

Status: Point in time view as at 31/01/2018.

Changes to legislation: There are currently no known outstanding effects for the Criminal Finances Act 2017, SCHEDULE 2. (See end of Document for details)

SCHEDULES

SCHEDULE 2

Section 35

DISCLOSURE ORDERS

1 The Terrorism Act 2000 is amended as follows.

Commencement Information

- I1** Sch. 2 para 1 in force at Royal Assent for specified purposes, see s. 58
- I2** Sch. 2 para. 1 in force at 31.1.2018 in so far as not already in force by S.I. 2018/78, reg. 3(bb)

2 After section 37 insert—

“37A Disclosure orders in relation to terrorist financing investigations

Schedule 5A (terrorist financing investigations: disclosure orders) has effect.”

Commencement Information

- I3** Sch. 2 para. 2 in force at Royal Assent for specified purposes, see s. 58
- I4** Sch. 2 para. 2 in force at 31.1.2018 in so far as not already in force by S.I. 2018/78, reg. 3(bb)

3 After Schedule 5 insert—

“SCHEDULE 5A

TERRORIST FINANCING INVESTIGATIONS: DISCLOSURE ORDERS

PART 1

ENGLAND AND WALES AND NORTHERN IRELAND

Interpretation

- 1 This paragraph applies for the purposes of this Part of this Schedule.
- 2 A disclosure order is an order made under paragraph 9.
- 3 A judge is—
 - (a) in England and Wales, a judge entitled to exercise the jurisdiction of the Crown Court;
 - (b) in Northern Ireland, a Crown Court judge.
- 4 A terrorist financing investigation is a terrorist investigation into—

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- (a) the commission, preparation or instigation of an offence under any of sections 15 to 18, or
 - (b) the identification of terrorist property or its movement or use.
- 5 An appropriate officer is—
- (a) a constable, or
 - (b) a counter-terrorism financial investigator.
- 6 A senior police officer is a police officer of at least the rank of superintendent.
- 7 “Document” means anything in which information of any description is recorded.
- 8 “Excluded material”—
- (a) in relation to England and Wales, has the same meaning as in the Police and Criminal Evidence Act 1984;
 - (b) in relation to Northern Ireland, has the same meaning as in the Police and Criminal Evidence (Northern Ireland) Order 1989 (S.I. 1989/1341 (N.I. 12)).

Disclosure orders

- 9 (1) A judge may, on the application of an appropriate officer, make a disclosure order if satisfied that each of the requirements for the making of the order is fulfilled.
- (2) The application must state that a person or property specified in the application is subject to a terrorist financing investigation and the order is sought for the purposes of the investigation.
- (3) A disclosure order is an order authorising an appropriate officer to give to any person the officer considers has relevant information notice in writing requiring the person to do any or all of the following with respect to any matter relevant to the terrorist financing investigation concerned—
- (a) answer questions, either at a time specified in the notice or at once, at a place so specified;
 - (b) provide information specified in the notice, by a time and in a manner so specified;
 - (c) produce documents, or documents of a description, specified in the notice, either at or by a time so specified or at once, and in a manner so specified.
- (4) Relevant information is information (whether or not contained in a document) which the appropriate officer concerned considers to be relevant to the investigation.
- (5) A person is not bound to comply with a requirement imposed by a notice given under a disclosure order unless evidence of authority to give the notice is produced.
- (6) An appropriate officer may not make an application under this paragraph unless the officer is a senior police officer or is authorised to do so by a senior police officer.

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Requirements for making of disclosure order

- 10 (1) These are the requirements for the making of a disclosure order.
- (2) 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.
- (3) There must 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 (whether or not by itself) to the terrorist financing investigation concerned.
- (4) There must be reasonable grounds 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.

Offences

- 11 (1) A person commits an offence if without reasonable excuse the person fails to comply with a requirement imposed under a disclosure order.
- (2) A person guilty of an offence under sub-paragraph (1) is liable—
- (a) on summary conviction in England and Wales, to imprisonment for a term not exceeding 51 weeks, or to a fine, or to both;
- (b) on summary conviction in Northern Ireland, to imprisonment for a term not exceeding 6 months, or to a fine not exceeding level 5 on the standard scale, or to both.
- (3) A person commits an offence if, in purported compliance with a requirement imposed under a disclosure order, the person—
- (a) makes a statement which the person knows to be false or misleading in a material particular, or
- (b) recklessly makes a statement which is false or misleading in a material particular.
- (4) A person guilty of an offence under sub-paragraph (3) is liable—
- (a) on conviction on indictment, to imprisonment for a term not exceeding 2 years, or to a fine, or to both;
- (b) on summary conviction in England and Wales, to imprisonment for a term not exceeding 12 months, or to a fine, or to both;
- (c) on summary conviction in Northern Ireland, to imprisonment for a term not exceeding 6 months, or to a fine not exceeding the statutory maximum, or to both.
- (5) In relation to an offence committed before the coming into force of section 281(5) of the Criminal Justice Act 2003 (alteration of penalties for certain summary offences), the reference in sub-paragraph (2)(a) to 51 weeks is to be read as a reference to 6 months.
- (6) In relation to an offence committed before the coming into force of section 282 of the Criminal Justice Act 2003 (increase in maximum sentence

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on summary conviction of offence triable either way), the reference in sub-paragraph (4)(b) to 12 months is to be read as a reference to 6 months.

Statements

- 12 (1) 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.
- (2) Sub-paragraph (1) does not apply—
- (a) in the case of proceedings under this Part of this Act (including paragraph 11(1) or (3)),
 - (b) on a prosecution for an offence under section 5 of the Perjury Act 1911 or Article 10 of the Perjury (Northern Ireland) Order 1979 (S.I. 1979/1714 (N.I. 19)) (false statements), or
 - (c) on a prosecution for some other offence where, in giving evidence, the person makes a statement inconsistent with the statement mentioned in sub-paragraph (1).
- (3) A statement may not be used by virtue of sub-paragraph (2)(c) against a person unless—
- (a) evidence relating to it is adduced, or
 - (b) a question relating to it is asked,
- by or on behalf of the person in the proceedings arising out of the prosecution.

Further provisions

- 13 (1) A disclosure order does not confer the right to require a person—
- (a) to answer any privileged question,
 - (b) to provide any privileged information, or
 - (c) to produce any privileged document or other material,
- except that a lawyer may be required to provide the name and address of a client.
- (2) For the purposes of sub-paragraph (1)—
- (a) a privileged question is a question which the person would be entitled to refuse to answer on grounds of legal professional privilege in proceedings in the High Court;
 - (b) privileged information is any information which the person would be entitled to refuse to provide on grounds of legal professional privilege in proceedings in the High Court;
 - (c) a privileged document or other material is any document or material which the person would be entitled to refuse to produce on grounds of legal professional privilege in proceedings in the High Court.
- (3) A disclosure order does not confer the right to require a person to produce excluded material.
- (4) A disclosure order has effect in spite of any restriction on the disclosure of information (however imposed).

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- (5) An appropriate officer may take copies of any documents produced in compliance with a requirement to produce them imposed under a disclosure order.
- (6) The documents may be retained for so long as it is necessary to retain them (as opposed to a copy of them) in connection with the terrorist financing investigation for the purposes of which the order was made.
- (7) But if an appropriate officer has reasonable grounds for believing that—
 - (a) the documents may need to be produced for the purposes of any legal proceedings, and
 - (b) they might otherwise be unavailable for those purposes,they may be retained until the proceedings are concluded.
- (8) An appropriate officer may retain documents under sub-paragraph (7) only if the officer is a senior police officer or is authorised to do so by a senior police officer.

Supplementary

- 14 (1) An application for a disclosure order may be made without notice to a judge in chambers.
- (2) Rules of court may make provision as to the practice and procedure to be followed in connection with proceedings relating to disclosure orders.
- (3) An application to discharge or vary a disclosure order may be made to the Crown Court by—
 - (a) the person who applied for the order;
 - (b) any person affected by the order.
- (4) The Crown Court may—
 - (a) discharge the order;
 - (b) vary the order.
- (5) An application to discharge or vary a disclosure order need not be made by the same appropriate officer that applied for the order.
- (6) References to a person who applied for a disclosure order are to be construed accordingly.
- (7) An appropriate officer may not make an application to discharge or vary a disclosure order unless the officer is a senior police officer or is authorised to do so by a senior police officer.”

Commencement Information

I5 Sch. 2 para. 3 in force at Royal Assent for specified purposes, see s. 58

I6 Sch. 2 para. 3 in force at 31.1.2018 in so far as not already in force by S.I. 2018/78, reg. 3(bb)

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“PART 2

SCOTLAND

Interpretation

- 15 This paragraph applies for the purposes of this Part of this Schedule.
- 16 A disclosure order is an order made under paragraph 19.
- 17 A terrorist financing investigation is a terrorist investigation into—
- (a) the commission, preparation or instigation of an offence under any of sections 15 to 18, or
 - (b) the identification of terrorist property or its movement or use.
- 18 “Document” means anything in which information of any description is recorded.

Disclosure orders

- 19 (1) The High Court of Justiciary may, on the application of the Lord Advocate, make a disclosure order if satisfied that each of the requirements for the making of the order is fulfilled.
- (2) The application must state that a person or property specified in the application is subject to a terrorist financing investigation and the order is sought for the purposes of the investigation.
- (3) A disclosure order is an order authorising the Lord Advocate to give to any person the Lord Advocate considers has relevant information notice in writing requiring the person to do any or all of the following with respect to any matter relevant to the terrorist financing investigation concerned—
- (a) answer questions, either at a time specified in the notice or at once, at a place so specified;
 - (b) provide information specified in the notice, by a time and in a manner so specified;
 - (c) produce documents, or documents of a description, specified in the notice, either at or by a time so specified or at once, and in a manner so specified.
- (4) Relevant information is information (whether or not contained in a document) which the Lord Advocate considers to be relevant to the investigation.
- (5) A person is not bound to comply with a requirement imposed by a notice given under a disclosure order unless evidence of authority to give the notice is produced.

Requirements for making of disclosure order

- 20 (1) These are the requirements for the making of a disclosure order.

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- (2) 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.
- (3) There must 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 (whether or not by itself) to the terrorist financing investigation concerned.
- (4) There must be reasonable grounds 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.

Offences

- 21
- (1) A person commits an offence if without reasonable excuse the person fails to comply with a requirement imposed under a disclosure order.
 - (2) A person guilty of an offence under sub-paragraph (1) is liable on summary conviction to—
 - (a) imprisonment for a term not exceeding 6 months,
 - (b) a fine not exceeding level 5 on the standard scale, or
 - (c) both.
 - (3) A person commits an offence if, in purported compliance with a requirement imposed under a disclosure order, the person—
 - (a) makes a statement which the person knows to be false or misleading in a material particular, or
 - (b) recklessly makes a statement which is false or misleading in a material particular.
 - (4) A person guilty of an offence under sub-paragraph (3) is liable—
 - (a) on summary conviction, to imprisonment for a term not exceeding 12 months or to a fine not exceeding the statutory maximum or to both, or
 - (b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both.

Statements

- 22
- (1) 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.
 - (2) Sub-paragraph (1) does not apply—
 - (a) in the case of proceedings under this Part of this Act (including paragraph 21(1) or (3)),
 - (b) on a prosecution for perjury, or
 - (c) on a prosecution for some other offence where, in giving evidence, the person makes a statement inconsistent with the statement mentioned in sub-paragraph (1).

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- (3) A statement may not be used by virtue of sub-paragraph (2)(c) against a person unless—
- (a) evidence relating to it is adduced, or
 - (b) a question relating to it is asked,
- by or on behalf of the person in the proceedings arising out of the prosecution.

Further provisions

- 23 (1) A disclosure order does not confer the right to require a person—
- (a) to answer any question,
 - (b) to provide any information, or
 - (c) to produce any document,
- which the person would be entitled to refuse to answer, provide or produce on grounds of legal privilege.
- (2) A disclosure order has effect in spite of any restriction on the disclosure of information (however imposed).
- (3) The Lord Advocate may take copies of any documents produced in compliance with a requirement to produce them imposed under a disclosure order.
- (4) The documents may be retained for so long as it is necessary to retain them (as opposed to a copy of them) in connection with the terrorist financing investigation for the purposes of which the order was made.
- (5) But if the Lord Advocate has reasonable grounds for believing that—
- (a) the documents may need to be produced for the purposes of any legal proceedings, and
 - (b) they might otherwise be unavailable for those purposes,
- they may be retained until the proceedings are concluded.

Supplementary

- 24 (1) An application for a disclosure order may be made without notice to a judge of the High Court of Justiciary.
- (2) Provision may be made in rules of court as to the discharge and variation of disclosure orders.
- (3) An application to discharge or vary a disclosure order may be made to the High Court of Justiciary by—
- (a) the Lord Advocate;
 - (b) any person affected by the order.
- (4) The High Court of Justiciary may—
- (a) discharge the order;
 - (b) vary the order.”

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Commencement Information

- I7** Sch. 2 para. 4 in force at Royal Assent for specified purposes, see s. 58
- I8** Sch. 2 para. 4 in force at 31.1.2018 in so far as not already in force by S.I. 2018/78, reg. 3(bb)

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