

Draft Order in Council laid before Parliament under paragraph 2(2) of Schedule 2 to the European Communities Act 1972, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2005 No.

**PROCEEDS OF CRIME
FINANCIAL SERVICES**

The Proceeds of Crime Act 2002 and Money
Laundering Regulations 2003 (Amendment) Order 2005

Made - - - - 2005
Coming into force - - 2005

At the Court at Buckingham Palace, the day of 2005

Present,

The Queen's Most Excellent Majesty in Council

Her Majesty, in exercise of the powers conferred on Her by section 2(2) of the European Communities Act 1972(1), is pleased, by and with the advice of Her Privy Council to make the following Order:

In accordance with paragraph (2) of Schedule 2 to that Act, a draft of this Order was laid before Parliament and approved by resolution of each House of Parliament;

1. This Order may be cited as the Proceeds of Crime Act 2002 and Money Laundering Regulations 2003 (Amendment) Order 2005 and shall come into force on the expiry of one week beginning with the day on which it is made.

2.—(1) Section 330 of the Proceeds of Crime Act 2002(2) (failure to disclose: regulated sector) is amended as follows.

(2) In subsections (6)(b), (9A)(a) and (10) after “professional legal adviser” there is inserted “or other relevant professional adviser”.

(3) In subsection (6)(c) after “subsection (7)” there is inserted “or (7B)”.

(4) After subsection (7A)(3) there is inserted—

(1) 1972 c.68.

(2) 2002 c.39; section 330(6) was substituted by section 104 of the Serious Organised Crime and Police Act 2005 (c.15) and section 330(9A) was inserted by section 106(2) of that Act.

(3) Section 330(7A) was inserted by section 102(5) of the Serious Organised Crime and Police Act 2005.

“(7B) This subsection applies to a person if—

- (a) he is employed by, or is in partnership with, a professional legal adviser or a relevant professional adviser to provide the adviser with assistance or support,
- (b) the information or other matter mentioned in subsection (3) comes to the person in connection with the provision of such assistance or support, and
- (c) the information or other matter came to the adviser in privileged circumstances.”.

(5) After subsection (13) there is inserted—

“(14) A relevant professional adviser is an accountant, auditor or tax adviser who is a member of a professional body which is established for accountants, auditors or tax advisers (as the case may be) and which makes provision for—

- (a) testing the competence of those seeking admission to membership of such a body as a condition for such admission; and
- (b) imposing and maintaining professional and ethical standards for its members, as well as imposing sanctions for non-compliance with those standards.”.

3.—(1) Regulation 7 of the Money Laundering Regulations 2003(4) (internal reporting procedures) is amended as follows.

(2) In paragraphs (3) and (4) after “professional legal adviser” there is inserted “or other relevant professional adviser”.

(3) For paragraph (6) there is substituted—

“(6) A relevant professional adviser is an accountant, auditor or tax adviser who is a member of a professional body which is established for accountants, auditors or tax advisers (as the case may be) and which makes provision for—

- (a) testing the competence of those seeking admission to membership of such a body as a condition for such admission; and
- (b) imposing and maintaining professional and ethical standards for its members, as well as imposing sanctions for non-compliance with those standards.

(7) Paragraph (1)(b) also does not apply to a person if—

- (a) he is employed by, or is in partnership with, a professional legal adviser or a relevant professional adviser to provide the adviser with assistance or support,
- (b) the information or other matter mentioned in paragraph (1)(b) comes to the person in connection with the provision of such assistance or support, and
- (c) the information or other matter came to the adviser in privileged circumstances.”.

Clerk of the Privy Council

EXPLANATORY NOTE

(This note is not part of the Order)

Section 330 of the Proceeds of Crime Act 2002 requires a person to make a disclosure in accordance with section 330(4) (as substituted by section 104(3) of the Serious Organised Crime and Police Act 2005) where he knows or suspects, or has reasonable grounds for knowing or suspecting, that another person is engaged in money laundering and the information or other matter came to him in the course of a business in the regulated sector. Schedule 9 to that Act (as amended by the Proceeds of Crime Act 2002 (Business in the Regulated Sector and Supervisory Authorities) Order 2003 (S.I. 2003/3074)) has effect for determining what is a business in the regulated sector. Failure to make such a disclosure is an offence under section 330(1).

Section 330(6)(b) (as substituted by section 104(3) of the 2005 Act) provides a defence to this offence where the person is a professional legal adviser and the information or other matter came to him in the circumstances set out in section 330(10). In order to give full effect to Directive [2001/97/EC](#), article 2(2) of this Order amends section 330(6)(b), (9A)(a) and (10) to extend the persons to whom the defence applies to a “relevant professional adviser”, as defined by section 330(14), which is inserted by article 2(5). The amendments made by article 2(3) and (4) provide a defence for a person who is employed by (or in partnership with) the professional legal adviser or other relevant professional adviser to provide assistance or support.

The Money Laundering Regulations 2003 also give effect to that Directive. Article 3 of this Order makes the same amendments to regulation 7 of those Regulations as the amendments made by article 2 to section 330. Regulation 7 provides for the internal reporting procedures with which a person must comply in the course of relevant business (regulation 3(1) of those Regulations). “Relevant business” is defined by regulation 2(2) of those Regulations.