

**EXPLANATORY MEMORANDUM TO**  
**THE PROCEEDS OF CRIME ACT 2002 AND MONEY LAUNDERING**  
**REGULATIONS 2003 (AMENDMENT) ORDER 2006**

**2006 No. 308**

1. This explanatory memorandum has been prepared by the Home Office and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. **Description**

2.1 This Order amends section 330 of the Proceeds of Crime Act 2002 which creates an obligation to disclose suspicions of money laundering to the authorities. The duty to report under this section is restricted to those persons who receive information in the course of a business in the regulated sector as defined in Schedule 9 to the Act. Failure to make such a disclosure is an offence.

2.2 The Order provides for the defence to the “failure to disclose” offence, which currently applies to professional legal advisers in certain circumstances, to be extended to include accountants, auditors and tax advisers who satisfy certain conditions.

3. **Matters of special interest to the Joint Committee on Statutory Instruments**

3.1 The Money Laundering Regulations 2003 also give effect to the Directive and these are also amended by the instrument.

4. **Legislative Background**

4.1 The Proceeds of Crime Act 2002 created a single set of money laundering offences applicable throughout the UK to the proceeds of all crimes. There are separate offences of failure to disclose money laundering. The Act includes defences to these offences in certain circumstances. In particular, the Act provides a defence in certain circumstances to the legal profession in respect of the obligation to report money laundering. It does not provide an equivalent defence to the accountancy profession where they are providing directly comparable services.

4.2 The Order will give full effect to Directive 2001/97/EC ( the 2<sup>nd</sup> EC Money Laundering Directive) by amending the Act to extend the persons to whom the defence applies to a “relevant professional adviser”. A “relevant professional adviser” is an accountant, auditor, or tax adviser who is a member of a professional body which requires a test of competence as a condition of

membership and the maintenance of professional standards, including sanctions for non-compliance with those standards.

4.3 The amendments made by the Order also provide a defence for a person who is employed by, or is in partnership with, a professional legal adviser or other relevant professional adviser, as defined in the Order, to give them assistance or support.

## **5. Extent**

5.1 This instrument applies to all of the United Kingdom.

## **6. European Convention on Human Rights**

The Parliamentary Under Secretary of State for the Home Department, Paul Goggins, has made the following statement regarding Human Rights:

In my view the provisions of The Proceeds of Crime Act 2002 and Money Laundering Regulations 2003 (Amendment) Order 2006 are compatible with the Convention rights.

## **7. Policy background**

7.1 The Home Office conducted an informal consultation on the obligations of accountants, auditors and tax advisers to report money laundering which has formed the basis of the policy decision to amend the Proceeds of Crime Act 2002.

7.2 The Government's objective is to have firm and effective legislation in place to combat money laundering. The amendment to the Proceeds of Crime Act 2002 to which this Order gives effect will not damage the effectiveness of the money laundering reporting regime.

## **8. Impact**

8.1 A Regulatory Impact Assessment has not been prepared for this instrument as it will impose negligible additional burden on business, charities or the voluntary organisations.

## **9. Contact**

Robert Lawman at the Home Office Tel: 020 7035 1563 or e-mail: [robert.lawman@homeoffice.gsi.gov.uk](mailto:robert.lawman@homeoffice.gsi.gov.uk) will answer any queries regarding the instrument.