

<b>Committee(s):</b>	<b>Date(s):</b>
Police Committee	
<b>Subject:</b> Criminal Finances Act	<b>Public</b>
<b>Report of:</b> Remembrancer <b>Report Author:</b> Philip Saunders, Parliamentary Affairs Counsel	<b>For Information</b>

### Summary

This Report sets out those aspects of the Criminal Finance Act that are of most interest to your Committee, including

- Unexplained wealth orders
- Money laundering
- Enforcement Powers
- Tax evasion

### Recommendation

- To note the contents of this Report.

## Main Report

### Background

1. The Government's Action Plan for Anti-Money Laundering and Counter-Terrorist Finance focused on three priorities: a more robust law enforcement response; reforming the supervisory regime; and increasing UK authorities' international reach. The Act is the vehicle the Government plans to use to implement the legislative elements of the Action Plan.
2. The Act will expand authorities' powers to seize proceeds of crime and combat tax evasion and money laundering. Explaining the Act, Home Office minister Ben Wallace highlighted the increasing severity of financial crime and indicated that it was becoming more prevalent. Wallace said the measure relating to tax evasion were the result of "engagement with the private sector- banks, accountants and legal practices". The Act received broad welcome across the House of Commons.

## **Unexplained Wealth Orders (UWO)**

3. UWOs are of very wide-ranging and powerful effect – they will give courts a power to require a person to provide information about property they own.
4. An authority may only apply for a UWO if the value of the property that might be subject to an order is greater than £100,000. Under the Act, an application for a UWO must be made to the High Court and may only be made by the NCA, the SFO, the CPS, the Public Prosecution Service for Northern Ireland, HMRC or the Financial Conduct Authority.
5. An application (and any ensuing order) may be made in relation to two categories of person:
  - a. A person in relation to whom there are reasonable grounds for suspecting involvement in serious criminal activity such as drug trafficking, arms trafficking and money laundering
  - b. A ‘Politically Exposed Person’ (PEP). In the Commons the minister said this measure was intended to “reflect a concern about those involved in corruption overseas laundering the proceeds of crime in the UK; and the fact that it may be difficult for law enforcement agencies to satisfy any evidential standard at the outset of such a investigation given that all relevant information may be outside of the jurisdiction”. The Act defines a PEP as an individual who has been entrusted with prominent public functions by an international organisation or a State outside of the UK or the EEA.
6. The High Court may make an order only if it is “satisfied” (that it is more likely than not that the respondent is involved) that an UWO should be made.
7. If the respondent replies to an UWO then the authority has 60 days to consider the evidence put forward. Within the 60 days the authority must decide whether to take no further action, begin a civil recovery investigation using existing civil recovery powers under the Proceeds of Crime Act, or apply for other forms of recovery. If the respondent fails to reply to the UWO, the enforcement authority must consider what action it intends to take against the property and may use existing civil recovery powers to recover the property.

## **Money Laundering**

8. The Act proposes extending the period in which the National Crime Agency is permitted (subject to the agreement of a court) to gather evidence prior to its decision on what action, if any, to take. This measure

is intended to provide the NCA with more time to investigate suspicious transactions – up to a maximum of 186 days.

9. The Act adds to the current arrangements under which banks and other institutions are permitted to share information when they consider that there has been money laundering. The permission to share information is triggered where the institution “has a suspicion” that the information may assist in identifying whether a person is engaged in money laundering. These measures include a power for the NCA to request information. The information requested must be for the purposes of the NCA’s investigative functions, including its investigations about whether a person is engaged in money laundering, or whether a money laundering investigation should be started.

### **Recovery and Enforcement Powers**

10. The Act proposes to extend existing powers to seize and recover cash that is the proceeds of unlawful conduct or intended for use in such conduct so that authorities may seize and recover precious metals; precious stones; watches; artistic works; face-value vouchers; and postage stamps. The property may be detained up to a maximum of two years (with judicial approval) if required for an ongoing criminal investigation or proceedings. The Act confirms the powers will be available to Revenue and Customs, the police, the SFO and an accredited financial investigator.
11. The Act provides for the freezing and forfeiture of bank and building society accounts that contain the proceeds of unlawful conduct. An application for an account freezing order (AFO) may be made where there are reasonable grounds for suspecting that the money is linked to unlawful conduct. An application for such an order must be made to a magistrates’ court and may be made without notice, if notice of application would prejudice future actions in relation to the accounts. Any application must be authorised by a “senior officer” at HMRC, a police officer of at least the rank of inspector, the Director of the SFO, the Director General of the NCA or a designated accredited financial investigator.
12. Currently POCA contains search and seizure powers to prevent the dissipation of property. Their use must be authorised by a senior officer. At present, Accredited Financial Investigators (AFIs) - who are civilian staff working for a police force - can only obtain that authorisation from a senior AFI officer and not from a senior police officer. The Act will allow for AFIs to receive authorisation from a senior police officer.

## **Tax Evasion**

13. In reaction to disclosure of the Panama Papers, which revealed advice to corporations in how to evade tax, the Prime Minister committed to legislate to hold organisations and corporations to account for the actions of their employees.
14. The Act proposes a complex and wide-ranging new offence relating to tax evasion facilitated by corporations. At present, where, for example, a banker or accountant criminally facilitates a customer to commit a tax evasion offence, the taxpayer and the banker or accountant commit criminal offences but the company employing the banker or accountant does not.
15. The proposed offences are intended to hold such organisations to account for the actions of their employees and aim to do this by creating a quasi-strict liability offence whereby the relevant body would be guilty of the corporate failure to prevent the facilitation of tax evasion offence, unless the relevant body can show that it had in place reasonable prevention procedures (or that it was not reasonable to expect such procedures). The Act does not create a new offence in relation to tax evasion itself and it does not create a new offence in relation to an individual.
16. There are a range of circumstances where the facilitation offence would not be committed, for example where a client is advised in relation to aggressive avoidance falling short of fraudulent evasion or where advice leading to the act is negligent or where the result is inadvertent.
17. The Government indicated that only reasonable procedures, not fail proof procedures, are required. It is intended that a risk based, rather than zero tolerance, approach should be adopted.

## **Consultation**

18. The City of London Police force has been consulted in the preparation of this Report.

## **Conclusion**

19. The Act is relevant to the City of London Police in relation to its policing duties and its activities linked to the NCA and other third parties.

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