functions.
- 173 Sub-section (2) removes the current restriction within section 23A of the Criminal Law (Consolidation) (Scotland) Act 1995 (CLCSA) that prevents HMRC from using its criminal powers for offences relating to prohibitions and restrictions or the movement of goods. This

gives officers of HMRC in Scotland criminal powers in relation to crimes involving prohibitions and restrictions on the movement of goods similar to those currently enjoyed by officers of HMRC in England and Wales and Northern Ireland.

- 174 Sub-sections (3), (4) and (5) remove restrictions on the use of HMRC's criminal investigation powers in relation to offences relating to functions of HMRC that are functions previously held by the Inland Revenue.
- 175 Sub-section (3) amends the definition of "officer of law" in section 307 of the Criminal Procedure (Scotland) Act 307.
- 176 Sub-section (4) amends the Proceeds of Crime Act 2002 to remove the restrictions on the exercise of the powers contained in sections 289, 294, 375C and 408C, so that these powers can be used when investigating crimes related to former inland revenue functions for which they are currently unavailable.
- 177 Sub-section (5) amends the Finance Act 2007 to remove the specified restriction at section 84, enabling HMRC officers to use their criminal investigatory powers from the Police and Criminal Evidence Act 1984 in relation to certain former revenue functions in relation to which they are not currently available.

Section 19: Her Majesty's Revenue and Customs: new powers

- 178 Section 19 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 under Chapter 2 of Part 5 of POCA 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).
- 179 The inclusion of HMRC staff in the definition of "appropriate officer" and "senior appropriate officer" in section 378 of POCA allows them to apply for the orders and warrants to build a case for civil recovery proceedings. They are officers for the purposes of a "civil recovery investigation", see section 341 of POCA.

Section 20: Financial Conduct Authority

- 180 Section 20 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".
- 181 The inclusion of FCA staff in the definition of "appropriate officer" and "senior appropriate officer" in section 378 of POCA 2002 allows them to apply for the orders and warrants to build a case for civil recovery proceedings.

Section 21: Immigration Officers

- 182 Section 21 amends section 24 of the UK Borders Act 2007 (UKBA). That section already provided immigration officers with access to the powers to search for, seize, detain and seek the forfeiture of cash under POCA. Those powers are provided in Chapter 3 of Part 5 of POCA and relate to cash that is either the proceeds of unlawful conduct or intended for use in such. Section 21 provides that immigration officers also have access to the powers in this Act relating to the recovery of listed assets in summary proceedings (see section 14) and the forfeiture of money held in bank and building society accounts (see section 15).
- 183 The heading of section 24 of UKBA is amended to clarify that the power now extends to items other than cash.

These Explanatory Notes relate to the Criminal Finances Act 2017 (c. 22) which received Royal Assent on 27 April 2017

184 Section 24(1) of UKBA is amended to provide the civil recovery powers in Chapter 3 to 3B, which cover cash seizure, forfeiture of moveable property and for forfeiture of funds held in bank accounts, to Immigration Officers. The relevant sub-sections within section 24 are then amended to permit all of the aspects of the powers to be available to those officers

Assault and obstruction offences

Section 22: Search and seizure warrants: assault and obstruction offences

185 Section 22 inserts new section 356A into POCA, making it an offence to assault or wilfully 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.

Section 23: Assault and obstruction offence in relation to SFO officers

186 Section 23 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 or seizure power. The “relevant powers” are detailed in sub-section (5).

Section 24: External requests, orders and investigations

187 Section 24 amends sections 444 and 445 of POCA, which give the Secretary of State the power to make provisions (by way of Orders in Council) in respect of orders made by an overseas court. Section 444 applies to “external orders”, which is defined in section 447 to mean orders by an overseas court for freezing or recovery of property obtained as a result of criminal conduct. Section 445 applies to “external investigations” which are defined in section 447 of POCA as investigations into whether property has been obtained through unlawful conduct, and the extent or whereabouts of any property so obtained. The principal Orders made under those sections are 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). 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 in respect of overseas investigations.

Section 25: Obstruction offence in relation to immigration officers

188 Section 25 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). There is already an offence for assaulting an immigration officer in the course of their duties in section 22 of the UK Borders Act 2007.

Chapter 5: Miscellaneous

Seized money: England and Wales and Northern Ireland

Section 26: Seized money: England and Wales

189 Section 26 amends section 67 of POCA. Section 67 of POCA provides the magistrates’ court with a power to enforce a confiscation order. In particular, it relates to a defendant’s money seized by the police or HMRC under the Police and Criminal Evidence Act 1984 that has to be paid into a bank or building society account. The court can order that money be paid to the

court in satisfaction of a confiscation order. This section amends the existing scheme provided in section 67 in three ways. Firstly, it is extended beyond police and HMRC officers to all law enforcement officers who have the power to seize money. Secondly, section 67 now applies to money that has been seized under any power relating to a criminal investigation or proceeding (not just the Police and Criminal Evidence Act), or under the investigatory powers in POCA. Thirdly, this section amends section 67 so that it applies to money however it is held by law enforcement, and not just in a bank or building society account.

190 There is also a technical amendment to provide a definition of “bank” following the repeal of the provision in the Banking Act 1987 that previously provided the definition.

Section 27: Seized Money: Northern Ireland

191 This section extends the power of the court in Northern Ireland in a similar way to the changes made for England and Wales in section 26. It also makes an equivalent technical amendment to the definition of “bank” for Northern Ireland

Miscellaneous provisions relating to Scotland

Section 28: Seized money

192 Section 28 inserts a new section 131ZA into Part 3 of POCA. This largely replicates in Scotland the effect, as amended by this Act, of section 67 for England and Wales, and section 215 for Northern Ireland. See the commentary above on the amendments made by this Act to sections 67 and 215 of POCA.

193 Any wilful failure to comply with an order of the court under this section will be dealt with as contempt of court.

194 The new section confers on the Scottish Ministers the power to amend it, by regulations, so that it applies 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.

Section 29: Recovery orders relating to heritable property

195 Section 29 amends Part 5 of POCA (civil recovery of the proceeds etc. of unlawful conduct), to provide 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.

196 It amends sections 266 and 267 of POCA to allow for the recovery of possession to be dealt with as part of the civil recovery proceedings in the Court of Session rather than, as at present, require a subsequent and separate action in the Sheriff Court. 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.

197 This section also inserts two new sections into Part 5 of POCA in consequence of these provisions. As part of the regime to safeguard against homelessness, new section 245ZA requires the Scottish Ministers to notify the relevant local authority where they apply for a decree of removing and warrant for ejection in relation to heritable property which consists of or includes a dwellinghouse. New section 269A sets out the effect on leases and occupancy rights where the Court of Session, in making a recovery order, also grants decree of removing and warrant for ejection in relation to any persons occupying the heritable property.

Section 30: Money received by administrators

- 198 Section 30 is a technical amendment to Paragraph 6 of Schedule 3 to 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

Section 31: Accredited financial investigators

- 199 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. Section 31 amends section 47G of POCA to allow 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 section 31 enables an AFI to seek the approval of a senior police officer as is the case with a constable.
- 200 Section 31 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.
- 201 Section 31 also makes equivalent amendments for Northern Ireland.

Section 32: Reconsideration of discharged orders

- 202 Sections 21 and 22 of POCA allow for the reconsideration of a confiscation order already made if new evidence becomes available. They allow for the amount on the confiscation order to be increased either to reflect a higher benefit value (i.e. the amount that the defendant made from their crime) or an increase of the available amount (i.e. the amount they had available to pay a confiscation order). This section amends POCA to allow for this reconsideration approach even in relation to confiscation orders that have been discharged by Court order under sections 24 or 25. Those sections apply respectively where there was either an inadequate amount to settle the order or there was only a small amount outstanding.

Section 33: Confiscation investigations: determination of the available amount

- 203 Section 33 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 of 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 sections 9 and 77 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.
- 204 The extension of investigation powers allows the police and others to test the “available amount” claimed by a defendant. Under section 7(2) of POCA, the defendant is required to prove to the court that the available amount to settle a confiscation order is less than the benefit figure. The amendment also allows 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.

205 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 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)).

206 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.

Section 34: Confiscation orders and civil recovery: minor amendments

207 Section 34 makes minor amendments to sections 82, 148, 230, 245D, 290, 297A, 302 and 306 of POCA and section 8 of the Serious Crime Act 2015. The definition of “free property” in sections 82, 148 and 230 of POCA is extended to include cash which is detained pending the hearing of a forfeiture application. Free property can be taken into account when calculating the “available amount” for satisfying a confiscation order. It is any property that is not already subject to certain kinds of forfeiture and deprivation orders – property already subject to one of those orders in earlier proceedings cannot then be taken into account for the purposes of confiscation proceedings because it is not “available” and is accounted for elsewhere.

208 The amendments also 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 in section 306 now includes property that has been used to redeem a mortgage.

209 The amendments also 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

Section 35: Disclosure orders

210 Section 35 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 and terrorist property. 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.

211 Paragraphs 1 to 8 of Part 1 provide details of the process for making an application for a disclosure order in 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.

212 Paragraph 9 allows an appropriate officer to apply to a Crown Court judge for a disclosure order so far as relating to a terrorist financing investigation.

213 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.

- 214 Paragraph 10 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.
- 215 Paragraph 11 provides for two offences in relation to disclosure orders. An offence is committed under paragraph 11(1) if, without reasonable excuse, a person fails to comply with a requirement imposed under a disclosure order. A person guilty of this offence is liable on summary conviction in (i) England and Wales, to imprisonment for a term not exceeding 51 weeks or a fine, or both and (ii) Northern Ireland, to imprisonment for a term not exceeding six months or a fine not exceeding level 5 on the standard scale, or both. It is also an offence under paragraph 11(3) if a person purports to comply with a requirement imposed under a disclosure order by knowingly or recklessly making a false or misleading statement. A person guilty of this offence is liable on (a) indictment to imprisonment for a term not exceeding two years or a fine, or both; or (b) summary conviction in (i) England and Wales, to imprisonment for a term not exceeding 12 months or a fine, or both; and (ii) Northern Ireland, to imprisonment for a term not exceeding six months or a fine not exceeding level 5 on the standard scale, or both.
- 216 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.
- 217 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.
- 218 Paragraph 14 makes supplementary provisions in relation to disclosure orders. Paragraph 14(1) provides that an application for a disclosure order may be made without notice 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.
- 219 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.

Section 36: Sharing of information within the regulated sector

- 220 Section 36 inserts, after section 21C of TACT, new sections 21CA–21CF, which make provision for the voluntary sharing of information between relevant undertakings in the regulated sector in connection with suspicions of terrorist financing or the identification of terrorist property or its movement or use.
- 221 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 a 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 requested the disclosure.

222 Section 21CB specifies the information to be provided in a disclosure request or the notification to a constable.

223 Section 21CC specifies the effect of section 21CA on required disclosures under section 21A of TACT, in particular that the making of a required notification under section 21CA in good faith or the making of a joint disclosure report in good faith is to be treated as satisfying the requirement to make a required disclosure. Section 21CC also sets out the information to be provided as part of the joint disclosure report, and the timeframe for information sharing to take place before a joint disclosure report must be provided. 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.

224 Section 21CD provides certain limitations on the application of section 21CC, in particular the fact that the provisions in 21CC do not remove the requirement to make a required disclosure under section 21A of TACT on matters which are wider than the disclosure request.

225 Section 21CE provides that a relevant disclosure (one made in compliance with section 21CA) made in good faith does not breach an obligation of confidence or any other restrictions on the disclosure of information (however imposed). This section also clarifies 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 6 to 10 of Schedule 5.

226 Section 21CF provides interpretation of terms used within this section.

Section 37: Further information orders

227 Section 37 inserts, after section 22A of TACT, new sections 22B – 22E, which make provision for a law enforcement officer to apply to the court for a further information order which is an order requiring further information to be provided by the regulated sector in relation to a disclosure under section 21A of TACT or a corresponding disclosure requirement (under the law of a foreign country) which would assist an investigation about the commission of a terrorist financing offence or with identifying terrorist property.

228 Section 22B sets out the conditions for making such an order including that the information sought must relate to a matter arising from a disclosure under TACT or to a corresponding disclosure requirement under the law of a foreign state (where the information is sought by a foreign authority). If a person fails to comply with the further information order in England, Wales or Northern Ireland, then they may be ordered to pay a monetary penalty of up to £5000; in Scotland, contempt proceedings would be the available penalty.

229 Section 22C provides that statements made by a person, in response to a further information order, may not be used in evidence against that person in criminal proceedings, unless the limited exceptions provisions in sub-section (2) apply.

230 Section 22D 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.

231 Section 22E 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.

Civil recovery

Section 38: Forfeiture of terrorist cash

232 Section 38 amends Schedule 1 to ATCSA which provides for the forfeiture of terrorist cash. In particular, this section amends the definition of terrorist cash in paragraph 1 of Schedule 1 to include gaming vouchers, fixed-value casino tokens and betting receipts. Gaming vouchers are defined as a voucher in physical form issued by a gaming machine, such as a fixed odds betting terminal, that represents a right to be paid the amount stated on it. Fixed value casino tokens mean a token, issued by a casino that represents a right to be paid the value stated on it. Betting receipt means a receipt in physical form that represents a right to be paid an amount in respect of a bet placed with a person holding a betting licence.

233 This section also amends paragraph 3 of Schedule 1 to extend the length of time that the magistrates' court or (in Scotland) the sheriff may authorise the detention of cash following seizure from three months to six months (subject to an overall cap of two years). Paragraph 9 is amended to make provision for the court to order the release of detained cash to a person to whom the cash belongs but from whom it was not seized, providing certain conditions are met.

234 Section 38(4) inserts after paragraph 5 of Schedule 1 new Part 2A (comprising paragraphs 5A to 5F) which provides for the forfeiture of terrorist cash without a court order, allowing terrorist cash to be administratively forfeited by way of a notice issued by an appropriate law enforcement officer.

235 Paragraph 5A makes provision for a cash forfeiture notice to be given by a senior officer for the purpose of forfeiting terrorist cash which has been detained and specifies the information which such a notice must contain. It also provides a period of 30 days for objections to the proposed forfeiture to be made and requires the Secretary of State to make regulations which detail how a forfeiture notice is to be given.

236 Paragraph 5B sets out what the effect of a cash forfeiture notice is and the circumstances in which such a notice will lapse.

237 Paragraph 5C makes provision for the detention of cash where a cash forfeiture notice has lapsed following an objection being made thereto and the period for detaining the cash authorised by the court under paragraph 3(2) has expired.

238 Paragraph 5D makes provision for a person aggrieved by the forfeiture of cash via a cash forfeiture notice to apply to the magistrates' court or (in Scotland) the sheriff for an order to set aside the forfeiture.

239 In paragraph 5E, provision is made for the release of cash which is detained following the giving or lapse of a cash forfeiture notice. The person from whom the cash was seized may apply for its release to the magistrates' court or (in Scotland) the sheriff, which may direct its release if not satisfied that the cash is terrorist cash. Alternatively, an authorised officer may release the cash if satisfied that the detention is no longer justified.

240 Paragraph 5F deals with the application of cash which has been forfeited under a cash forfeiture notice. Provision is made for cash which is forfeited by this process to be paid into the Consolidated Fund or, if forfeited in Scotland, to be paid in the Scottish Consolidated Fund but not before the end of the period within which an application to set aside the forfeiture can be made or, if such an application is made, until it is determined.

Section 39: Forfeiture of Certain Personal (or Moveable) Property

- 241 Section 39 introduces Schedule 3, which amends Schedule 1 to ATCSA by inserting a new Part 4A which comprises paragraphs 10A – 10P and which makes provision for the seizure, detention and forfeiture of certain personal or moveable property (“listed assets”).
- 242 Paragraph 10A(1) defines a “listed asset” and paragraph 10A(2) provides that the Secretary of State may by regulations add or remove items from the definition of “listed asset”.
- 243 Paragraph 10B(1) provides that an authorised officer may seize any item of property if he has reasonable grounds for suspecting that it is a listed asset and it is property within the meaning of paragraph 10B(1)(b) i.e. it is intended to be used for the purposes of terrorism, or consists of resources of an organisation which is a proscribed organisation, or it is property which is earmarked as terrorist property, as defined in Part 5 of Schedule 1 to ATCSA. Under sub-paragraph 10B(2), an authorised officer may also seize any item of property if he has reasonable grounds for suspecting it is a listed asset, that part of it is property within the meaning of paragraph 10B(1)(b) and it is not reasonably practicable to seize only that part.
- 244 Paragraph 10C provides for the detention of property seized under paragraph 10B by an authorised officer for an initial period of 48 hours providing there continues to be reasonable grounds for suspecting it is a listed asset or property within the meaning of paragraph 10B(1)(b).
- 245 Paragraph 10D provides that the period for which property seized under paragraph 10B may be detained can be extended by a judicial authority for a period of up to six months, up to an overall maximum of two years (from the first order). The judicial authority may make this order if satisfied that the property is a listed asset and there are reasonable grounds for suspecting that it is property within the meaning of paragraph 10B(1)(b), and that its continued detention is justified whilst investigations are made into its origin or intended use, or whilst consideration is being given to the bringing of proceedings for an offence with which the property is connected, or whilst such proceedings are ongoing.
- 246 Paragraph 10D(4) provides that the first application to extend the period of detention may be made and heard without notice, and in private.
- 247 Paragraph 10E(1) provides that an authorised officer may carry out tests on any item of property seized under paragraph 10B for the purpose of establishing whether it is a listed asset. Paragraph 10E(2) provides that such property must be safely stored throughout the period during which it is detained.
- 248 Paragraph 10F makes provision for the release of property detained under Part 4A. 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, it may direct the release of the property, or part thereof. An authorised officer or, in Scotland, the procurator fiscal may release all or part of the property if satisfied that the detention can no longer be justified (providing the judicial authority has been notified).
- 249 Paragraph 10G provides that a judicial authority, on application, may order the forfeiture of property or any part of it if satisfied that the property is a listed asset and what is to be forfeited is within the meaning of paragraph 10B(1)(b) i.e. it is intended for use in terrorism, or that it is the resources of a proscribed organisation, or that it is property earmarked as terrorist property. It also provides that a magistrates’ court may provide for the payment of reasonable legal expenses that a person has or may reasonably incur in certain proceedings from the proceeds of realisation.
- 250 Paragraphs 10H to 10K explain how associated property and joint property are to be dealt with when forfeiture is ordered.

- 251 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.
- 252 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. The section also provides that a relevant court may provide for the payment of reasonable legal expenses to the person from whom the property was seized from the proceeds of realisation.
- 253 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 Paragraph 10I. 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.
- 254 Paragraph 10K provides for a right of appeal against a forfeiture decision made under Paragraph 10G to 10J.
- 255 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 TACT.
- 256 Paragraph 10M provides that the relevant law enforcement agency must realise the property or make arrangements for its realisation, subject to any appeal rights against the forfeiture being exhausted.
- 257 Paragraph 10N sets out the order in which the proceeds realised should be applied.
- 258 Paragraph 10O provides for the true owner of the property to apply for its release.
- 259 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.

Section 40: Forfeiture of money held in bank and building society accounts

- 260 Section 40 and Paragraph 2 to Schedule 4 insert into Schedule 1 of ATCSA a 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 property earmarked as terrorist property.
- 261 Paragraph 10Q allows a “senior officer”, or an “enforcement officer” with senior officer approval, (as defined in sub-paragraph 7) to apply for an account freezing order (AFO) in respect of bank and building society accounts, where there are reasonable grounds to suspect that the money held in them are: intended to be used for terrorism, the resources of a proscribed organisation or property earmarked as terrorist property. The AFO can be made without notice, if notice of application would prejudice the taking of any steps to later forfeit such monies.
- 262 The AFO prohibits each person by or for whom 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.

- 263 Sub-paragraph 10Q(3)(b) introduces a requirement to consult with HM Treasury into the AFO application process. The requirement to consult will enable the Treasury to consider whether it should be exercising its powers under the Terrorist Asset-Freezing etc. Act 2010 in the particular case.
- 264 Paragraph 10R defines the term “bank”.
- 265 Paragraph 10S provides that the court may make the order, if it is satisfied that the funds in the account (whether all or in part) meet the relevant definition in Paragraph 10Q.
- 266 The court sets the timeframe for the AFO which may not exceed an overall 2-year maximum period, starting on the day it was made.
- 267 Paragraph 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.
- 268 Paragraph 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.
- 269 Paragraph 10V provides that a court, in which proceedings relating to a frozen account are pending, can stay those proceedings if satisfied that an AFO order has been applied for or obtained. That court may also order that proceedings can continue on any terms it thinks appropriate.
- 270 Paragraph 10W allows a senior officer to give an “account for 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 for forfeiture notice to be served. This is an administrative procedure.
- 271 Sub-paragraph 10W(2) provides that a 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 either are intended to be used for the purposes of terrorism, consist of the resources of a proscribed organisation or are property earmarked as terrorist property. Per sub-paragraph 10W(4) the account for forfeiture notice (AFN) 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 for forfeiture notice will be forfeited, and the bank or building society must transfer that money into the interest bearing account nominated by an enforcement officer. An objection does not prevent forfeiture of the money under Paragraph 10Z2. It is not necessary for an account for 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-paragraph 10Z2(2).
- 272 Paragraph 10X requires the Secretary of State to make regulations about how an AFN is to be given.
- 273 Paragraph 10Y sets out the conditions under which an AFN lapses. The AFN lapses if an objection is received; an application for forfeiture is made; or if the AFO is recalled or set aside. Under sub-paragraph 10Y(2), if the AFN lapses due to an objection being made, the relevant AFO will cease 48 hours after the objection. Sub-paragraph 10Y(3) provides that, if within the 48-hour period a senior officer applies to either extend the period of the AFO under Paragraph 10T or to seek forfeiture of the money under Paragraph 10Z2, the AFO will continue to have effect until the relevant time.

- 274 Paragraph 10Z 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 money could be forfeited under paragraph 10Z2 (judicial forfeiture). If it is satisfied that the funds could not be forfeited under that paragraph, it must set aside the administrative forfeiture and order the release of that money.
- 275 Paragraph 10Z1 provides that any money forfeited under an account forfeiture notice must be paid into the Consolidated Fund.
- 276 Paragraph 10Z2 sets out the procedure for applying to a relevant court for the forfeiture of the money in a frozen account. If the court is satisfied that the money is intended to be used for the purposes of terrorism, consists of the resources of a proscribed organisation or is property earmarked as terrorist property, it may order forfeiture of those monies. Where a court orders forfeiture, the bank or building society with which the monies are held must transfer those funds to an interest bearing account nominated by the enforcement officer.
- 277 Paragraph 10Z3 provides that, where a court declines to order forfeiture and the law enforcement agency appeals that decision, it may also apply for an extension of the account freezing order pending the appeal.
- 278 Paragraph 10Z4 provides that any party aggrieved by a forfeiture order or the refusal make such an order, can appeal that order or decision. The time period for the lodging of an appeal is 30 days from the day that the court makes the order or decision. If the appeal is upheld, the court may order the release of the whole or part of the funds. If a forfeiture order is successfully appealed, and the funds are returned to the individual, any interest which accrued during the time that the funds were held by the police shall also be returned to the individual.
- 279 Paragraph 10Z5 provides that, where an application for forfeiture is made on the basis that an organisation is proscribed and there is subsequently a successful appeal against a refusal to proscribe the organisation, an appeal against the forfeiture order may be brought within 30 days of the deproscription order coming into force.
- 280 Paragraph 10Z6 provides that any funds forfeited under an order should be paid into the Consolidated Fund.
- 281 Paragraph 10Z7 provides that if an AFO is made and none of that money is subsequently forfeited, the person by or for whom the account is operated may make an application to court for compensation. Paragraph 10Z7(3) provides that the court, if satisfied that the applicant has suffered loss and the circumstances are exceptional, may order compensation be paid to the applicant. The amount of compensation to be paid is the amount the court thinks reasonable, having regard to the loss suffered and any other relevant circumstances.
- 282 Paragraph 3 of Schedule 4 to the Criminal Finances Act amends paragraph 19 (general interpretation) of Schedule 1 to ATCSA to make consequential amendments which reflect the definitions used in new Part 4B of Schedule 1 to ATCSA.

Counter-terrorism financial investigators

Section 41: Extension of powers to financial investigators

- 283 Section 41 inserts into TACT new section 63F, which makes provision for counter-terrorism financial investigators.
- 284 Sub-section (1) provides that TACT is to be amended as set out in sub-sections (2) to (5).

285 Sub-section (2) inserts a new section 63F (Counter-terrorism financial investigators) into TACT. New section 63F(1) requires the metropolitan police force to provide a system for the accreditation of financial investigators, known as counter-terrorism financial investigators (CTFIs). Section 63F(2) provides that the system of accreditation must include provision for monitoring the performance of CTFIs and the withdrawal of accreditation, in specified circumstances. Sections 63F(3) – (7) provide that a person may be accredited as a CTFI if they are: a member of civilian staff of a police force in England and Wales, or a member of staff of the City of London police or the Police Service of Northern Ireland. A person may be accredited in relation to TACT or ATCSA, or in relation to particular provisions of either of those Acts. The accreditation may be limited to specified purposes. The metropolitan police force is required to make provision for training in financial investigation and the operation of TACT and ATCSA.

286 Sub-section (3) amends Part 1 of Schedule 5 to TACT to allow an appropriate officer (which term is defined in paragraph 5(6)) to apply under paragraph 5 to a Circuit judge or District Judge for an order requiring a person to produce or to provide access to materials (consisting of or including excluded or special procedure material) in his possession. New sub-paragraph 5(1A) provides that a CTFI may only apply for such an order for the purposes of a terrorist investigation so far as relating to terrorist property. Part 1 of Schedule 5 is also amended to allow CTFIs to apply for an order under paragraph 13 (explanations) requiring any person specified in the order to provide an explanation of any material produced or made available to a counter-terrorism financial investigator under paragraph 5.

287 Sub-section (4) amends Schedule 6 to TACT (which makes provision for financial information orders) to enable a CTFI to be named in the order and to require a financial institution to which the order applies to provide customer information for the purposes of a terrorist investigation.

288 Sub-section (5) amends Schedule 6A to TACT to enable a CTFI to apply for an account monitoring order for the purposes of a terrorist investigation. It also provides that, where an application for an account monitoring order is made by a CTFI, the description of information specified in that order may be varied by a different CTFI and an application to discharge or vary that order may be made by a different CTFI.

289 Sub-section (6) inserts new paragraph 10(7A) in Schedule 1 to ATCSA which makes provision for the payment of compensation where cash was seized by a CTFI.

Section 42: Offences in relation to counter-terrorism financial investigators

290 Section 42(1) inserts new section 120B into TACT which makes provision for the offences of assaulting, or resisting or wilfully obstructing a CTFI who is exercising a relevant power (the relevant powers are specified in sub-section 120B(5)).

291 Section 120B(3) provides that the offence of assaulting a CTFI carries a sentence on summary conviction in England and Wales of imprisonment for a term not exceeding 51 weeks or a fine, or both; and in Northern Ireland, imprisonment for a term not exceeding 6 months or a fine not exceeding level 5 on the standard scale, or both.

292 Section 120B(4) provides that the offence of resisting or wilfully obstructing a CTFI carries a sentence on summary conviction in England and Wales of imprisonment for a term not exceeding 51 weeks or a fine not exceeding level 3 on the standard scale, or both; and in Northern Ireland, imprisonment for a term not exceeding 1 month or a fine not exceeding level 3 on the standard scale, or both.

293 Section 120B(6) makes provision for a different maximum custodial penalty in England and Wales for such offences committed before the coming into force of section 281(5) of the Criminal Justice Act 2003.

294 Section 42(2) inserts a new Part 4C in Schedule 1 to ATCSA which makes provision for equivalent offences of assaulting or obstructing a CTFI who is exercising a power conferred on them under Schedule 1.

Enforcement in other parts of United Kingdom

Section 43: Cross-border enforcement of criminal orders

295 Section 43 amends TACT to insert a new section 120C which provides for an Order in Council to be made providing for the cross-border enforcement of certain investigatory orders (specified in new section 120C(2)) made under TACT. This allows relevant orders made in one part of the UK to be enforced in another part.

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

Preliminary

Section 44: Meaning of relevant body acting in the capacity of an associated person

296 Section 44 defines essential terms used in Part 3 of the Act and the new Corporate Failure to Prevent offences.

297 “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.

298 A person “acts in the capacity of a person associated with a relevant body” in the circumstances set out in sub-section (4). A person acts in the capacity of a person associated with a relevant body if he or she is:

- a. an employee acting in that capacity;
- b. an agent acting in that capacity; or
- c. any other person who performs services for or on behalf of that relevant body and acts in the capacity of a person performing such services.

299 Whether a person is a person acting in the capacity of a person associated with a relevant body is a question of function rather than form. The capacity in which the person acts is not determinative, the person may act in the capacity of an employee, agent, contractor, sub-contractor, or consultant. 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 acting in the capacity of a person associated with the relevant body.

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

Section 45: Failure to prevent facilitation of UK tax evasion offences

300 Section 45(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 a person associated with it commits a tax evasion facilitation offence, that is, criminally facilitates another’s offence of tax evasion.

301 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.

302 Moreover, the associated person must commit the tax evasion facilitation offence in the capacity of a person associated with the relevant body. 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 a person associated with their employer. Therefore the employing relevant body does not commit the new offence. Likewise a relevant body will not commit the new offence where it contracts with another relevant body that is evading its own tax.

303 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 falling short of evasion the new offence will not be committed.

304 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 (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.

305 Guidance will be published to assist relevant bodies to devise reasonable prevention procedures (see section 47).

Section 46: Failure to prevent facilitation of foreign tax evasion offences

306 Section 46 creates an offence of corporate failure to prevent the facilitation of foreign tax evasion offences.

307 This offence is broadly similar to the offence created in section 45 in relation to UK taxes. It is slightly narrower in scope, in that only certain relevant bodies can commit the foreign tax offence. Section 46(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 section 46 foreign tax offence will not be committed.

308 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 section 46 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.

309 Sub-section (6) likewise confirms the requirement of “dual criminality” in relation to the act of facilitation by a person acting in the capacity of a person associated with the relevant body. 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 because UK law renders criminal only deliberate acts of facilitation.

Guidance about prevention procedures

Section 47: Guidance about preventing the facilitation of tax evasion offences

310 Section 47 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.

311 Sub-section (7) enables the Chancellor to endorse guidance prepared and published by others. It is therefore possible for guidance prepared by a trade association, for example, 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

Section 48: Offences: extra-territorial application and jurisdiction

312 Section 48 confirms that (except in relation to scope for the foreign tax 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.

313 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 section 45 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.

314 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 section 46 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 usually being the convenient forum for such action.

Section 49: Consent to prosecution under section 46

315 Section 49 requires the personal consent of the DPPNI, 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.

Section 50: Offences by partnerships: supplementary

316 Section 50 makes procedural provision for prosecutions of partnerships and applies laws applying to the prosecution of companies to such cases.

Consequential amendments and interpretation

Section 51 Consequential amendments

317 Section 51 makes consequential amendments to various Acts governing criminal justice.

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318 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.

319 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.

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

Section 52: Interpretation of Part 3

321 Section 52 defines terms used in Part 3.

Part 4: General

Section 53: Minor and consequential amendments

322 This section gives effect to Schedule 5, which contains minor and consequential amendments to other enactments.

Sections 54: Power to make consequential provisions

323 Section 54 enables further provision consequential upon the Act to be made by Regulations, 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 as appropriate.

Section 55: procedural requirements

324 Section 55 provides that any such regulations which amend, repeal, revoke provision in primary legislation are be subject to the affirmative resolution procedure, otherwise the negative resolution procedure applies. Section 55(1) requires the Secretary of State to consult with the devolved administrations as appropriate before making regulations which would fall within the legislative competence of the Scottish Parliament or the National Assembly for Wales, or which contain provisions that deal with a transferred matter in respect of Northern Ireland. Sub-sections (2) and (3) require the Scottish Ministers and the Department of Justice in Northern Ireland to consult the Secretary of State before making regulations.

Section 56: Financial provisions

325 This section sets out financial provisions relating to the Act.

Section 57: Extent

326 This section sets out the territorial extent of the provisions in the Act.

Section 58: Commencement

327 This section provides for commencement.

328 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

329 Section 58 provides that – subject to the exceptions listed at sub-sections (4) and (6) – the provisions of the Act may be brought into force on whatever day the Secretary of State (or the Scottish Ministers, the Department of Justice in Northern Ireland or the Treasury) appoints by Regulation or Statutory Instrument. Sub-section (4) provides for sections 9, 18, 41 and 42 to come into force two months after the passing of the Act. Sub-section (6) provides for itself, the general provisions in sections 54 to 57 and any other necessary provisions to come into force on Royal Assent.

Related documents

330 The following documents are relevant to the Act 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)
- The National Risk Assessment 2015
(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_Laundering_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.

CDs: British Crown Dependencies i.e. Jersey, Guernsey and the Isle of Man

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

OTs: British Overseas Territories with a financial centre i.e. Anguilla, Bermuda, the British Virgin Islands, the Cayman Islands, Gibraltar, Montserrat, and the Turks and Caicos Islands.

PEPs: Politically Exposed Persons

POCA: The Proceeds of Crime Act 2002

SAR: Suspicious Activity Report

SDSR: The Strategic Defence and Security Review

SFO: Serious Fraud Office

SI: Statutory Instrument

TACT: Terrorism Act 2000

UWO: Unexplained Wealth Order

Annex B – POCA Summary

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

332 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.

333 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

334 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 money, calculated by reference to the criminal benefit and 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

335 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

336 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

337 Cash over £1,000 can be seized if it is suspected to be unlawful in origin, or to be intended for use in unlawful conduct. These are civil proceedings, 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

338 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.

339 POCA also provides for a number of investigative powers, such as search and seizure, and powers to apply for production orders and disclosure orders.

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340 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.

341 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 Act gives effect to key elements of the Action Plan.

Annex C – Territorial extent and application in the United Kingdom

Provision	Extends to E & W and applies to England?	Extends to E & W and applies to Wales?	Extends and applies to Scotland?	Extends and applies to Northern Ireland?
Part 1: Proceeds of crime – Chapter 1: Investigations				
Sections 1 to 3	Yes	Yes	No	Yes
Sections 4 to 6	No	No	Yes	No
Section 7	Yes	Yes	No	Yes
Section 8	No	No	Yes	No
Section 9	Yes	Yes	Yes	Yes
Part 1: Proceeds of crime – Chapter 2: Money laundering				
Sections 10 to 12	Yes	Yes	Yes	Yes
Part 1: Proceeds of crime – Chapter 3: Civil recovery				
Section 13	Yes	Yes	Yes	Yes
Section 14	Yes	Yes	Yes	Yes
Section 15	Yes	Yes	Yes	Yes
Section 16	Yes	Yes	Yes	Yes
Part 1: Proceeds of crime – Chapter 4: Enforcement powers and related offences				
Section 17	Yes	Yes	No	Yes
Section 18	Yes	Yes	Yes	Yes
Schedule 1	Yes	Yes	No	Yes
Section 19	Yes	Yes	Yes	Yes
Section 20	Yes	Yes	No	Yes
Section 21	Yes	Yes	Yes	Yes
Section 22	Yes	Yes	No	Yes
Section 23	Yes	Yes	No	Yes
Section 24	Yes	Yes	Yes	Yes
Section 25	Yes	Yes	Yes	Yes
Part 1: Proceeds of crime – Chapter 5: Miscellaneous				
Section 26	Yes	Yes	No	No
Section 27	No	No	No	Yes
Section 28	No	No	Yes	No
Section 29	No	No	Yes	No

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Section 30	No	No	Yes	No
Section 31	Yes	Yes	No	In part
Section 32	Yes	Yes	Yes	Yes
Section 33	Yes	Yes	Yes	Yes
Section 34	Yes	Yes	In part	In part
Part 2: Terrorist property				
Sections 35 to 42 and Schedule 2	Yes	Yes	Yes	Yes
Schedule 3&4	Yes	Yes	Yes	Yes
Section 43	Yes	Yes	Yes	Yes
Part 3: Corporate offences of failure to prevent facilitation of tax evasion				
Sections 44 to 50	Yes	Yes	Yes	Yes
Sections 51 to 52	Yes	Yes	In part	In part
Part 4: General				
Sections 53-59 and Schedule 5	Yes	Yes	In part	In part

These Explanatory Notes relate to the Criminal Finances Act 2017 (c. 22) which received Royal Assent on 27 April 2017

Annex D – Hansard References

342 The following table sets out the dates and Hansard references for each stage of the Act's passage through Parliament.

Stage	Date	Hansard Reference
House of Commons		
Introduction	13 October 2016	Vol 615 Col. 466
Second Reading	25 October 2016	Vol 616 Cols. 194-244
Public Bill Committee	15 November 2016	Vol 617 Cols. 1-34; 35-74
	17 November 2016	Vol 617 Cols 75-102; 103-126
	22 November 2016	Vol 617 Cols 127-174; 175-204
Report and Third Reading	21 February 2017	Vol 621 Cols. 873-974 Vol 621 Cols. 975-978
House of Lords		
Introduction	22 February 2017	Vol 779 Col. 335
Second Reading	9 March 2017	Vol 779 Cols. 1474-1521
Grand Committee	28 March 2017	Vol 782 Cols 482-542; 558-587
	3 April 2017	Vol 782 Cols 864-913
Report and Third Reading	25 April 2017	Vol 782 Cols 1298-1358 Vol 782 Cols 1358-1359
Commons Consideration of Lords Amendments	26 April 2017	Vol 624 Cols 1149-1157
Royal Assent	27 April 2017	House of Commons Vol 624 Col 1230
		House of Lords Vol 782 Col 1528

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Annex E – Progress of Bill Table

343 This Annex shows how each section and Schedule of the Act was numbered during the passage of the Bill through Parliament.

Section of the Act	Bill as Introduced in the Commons	Bill as amended in Committee in the Commons	Bill as introduced in the Lords	Bill as amended in Committee in the Lords
Section 1	Clause 1	Clause 1	Clause 1	Clause 1
Section 2	Clause 2	Clause 2	Clause 2	Clause 2
Section 3	Clause 3	Clause 3	Clause 3	Clause 3
Section 4	Clause 4	Clause 4	Clause 4	Clause 4
Section 5	Clause 5	Clause 5	Clause 5	Clause 5
Section 6	Clause 6	Clause 6	Clause 6	Clause 6
Section 7	Clause 7	Clause 7	Clause 7	Clause 7
Section 8	Clause 8	Clause 8	Clause 8	Clause 8
Section 9				
Section 10	Clause 9	Clause 9	Clause 9	Clause 9
Section 11	Clause 10	Clause 10	Clause 10	Clause 10
Section 12	Clause 11	Clause 11	Clause 11	Clause 11
Section 13			Clause 12	Clause 12
Section 14		Clause 12	Clause 13	Clause 13
Section 15	Clause 12	Clause 13	Clause 14	Clause 14
Section 16	Clause 13	Clause 14	Clause 15	Clause 15
Section 17	Clause 14	Clause 15	Clause 16	Clause 16
Section 18			Clause 17	Clause 17
Section 19	Clause 15	Clause 16	Clause 18	Clause 18
Section 20	Clause 16	Clause 17	Clause 19	Clause 19
Section 21		Clause 18	Clause 20	Clause 20
Section 22	Clause 17	Clause 19	Clause 21	Clause 21
Section 23	Clause 18	Clause 20	Clause 22	Clause 22
Section 24	Clause 20	Clause 22	Clause 23	Clause 23
Section 25	Clause 19	Clause 21	Clause 24	Clause 24
Section 26	Clause 21	Clause 23	Clause 25	Clause 25
Section 27	Clause 22	Clause 24	Clause 26	Clause 26
Section 28	Clause 23	Clause 25	Clause 27	Clause 27
Section 29	Clause 24	Clause 26	Clause 28	Clause 28
Section 30	Clause 25	Clause 27	Clause 29	Clause 29
Section 31	Clause 26	Clause 28	Clause 30	Clause 30

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Section 32				Clause 31
Section 33	Clause 27	Clause 29	Clause 31	Clause 32
Section 34	Clause 28	Clause 30	Clause 32	Clause 33
Section 35	Clause 29	Clause 31	Clause 33	Clause 34
Section 36	Clause 30	Clause 32	Clause 34	Clause 35
Section 37	Clause 31	Clause 33	Clause 35	Clause 36
Section 38		Clause 34	Clause 36	Clause 37
Section 39	Clause 32	Clause 35	Clause 37	Clause 38
Section 40	Clause 33	Clause 36	Clause 38	Clause 39
Section 41	Clause 34	Clause 37	Clause 39	Clause 40
Section 42	Clause 35	Clause 38	Clause 40	Clause 41
Section 43				Clause 42
Section 44	Clause 36	Clause 39	Clause 41	Clause 43
Section 45	Clause 37	Clause 40	Clause 42	Clause 44
Section 46	Clause 38	Clause 41	Clause 43	Clause 45
Section 47	Clause 39	Clause 42	Clause 44	Clause 46
Section 48	Clause 40	Clause 43	Clause 45	Clause 47
Section 49	Clause 41	Clause 44	Clause 46	Clause 48
Section 50	Clause 42	Clause 45	Clause 47	Clause 49
Section 51	Clause 43	Clause 46	Clause 48	Clause 50
Section 52	Clause 44	Clause 47	Clause 49	Clause 51
Section 53	Clause 45	Clause 48	Clause 50	Clause 52
Section 54	Clause 46	Clause 49	Clause 51	Clause 53
Section 55	Clause 47	Clause 50	Clause 52	Clause 54
Section 56	Clause 48	Clause 51	Clause 53	Clause 55
Section 57	Clause 49	Clause 52	Clause 54	Clause 56
Section 58	Clause 50	Clause 53	Clause 55	Clause 57
Section 59	Clause 51	Clause 54	Clause 56	Clause 58
Schedule 1	Schedule 1	Schedule 1	Schedule 1	Schedule 1
Schedule 2	Schedule 2	Schedule 2	Schedule 2	Schedule 2
Schedule 3	Schedule 3	Schedule 3	Schedule 3	Schedule 3
Schedule 4	Schedule 4	Schedule 4	Schedule 4	Schedule 4
Schedule 5	Schedule 5	Schedule 5	Schedule 5	Schedule 5

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