

Status: Point in time view as at 09/02/2011.

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SCHEDULES

SCHEDULE 6

Section 38.

FINANCIAL INFORMATION

Orders

- 1 (1) Where an order has been made under this paragraph in relation to a terrorist investigation, a constable named in the order may require a financial institution [^{F1}to which the order applies] to provide customer information for the purposes of the investigation.
- [^{F2}(1A) The order may provide that it applies to—
- (a) all financial institutions,
 - (b) a particular description, or particular descriptions, of financial institutions, or
 - (c) a particular financial institution or particular financial institutions.]
- (2) The information shall be provided—
- (a) in such manner and within such time as the constable may specify, and
 - (b) notwithstanding any restriction on the disclosure of information imposed by statute or otherwise.
- (3) An institution which fails to comply with a requirement under this paragraph shall be guilty of an offence.
- (4) It is a defence for an institution charged with an offence under sub-paragraph (3) to prove—
- (a) that the information required was not in the institution's possession, or
 - (b) that it was not reasonably practicable for the institution to comply with the requirement.
- (5) An institution guilty of an offence under sub-paragraph (3) shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

Textual Amendments

- F1** Words in Sch. 6 para. 1(1) inserted (20.12.2001) by 2001 c. 24, s. 3, Sch. 2 Pt. 4 para. 6(2); S.I. 2001/4019, art. 2(1)(c)
- F2** Sch. 6 para. 1(1A) inserted (20.12.2001) by 2001 c. 24, s. 3, Sch. 2 Pt. 4 para. 6(3); S.I. 2001/4019, art. 2(1)(c)

Procedure

- 2 An order under paragraph 1 may be made only on the application of—
- (a) in England and Wales or Northern Ireland, a police officer of at least the rank of superintendent, or

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- (b) in Scotland, the procurator fiscal.
- 3 An order under paragraph 1 may be made only by—
- (a) in England and Wales, a Circuit judge,
 - (b) in Scotland, the sheriff, or
 - (c) in Northern Ireland, a [^{F3}Crown Court judge].

Textual Amendments

F3 Words in Sch. 6 para. 3(c) substituted (7.7.2002) by 2001 c. 24, ss. 121(4); S.I. 2002/1558, art. 2

- 4 (1) [^{F4}Criminal Procedure Rules] may make provision about the procedure for an application under paragraph 1.
- (2) The High Court of Justiciary may, by Act of Adjournal, make provision about the procedure for an application under paragraph 1.
- [^{F5}(3) Crown Court Rules may make provision about the procedure for an application under paragraph 1.]

Textual Amendments

- F4** Words in Sch. 6 para. 4(1) substituted (1.9.2004 subject to saving in art. 3 of the commencing S.I.) by Courts Act 2003 (c. 39), s. 109(1), Sch. 8 para. 390(2); S.I. 2004/2066, art. 2
- F5** Sch. 6 para. 4(3) inserted (1.9.2004 subject to saving in art. 3 of the commencing S.I.) by Courts Act 2003 (c. 39), s. 109(1), Sch. 8 para. 390(3); S.I. 2004/2066, art. 2

Criteria for making order

- 5 An order under paragraph 1 may be made only if the person making it is satisfied that—
- (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.

Financial institution

- 6 (1) In this Schedule “financial institution” means—
- [^{F6}(a) a person who has permission under Part 4 of the Financial Services and Markets Act 2000 to accept deposits,]
 - ^{F7}(b)
 - (c) a credit union (within the meaning of the ^{M1}Credit Unions Act 1979 or the ^{M2}Credit Unions (Northern Ireland) Order 1985),
 - [^{F8}(d) a person carrying on a relevant regulated activity,]
 - (e) the National Savings Bank,
 - (f) a person who carries out an activity for the purposes of raising money authorised to be raised under the ^{M3}National Loans Act 1968 under the auspices of the Director of National Savings,

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- (g) a European institution carrying on a home regulated activity (within the meaning of [^{F9}Directive 2006/48/ EC of the European Parliament and of the Council of 14 June 2006] relating to the taking up and pursuit of the business of credit institutions [^{F10}as last amended by Directive 2009/111/ EC]),
 - (h) a person carrying out an activity specified in any of points 1 to 12^{F11}, 14 and 15] of [^{F12}Annex 1] to that Directive, ^{F13}...
 - ^{F14}(ha) an electronic money institution within the meaning of Directive 2009/110/ EC of the European Parliament and of the Council of 16th September 2009 relating to the taking up, pursuit and prudential supervision of the business of electronic money institutions, and]
 - (i) a person who carries on an insurance business in accordance with an authorisation pursuant to [^{F15}Article 4 or 51 of Directive 2002/83/ EC of the European Parliament and of the Council of 5th November 2002 concerning life assurance] .
- ^{F16}(1A) For the purposes of sub-paragraph (1)(d), a relevant regulated activity means—
- (a) dealing in investments as principal or as agent,
 - (b) arranging deals in investments,
 - [operating a multilateral trading facility,]
- ^{F17}(ba)
- (c) managing investments,
 - (d) safeguarding and administering investments,
 - (e) sending dematerialised instructions,
 - (f) establishing etc. collective investment schemes,
 - (g) advising on investments.
- (1B) Sub-paragraphs (1)(a) and (1A) must be read with—
- (a) section 22 of the Financial Services and Markets Act 2000;
 - (b) any relevant order under that section; and
 - (c) Schedule 2 to that Act.]
- (2) The Secretary of State may by order provide for a class of person—
- (a) to be a financial institution for the purposes of this Schedule, or
 - (b) to cease to be a financial institution for the purposes of this Schedule.
- (3) An institution which ceases to be a financial institution for the purposes of this Schedule (whether by virtue of sub-paragraph (2)(b) or otherwise) shall continue to be treated as a financial institution for the purposes of any requirement under paragraph 1 to provide customer information which relates to a time when the institution was a financial institution.

Textual Amendments

- F6** Sch. 6 para. 6(1)(a) substituted (1.12.2001) by S.I. 2001/3649, arts. 1, 361(2)(a)
- F7** Sch. 6 para. 6(1)(b) repealed (1.12.2001) by S.I. 2001/3649, arts. 1, 361(2)(b)
- F8** Sch. 6 para. 6(1)(d) substituted (1.12.2001) by S.I. 2001/3649, arts. 1, 361(2)(c)
- F9** Words in Sch. 6 para. 6(1)(g) substituted (1.1.2007) by The Capital Requirements Regulations 2006 (S.I. 2006/3221), reg. 29(2), Sch. 4 para. 6(3)
- F10** Words in Sch. 6 para. 6(1)(g) inserted (9.2.2011 for specified purposes, 30.4.2011 in so far as not already in force) by The Electronic Money Regulations 2011 (S.I. 2011/99), reg. 1(2), Sch. 4 para. 3(b)(i)

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- F11** Words in Sch. 6 para. 6(1)(h) substituted (9.2.2011 for specified purposes, 30.4.2011 in so far as not already in force) by [The Electronic Money Regulations 2011 \(S.I. 2011/99\)](#), reg. 1(2), [Sch. 4 para. 3\(b\)\(iii\)](#)
- F12** Words in Sch. 6 para. 6(1)(h) substituted (22.11.2000) by [S.I. 2000/2952](#), [reg. 9\(b\)](#)
- F13** Word in Sch. 6 para. 6(1)(h) omitted (9.2.2011 for specified purposes, 30.4.2011 in so far as not already in force) by virtue of [The Electronic Money Regulations 2011 \(S.I. 2011/99\)](#), reg. 1(2), [Sch. 4 para. 3\(b\)\(ii\)](#)
- F14** Sch. 6 para. 6(1)(ha) inserted (9.2.2011 for specified purposes, 30.4.2011 in so far as not already in force) by [The Electronic Money Regulations 2011 \(S.I. 2011/99\)](#), reg. 1(2), [Sch. 4 para. 3\(b\)\(ii\)](#)
- F15** Words in Sch. 6 para. 6(1)(i) substituted (11.1.2005) by [The Life Assurance Consolidation Directive \(Consequential Amendments\) Regulations 2004 \(S.I. 2004/3379\)](#), [reg. 7](#)
- F16** Sch. 6 para 6(1A)(1B) inserted (1.12.2001) by [S.I. 2001/3649](#), [arts. 1, 361\(3\)](#)
- F17** Sch. 6 para. 6(1A)(ba) inserted (1.4.2007 for certain purposes and otherwise 1.11.2007) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment No. 3\) Order 2006 \(S.I. 2006/3384\)](#), [art. 33](#)

Commencement Information

- II** Sch. 6 wholly in force at 19.2.2001; Sch. 6 not in force at Royal Assent see s. 128; Sch. 6 para. 6(2) in force at 31.10.2000 by [S.I. 2000/2944](#), [art. 2\(j\)\(ii\)](#); Sch. 6 in force at 19.2.2001 in so far as not already in force by [S.I. 2001/421](#), [art. 2](#)

Marginal Citations

- M1** 1979 c. 34.
M2 [S.I. 1985/1205 \(N.I.12\)](#).
M3 1968 c. 13.

Customer information

- 7 (1) In this Schedule “customer information” means (subject to sub-paragraph (3))—
- (a) information whether a business relationship exists or existed between a financial institution and a particular person (“a customer”),
 - (b) a customer’s account number,
 - (c) a customer’s full name,
 - (d) a customer’s date of birth,
 - (e) a customer’s address or former address,
 - (f) the date on which a business relationship between a financial institution and a customer begins or ends,
 - (g) any evidence of a customer’s identity obtained by a financial institution in pursuance of or for the purposes of any legislation relating to money laundering, and
 - (h) the identity of a person sharing an account with a customer.
- (2) For the purposes of this Schedule there is a business relationship between a financial institution and a person if (and only if)—
- (a) there is an arrangement between them designed to facilitate the carrying out of frequent or regular transactions between them, and
 - (b) the total amount of payments to be made in the course of the arrangement is neither known nor capable of being ascertained when the arrangement is made.
- (3) The Secretary of State may by order provide for a class of information—
- (a) to be customer information for the purposes of this Schedule, or

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- (b) to cease to be customer information for the purposes of this Schedule.

Commencement Information

- I2** Sch. 6 wholly in force at 19.2.2001; Sch. 6 not in force at Royal Assent see s. 128; Sch. 6 para. 7(3) in force at 31.10.2000 by [S.I. 2000/2944](#), [art. 2\(j\)\(iii\)](#); Sch 6 para. 7 in force at 19.2.2001 in so far as not already in force by [S.I. 2001/421](#), [art. 2](#)

Offence by body corporate, &c.

- 8 (1) This paragraph applies where an offence under paragraph 1(3) is committed by an institution and it is proved that the offence—
- (a) was committed with the consent or connivance of an officer of the institution, or
 - (b) was attributable to neglect on the part of an officer of the institution.
- (2) The officer, as well as the institution, shall be guilty of the offence.
- (3) Where an individual is convicted of an offence under paragraph 1(3) by virtue of this paragraph, he shall be liable on summary conviction to—
- (a) imprisonment for a term not exceeding six months,
 - (b) a fine not exceeding level 5 on the standard scale, or
 - (c) both.
- (4) In the case of an institution which is a body corporate, in this paragraph “officer” includes—
- (a) a director, manager or secretary,
 - (b) a person purporting to act as a director, manager or secretary, and
 - (c) if the affairs of the body are managed by its members, a member.
- (5) In the case of an institution which is a partnership, in this paragraph “officer” means a partner.
- (6) In the case of an institution which is an unincorporated association (other than a partnership), in this paragraph “officer” means a person concerned in the management or control of the association.

Self-incrimination

- 9 (1) Customer information provided by a financial institution under this Schedule shall not be admissible in evidence in criminal proceedings against the institution or any of its officers or employees.
- (2) Sub-paragraph (1) shall not apply in relation to proceedings for an offence under paragraph 1(3) (including proceedings brought by virtue of paragraph 8).

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