

## **Home Office Circular: Criminal Finances Act 2017**

### **MONEY LAUNDERING: FURTHER INFORMATION ORDERS SECTIONS 339ZH-339ZK**

#### **Introduction**

1. This guidance is issued to ensure understanding of the operation of the Further Information Order (“FIO”) provisions in sections 339ZH to 339ZK of the Proceeds of Crime Act 2002 (“POCA”) as inserted by the Criminal Finances Act 2017, and to provide an understanding of the responsibilities of the National Crime Agency (NCA) or procurator fiscal when an FIO is sought. It is not a statement of law and is not intended to provide a comprehensive description or interpretation of the power. This circular does not constitute legal advice. It is not a statement of law and is not intended to provide a comprehensive description or interpretation of the power.

#### **Background**

2. The Financial Action Task Force (FATF) Recommendation 29.3 requires countries to put in place powers to enable their Financial Intelligence Units (FIU) to obtain further information in relation to suspicions of money laundering and terrorist financing. The UKFIU is hosted in the National Crime Agency (NCA).
3. In England, Wales and Northern Ireland, the NCA can apply to the magistrates’ court for FIOs. Representations in Scotland are only ever completed by a procurator fiscal and therefore in Scotland, the application is to be made by a procurator fiscal to the sheriff.
4. An FIO can require the person making the disclosure or any person carrying on a business in the regulated sector to provide specified information, or any other information which the court deems appropriate, in relation to a matter arising from a Part 7 disclosure and where the conditions for making an FIO are met. Information disclosed by the person or business in response to a FIO would not be taken to break any restriction on the disclosure of information, however imposed (as per POCA 339ZK(3)). If the information is not provided, the magistrates’ court may order the person in the regulated sector responsible for responding to pay a fine not exceeding £5,000. Any breach of an Order from the sheriff would potentially be a contempt of court.
5. The NCA can receive information on a voluntary basis from any person in relation to the exercise of its statutory functions (including combatting money laundering and terrorist finance) as defined in Section 7 of the Crime and Courts Act 2013.

#### **The NCA or Procurator Fiscal**

6. An FIO may be sought where further information in relation to a disclosure would assist in examining whether a person is engaged in money laundering, would assist law enforcement agencies in determining whether an investigation into money laundering should be started or is in connection with an investigation into money laundering by an authority in a country outside the UK. Either Condition 1 or Condition 2 (detailed below) must be met as a threshold for producing an Order, and applications must be made by a “relevant person”.
7. The “relevant person” means –
  - a. in the case of an application to a magistrates’ court, the Director General of the National Crime Agency or any other National Crime Agency officer authorised by the Director General (whether generally or specifically) for this purpose, or
  - b. in the case of an application to the sheriff, a procurator fiscal.
8. The application must –
  - a. specify or describe the information sought under the order, and
  - b. specify the person from whom the information is sought (“the respondent”)
9. The information required may be sought in relation to a disclosure made in the UK. In relation to a corresponding disclosure made in a foreign country, the request must be made by an authority with responsibility for examining money laundering. It would normally be anticipated that this request would come from the financial intelligence unit of the relevant country.
10. Any request made by a foreign authority will be assessed by the UKFIU against the standard UK criteria for any request for assistance. Should this be satisfactory, the NCA may then act on behalf of the foreign country (assuming that the request complies with the conditions set out in the Act and as per Overseas Security and Justice Assistance Guidance) and that there is agreement that the information may exist. It is a matter of discretion for the NCA as to when to apply for an FIO. It should be noted that an FIO represents a request for information that can’t be used in evidence against the person who made the statement, as stated in 339ZI(1).
11. One of the two conditions relating to the making of an FIO must be met for the court to make an order.
12. Condition 1 for the making of an FIO is met if—
  - a. the information required to be given under the order would relate to a matter arising from a disclosure under part 7 of POCA,
  - b. the respondent is the person who made the disclosure or is otherwise carrying on a business in the regulated sector,
  - c. the information would assist in investigating whether a person is engaged in money laundering or in determining whether an investigation of that kind should be started, and
  - d. it is reasonable in all the circumstances for the information to be provided.

13. Condition 2 for the making of an FIO is met if—
- a. the information required to be given under the order would relate to a matter arising from a disclosure made under a corresponding disclosure requirement,
  - b. an external request has been made to the National Crime Agency for the provision of information in connection with that disclosure,
  - c. the respondent is carrying on a business in the regulated sector,
  - d. the information is likely to be of substantial value to the authority that made the external request in determining any matter in connection with the disclosure, and
  - e. it is reasonable in all the circumstances for the information to be provided.
14. An FIO does not confer the right to require a person to provide privileged information.
15. “Privileged information” is information which a person would be entitled to refuse to provide on grounds of legal professional privilege in proceedings in the High Court or, in Scotland, legal privilege as defined by section 412 of POCA (see section 339ZK(2)).

### **Role of the Court**

16. The NCA (or in Scotland, the Procurator Fiscal) may apply to the magistrates’ court (or the sheriff in Scotland) for the court to grant the FIO. The application for the Order may be held and determined in private.
17. The court must ensure that the conditions set out in either section 339ZH (4) or (5) of POCA for the Order to be made are met.
18. The Applicant (either NCA or Procurator Fiscal) must specify or describe what information is sought under the FIO, and must specify from whom the information is sought. It must also specify how the information is to be provided, and by what date and/or time.
19. If the person or entity (in England, Wales or Northern Ireland) on whom the Order is served fails to comply with that Order, the magistrates’ court may impose a penalty not to exceed £5,000.
20. In the case of Scotland, any breach of the order would potentially be treated as a contempt of court.
21. An appeal from a decision on an application for a FIO lies to the relevant appeal court.
22. An appeal under this section lies at the instance of any person who was a party to the proceedings on the application.
23. The “relevant appeal court” is –

- a. the Crown Court, in the case of a decision made by a magistrates' court in England and Wales;
- b. a county court, in the case of a decision made by a magistrates' court in Northern Ireland;
- c. the Sheriff Appeal Court, in the case of a decision made by the sheriff.

24. On appeal under this section, the relevant appeal court may –
- a. make or (as the case may be) discharge a FIO, or
  - b. vary the order.

**Role of the respondent:**

25. An FIO is an order requiring the respondent to provide –
- a. the information specified or described in the application for the order, or
  - b. such other information as the court or sheriff making the order thinks appropriate

(so far as the information is in the possession, or under the control, of the respondent).

26. A statement made by a person in response to a FIO may not be used in evidence against the person in criminal proceedings.

27. This will not apply –
- a. In the case of proceedings under Part 7
  - b. On a prosecution for perjury, or
  - c. On a prosecution for some other offence where, in giving evidence, the person makes a statement inconsistent with the statement mentioned in Subsection (1) above (paragraph 25).

## Home Office Circular: Criminal Finances Act 2017

### TERRORIST FINANCING: FURTHER INFORMATION ORDERS SECTIONS 22B – 22E OF THE TERRORISM ACT 2000 (TACT)

#### Introduction

1. This guidance is issued to ensure understanding of the operation of the Further Information Order (FIO) provisions in sections 22B-E of the terrorism Act 2000 (TACT), and to provide an understanding of the responsibilities of relevant parties when an FIO is sought. It is not a statement of law and is not intended to provide a comprehensive description or interpretation of the power. This circular does not constitute legal advice. It is not a statement of law and is not intended to provide a comprehensive description or interpretation of the power.

#### Background

2. The Financial Action Task Force (FATF) Recommendation 29.3 requires countries to put in place powers to enable their Financial Intelligence Units (FIU) to obtain further information in relation to suspicions connected with terrorist financing or with identifying terrorist property. The UK FIU is hosted in the National Crime Agency (NCA).
3. Part 2 of the Criminal Finances Act 2017 introduced new sections 22B-22E of TACT which provide for Further Information Orders (FIOs) in relation to terrorist financing. In England, Wales and Northern Ireland a law enforcement officer<sup>1</sup> can apply to a magistrates' court for an FIO. In Scotland, the Procurator Fiscal can apply to the sheriff for an FIO. However a law enforcement officer may not make an application for an FIO unless they are, or have been authorised to do so by, a senior law enforcement officer<sup>2</sup>.
4. An FIO can require the person making the disclosure or any member of the regulated sector to provide specified information, or any other information, which meets the following conditions:
5. Condition 1 for the making of an FIO is met if—
  - (a) the information required to be given under the order would relate to a matter arising from a disclosure made under section 21A,
  - (b) the respondent is the person who made the disclosure or is otherwise carrying on a business in the regulated sector,
  - (c) the information would assist in

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<sup>1</sup> "Law enforcement officer" in England, Wales and Northern Ireland means: a constable; a NCA officer authorised for this purpose by the Director General of the NCA; or a counter-terrorism financial investigator.

<sup>2</sup> "Senior law enforcement officer" means: a police officer of at least the rank of superintendent; the Director General of the NCA; or any other NCA officer authorised by the Director General (whether generally or specifically) for this purpose.

- a. investigating whether a person is involved in the commission of an offence under any of sections 15 to 18 or in determining whether an investigation of that kind should be started, or
  - b. Identifying terrorist property or its movement or use, and
  - c. It is reasonable in all the circumstances for the information to be provided.
6. Condition 2 for the making of an FIO is met if—
  - (a) the information required to be given under the order would relate to a matter arising from a disclosure made under a corresponding disclosure requirement,
  - (b) an external request has been made to the National Crime Agency for the provision of information in connection with that disclosure,
  - (c) the respondent is carrying on a business in the regulated sector,
  - (d) the information is likely to be of substantial value to the authority that made the external request in determining any matter in connection with the disclosure, and
  - (e) It is reasonable in all the circumstances for the information to be provided.
7. If a person fails to comply with an FIO, the magistrate's court may order the person to pay a fine not exceeding £5,000. Failure to comply with an FIO issued by the sheriff will constitute a contempt of court.
8. Section 22C of TACT provides that any statement made in response to an FIO may not be used in evidence against that person in criminal proceedings, subject to certain exceptions (see section 22C(2)). FIOs do not confer the right to require privileged information and information provided under FIO is not to be taken to breach any restriction on disclosure (however imposed).

### **Role of the senior law enforcement officer**

9. An FIO may be sought where further information in relation to a disclosure under s.21A TACT would assist in: investigating a person suspected of committing terrorist financing offences (or would assist in determining whether this type of investigation should be started) or identifying terrorist property (or its movement or use).
10. Under section 22B, the information which is required to be provided by an FIO may relate to either:
  - a disclosure made in the UK, or
  - a corresponding disclosure made in a foreign country, if a request has been made to the NCA for the provision of information in connection with that disclosure by an authority with responsibility for investigating corresponding terrorist financing offences.
11. Any request made by a foreign authority can only be made to and assessed by the UKFIU against the standard UK criteria for any request for assistance. Should this be satisfactory, the NCA may then act on behalf of the foreign entity

(assuming that the request complies with the conditions set out in the Act and as per the Overseas Security and Justice Assistance Guidance in what it can ask of the foreign partner) and that there is agreement that the information may exist (subject to whether the information received can be passed on).

12. An FIO may be sought in relation to information which relates to a matter arising from a disclosure under s.21A of TACT, and may be served on any member of the regulated sector, irrespective of whether that person raised the disclosure. It will be necessary to demonstrate to the court, when applying for an FIO, that such a disclosure has been made, and that the further information sought relates to the disclosure and meets the other conditions specified in section 22B.
13. When making an application, the law enforcement officer must specify or require the information sought and the person from whom it is sought as per section 22B(2) of TACT.

### **Role of the court**

14. A court, on application made by a law enforcement officer, may make an FIO under section 22B(1) of TACT, if satisfied that either condition 1 or condition 2 (set out at sections 22B(4)-(5)) is met.
15. An application for an FIO may be heard and determined in private.
16. As set out in section 22E of TACT, an FIO cannot require a person to provide privileged information<sup>3</sup>.
17. If a reporter fails to comply with an FIO, the magistrates' court (in the case of England, Wales and Northern Ireland) may impose a penalty not exceeding £5,000. In the case of Scotland, any breach of an order would lead to contempt proceedings.
18. Section 22D of TACT provides that any person who was a party to the proceedings relating to the application for the FIO can appeal to the relevant appeal court against the decision made in those proceedings.
19. The 'relevant appeal court' is –
  - d. The Crown Court, in the case of a decision made by a magistrates' court in England and Wales;
  - e. A country court, in the case of a decision made by a magistrates' court in Northern Ireland
  - f. The Sheriff Appeal Court, in the case of a decision made by the sheriff.
20. On appeal the relevant appeal court may –
  - g. Make or (as the case may be) discharge a further information order, or
  - h. Vary the order.

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<sup>3</sup> "Privileged information" is defined as: information which a person would be entitled to refuse to provide on the grounds of legal professional proceedings in the High Court or, in Scotland, legal privilege as defined by section 412 of the Proceeds of Crime Act 2002.