

## SCHEDULE 2

Regulation 3

### AMENDMENTS OF THE PROCEEDS OF CRIME ACT 2002

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

#### **“333A Tipping off: regulated sector**

- (1) A person commits an offence if—
  - (a) the person discloses any matter within subsection (2);
  - (b) the disclosure is likely to prejudice any investigation that might be conducted following the disclosure referred to in that subsection; and
  - (c) the information on which the disclosure is based came to the person in the course of a business in the regulated sector.
- (2) The matters are that the person or another person has made a disclosure under this Part—
  - (a) to a constable,
  - (b) to an officer of Revenue and Customs,
  - (c) to a nominated officer, or
  - (d) to a member of staff of the Serious Organised Crime Agency authorised for the purposes of this Part by the Director General of that Agency,  
of information that came to that person in the course of a business in the regulated sector.
- (3) A person commits an offence if—
  - (a) the person discloses that an investigation into allegations that an offence under this Part has been committed is being contemplated or is being carried out;
  - (b) the disclosure is likely to prejudice that investigation; and
  - (c) the information on which the disclosure is based came to the person in the course of a business in the regulated sector.
- (4) A person guilty of an offence under this section is liable—
  - (a) on summary conviction to imprisonment for a term not exceeding three months, or to a fine not exceeding level 5 on the standard scale, or to both;
  - (b) on conviction on indictment to imprisonment for a term not exceeding two years, or to a fine, or to both.
- (5) This section is subject to—
  - (a) section 333B (disclosures within an undertaking or group etc),
  - (b) section 333C (other permitted disclosures between institutions etc), and
  - (c) section 333D (other permitted disclosures etc).

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

### **333B Disclosures within an undertaking or group etc**

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

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

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

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

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

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

### **333C Other permitted disclosures between institutions etc**

(1) This section applies to a disclosure—

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

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

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

and the protection of personal data (within the meaning of section 1 of the Data Protection Act 1998).

### **333D Other permitted disclosures etc**

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

### **333E Interpretation of sections 333A to 333D**

- (1) For the purposes of sections 333A to 333D, Schedule 9 has effect for determining—
  - (a) what is a business in the regulated sector, and
  - (b) what is a supervisory authority.
- (2) In those sections—
  - “credit institution” has the same meaning as in Schedule 9;
  - “financial institution” means an undertaking that carries on a business in the regulated sector by virtue of any of paragraphs (b) to (i) of paragraph 1(1) of that Schedule.
- (3) References in those sections to a disclosure by or to a credit institution or a financial institution include disclosure by or to an employee, officer or partner of the institution acting on its behalf.
- (4) For the purposes of those sections a country or territory imposes “equivalent money laundering requirements” if it imposes requirements equivalent to those laid down in Directive 2005/60/EC of the European Parliament and of the Council of 26<sup>th</sup> October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing.
- (5) In those sections “relevant professional adviser” means an accountant, auditor or tax adviser who is a member of a professional body which is established for accountants, auditors or tax advisers (as the case may be) and which makes provision for—
  - (a) testing the competence of those seeking admission to membership of such a body as a condition for such admission; and

*Status: This is the original version (as it was originally made).*

(b) imposing and maintaining professional and ethical standards for its members, as well as imposing sanctions for non-compliance with those standards.”

5. In section 334(2) (penalties for offences under sections 330 to 333) for “, 332 or 333” substitute “or 332”.

6. In section 338(3)(b) (disclosure after prohibited act: requirement for good reason for failure to disclose beforehand) for “there is a good reason” substitute “he has a reasonable excuse”.

7. After section 339 (form and manner of disclosures)(2) insert—

**“339ZA Disclosures to SOCA**

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

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

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

“(ba) the disclosure is of a matter within section 333A(2) or (3)(a) (money laundering: tipping off) and the information on which the disclosure is based came to the person in the course of a business in the regulated sector.”.

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

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

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