

GENERAL SCHEME
OF
CRIMINAL JUSTICE (MONEY LAUNDERING AND TERRORIST
FINANCING) (AMENDMENT) BILL 2019

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HEAD 1: SHORT TITLE, COLLECTIVE CITATION AND COMMENCEMENT

Provide that –

(1) This Bill may be cited as the Criminal Justice (Money Laundering and Terrorist Financing) (Amendment) Bill 2019.

(2) The Criminal Justice (Money Laundering and Terrorist Financing) Acts 2010 and 2018 and this Act may be cited together as the Criminal Justice (Money Laundering and Terrorist Financing) Acts 2010 to 2019.

(3) This Act shall come into operation on such day or days as the Minister for Justice and Equality may appoint by order or orders either generally or with reference to any particular purpose or provision and different days may be so appointed for different purposes or different provisions.

HEAD 2 : INTERPRETATION

Provide that –

In this Bill –

“Act of 2010” means the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010.

Head 3: Appeal from Section 20 Order

Provide that –

In this Bill –

Section 20 of the Act of 2010 is amended by inserting the following:

“20(3) Any person affected by an Order made by the District Court under this section or section 19 may appeal therefrom to a judge of the Circuit Court within whose circuit is situated the District Court in which the decision was given”

Head 4: Amendment of section 24 of the Act of 2010

Provide that –

In this Bill –

(1) Section 24(1) of the Act of 2010 is amended by the substitution of the following for the definition of “tax adviser”:

“tax adviser” means a person who by way of business provides advice about the tax affairs of other persons, and any other person whose main business is to provide, directly or by means of other persons to which that other person is related, material aid, assistance, or advice on tax matters

(2) Section 24(1) of the Act of 2010 is amended by the insertion of the following definition:

“letting agent” means a person who by way of business carries out the letting of land (including a letting in conacre or for the purposes of agistment),

(3) Section 24(1) is amended in the definition of “electronic money” by the insertion of “other than monetary value referred to in Regulation 5 of those Regulations” after “(S.I. No. 183 of 2011)”.

(4) Section 24 of the Act of 2010 is amended by the insertion of the following definitions:

“virtual currencies” means a digital representation of value that is not issued or guaranteed by a central bank or a public authority, is not necessarily attached to a legally established currency and does not possess a legal status of currency or money, but is accepted by natural or legal persons as a means of exchange and which can be transferred, stored and traded electronically

“virtual currency provider” means an entity that provides services in respect of virtual currencies

“custodian wallet provider” means an entity that provides services to safeguard private cryptographic keys on behalf of its customers, to hold, store and transfer virtual currencies.

Head 5: Amendment of section 25 of the Act of 2010

Provide that –

In this Bill –

Section 25(1) of the Act of 2010 is amended by the insertion of the following paragraph after paragraph (i):

(ia) a letting agent, but only in respect of transactions for which the monthly rent amounts to €10,000 or more

(ib) a provider engaged in exchange services between virtual currencies and fiat currencies,

(ic) a custodian wallet provider,

(id) a person trading, or acting as an intermediary in the trade of, works of art, but only in respect of transactions of a value of at least €10,000 (whether in one transaction or in a series of transactions that are or appear to be linked to each other),

(ie) a person providing storage of works of art when this is carried out by free ports, but only in respect of transactions of a value of at least €10,000 (whether in one transaction or in a series of transactions that are or appear to be linked to each other)

Head 6: Amendment of section 33 of the Act of 2010

Provide that –

In this Bill –

(1) Section 33(1) is amended by the insertion of the following paragraph after paragraph (e):

“(f) at any time where the designated person is obliged, under any enactment or rule of law, including Directive 2011/16/EU to contact the customer for the purpose of reviewing any relevant information relating to the beneficial owner.”

(2) Section 33 (2) is amended

(a) By the insertion of the following subparagraph after subsection

(2)(a)(i):

“(ia) information from relevant trust services as set out in Regulation (EU) 910/2014”

(b) by the insertion of the following subsection after subsection (2A):

“(2B) Where the beneficial owner is the senior managing official as referred as referred to in Article 3(6)(a)(ii) of the Fourth Money Laundering Directive, a designated person shall take the necessary measures to verify the identity of that person and shall keep records of—

(a) the steps taken to verify the person’s identity, and

(b) any difficulties encountered in the process of verifying the person’s identity.”

Head 7: Amendment of section 33A of the Act of 2010

Provide that –

In this Bill –

Section 33A of the Act of 2010 is amended—

- (a) In subsection (1)(a)(ii), by the substitution of “€150” for “€250”
- (b) By the substitution of the following for paragraph (b) of subsection (1):
“ (b) the monetary value that may be stored electronically on the payment instrument concerned does not exceed €150”
- (c) in subsection (1)(f), by the substitution of “€50” for “€100”
- (d) by the insertion of the following paragraph after subsection (1)(f):
“ (g) the transaction concerned is not a remote payment transactions (within the meaning of point (6) of Article 4 of Directive (EU) 2015/2366 of the European Parliament and of the Council), of an amount exceeding €50”
- (e) by the insertion of the following subsection:
“ (2A) (a) A designated person that is a credit institution or financial institution acting as an acquirer shall not accept a payment carried out with an anonymous prepaid card issued in a state other than a Member State unless the payment instrument concerned meets the requirements in subsections (1) and (2).
(b) A designated person who fails to comply with paragraph (a) commits an offence and is liable—
(i) on summary conviction, to a fine not exceeding €5,000 or imprisonment for a term not exceeding 12 months (or both), or
(ii) on conviction on indictment, to a fine or imprisonment for a term not exceeding 5 years (or both).”

Head 8: Amendment of section 35 of the Act of 2010

Provide that –

In this Bill –

(a) Section 35 is amended by the insertion of the following subsection:

(3A) Prior to the establishment of a business relationship with a customer that is [a body corporate or a trust required to register its beneficial ownership information under any legislation in force in the State or in any other Member State giving effect to Article 30 or 31 of the Fourth Money Laundering Directive], a designated person shall obtain proof that the beneficial ownership information has been duly registered or an excerpt of the register demonstrating that the beneficial ownership information has been duly registered.

Head 9: Amendment of section 36A of the Act of 2010

Provide that –

In this Bill –

Section 36A of the Act of 2010 is amended by the substitution of the following subsection for subsection (1):

“(1) A designated person shall, as far as reasonably possible, in accordance with policies and procedures adopted in accordance with section 54, examine the background of all transactions that—

- (a) are complex,
- (b) are unusually large,
- (c) are conducted in an unusual pattern, or
- (d) do not have an apparent economic or lawful purpose.”

Head 10: Amendment of section 37 of the Act of 2010

Provide that –

In this Bill –

Section 37(10) of the Act of 2010 is amended in the definition of “politically exposed person”—

(a) By the substitution of “any of the following individuals” for “either of the following individuals” and

(b) By the insertion of the following after paragraph (b):

“(c) any individual holding a prescribed function or a function of a prescribed class”

Head 11: Amendment of section 38 of the Act of 2010

Provide that –

In this Bill –

Section 38 is amended by the insertion of “involving the execution of payments” after “correspondent relationship”.

Head 12: Amendment of section 38A of the Act of 2010

Provide that –

In this Bill –

Section 38A is amended:

(1) in subsection (1),

(a) by the substitution of “specified in subsection (1A)” for “including enhanced monitoring of the business relationship, to manage and mitigate the risk of money laundering and terrorist financing, additional to those specified in this Chapter,”

(b) by the insertion of the following after subsection (1):

“(1A)

(a) obtaining additional information on the customer and on the beneficial owner;

(b) obtaining additional information on the intended nature of the business relationship;

(c) obtaining information on the source of funds and source of wealth of the customer and of the beneficial owner;

(d) obtaining information on the reasons for the intended or performed transactions;

(e) obtaining the approval of senior management for establishing or continuing the business relationship;

(f) conducting enhanced monitoring of the business relationship by increasing the number and timing of controls applied, and selecting patterns of transactions that need further examination.”

(c) by the insertion of the following after section (1A):

“(1B) (a) The Government may, where it is satisfied that the risk of money laundering and terrorist financing in relation to a high-risk third country, by order impose one of the measures set out in subsection (b) in respect of the third country concerned.

(b) The measures referred to in subsection (a) include:

- (i) requiring designated persons to apply measures, in relation to a customer from that country, that are additional to those specified in [section 39A];
 - (ii) requiring designated persons to take into account in their policies, controls and procedures under section 54(3)(g), the risk involved in relation to the country concerned , or to report to FIU Ireland and the Revenue Commissioners any transaction involving the country concerned;
 - (iii) requiring designated persons to cease business relationships or not to enter business relationships or not to carry out transactions with persons from the country concerned, or to enter into business relationships only under such conditions as may be specified in the order.
- (2) An order under subsection (1B) may apply to any particular class of designated person.
- (3) A person who fails to comply with a requirement in an order under subsection (1B) stated in that order to be a penal provision commits an offence and is liable to a penalty on conviction on indictment of a fine.

Head 13: Amendment of section 40 of the Act of 2010

Provide that –

In this Bill –

Section 40 is amended in subsection (4)(b) by the insertion of the following after “customer”:

“including any information from relevant trust services as set out in Regulation (EU) 910/2014”

Head 14: Amendment of section 51 of the Act of 2010

Provide that –

In this Bill –

Section 51 of the Act of 2010 is amended by the substitution of the following for paragraph (2):

“(2) It is a defence in any proceedings against a person for an offence under section 49, in relation to a disclosure, for the person to prove that, at the time of the disclosure—

- (a) the person was a credit institution or financial institution or a majority-owned subsidiary, or a branch, of a credit institution or financial institution, or made the disclosure on behalf of a credit institution or a financial institution or a majority-owned subsidiary, or a branch, of a credit institution or financial institution,
- (b) the disclosure was to either—
 - (i) a credit institution or financial institution incorporated in a Member State, where both the institution making the disclosure, or on whose behalf the disclosure was made, and the institution to which it was made belonged to the same group, or
 - (ii) a majority-owned subsidiary or branch situated in a third country of a credit institution or financial institution incorporated in a Member State, where the subsidiary or branch was in compliance with group-wide policies and procedures adopted in accordance with section 54, or, as the case may be, Article 45 of the Fourth Money Laundering Directive, including procedures for sharing information within a group.“

Head 15: Regulations in respect of screening for International Financial Sanctions

Provide that –

In this Bill –

The following is inserted after section 54 of the 2010 Act

“Section 54A

- (1) The Minister for Finance may by regulations provide for any matter in respect of screening requirements for International Financial Sanctions by credit institutions and financial institutions.
- (2) Such regulations may include, but are not limited to;
 - (a) the assessment and management of risks of breaches of International Financial Sanctions,
 - (b) internal policies, controls and procedures in respect of International Financial Sanctions, including internal reporting procedures,
 - (c) any other measures necessary to ensure persons dealing with credit institutions or financial institutions are subject to screening for International Financial Sanctions.
- (3) Regulations under this section may contain such incidental, supplementary and consequential provisions as appear to the Minister to be necessary or expedient for the purposes of the regulations .
- (4) A person commits an offence if that person fails to comply with the regulations made under subsection (1)
- (5) A person who commits an offence under this section is liable –
 - (a) on summary conviction, to a fine not exceeding €5,000 or imprisonment for a term not exceeding 12 months (or both), or
 - (b) on conviction on indictment, to a fine or imprisonment for a term not exceeding 3 years (or both).

Head 16: Amendment of section 55 of the Act of 2010

Provide that –

In this Bill –

Section 55 is amended in subsection (2) by the insertion of the following after “section 33”:

“, including information from relevant trust services as set out in Regulation (EU) 910/2014”

Head 17: Amendment of section 58 of the Act of 2010

Provide that –

In this Bill –

Section 58 of the Act of 2010 is amended by the insertion of “or safe-deposit box” after “anonymous passbook” in subsections (1) and (2).

Head 18: Amendment of section 60 of the Act of 2010

Provide that –

In this Bill –

Section 60(2) of the Act of 2010 is amended by the insertion of the following paragraphs after paragraph (d):

(da) in the case of a designated person that is a provider engaged in exchange services between virtual currencies and fiat currencies or a custodian wallet provider, the Central Bank of Ireland;

(db) in the case of a designated person that is a letting agent, the Property Services Regulatory Authority.

Head 19: Amendment of section 65 of the Act of 2010

Provide that –

In this Bill –

Section 65 of the Act of 2010 is amended by the insertion of the following after “relates”:

“including, where the competent authority is not a State competent authority:

- (a) The number of reports of breaches of the provisions of this Act that it has received during that year;
- (b) The number and description of measures taken to monitor compliance with designated persons with their obligations under this Part;”

Head 20: Substitution of section 101 of the Act of 2010

Provide that –

In this Bill –

The following is substituted for section 101 of the Act of 2010:

- (1) There shall stand established a tribunal to be known as the Trust or Company Service Provider Appeal Tribunal and in this Act referred to as the “Appeal Tribunal” to determine the appeals provided for in this Act.
- (2) The Appeal Tribunal shall be independent in the performance of its functions.
- (3) The Appeal Tribunal shall consist of such number of members appointed by the Minister as he or she, considers necessary for the expeditious performance of the duties of the Appeal Tribunal, each of whom shall have had before his or her appointment not less than 7 years’ experience as a practicing barrister or practicing solicitor.
- (4) Subject to *subsection* (13), the Minister shall not appoint a member of the Appeal Tribunal unless the Public Appointments Service, after holding a competition under section 47 of the Public Service Management (Recruitment and Appointments) Act 2004, has selected him or her for appointment to the position.
- (5) *Subsection* (4) shall not apply to the reappointment of a member, in accordance with *subsection* (7), for a second term.
- (6) Whenever the Tribunal consists of more than one member, it shall be grouped into divisions, each of which shall consist of one member.

- (7) Each member of the Appeal Tribunal appointed shall hold office under a contract for services in writing, containing such terms and conditions, including remuneration, as the Minister, with the consent of the Minister for Public Expenditure and Reform, may determine.
- (8) The term of office of the members of the Appeal Tribunal shall be 5 years and a member may be reappointed to the office for a second term not exceeding 5 years.
- (9) Members of the Appeal Tribunal may not serve for more than 2 terms.
- (10) A member of the Appeal Tribunal may at any time resign by a letter sent to the Minister, and the resignation shall take effect on the date on which the Minister receives the letter.
- (11) Where a member of the Tribunal is-
- a. Nominated as a member of Seanad Éireann,
 - b. Elected as a member of either House of the Oireachtas or to be a member of the European Parliament,
 - c. Regarded pursuant to section 19 of the European Parliament Elections Act 1997 as having been elected to that Parliament,
 - d. Elected or co-opted as a member of a local authority,
 - e. Appointed to judicial office, or
 - f. Appointed Attorney General,

he or she shall thereupon cease to be a member of the Tribunal.

(12) The Minister may, at any time, revoke an appointment of a person under this section for stated misbehaviour or if, in the opinion of the Minister, the person has become incapable through ill health or otherwise of effectively performing the functions of the Appeal Tribunal.

(13) Each member of the Appeal Tribunal may determine his or her own procedure, subject to *section 101* and to any general directions given to the Appeal Tribunal by the Minister in the interests of securing consistency of procedures in relation to appeals under this Chapter.

(14) If a Tribunal member-

- a. Dies, resigns, becomes disqualified or is removed from office, or
- b. Is for any reason temporarily unable to continue to perform his or her functions,

the Minister may appoint another person to be a member of the Tribunal until an appointment is made in accordance with *subsection (4)*.

Head 21: Amendment of Schedule 3 and 4 of the Act of 2010

Provide that –

In this Bill –

(1) Schedule 3 to the Act of 2010 is amended in paragraph (3) by the insertion of “— registration, establishment, residence in:” after “Geographical risk factors”.

(2) Schedule 4 to the Act of 2010 is amended—

(a) in paragraph (1) by the insertion of the following subparagraph after subparagraph (g):

“(h) customer is a third country national who applies for residence rights or citizenship in the State in exchange of capital transfers, purchase of property or government bonds, or investment in corporate entities in the State.”

(b) in paragraph (2)

(i) by the substitution of the following for subparagraph (c):

“(c) non face-to-face business relationships or transactions, without certain safeguards, such as electronic identification means, relevant trust services as defined in Regulation (EU) 910/2014 or any other secure, remote or electronic, identification process regulated, recognised, approved or accepted by the relevant national authorities;”

(ii) by the insertion of the following after subparagraph (e):

“(f) transactions related to oil, arms, precious metals, tobacco products, cultural artefacts and other items of archaeological, historical, cultural and religious importance, or of rare or scientific value, as well as ivory and protected species.”

Head 22: Provision of bank records in certain form

Provide that –

In this Bill –

(1) The Criminal Assets Bureau Act 1996 is amended in section 14A by the substitution of the following for subsection (5):

“(5) Where such material consists of information contained in a computer, the order shall have effect as an order to produce the material, or to give access to it—

(a) subject to paragraph (b), in a form in which it is legible and comprehensible and in which it can be taken away, or

(b) where a form has been prescribed by the Minister under subsection (5A) in relation to the material concerned, in that form.

(5A) The Minister may prescribe a form for the purposes of subsection (5) and may prescribe different forms for different classes of material.”

(2) The Criminal Justice Act 1994 is amended in section 63 by the substitution of the following for subsection (4):

“(4) Where the material consists of information contained in a computer, an order under subsection (3) of this section shall have effect as an order to produce the material, or to give access to it—

(a) subject to paragraph (b), in a form in which it is legible and comprehensible and in which it can be taken away, or

(b) where a form has been prescribed by the Minister under subsection (4A) in relation to the material concerned, in that form.

(4A) The Minister may prescribe a form for the purposes of subsection (4) and may prescribe different forms for different classes of material.”

(3) The Criminal Justice (Theft and Fraud Offences) Act 2001 is amended in section 52 by the substitution of the following for subsection (3):

“(3) Where the material consists of or includes information contained in a computer, the order shall have effect as an order to produce the information, or to give access to it—

(a) subject to paragraph (b), in a form in which it is legible and comprehensible and in which it can be taken away, or

(b) where a form has been prescribed by the Minister under subsection (3A) in relation to the material concerned, in that form.

(3A) The Minister may prescribe a form for the purposes of subsection (3) and may prescribe different forms for different classes of material.”

(4) The Criminal Justice Act 2011 is amended in section 15 by the substitution of the following for subsection (6):

“(6) Where the documents concerned are not in legible form, an order under this section shall have effect as an order—

(a) to give to a member of the Garda Síochána any password necessary to make the documents legible and comprehensible,

(b) otherwise to enable the member of the Garda Síochána to examine the documents in a form in which they are legible and comprehensible, or

(c) subject to subsection (6A), to produce the documents to the member of the Garda Síochána in a form in which they can be removed and in which they are, or can be made, legible and comprehensible.

(6A) The Minister may prescribe a form for the purposes of subsection (6)(c) and may prescribe different forms for different classes of material.”