EXPLANATORY MEMORANDUM TO

THE TERRORISM ACT 2000 (BUSINESS IN THE REGULATED SECTOR AND SUPERVISORY AUTHORITIES) ORDER 2007
2007 No. 3288

AND

THE PROCEEDS OF CRIME ACT 2002 (BUSINESS IN THE REGULATED SECTOR AND SUPERVISORY AUTHORITIES) ORDER 2007
2007 No. 3287

1. This explanatory memorandum has been prepared by HM Treasury and is laid before Parliament by Command of Her Majesty.

2. Description

2.1 These Orders implement, in part, Directive 2005/60/EC 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 Third Directive). The Orders amend the meaning of a business in the regulated sector and the meaning of a supervisory authority for the purposes of Part 3 of the Terrorism Act 2000 and Part 7 of the Proceeds of Crime Act 2002 respectively.

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

3.1 None

4. Legislative Background

4.1 The Third Directive builds on the obligations imposed on member states by the First Directive (91/308/EEC) amended by the Second Directive (2001/97/EC). Its aim is to update European legislation on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing so that it better reflects the 40 Recommendations on money laundering made by the Financial Action Task Force[1]. The Financial Action Task Force has also made 9 Special Recommendations on terrorist finance. These are implemented through separate EU and UK instruments.

4.2 The Third Directive is implemented in part by the provisions of Part 7 of the Proceeds of Crime Act 2002 and Part 3 of the Terrorism Act 2000. It is also implemented by the Money Laundering Regulations 2007 (SI 2007/2157), by means of the licensing requirement in the Gambling Act 2005 and disciplinary rules made by the professional bodies.

4.3 The amendments to the meaning of a business in the regulated sector made by these Orders reflect changes to the description of the scope of the regulated sector made by the Third Directive. The amendments to the meaning of a supervisory authority made by these Orders reflect the requirement in the Third Directive for all sectors within its scope to be effectively monitored for compliance and reflect

[1] www.FATF-GAFI.org

the fact that the Directive specifically allows for accountants, auditors, legal professionals and tax advisers to be monitored by a self-regulatory body. In these respects, the amendments mirror those provisions of the Money Laundering Regulations 2007 (SI 2007/2157) which deal with the scope of the Regulations and the supervisory authorities for the purposes of ensuring compliance with the Regulations. The Terrorism Act 2000 (Business in the Regulated Sector and Supervisory Authorities) Order 2007 is made under the power conferred by paragraph 5 of Schedule 3A to the Terrorism Act 2000; and the Proceeds of Crime Act 2002 (Business in the Regulated Sector and Supervisory Authorities) Order 2007 is made under the power conferred by paragraph 5 of the Proceeds of Crime Act 2002.

4.4 The Government submitted an explanatory memorandum dated 17 September 2004 on the draft Third Money Laundering Directive (doc. 11134/04). The House of Commons Select Committee on European Scrutiny reported on the draft Directive in reports 32 (2003-04), para 13 (13 October 2004), 1 (2004-05), para 14 (1 December 2004) and 1 (2005-06), para 50 (4 July 2005), clearing it after Ministerial correspondence. The House of Lords European Union Committee considered the draft Directive in Sub-Committee E (Law and Institutions) and cleared it from scrutiny on 22 June 2005 after Ministerial correspondence (see report 45 (2005-06)). A Transposition Note, prepared jointly with the Home Office, is attached as an Annex to this memorandum.

5. Extent

5.1 This instrument applies to all of the United Kingdom. It does not apply to Gibraltar or the Crown Dependencies

6. European Convention on Human Rights

6.1 The Economic Secretary to the Treasury has made the following statement regarding Human Rights:

> In my view the provisions of the Terrorism Act 2000 (Business in the Regulated Sector and Supervisory Authorities) Order 2007 and the Proceeds of Crime Act 2002 (Business in the Regulated Sector and Supervisory Authorities) Order 2007 are compatible with the Convention rights.

7. Policy background

Objectives

7.1 The principal policy objective of the Third Directive is to update and enhance European legislation to bring it in line with the international standards on combating money laundering and terrorist financing set out in the Financial Action Task Force's (FATF) 40 Recommendations.

7.2 The Money Laundering Regulations 2007 list the persons ("relevant persons") who are subject to the Regulations. There are eight main business sectors that are covered.[2] The aim of this order is to align the scope of sectors subject to the Proceeds of Crime Act 2002 and the Terrorism Act 2000 with that of the Money Laundering Regulations 2007.

[2] Regulation 3

Supervision

7.3 The Third Directive also requires that all sectors subject to the Regulations be supervised for their compliance with them. Part 4 of the Money Laundering Regulations 2007 lists the supervisors for the different sectors.

7.4 The purpose of Part 2 of these Orders is to ensure that the references in the Terrorism Act 2000 and Proceeds of Crime Act 2002 to supervisory bodies are consistent with the Money Laundering Regulations 2007.

Consultation

7.5 The Government consulted for 12 weeks on its policy proposals for implementing the Third Money Laundering Directive in July 2006, and it then consulted for a further 10 weeks on draft Regulations in January 2007. Around 100 responses were received for each consultation. A summary of the responses to each consultation is published on the Treasury's website (hm-treasury.gov.uk).

Implementation of the Regulations and guidance

7.6 The Government sees the Money Laundering Regulations 2007, the Proceeds of Crime Act 2002 and the Terrorism Act 2000 as part of an implementation system that also includes supervisory rules (such as those in the FSA Handbook) and guidance to industry (for example the Joint Money Laundering Steering Group guidance for financial services). The Money Laundering Regulations 2007 and the Proceed of Crime Act 2002 enable firms that have followed Treasury approved guidance to use this as a defence against the imposition of civil penalties or prosecution for a criminal offence.

8. Impact

8.1 A Regulatory Impact Assessment was published with the Money Laundering Regulations 2007 this July . These Orders do not have additional impacts to those listed in that Regulatory Impact Assessment.

9. Contact

Keith Davis at HM Treasury Tel: 020 7270 5358 or e-mail: keith.davis@hm-treasury.x.gsi.gov.uk can answer any queries regarding the instrument.

Transposition note for Directive 2005/60/EC:

Third Money Laundering Directive

Articles of Directive 2005/60/EC	Objective	Implementation	Responsibility
1	Requires Member States to ensure that money laundering and terrorist financing are prohibited and defines money laundering and terrorist financing	Sections 15 to 18 of the Terrorism Act 2000 (TACT) Sections 327 to 329 of the Proceeds of Crime Act 2002 (POCA)	The Secretary of State
2(1)	Defines the scope of persons to whom the obligations apply.	Part 1 of Schedule 3A to TACT as inserted by the Terrorism Act 2000 (Business in the Regulated Sector and Supervisory Authorities) Order 2007. Part 1 of Schedule 9 to POCA as inserted by the Proceeds of Crime Act 2002 (Business in the Regulated Sector and Supervisory Authorities) Order 2007.	HM Treasury
2(2)	Excludes from scope persons who engage in financial activity on an occasional or very limited basis.	Paragraph 2(3) of Schedule 3A to TACT as inserted by the Terrorism Act 2000 (Business in the Regulated Sector and Supervisory Authorities) Order 2007. Paragraph 2(3) of Schedule 9 to POCA as inserted by the Proceeds of Crime Act 2002 (Business in the Regulated Sector and Supervisory Authorities) Order 2007.	HM Treasury
21	Requires Member States to establish a Financial Intelligence Unit (FIU), with appropriate access to financial, administrative and law enforcement information, to receive reports of suspicious activities	References to the Serious Organised Crime Agency in sections 19, 20, 21A and 21B of TACT and sections 330, 331, 332, 336 and 340 of POCA Section 3 of the Serious Organised Crime and Police Act 2005	The Secretary of State
22	The institutions and persons covered by the Directive must promptly inform the FIU if they know, suspect or have reasonable grounds to suspect that money laundering and terrorist financing is being or has	Sections 21A and 21B of TACT as amended by paragraphs 3(2) and 4 of Schedule 1 to the Terrorism Act 2000 and Proceeds of Crime Act 2002 (Amendment)	The Secretary of State

	been committed or attempted and must provide all necessary information to the FIU	Regulations 2007 ("the Regulations") Sections 330 and 340(11) of POCA	
23(1)	Member States can derogate from Article 22(1) by allowing disclosures to an appropriate self-regulatory body	The Government has decided not to implement this derogation	The Secretary of State
23(2)	Member States are not obliged to apply the obligations in Article 22(1) to lawyers and relevant professionals when they are giving legal advice	Section 21A(5)(b) and (c), (5A), (8), (9) and (15) of TACT as amended by paragraph 3(3) to (6) of Schedule 1 to the Regulations Section 330(6), (7B), (9A), (10), (11) and (14) of POCA (as amended by S.I. 2006/308)	The Secretary of State
24(1)	A transaction that gives rise to suspicions of money laundering or terrorist financing must not be carried out until a report has been made in accordance with Article 22(1)(a)	Section 21 of TACT Section 21ZA of TACT as inserted by paragraph 2 of Schedule 1 to the Regulations Sections 327(2), 328(2), 329(2), 335 and 338 of POCA	The Secretary of State
24(2)	Provides an exception to 24(1) if not carrying out the transaction is impossible or is likely to frustrate efforts to pursue the beneficiaries of a suspected money laundering or terrorist financing operation and a report is made immediately afterwards	Sections 21ZB and 21ZC of TACT as inserted by paragraph 2 of Schedule 1 to the Regulations Sections 327(2), 328(2), 329(2) and 338 of POCA	The Secretary of State
26	If a person covered by the Directive makes a disclosure in accordance with Article 22(1) it should not be a breach of any restriction on disclosure and it should not result in liability of any kind	Sections 20 and 21B of TACT Section 337 and 338(4) of POCA	The Secretary of State
27	Protection of those who make reports of suspicious activity from hostile action	The Home Office issued guidance to the police in December 2005 (HO Circular 53/2005) about the need to protect the identity of members of staff who make reports. The guidance is applied by other criminal justice and law enforcement agencies that handle reports. In addition SOCA has established a telephone line for the reporting sectors to raise	The Secretary of State

		any concerns about the inappropriate use of reports by law enforcement agencies.	
28(1)	Member States must ensure that the persons covered by the Directive do not tip off their customers or a third party that information has been disclosed in accordance with Article 22 or that a money laundering or terrorist financing investigation is being or may be carried out	Sections 21D, 21E(1) and 21G(3) and (4) of TACT as inserted by paragraph 5 of Schedule 1 to the Regulations Sections 333A, 333B(1) and 333D(3) and (4) of POCA as inserted by paragraph 4 of Schedule 2 to the Regulations	The Secretary of State
28(2)	A defence to tipping off if a disclosure is made to a competent authority or for law enforcement purposes	Section 21G(1) of TACT as inserted by paragraph 5 of Schedule 1 to the Regulations Section 333D(1) of POCA as inserted by paragraph 4 of Schedule 2 to the Regulations	The Secretary of State
28(3)	A defence to tipping off if the disclosure is between credit and financial institutions in the same group	Section 21E(2) and (3) of TACT as inserted by paragraph 5 of Schedule 1 to the Regulations Section 333B(2) and (3) of POCA as inserted by paragraph 4 of Schedule 2 to the Regulations	The Secretary of State
28(4)	A defence to tipping off if the disclosure is between professional legal advisers or relevant professional advisers and they both carry out their activities in a Member State or a country with equivalent money laundering requirements and within the same legal person or network	Section 21E(4) of TACT as inserted by paragraph 5 of Schedule 1 to the Regulations Section 333B(4) of POCA as inserted by paragraph 4 of Schedule 2 to the Regulations	The Secretary of State
28(5)	A defence to tipping off if the disclosure is by a credit institution, a financial institution, a professional legal adviser or a relevant professional adviser to another such institution or person provided the disclosure relates to the same client and transaction, the disclosure is only for the purpose of preventing an offence, the institution or person is in a Member State or a country with equivalent money laundering requirements and certain data protection standards apply	Section 21F of TACT as inserted by paragraph 5 of Schedule 1 to the Regulations Section 333C of POCA as inserted by paragraph 4 of Schedule 2 to the Regulations	The Secretary of State

28(6)	A defence to tipping off if the disclosure is by a professional legal adviser or relevant professional adviser and it is made to seek to dissuade a client from engaging in illegal activity	Section 21G(2) of TACT as inserted by paragraph 5 of Schedule 1 to the Regulations Section 333D(2) of POCA as inserted by paragraph 4 of Schedule 2 to the Regulations	The Secretary of State
37(5)	SROs may supervise auditors, external accountants and tax advisers, notaries and independent legal advisers	Paragraph 4(2) of Schedule 3A to TACT as inserted by the Terrorism Act 2000 (Business in the Regulated Sector and Supervisory Authorities) Order 2007. **Paragraph 4(2) of Schedule 9 to POCA as inserted by the Proceeds of Crime Act 2002 (Business in the Regulated Sector and Supervisory Authorities) Order 2007.**	HM Treasury
39	The persons covered by the Directive must be liable for infringements of provisions adopted, administrative measures or sanctions imposed and penalties must be effective, proportionate and dissuasive	*Sections 15 to 18 (maximum penalty 14 years, a fine or both), 21A (maximum penalty 5 years, a fine or both) and 21D (maximum penalty 2 years, a fine or both) of TACT* Sections 327 to 329 (maximum penalty 14 years, a fine or both), 330 (maximum penalty 5 years, a fine or both), 331 (maximum penalty 5 years, a fine or both) and 333A (maximum penalty 2 years, a fine or both) of POCA	The Secretary of State