

2007 No. 3287

PROCEEDS OF CRIME

The Proceeds of Crime Act 2002 (Business in the Regulated Sector and Supervisory Authorities) Order 2007

<i>Made</i> - - - -	<i>19th November 2007</i>
<i>Laid before Parliament</i>	<i>20th November 2007</i>
<i>Coming into force</i> - -	<i>15th December 2007</i>

The Treasury make the following Order in exercise of the powers conferred on them by section 459(2) of, and paragraph 5 of Schedule 9 to, the Proceeds of Crime Act 2002(a):

Citation and commencement

1. This Order may be cited as the Proceeds of Crime Act 2002 (Business in the Regulated Sector and Supervisory Authorities) Order 2007 and comes into force on 15th December 2007.

Amendment of Schedule 9 to the Proceeds of Crime Act 2002

2. For Parts 1 (regulated sector) and 2 (supervisory authorities) of Schedule 9 to the Proceeds of Crime Act 2002(b) substitute—

“PART 1

REGULATED SECTOR

Business in the regulated sector

- 1.—(1) A business is in the regulated sector to the extent that it consists of—
- (a) the acceptance by a credit institution of deposits or other repayable funds from the public, or the granting by a credit institution of credits for its own account;
 - (b) the carrying on of one or more of the activities listed in points 2 to 12 and 14 of Annex 1 to the Banking Consolidation Directive by an undertaking other than—
 - (i) a credit institution; or
 - (ii) an undertaking whose only listed activity is trading for own account in one or more of the products listed in point 7 of Annex 1 to the Banking Consolidation Directive and which does not act on behalf of a customer (that is, a third party which is not a member of the same group as the undertaking);

(a) 2002 c. 29.

(b) Part 1 of Schedule 9 was substituted by S.I. 2003/3074 and subsequently amended by S.I.s 2006/2385, 2006/3221 and 2007/208 (with effect from 1 November 2007). Part 2 was amended by the Enterprise Act 2002 (c.40), section 2; S.I. 2003/3074; the Pensions Act 2004 (c.35), section 319(1), Sch 12, para 80; and the Gambling Act 2005 (c.19), section 356(1), Sch 16, Pt 2, para 19.

- (c) the carrying on of activities covered by the Life Assurance Consolidation Directive by an insurance company authorised in accordance with that Directive;
- (d) the provision of investment services or the performance of investment activities by a person (other than a person falling within Article 2 of the Markets in Financial Instruments Directive) whose regular occupation or business is the provision to other persons of an investment service or the performance of an investment activity on a professional basis;
- (e) the marketing or other offering of units or shares by a collective investment undertaking;
- (f) the activities of an insurance intermediary as defined in Article 2(5) of the Insurance Mediation Directive, other than a tied insurance intermediary as mentioned in Article 2(7) of that Directive, in respect of contracts of long-term insurance within the meaning given by article 3(1) of, and Part II of Schedule 1 to, the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001(a);
- (g) the carrying on of any of the activities mentioned in paragraphs (b) to (f) by a branch located in an EEA State of a person referred to in those paragraphs (or of an equivalent person in any other State), wherever its head office is located;
- (h) the activities of the National Savings Bank;
- (i) any activity carried on for the purpose of raising money authorised to be raised under the National Loans Act 1968(b) under the auspices of the Director of Savings;
- (j) the carrying on of statutory audit work within the meaning of section 1210 of the Companies Act 2006(c) (meaning of “statutory auditor” etc) by any firm or individual who is a statutory auditor within the meaning of Part 42 of that Act (statutory auditors);
- (k) the activities of a person appointed to act as an insolvency practitioner within the meaning of section 388 of the Insolvency Act 1986(d) (meaning of “act as insolvency practitioner”) or article 3 of the Insolvency (Northern Ireland) Order 1989(e);
- (l) the provision to other persons of accountancy services by a firm or sole practitioner who by way of business provides such services to other persons;
- (m) the provision of advice about the tax affairs of other persons by a firm or sole practitioner who by way of business provides advice about the tax affairs of other persons;
- (n) the participation in financial or real property transactions concerning—
 - (i) the buying and selling of real property (or, in Scotland, heritable property) or business entities;
 - (ii) the managing of client money, securities or other assets;
 - (iii) the opening or management of bank, savings or securities accounts;
 - (iv) the organisation of contributions necessary for the creation, operation or management of companies; or
 - (v) the creation, operation or management of trusts, companies or similar structures,

(a) S.I. 2001/544.

(b) 1968 c. 13.

(c) 2006 c.46.

(d) 1986 c. 45; s388 was amended by the Insolvency Act 2000, s4(1), (2)(a), (2)(b), 2(c); the Bankruptcy (Scotland) Act 1993, s11(1); and S.I. 1994/2421, 2002/1240, 2002/2708.

(e) 1989 No. 2405 (NI 19); article 3 was amended by the Insolvency (Northern Ireland) Order 2002 No. 3152 (N.I. 6) article 6, and S.R. 1995/225, 2002/334, 2003/550, 2004/307.

by a firm or sole practitioner who by way of business provides legal or notarial services to other persons;

- (o) the provision to other persons by way of business by a firm or sole practitioner of any of the services mentioned in sub-paragraph (4);
- (p) the carrying on of estate agency work (within the meaning given by section 1 of the Estate Agents Act 1979(a) (estate agency work)) by a firm or a sole practitioner who carries on, or whose employees carry on, such work;
- (q) the trading in goods (including dealing as an auctioneer) whenever a transaction involves the receipt of a payment or payments in cash of at least 15,000 euros in total, whether the transaction is executed in a single operation or in several operations which appear to be linked, by a firm or sole trader who by way of business trades in goods;
- (r) operating a casino under a casino operating licence (within the meaning given by section 65(2) of the Gambling Act 2005(b) (nature of licence)).

(2) For the purposes of sub-paragraph (1)(a) and (b) “credit institution” means—

- (a) a credit institution as defined in Article 4(1)(a) of the Banking Consolidation Directive; or
- (b) a branch (within the meaning of Article 4(3) of that Directive) located in an EEA state of an institution falling within paragraph (a) (or of an equivalent institution in any other State) wherever its head office is located.

(3) For the purposes of sub-paragraph (1)(n) a person participates in a transaction by assisting in the planning or execution of the transaction or otherwise acting for or on behalf of a client in the transaction.

(4) The services referred to in sub-paragraph (1)(o) are—

- (a) forming companies or other legal persons;
- (b) acting, or arranging for another person to act—
 - (i) as a director or secretary of a company;
 - (ii) as a partner of a partnership; or
 - (iii) in a similar position in relation to other legal persons;
- (c) providing a registered office, business address, correspondence or administrative address or other related services for a company, partnership or any other legal person or arrangement;
- (d) acting, or arranging for another person to act, as—
 - (i) a trustee of an express trust or similar legal arrangement; or
 - (ii) a nominee shareholder for a person other than a company whose securities are listed on a regulated market.

(5) For the purposes of sub-paragraph (4)(d) “regulated market”—

- (a) in relation to any EEA State, has the meaning given by point 14 of Article 4(1) of the Markets in Financial Instruments Directive; and
- (b) in relation to any other State, means a regulated financial market which subjects companies whose securities are admitted to trading to disclosure obligations which are contained in international standards and are equivalent to the specified disclosure obligations.

(6) For the purposes of sub-paragraph (5) “the specified disclosure obligations” means disclosure requirements consistent with—

(a) 1979 c.38. Section 1 was amended by the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c.73), Schedule 1, Pt I, para 40, the Planning (Consequential Provisions) Act 1990 (c.11), Schedule 2, para. 42, the Planning (Consequential Provisions) (Scotland) Act 1997 (c.11), Schedule 2, para. 28. S.I. 1991/1220 and S.I. 2001/1283.

(b) 2005 c.19.

- (a) Article 6(1) to (4) of Directive 2003/6/EC of the European Parliament and of the Council of 28th January 2003(a) on insider dealing and market manipulation;
- (b) Articles 3, 5, 7, 8, 10, 14 and 16 of Directive 2003/71/EC of the European Parliament and of the Council of 4th November 2003(b) on the prospectuses to be published when securities are offered to the public or admitted to trading;
- (c) Articles 4 to 6, 14, 16 to 19 and 30 of Directive 2004/109/EC of the European Parliament and of the Council of 15th December 2004(c) relating to the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market; or
- (d) Community legislation made under the provisions mentioned in paragraphs (a) to (c).

(7) For the purposes of sub-paragraph (1)(j) and (l) to (q) “firm” means any entity, whether or not a legal person, that is not an individual and includes a body corporate and a partnership or other unincorporated association.

(8) For the purposes of sub-paragraph (1)(q) “cash” means notes, coins or travellers’ cheques in any currency.

Excluded activities

2.—(1) A business is not in the regulated sector to the extent that it consists of—

- (a) the issuing of withdrawable share capital within the limit set by section 6 of the Industrial and Provident Societies Act 1965(d) (maximum shareholding in society), or the acceptance of deposits from the public within the limit set by section 7(3) of that Act (carrying on of banking by societies), by a society registered under that Act;
- (b) the issuing of withdrawable share capital within the limit set by section 6 of the Industrial and Provident Societies Act (Northern Ireland) 1969(e) (maximum shareholding in society), or the acceptance of deposits from the public within the limit set by section 7(3) of that Act (carrying on of banking by societies), by a society registered under that Act;
- (c) the carrying on of any activity in respect of which a person who is (or falls within a class of persons) specified in any of paragraphs 2 to 23, 25 to 38 or 40 to 49 of the Schedule to the Financial Services and Markets Act 2000 (Exemption) Order 2001(f) is exempt;
- (d) the exercise of the functions specified in section 45 of the Financial Services Act 1986(g) (miscellaneous exemptions) by a person who was an exempted person for the purposes of that section immediately before its repeal;
- (e) the engaging in financial activity which fulfils all of the conditions set out in paragraphs (a) to (g) of sub-paragraph (3) of this paragraph by a person whose main activity is that of a high value dealer; or

(a) OJ No L 96, 12.4.2003, p. 16.

(b) OJ No L 345, 31.12.2003, p. 64.

(c) OJ No L 390, 31.12.2004, p. 43.

(d) 1965 c. 12. Section 6 was amended by the Housing (Consequential Provisions) Act 1985 (c.17), S.I. 1994/341 and S.I. 1997/627. Section 7(3) was amended by S.I. 1981/394.

(e) 1969 c. 24 (N.I.).

(f) S.I. 2001/1201. This Order was amended by S.I. 2001/3623, S.I. 2002/1310, S.I. 2003/47, S.I. 2003/1675, S.I. 2005/592, S.I.2005/2114, S.I.2005/3225, S.I. 2006/2383, S.I. 2007/125 and S.I. 2007/1821. Paragraphs 1, 24 and 24A exempt respectively the Bank of England, industrial and provident societies and credit unions within the meaning of the Credit Unions (Northern Ireland) Order 1985 (S.I. 1985/1205 (N.I.12) in respect of the activity of accepting deposits. Paragraph 39 exempts insolvency practitioners in respect of any regulated activity mentioned in Article 5(1). Paragraph 24A was inserted by S.I. 2001/3623.

(g) 1986 c.60. This Act was repealed as from 1st December 2001 by S.I. 2001/3649, art.3(1)(c).

- (f) the preparation of a home information pack (within the meaning of Part 5 of the Housing Act 2004^(a) (home information packs)) or a document or information for inclusion in a home information pack.

(2) For the purposes of sub-paragraph (1)(e) a “high value dealer” means a person mentioned in paragraph 1(1)(q) when carrying on the activities mentioned in that paragraph.

(3) A business is not in the regulated sector to the extent that it consists of financial activity if—

- (a) the person’s total annual turnover in respect of the financial activity does not exceed £64,000;
- (b) the financial activity is limited in relation to any customer to no more than one transaction exceeding 1,000 euros, whether the transaction is carried out in a single operation, or a series of operations which appear to be linked;
- (c) the financial activity does not exceed 5% of the person’s total annual turnover;
- (d) the financial activity is ancillary to the person’s main activity and directly related to that activity;
- (e) the financial activity is not the transmission or remittance of money (or any representation of monetary value) by any means;
- (f) the main activity of the person carrying on the financial activity is not an activity mentioned in paragraph 1(1)(a) to (p) or (r); and
- (g) the financial activity is provided only to customers of the person’s main activity and is not offered to the public.

(4) A business is not in the regulated sector if it is carried on by—

- (a) the Auditor General for Scotland;
- (b) the Auditor General for Wales;
- (c) the Bank of England;
- (d) the Comptroller and Auditor General;
- (e) the Comptroller and Auditor General for Northern Ireland;
- (f) the Official Solicitor to the Supreme Court, when acting as trustee in his official capacity; or
- (g) the Treasury Solicitor.

Interpretation

3.—(1) In this Part—

“the Banking Consolidation Directive” means directive 2006/48/EC of the European Parliament and of the Council of 14th June 2006^(b) relating to the taking up and pursuit of the business of credit institutions;

“the Insurance Mediation Directive” means directive 2002/92/EC of the European Parliament and of the Council of 9th December 2002^(c) on insurance mediation;

“the Life Assurance Consolidation Directive” means directive 2002/83/EC of the European Parliament and of the Council of 5th November 2002^(d) concerning life assurance; and

“the Markets in Financial Instruments Directive” means directive 2004/39/EC of the European Parliament and of the Council of 12th April 2004^(a) on markets in financial instruments.

(a) 2004 c. 34.

(b) OJ No L 177, 30.6.2006, p. 1.

(c) OJ No L 9, 15.1.2003, p. 3.

(d) OJ No L 345, 19.12.2002, p.1.

(2) In this Part references to amounts in euros include references to equivalent amounts in another currency.

(3) Terms used in this Part and in the Banking Consolidation Directive or the Markets in Financial Instruments Directive have the same meaning in this Part as in those Directives.

PART 2

SUPERVISORY AUTHORITIES

4.—(1) The following bodies are supervisory authorities—

- (a) the Commissioners for Her Majesty's Revenue and Customs;
- (b) the Department of Enterprise, Trade and Investment in Northern Ireland;
- (c) the Financial Services Authority;
- (d) the Gambling Commission;
- (e) the Office of Fair Trading;
- (f) the Secretary of State; and
- (g) the professional bodies listed in sub-paragraph (2).

(2) The professional bodies referred to in sub-paragraph (1)(g) are—

- (a) the Association of Accounting Technicians;
- (b) the Association of Chartered Certified Accountants;
- (c) the Association of International Accountants;
- (d) the Association of Taxation Technicians;
- (e) the Chartered Institute of Management Accountants;
- (f) the Chartered Institute of Public Finance and Accountancy;
- (g) the Chartered Institute of Taxation;
- (h) the Council for Licensed Conveyancers;
- (i) the Faculty of Advocates;
- (j) the Faculty Office of the Archbishop of Canterbury;
- (k) the General Council of the Bar;
- (l) the General Council of the Bar of Northern Ireland;
- (m) the Insolvency Practitioners Association;
- (n) the Institute of Certified Bookkeepers;
- (o) the Institute of Chartered Accountants in England and Wales;
- (p) the Institute of Chartered Accountants in Ireland;
- (q) the Institute of Chartered Accountants of Scotland;
- (r) the Institute of Financial Accountants;
- (s) the International Association of Book-keepers;
- (t) the Law Society;
- (u) the Law Society for Northern Ireland; and
- (v) the Law Society of Scotland.”

Transitional provision

3. Before the entry into force of Part 42 of the Companies Act 2006 (statutory auditors)—

(a) OJ No L 145, 30.4.2004, p. 1., amended by directive 2006/31/EC (OJ No L 114, 27.4.06, p. 60).

- (a) the reference in paragraph 1(1)(j) of Schedule 9 to the Proceeds of Crime Act 2002, as inserted by Article 2 of this Order, to a person who is a statutory auditor shall be treated as a reference to a person who is eligible for appointment as a company auditor under section 25 of the Companies Act 1989^(a) (eligibility for appointment) or article 28 of the Companies (Northern Ireland) Order 1990^(b); and
- (b) the reference in paragraph 1(1)(j) of Schedule 9 to the Proceeds of Crime Act 2002, as inserted by Article 2 of this Order, to the carrying on of statutory audit work shall be treated as a reference to the provision of audit services.

Frank Roy

Alan Campbell

Two of the Lords Commissioners of
Her Majesty's Treasury

19th November 2007

^(a) 1989 c. 40.
^(b) 1990 No.593 (N.I. 5).

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends the meaning of a business in the regulated sector and the meaning of a supervisory authority for the purposes of Part 7 of the Proceeds of Crime Act 2002 (c.29) (money laundering) by substituting new Parts 1 and 2 of Schedule 9 to that Act. The new provisions implement in part Directive 2005/60/EC (OJ No L 309, 25.11.2005, p.15) of the European Parliament and of the Council on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing (“the Directive”). A transposition note setting out how certain elements of the Directive will be transposed into UK law has been prepared jointly by the Treasury and the Home Office. The main elements of the Directive will be transposed into UK law by the Money Laundering Regulations 2007 (S.I. 2007/2157) and a separate transposition note has been prepared in relation to those Regulations. Copies of both transposition notes are available from the Financial Services Team, HM Treasury, 1 Horse Guards Road, London SW1A 2HQ.

The amendments to the meaning of a business in the regulated sector provided by the new Part 1 of Schedule 9 reflect the changes to the scope of the regulated sector made by the Directive. Two major changes are the expanded definition of a trust or company service provider and the exemption for financial activity on an occasional or very limited basis.

The amendments to the meaning of a supervisory authority provided by the new Part 2 of Schedule 9 reflect the requirement of the Directive for all sectors within its scope to be effectively monitored for compliance, and the provision made by the Directive for accountants, auditors, legal professionals and tax advisers to be monitored by a self-regulatory body.

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