

Status: Point in time view as at 27/11/2008.

Changes to legislation: There are currently no known outstanding effects for the Anti-terrorism, Crime and Security Act 2001, SCHEDULE 2. (See end of Document for details)

SCHEDULES

SCHEDULE 2

Section 3

TERRORIST PROPERTY: AMENDMENTS

PART 1

ACCOUNT MONITORING ORDERS

- 1 (1) The Terrorism Act 2000 is amended as follows.
- (2) The following section is inserted after section 38—

“38A Account monitoring orders

Schedule 6A (account monitoring orders) shall have effect.”

- (3) The following Schedule is inserted after Schedule 6—

“SCHEDULE 6A

ACCOUNT MONITORING ORDERS

Introduction

- 1 (1) This paragraph applies for the purposes of this Schedule.
- (2) A judge is—
 - (a) a Circuit judge, in England and Wales;
 - (b) the sheriff, in Scotland;
 - (c) a Crown Court judge, in Northern Ireland.
- (3) The court is—
 - (a) the Crown Court, in England and Wales or Northern Ireland;
 - (b) the sheriff, in Scotland.
- (4) An appropriate officer is—
 - (a) a police officer, in England and Wales or Northern Ireland;
 - (b) the procurator fiscal, in Scotland.
- (5) “Financial institution” has the same meaning as in Schedule 6.

Account monitoring orders

- 2 (1) A judge may, on an application made to him by an appropriate officer, make an account monitoring order if he is satisfied that—

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- (a) the order is sought for the purposes of a terrorist investigation,
 - (b) the tracing of terrorist property is desirable for the purposes of the investigation, and
 - (c) the order will enhance the effectiveness of the investigation.
- (2) The application for an account monitoring order must state that the order is sought against the financial institution specified in the application in relation to information which—
- (a) relates to an account or accounts held at the institution by the person specified in the application (whether solely or jointly with another), and
 - (b) is of the description so specified.
- (3) The application for an account monitoring order may specify information relating to—
- (a) all accounts held by the person specified in the application for the order at the financial institution so specified,
 - (b) a particular description, or particular descriptions, of accounts so held, or
 - (c) a particular account, or particular accounts, so held.
- (4) An account monitoring order is an order that the financial institution specified in the application for the order must—
- (a) for the period specified in the order,
 - (b) in the manner so specified,
 - (c) at or by the time or times so specified, and
 - (d) at the place or places so specified,
- provide information of the description specified in the application to an appropriate officer.
- (5) The period stated in an account monitoring order must not exceed the period of 90 days beginning with the day on which the order is made.

Applications

- 3 (1) An application for an account monitoring order may be made ex parte to a judge in chambers.
- (2) The description of information specified in an application for an account monitoring order may be varied by the person who made the application.
- (3) If the application was made by a police officer, the description of information specified in it may be varied by a different police officer.

Discharge or variation

- 4 (1) An application to discharge or vary an account monitoring order may be made to the court by—
- (a) the person who applied for the order;
 - (b) any person affected by the order.

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- (2) If the application for the account monitoring order was made by a police officer, an application to discharge or vary the order may be made by a different police officer.
- (3) The court—
 - (a) may discharge the order;
 - (b) may vary the order.

Rules of court

- 5 (1) Rules of court may make provision as to the practice and procedure to be followed in connection with proceedings relating to account monitoring orders.
- (2) In Scotland, rules of court shall, without prejudice to section 305 of the Criminal Procedure (Scotland) Act 1995 (c. 46), be made by Act of Adjournal.

Effect of orders

- 6 (1) In England and Wales and Northern Ireland, an account monitoring order has effect as if it were an order of the court.
- (2) An account monitoring order has effect in spite of any restriction on the disclosure of information (however imposed).

Statements

- 7 (1) A statement made by a financial institution in response to an account monitoring order may not be used in evidence against it in criminal proceedings.
- (2) But sub-paragraph (1) does not apply—
 - (a) in the case of proceedings for contempt of court;
 - (b) in the case of proceedings under section 23 where the financial institution has been convicted of an offence under any of sections 15 to 18;
 - (c) on a prosecution for an offence where, in giving evidence, the financial institution 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 financial institution unless—
 - (a) evidence relating to it is adduced, or
 - (b) a question relating to it is asked,by or on behalf of the financial institution in the proceedings arising out of the prosecution.”

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PART 2

RESTRAINT ORDERS

- 2 (1) Part 1 of Schedule 4 to the Terrorism Act 2000 (c. 11) (forfeiture orders under section 23 of that Act: England and Wales) is amended as follows.
- (2) In paragraph 5 (restraint orders) for sub-paragraph (2) substitute—
- “(2) The High Court may also make a restraint order under this paragraph where—
- (a) a criminal investigation has been started in England and Wales with regard to an offence under any of sections 15 to 18,
 - (b) an application for a restraint order is made to the High Court by the person who the High Court is satisfied will have the conduct of any proceedings for the offence, and
 - (c) it appears to the High Court that a forfeiture order may be made in any proceedings for the offence.”
- (3) In paragraph 5(3) for “the proceedings” substitute “ any proceedings ”.
- (4) In paragraph 5 after sub-paragraph (5) insert—
- “(6) In this paragraph “criminal investigation” means an investigation which police officers or other persons have a duty to conduct with a view to it being ascertained whether a person should be charged with an offence.”
- (5) For paragraph 6(3) substitute—
- “(3) A restraint order made under paragraph 5(1) shall in particular be discharged on an application under sub-paragraph (2) if the proceedings for the offence have been concluded.
- (4) A restraint order made under paragraph 5(2) shall in particular be discharged on an application under sub-paragraph (2)—
- (a) if no proceedings in respect of offences under any of sections 15 to 18 are instituted within such time as the High Court considers reasonable, and
 - (b) if all proceedings in respect of offences under any of sections 15 to 18 have been concluded.”
- (6) In paragraph 8(3) for “the proposed proceedings” substitute “ any proceedings for an offence under any of sections 15 to 18 ”.
- (7) In paragraph 9(1) (compensation where restraint order discharged) for “paragraph 6(3)(a)” substitute “ paragraph 6(4)(a) ”.
- 3 (1) Part 2 of Schedule 4 to the Terrorism Act 2000 (c. 11) (forfeiture orders under section 23 of that Act: Scotland) is amended as follows.
- (2) In paragraph 18 (restraint orders) for sub-paragraph (2) substitute—
- “(2) The Court of Session may also make a restraint order on such an application where—
- (a) a criminal investigation has been instituted in Scotland with regard to an offence under any of sections 15 to 18, and

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- (b) it appears to the Court of Session that a forfeiture order may be made in any proceedings for the offence.”
 - (3) In paragraph 18(3) for “the proceedings” substitute “ any proceedings ”.
 - (4) In paragraph 18 after sub-paragraph (5) insert—
 - “(6) In this paragraph “criminal investigation” means an investigation which police officers or other persons have a duty to conduct with a view to it being ascertained whether a person should be charged with an offence.”
 - (5) For paragraph 19(3) substitute—
 - “(3) A restraint order made under paragraph 18(1) shall in particular be recalled on an application under sub-paragraph (2) if the proceedings for the offence have been concluded.
 - (3A) A restraint order made under paragraph 18(2) shall in particular be discharged on an application under sub-paragraph (2)—
 - (a) if no proceedings in respect of offences under any of sections 15 to 18 are instituted within such time as the Court of Session considers reasonable, and
 - (b) if all proceedings in respect of offences under any of sections 15 to 18 have been concluded.”
 - (6) In paragraph 23(1) for “19(3)(a)” substitute “ 19(3A)(a) ”.
- 4
- (1) Part 3 of Schedule 4 to the Terrorism Act 2000 (forfeiture orders under section 23 of that Act: Northern Ireland) is amended as follows.
 - (2) In paragraph 33 (restraint orders) for sub-paragraph (2) substitute—
 - “(2) The High Court may also make a restraint order under this paragraph where—
 - (a) a criminal investigation has been started in Northern Ireland with regard to an offence under any of sections 15 to 18,
 - (b) an application for a restraint order is made to the High Court by the person who the High Court is satisfied will have the conduct of any proceedings for the offence, and
 - (c) it appears to the High Court that a forfeiture order may be made in any proceedings for the offence.”
 - (3) In paragraph 33(3) for “the proceedings” substitute “ any proceedings ”.
 - (4) In paragraph 33 after sub-paragraph (5) insert—
 - “(6) In this paragraph “criminal investigation” means an investigation which police officers or other persons have a duty to conduct with a view to it being ascertained whether a person should be charged with an offence.”
 - (5) For paragraph 34(3) substitute—
 - “(3) A restraint order made under paragraph 33(1) shall in particular be discharged on an application under sub-paragraph (2) if the proceedings for the offence have been concluded.

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- (4) A restraint order made under paragraph 33(2) shall in particular be discharged on an application under sub-paragraph (2)—
- (a) if no proceedings in respect of offences under any of sections 15 to 18 are instituted within such time as the High Court considers reasonable, and
 - (b) if all proceedings in respect of offences under any of sections 15 to 18 have been concluded.”
- (6) In paragraph 38(4), in the definition of “prosecutor”, for “the proposed proceedings” substitute “any proceedings for an offence under any of sections 15 to 18”.
- (7) In paragraph 39(1) (compensation where restraint order discharged) for “paragraph 34(3)(a)” substitute “paragraph 34(4)(a)”.

PART 3

DISCLOSURE OF INFORMATION

- 5 (1) The Terrorism Act 2000 (c. 11) is amended as follows.
- (2) The following sections are inserted after section 21—

“21A Failure to disclose: regulated sector

- (1) A person commits an offence if each of the following three conditions is satisfied.
- (2) The first condition is that he—
 - (a) knows or suspects, or
 - (b) has reasonable grounds for knowing or suspecting,
 that another person has committed an offence under any of sections 15 to 18.
- (3) The second condition is that the information or other matter—
 - (a) on which his knowledge or suspicion is based, or
 - (b) which gives reasonable grounds for such knowledge or suspicion,
 came to him in the course of a business in the regulated sector.
- (4) The third condition is that he does not disclose the information or other matter to a constable or a nominated officer as soon as is practicable after it comes to him.
- (5) But a person does not commit an offence under this section if—
 - (a) he has a reasonable excuse for not disclosing the information or other matter;
 - (b) he is a professional legal adviser and the information or other matter came to him in privileged circumstances.
- (6) In deciding whether a person committed an offence under this section the court must consider whether he followed any relevant guidance which was at the time concerned—
 - (a) issued by a supervisory authority or any other appropriate body,
 - (b) approved by the Treasury, and

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- (c) published in a manner it approved as appropriate in its opinion to bring the guidance to the attention of persons likely to be affected by it.
- (7) A disclosure to a nominated officer is a disclosure which—
 - (a) is made to a person nominated by the alleged offender’s employer to receive disclosures under this section, and
 - (b) is made in the course of the alleged offender’s employment and in accordance with the procedure established by the employer for the purpose.
- (8) Information or other matter comes to a professional legal adviser in privileged circumstances if it is communicated or given to him—
 - (a) by (or by a representative of) a client of his in connection with the giving by the adviser of legal advice to the client,
 - (b) by (or by a representative of) a person seeking legal advice from the adviser, or
 - (c) by a person in connection with legal proceedings or contemplated legal proceedings.
- (9) But subsection (8) does not apply to information or other matter which is communicated or given with a view to furthering a criminal purpose.
- (10) Schedule 3A has effect for the purpose of determining what is—
 - (a) a business in the regulated sector;
 - (b) a supervisory authority.
- (11) For the purposes of subsection (2) a person is to be taken to have committed an offence there mentioned if—
 - (a) he has taken an action or been in possession of a thing, and
 - (b) he would have committed the offence if he had been in the United Kingdom at the time when he took the action or was in possession of the thing.
- (12) A person guilty of an offence under this section is liable—
 - (a) on conviction on indictment, to imprisonment for a term not exceeding five years or to a fine or to both;
 - (b) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum or to both.
- (13) An appropriate body is any body which regulates or is representative of any trade, profession, business or employment carried on by the alleged offender.
- (14) The reference to a constable includes a reference to a person authorised for the purposes of this section by the Director General of the National Criminal Intelligence Service.

21B Protected disclosures

- (1) A disclosure which satisfies the following three conditions is not to be taken to breach any restriction on the disclosure of information (however imposed).

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- (2) The first condition is that the information or other matter disclosed came to the person making the disclosure (the discloser) in the course of a business in the regulated sector.
 - (3) The second condition is that the information or other matter—
 - (a) causes the discloser to know or suspect, or
 - (b) gives him reasonable grounds for knowing or suspecting,
 that another person has committed an offence under any of sections 15 to 18.
 - (4) The third condition is that the disclosure is made to a constable or a nominated officer as soon as is practicable after the information or other matter comes to the discloser.
 - (5) A disclosure to a nominated officer is a disclosure which—
 - (a) is made to a person nominated by the discloser’s employer to receive disclosures under this section, and
 - (b) is made in the course of the discloser’s employment and in accordance with the procedure established by the employer for the purpose.
 - (6) The reference to a business in the regulated sector must be construed in accordance with Schedule 3A.
 - (7) The reference to a constable includes a reference to a person authorised for the purposes of this section by the Director General of the National Criminal Intelligence Service.”
- (3) In section 19 after subsection (1) insert—
 - “(1A) But this section does not apply if the information came to the person in the course of a business in the regulated sector.”
 - (4) In section 19 after subsection (7) insert—
 - “(7A) The reference to a business in the regulated sector must be construed in accordance with Schedule 3A.
 - (7B) The reference to a constable includes a reference to a person authorised for the purposes of this section by the Director General of the National Criminal Intelligence Service.”
 - (5) In section 20 after subsection (4) insert—
 - “(5) References to a constable include references to a person authorised for the purposes of this section by the Director General of the National Criminal Intelligence Service.”
 - (6) The following Schedule is inserted after Schedule 3—

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“SCHEDULE
3A

REGULATED SECTOR AND SUPERVISORY AUTHORITIES

PART 1

REGULATED SECTOR

Business in the regulated sector

- 1 (1) A business is in the regulated sector to the extent that it engages in any of the following activities—
 - (a) accepting deposits by a person with permission under Part 4 of the Financial Services and Markets Act 2000 (c. 8) to accept deposits (including, in the case of a building society, the raising of money from members of the society by the issue of shares);
 - (b) the business of the National Savings Bank;
 - (c) business carried on by a credit union;
 - (d) any home-regulated activity carried on by a European institution in respect of which the establishment conditions in paragraph 13 of Schedule 3 to the Financial Services and Markets Act 2000, or the service conditions in paragraph 14 of that Schedule, are satisfied;
 - (e) any activity carried on for the purpose of raising money authorised to be raised under the National Loans Act 1968 (c. 13) under the auspices of the Director of Savings;
 - (f) the activity of operating a bureau de change, transmitting money (or any representation of monetary value) by any means or cashing cheques which are made payable to customers;
 - (g) any activity falling within sub-paragraph (2);
 - (h) any of the activities in points 1 to 12 or 14 of Annex 1 to the Banking Consolidation Directive, ignoring an activity described in any of paragraphs (a) to (g) above;
 - (i) business which consists of effecting or carrying out contracts of long term insurance by a person who has received official authorisation pursuant to Article 6 or 27 of the First Life Directive.
- (2) An activity falls within this sub-paragraph if it constitutes any of the following kinds of regulated activity in the United Kingdom—
 - (a) dealing in investments as principal or as agent;
 - (b) arranging deals in investments;
 - (c) managing investments;
 - (d) safeguarding and administering investments;
 - (e) sending dematerialised instructions;
 - (f) establishing (and taking other steps in relation to) collective investment schemes;
 - (g) advising on investments.

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- (3) Paragraphs (a) and (i) of sub-paragraph (1) and sub-paragraph (2) must be read with section 22 of the Financial Services and Markets Act 2000 (c. 8), any relevant order under that section and Schedule 2 to that Act.
- 2 (1) This paragraph has effect for the purposes of paragraph 1.
- (2) “Building society” has the meaning given by the Building Societies Act 1986.
- (3) “Credit union” has the meaning given by the Credit Unions Act 1979 (c. 34) or the Credit Unions (Northern Ireland) Order 1985 (S.I. 1985/1205 (N.I. 12)).
- (4) “European institution” means an EEA firm of the kind mentioned in paragraph 5(b) or (c) of Schedule 3 to the Financial Services and Markets Act 2000 which qualifies for authorisation for the purposes of that Act under paragraph 12 of that Schedule.
- (5) “Home-regulated activity” in relation to a European institution, means an activity—
- (a) which is specified in Annex 1 to the Banking Consolidation Directive and in respect of which a supervisory authority in the home State of the institution has regulatory functions, and
 - (b) if the institution is an EEA firm of the kind mentioned in paragraph 5(c) of Schedule 3 to the Financial Services and Markets Act 2000, which the institution carries on in its home State.
- (6) “Home State”, in relation to a person incorporated in or formed under the law of another member State, means that State.
- (7) The Banking Consolidation Directive is the Directive of the European Parliament and Council relating to the taking up and pursuit of the business of credit institutions (No. 2000/12 EC).
- (8) The First Life Directive is the First Council Directive on the co-ordination of laws, regulations and administrative provisions relating to the taking up and pursuit of the business of direct life assurance (No. [79/267/EEC](#)).

Excluded activities

- 3 A business is not in the regulated sector to the extent that it engages in any of the following activities—
- (a) the issue of withdrawable share capital within the limit set by section 6 of the Industrial and Provident Societies Act 1965 (c. 12) by a society registered under that Act;
 - (b) the acceptance of deposits from the public within the limit set by section 7(3) of that Act by such a society;
 - (c) the issue of withdrawable share capital within the limit set by section 6 of the Industrial and Provident Societies Act (Northern Ireland) 1969 (N.I. c. 24) by a society registered under that Act;
 - (d) the acceptance of deposits from the public within the limit set by section 7(3) of that Act by such a society;
 - (e) activities carried on by the Bank of England;

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- (f) any activity in respect of which an exemption order under section 38 of the Financial Services and Markets Act 2000 (c. 8) has effect if it is carried on by a person who is for the time being specified in the order or falls within a class of persons so specified .

PART 2

SUPERVISORY AUTHORITIES

- 4 (1) Each of the following is a supervisory authority—
- (a) the Bank of England;
 - (b) the Financial Services Authority;
 - (c) the Council of Lloyd’s;
 - (d) the Director General of Fair Trading;
 - (e) a body which is a designated professional body for the purposes of Part 20 of the Financial Services and Markets Act 2000.
- (2) The Secretary of State is also a supervisory authority in the exercise, in relation to a person carrying on a business in the regulated sector, of his functions under the enactments relating to companies or insolvency or under the Financial Services and Markets Act 2000.
- (3) The Treasury are also a supervisory authority in the exercise, in relation to a person carrying on a business in the regulated sector, of their functions under the enactments relating to companies or insolvency or under the Financial Services and Markets Act 2000.

PART 3

POWER TO AMEND

- 5 (1) The Treasury may by order amend Part 1 or 2 of this Schedule.
- (2) An order under sub-paragraph (1) must be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.”

PART 4

FINANCIAL INFORMATION ORDERS

- 6 (1) Paragraph 1 of Schedule 6 to the Terrorism Act 2000 (c. 11) (financial information orders) is amended as follows.
- (2) In sub-paragraph (1) after “financial institution” insert “ to which the order applies ”.
- (3) After sub-paragraph (1) insert—
- “(1A) The order may provide that it applies to—
- (a) all financial institutions,
 - (b) a particular description, or particular descriptions, of financial institutions, or

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(c) a particular financial institution or particular financial institutions.”

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