SECTION B22: OFFENCES RELATING TO THE PROCEEDS OF CRIMINAL CONDUCT

B22.1 Part 7 of the Proceeds of Crime Act 2002 creates a series of new 'money laundering' offences (ss. 327–329) which (subject to the transitional arrangements explained below) supplant offences previously contained in the CJA 1988, ss. 93A to 93C and the Drug Trafficking Act 1994, ss. 49 to 51. Sections 330 to 332 of the new Act create offences of failure to disclose cases of suspected money laundering. The non-disclosure offences (which supplant the Drug Trafficking Act 1994, s. 52) are capable of commission only by persons in the 'regulated sector' of the financial services industry as defined in sch. 9 to the Act (as amended by the Proceeds of Crime Act 2002 (Business in the Regulated Sector and Supervisory Authorities) Order 2003 (SI 2003 No. 3074). The new offences differ from s. 52 of the 1994 Act in that they extend to matters concerning the proceeds of all types of criminal conduct, and not just to those concerning the proceeds of drug trafficking. Finally, s. 333 creates an offence of 'tipping off' another person as to the fact that a protected or authorised disclosure (a lawful report of suspected money laundering) has been made, where this tip-off is likely to prejudice any subsequent investigation. This provision supplants s. 93D(2) of the 1998 Act and s. 53(2) of the 1994 Act. As to the origins, scope and purpose of Part 7 generally, see parts 5 to 8 of Brooke LJ's judgment in *Bowman* v *Fels* (2005) *The Times*, 14 March 2005.

In Part 8 of the new Act, s. 342 creates an offence involving conduct that is likely to obstruct or prejudice a money laundering, civil recovery or confiscation investigation. This supplants (but goes well beyond) the offences previously contained in s. 93D(1) of the 1988 Act and s. 53(1) of the 1994 Act.

The new legislation offers the prosecution several advantages over the old, primarily because it avoids the difficulties that could previously arise where, for example, there was clear evidence that D was involved in money laundering but the evidence did not disclose whether this involved the proceeds of drug trafficking or the proceeds of other crimes. D could not then be convicted of either offence. As to the framing of a conspiracy charge in such cases, see *Hussain* [2002] Crim LR 407 and *Rizvi* [2003] EWCA Crim 3575.

Parts 7 and 8 of the Act were brought into force on 24 February 2003 (Proceeds of Crime Act 2002 (Commencement No. 4, Transitional Provisions and Savings) Order 2003 (SI 2003 No. 120)), but subject to article 3 of that Order. This provides that the new provisions do *not* apply where the conduct allegedly constituting an offence under those provisions began before 24 February 2003 and ended on or after that date; and the old principal money laundering offences continue to have effect in such circumstances. For detailed analysis of the old law, see the 2002 edition of this work and see also *Montila* [2005] 1 All ER 113.

The Money Laundering Regulations

B22.2 The Money Laundering Regulations 2003 (SI 2003 No. 3075) came into force with minor exceptions on 1 March 2004, and impose a wider and more stringent regime than that previously applied by the 1993 Regulations, which they replace.

Detailed consideration of the regulations falls beyond the scope of this work but the principal implications in terms of criminal liability are as follows: where business relationships are formed, or individual transactions are carried out, in the course of relevant business (as defined in reg. 2), anyone carrying out such a business must

maintain certain procedures for identification (reg. 4), record-keeping (reg. 6) and internal reporting (reg. 7). Breaches of those requirements may be punishable under reg. 3, which also contains strict requirements as to the training of employees.

Money Laundering Regulations 2003, reg. 3

(1) Every person must in the course of relevant business carried on by him in the United Kingdom—

(a) comply with the requirements of regulations 4 (identification procedures), 6 (record-keeping procedures) and 7 (internal reporting procedures);

(b) establish such other procedures of internal control and communication as may be appropriate for the purposes of forestalling and preventing money laundering; and

(c) take appropriate measures so that relevant employees are—

(i) made aware of the provisions of these regulations, part 7 of the Proceeds of Crime Act 2002 (money laundering) and sections 18 and 21A of the Terrorism Act 2000; and

(ii) given training in how to recognise and deal with transactions which may be related to money laundering.

(2) A person who contravenes this regulation is guilty of an offence and liable—

(a) on conviction on indictment, to imprisonment for a term not exceeding 2 years, to a fine or to both;

(b) on summary conviction, to a fine not exceeding the statutory maximum.

(3) In deciding whether a person has committed an offence under this regulation, the court must consider whether he followed any relevant guidance which at the time concerned—

(a) issued by a supervisory authority or any other appropriate body;

(b) approved by the Treasury; and

(c) published in a manner approved by the Treasury as appropriate in their opinion to bring the guidance to the attention of persons likely to be affected by it.

(4) An appropriate body is any body which regulates or is representative of any trade, profession, business or employment carried on by the alleged offender.

(5) In proceedings against any person for an offence under this regulation, it is a defence for that person to show that he took all reasonable steps and exercised all due diligence to avoid committing the offence.

(6) Where a person is convicted of an offence under this regulation, he shall not also be liable to a penalty under regulation 20 (power to impose penalties).

Casinos have sometimes been associated with money laundering activities but, by reg. 8(1), casino operators must obtain satisfactory evidence of a person's identity before allowing him to use the casino's gaming facilities. By reg. 8(2), failure to do so is to be treated as a contravention of reg. 3.

Money Laundering and Criminal Property

B22.3 The term 'money laundering', although widely used in the Proceeds of Crime Act 2002, is potentially misleading. By s. 340(11), 'money laundering' is defined as an act which constitutes an offence under ss. 327, 328 or 329, an inchoate version of such an offence, secondary participation in such an offence or an act which would constitute any of the above if it were done in the United Kingdom. The offences under ss. 327 to 329 do not, however, use the terms 'money' or 'laundering' to define their scope. They are concerned instead with 'criminal property', as defined in s. 340(2) to (10).

Proceeds of Crime Act 2002, s. 340

(2) Criminal conduct is conduct which—

(a) constitutes an offence in any part of the United Kingdom, or

(b) would constitute an offence in any part of the United Kingdom if it occurred there.

(3) Property is criminal property if—

(a) it constitutes a person's benefit from criminal conduct or it represents such a benefit (in whole or part and whether directly or indirectly), and

(b) the alleged offender knows or suspects that it constitutes or represents such a benefit.

(4) It is immaterial—

(a) who carried out the conduct;

(b) who benefited from it;

(c) whether the conduct occurred before or after the passing of this Act.

(5) A person benefits from conduct if he obtains property as a result of or in connection with the conduct.

(6) If a person obtains a pecuniary advantage as a result of or in connection with conduct, he is to be taken to obtain as a result of or in connection with the conduct a sum of money equal to the value of the pecuniary advantage.

(7) References to property or a pecuniary advantage obtained in connection with conduct include references to property or a pecuniary advantage obtained in both that connection and some other.

(8) If a person benefits from conduct his benefit is the property obtained as a result of or in connection with the conduct.

(9) Property is all property wherever situated and includes—

(a) money;

(b) all forms of property, real or personal, heritable or moveable;

(c) things in action and other intangible or incorporeal property.

(10) The following rules apply in relation to property—

(a) property is obtained by a person if he obtains an interest in it;

(b) references to an interest, in relation to land in England and Wales or Northern Ireland, are to any legal estate or equitable interest or power;

(c) references to an interest, in relation to land in Scotland, are to any estate, interest, servitude or other heritable right in or over land, including a heritable security;

(d) references to an interest, in relation to property other than land, include references to a right (including a right to possession).

The concept of 'criminal property', which lies at the core of the money laundering offences, is essentially defined in s. 340(2) and (3). Property that does not fall within the terms of those provisions cannot be criminal property under part 7 of the Act. Subsections (4) to (10) expand upon and illustrate that concept, but are not necessarily exhaustive. Section 340(10), in particular, does not provide an exhaustive definition of 'obtaining' in relation to property. It states that a person may obtain property by obtaining an 'interest' in relation to it, which includes (in the case of property other than land) a right to possession; but getting *actual* possession must also involve obtaining.

Section 340(3)(b) purports to be part of the definition of 'criminal property', but for practical purposes it also specifies the key *mens rea* element in money laundering offences.

Authorised Disclosure and Appropriate Consent

B22.4 A person is not guilty of a money laundering offence if he makes an 'authorised disclosure' and acts with the 'appropriate consent'. These terms are defined in the Proceeds of Crime Act 2002, ss. 338 and 335, respectively.

Proceeds of Crime Act 2002, s. 338

(1) For the purposes of this Part a disclosure is authorised if—

(a) it is a disclosure to a constable, a customs officer or a nominated officer by the alleged offender that property is criminal property, and

(b) [repealed]

(c) the first, second or third condition set out below is satisfied.

(2) The first condition is that the disclosure is made before the alleged offender does the prohibited act.

(2A) The second condition is that—

(a) the disclosure is made while the alleged offender is doing the prohibited act,

(b) he began to do the act at a time when, because he did not then know or suspect that the property constituted or represented a person's benefit from criminal conduct, the act was not a prohibited act, and

(c) the disclosure is made on his own initiative and as soon as is practicable after he first knows or suspects that the property constitutes or represents a person's benefit from criminal conduct.

(3) The third condition is that—

(a) the disclosure is made after the alleged offender does the prohibited act,

(b) there is a good reason for his failure to make the disclosure before he did the act, and

(c) the disclosure is made on his own initiative and as soon as it is practicable for him to make it.

(4) An authorised disclosure is not to be taken to breach any restriction on the disclosure of information (however imposed).

(5) A disclosure to a nominated officer is a disclosure which—

(a) is made to a person nominated by the alleged offender's employer to receive authorised disclosures, and

(b) is made in the course of the alleged offender's employment.

(6) References to the prohibited act are to an act mentioned in section 327(1), 328(1) or 329(1) (as the case may be).

References to a constable include a person authorised for these purposes by the Director General of the National Criminal Intelligence Service (NCIS) (s. 340(13)).

Proceeds of Crime Act 2002, s. 335

(1) The appropriate consent is—

(a) the consent of a nominated officer to do a prohibited act if an authorised disclosure is made to the nominated officer;

(b) the consent of a constable to do a prohibited act if an authorised disclosure is made to a constable;

(c) the consent of a customs officer to do a prohibited act if an authorised disclosure is made to a customs officer.

(2) A person must be treated as having the appropriate consent if—

(a) he makes an authorised disclosure to a constable or a customs officer, and

(b) the condition in subsection (3) or the condition in subsection (4) is satisfied.

(3) The condition is that before the end of the notice period he does not receive notice from a constable or customs officer that consent to the doing of the act is refused.

(4) The condition is that—

(a) before the end of the notice period he receives notice from a constable or customs officer that consent to the doing of the act is refused, and

(b) the moratorium period has expired.

(5) The notice period is the period of seven working days starting with the first working day after the person makes the disclosure.

(6) The moratorium period is the period of 31 days starting with the day on which the person receives notice that consent to the doing of the act is refused.

(7) A working day is a day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday under the Banking and Financial Dealings Act 1971 in the part of the United Kingdom in which the person is when he makes the disclosure.

(8) References to a prohibited act are to an act mentioned in section 327(1), 328(1) or 329(1) (as the case may be).

(9) A nominated officer is a person nominated to receive disclosures under section 338.

Section 336 details conditions under which a nominated officer may give appropriate consent.

Guidance as to how disclosure should be made is provided by the NCIS at http://www.ncis.co.uk/disclosure.asp but this guidance (and Butler-Sloss P's judgment in *P* v *P (ancillary relief: proceeds of crime)* [2004] Fam 1) must now be read in light of the ruling

by the Court of Appeal in *Bowman* v *Fels* (2005) *The Times*, 14 March 2005, in which it was held that, 'the issue or pursuit of ordinary legal proceedings with a view to obtaining the court's adjudication upon the parties' rights and duties is not to be regarded as an arrangement or a prohibited act within ss. 327–9.' It follows that lawyers conducting litigation are not required to make disclosure to the NCIS and obtain NCIS consent merely because of a suspicion that the proceedings might in some way facilitate the acquisition, retention, use or control of criminal property by one or more of the parties.

Where disclosure is required, then as Laddie J explained in *Squirrell Ltd* v *National Westminster Bank plc* [2005] 2 All ER 784 at [17]: the constable (or NCIS officer) or customs officer may simply give consent (s. 335(1)). Alternatively, consent may be assumed if the party has made an authorised disclosure and has not received, within seven working days, notice that consent is refused. If notice of refusal is indeed given then a further 31 calendar days (the moratorium) must pass before the party can safely deal with the property in question.

Offences of Concealment, etc.

B22.5 **Proceeds of Crime Act 2002, s. 327**

(1) A person commits an offence if he—
(a) conceals criminal property;
(b) disguises criminal property;
(c) converts criminal property;
(d) transfers criminal property;
(e) removes criminal property from England and Wales or from Scotland or from Northern Ireland.

(2) But a person does not commit such an offence if—
(a) he makes an authorised disclosure under section 338 and (if the disclosure is made before he does the act mentioned in subsection (1)) he has the appropriate consent;
(b) he intended to make such a disclosure but had a reasonable excuse for not doing so;
(c) the act he does is done in carrying out a function he has relating to the enforcement of any provision of this Act or of any other enactment relating to criminal conduct or benefit from criminal conduct.

(2A) Nor does a person commit an offence under subsection (1) if—
(a) he knows, or believes on reasonable grounds, that the relevant criminal conduct occurred in a particular country or territory outside the United Kingdom, and
(b) the relevant criminal conduct—
(i) was not, at the time it occurred, unlawful under the criminal law then applying in that country or territory, and
(ii) is not of a description prescribed by an order made by the Secretary of State.

(2B) In subsection (2A) 'the relevant criminal conduct' is the criminal conduct by reference to which the property concerned is criminal property.

(2C) A deposit-taking body that does an act mentioned in paragraph (c) or (d) of subsection (1) does not commit an offence under that subsection if—
(a) it does the act in operating an account maintained with it, and
(b) the value of the criminal property concerned is less than the threshold amount determined under section 339A for the act.

(3) Concealing or disguising criminal property includes concealing or disguising its nature, source, location, disposition, movement or ownership or any rights with respect to it.

The SOCPA 2005, ss. 102(2) and 103(2), include certain amendments to s. 327, namely the insertion of s. 327(2A) to (2C). The insertion of subsections (2A) and (2B) by s. 102(2) is not yet in force, but this section is printed above as so amended.

Indictment

Statement of Offence **B22.6**

Concealing criminal property, contrary to section 327(1)(e) of the Proceeds of Crime Act 2002

Particulars of Offence

D on or about the . . . day of . . . concealed in his home criminal property, namely . . . knowing or suspecting it to represent in whole or in part the proceeds of drug trafficking committed by E.

The explanatory notes to the Act suggest that s. 327 'creates one of three principal money laundering offences', but this may be open to argument. The structure of the section suggests that it creates not one but five separate offences (one in each of s. 327(1)(a) to (1)(e)) and the Act contains no clear indication to the contrary. This contrasts with the Public Order Act 1986, which specifically states in s. 7(2) that ss. 1 to 5 of that Act each create only one offence. An indictment that merely alleges 'money laundering, contrary to s. 327' would thus appear to be duplicitous, although the position is by no means clear and it is possible that the courts will take a different view. The form of indictment above should be acceptable in either case. See generally **D10.21** ***et seq***.

Money Laundering Offences: Procedure and Sentence

Offences under the Proceeds of Crime Act 2002, ss. 327 to 329, are triable either way (s. 334). When tried on indictment they are class 3 offences. The maximum penalty is 14 years' imprisonment and/or a fine following conviction on indictment; six months and/or a fine not exceeding the statutory maximum on summary conviction. Guidance on sentencing for money laundering, albeit in relation to offences replaced by the PCA 2002, may be found in *Basra* [2002] 2 Cr App R (S) 469 and *Gonzalez* [2003] 2 Cr App R (S) 35. In *El-Delbi* [2003] EWCA Crim 1767 the Court of Appeal dealt with a case involving the laundering of the proceeds of drug trafficking. Such offenders can expect to receive severe sentences comparable to those playing a significant role in the supply of drugs. It should be borne in mind, however, that the maximum penalty for money laundering is 14 years while for dealing in Class A drugs it is life imprisonment. **B22.7**

Elements

The Proceeds of Crime Act 2002, s. 327, supplants the Drug Trafficking Act 1994, s. 49, and the CJA 1988, s. 93C. The scope of the offences created is potentially very broad. Dishonesty is not required, nor is knowledge of the provenance of the property. On a literal reading of s. 327, a thief who conceals, disguises or sells property that he has just stolen may thereby commit offences under that section, as may someone who merely suspects that the property he converts or exports represents the benefit of another person's crime (see s. 340(3)(b)). Where property is purchased for 'adequate consideration', s. 329(2) provides a defence to someone who is charged with unlawful acquisition, use or possession under s. 329(1) (see **B22.12**) but this defence cannot apply if he is charged instead with converting, transferring or removing the property under s. 327. **B22.8**

Section 327(2) creates defences to charges under s. 327(1). The accused does not bear any legal or persuasive burden in respect of those defences, but he must presumably bear an evidential burden. The prosecution therefore need not address any such issues unless these are raised by admissible evidence.

Money Laundering Arrangements

B22.9 **Proceeds of Crime Act 2002, s. 328**

(1) A person commits an offence if he enters into or becomes concerned in an arrangement which he knows or suspects facilitates (by whatever means) the acquisition, retention, use or control of criminal property by or on behalf of another person.

(2) But a person does not commit such an offence if—

(a) he makes an authorised disclosure under section 338 and (if the disclosure is made before he does the act mentioned in subsection (1)) he has the appropriate consent;

(b) he intended to make such a disclosure but had a reasonable excuse for not doing so;

(c) the act he does is done in carrying out a function he has relating to the enforcement of any provision of this Act or of any other enactment relating to criminal conduct or benefit from criminal conduct.

(3) Nor does a person commit an offence under subsection (1) if—

(a) he knows, or believes on reasonable grounds, that the relevant criminal conduct occurred in a particular country or territory outside the United Kingdom, and

(b) the relevant criminal conduct—

(i) was not, at the time it occurred, unlawful under the criminal law then applying in that country or territory, and

(ii) is not of a description prescribed by an order made by the Secretary of State.

(4) In subsection (3) 'the relevant criminal conduct' is the criminal conduct by reference to which the property concerned is criminal property.

(5) A deposit-taking body that does an act mentioned in subsection (1) does not commit an offence under that subsection if—

(a) it does the act in operating an account maintained with it, and

(b) the arrangement facilitates the acquisition, retention, use or control of criminal property of a value that is less than the threshold amount determined under section 339A for the act.

The SOCPA 2005, ss. 102(3) and 103(3), include certain amendments to s. 328, namely the insertion of s. 328(3) to (5). The insertion of subsection (3) and (4) by s. 102(3) is not yet in force, but the section is printed above as so amended.

Indictment, etc.

B22.10 Statement of Offence

Entering into or becoming concerned in a money laundering arrangement, contrary to section 328(1) of the Proceeds of Crime Act 2002.

Particulars of Offence

D on or about the day of . . . entered into or became concerned in an arrangement, namely the opening by E of an account at . . . . . under a false name, knowing or suspecting that this arrangement would facilitate the retention, use or control of criminal property by E or by other persons unknown.

In contrast to ss. 327 and 329, s. 328 appears to create a single offence, which may be committed in various ways. It is analogous in this respect to the offence of handling stolen goods (see **B4.137**). As to procedure and sentence, see **B22.7**.

Elements

B22.11 The Proceeds of Crime Act 2002, s. 238, supplants the Drug Trafficking Act 1994, s. 50, and the CJA 1988, s. 93A. It potentially affects not only deliberate or dishonest offenders, but also banks, accountants and legal advisers, etc., who become suspicious as to the legality of the means by which their clients have acquired any of the funds or other

property they are asked to deal with or manage. As Laddie J explained in *Squirrell Ltd* v *National Westminster Bank plc* [2005] 2 All ER 784 at [16]:

> The purpose of s. 328(1) is not to turn innocent third parties like [banks] into criminals. It is to put them under pressure to provide information to the relevant authorities to enable the latter to obtain information about possible criminal activity and to increase their prospects of being able to freeze the proceeds of crime. To this end, a party caught by s. 328(1) can avoid liability if he brings himself within the statutory defence created by s. 328(2). . . .

Arguably, it need not even be proved that such suspicion was well-founded. In *Squirrell*, Laddie J's view was that 'Even if [the client's account] does *not* contain funds which are, in fact, criminal property and no offence has been committed [by the client] s. 328(1) bites if [the bank] has a relevant suspicion'. Unfounded suspicions may, if that view is correct, lead to the commission of a s. 328 offence. Such an interpretation nevertheless looks doubtful in light of the decision of the House of Lords in *Montila* [2005] 1 WLR 3141 (not cited in *Squirrell*), in which it was held that a conviction for the somewhat similarly worded offence under the CJA 1988, s. 93C(2), requires proof that the property in question was *in fact* (and was not merely suspected to be) the proceeds of criminal conduct.

In *Bowman* v *Fels* (2005) *The Times*, 14 March 2005, the Court of Appeal rejected arguments that, if a lawyer acting for a client in legal proceedings discovers or suspects anything in the proceedings that may facilitate the acquisition, retention, use or control (usually by his own client or his client's opponent) of criminal property, he must immediately notify the NCIS of his belief if he is to avoid being guilty of a s. 328 offence. Brooke LJ said (at [83]):

> [Section 328] is . . . not intended to cover or affect the ordinary conduct of litigation by legal professionals. That includes any step taken by them in litigation from the issue of proceedings and the securing of injunctive relief or a freezing order up to its final disposal by judgment. We do not consider that either the European or the United Kingdom legislator can have envisaged that any of these ordinary activities could fall within the concept of 'becoming concerned in an arrangement which . . . facilitates the acquisition, retention, use or control of criminal property'.

The wording of s. 328(2) does not suggest that the accused bears any legal or persuasive burden in respect of the defences it creates, but he must bear an evidential burden. The prosecution therefore need not address any such issues unless these have been raised by admissible evidence.

Offences of Acquisition, Use or Possession

Proceeds of Crime Act 2002, s. 329 **B22.12**

(1) A person commits an offence if he—
  (a) acquires criminal property;
  (b) uses criminal property;
  (c) has possession of criminal property.

(2) But a person does not commit such an offence if—

(a) he makes an authorised disclosure under section 338 and (if the disclosure is made before he does the act mentioned in subsection (1)) he has the appropriate consent;

(b) he intended to make such a disclosure but had a reasonable excuse for not doing so;

(c) he acquired or used or had possession of the property for adequate consideration;

(d) the act he does is done in carrying out a function he has relating to the enforcement of any provision of this Act or of any other enactment relating to criminal conduct or benefit from criminal conduct.

(2A) Nor does a person commit an offence under subsection (1) if—

(a) he knows, or believes on reasonable grounds, that the relevant criminal conduct occurred in a particular country or territory outside the United Kingdom, and

(b) the relevant criminal conduct—

(i) was not, at the time it occurred, unlawful under the criminal law then applying in that country or territory, and

(ii) is not of a description prescribed by an order made by the Secretary of State.

(2B) In subsection (2A) 'the relevant criminal conduct' is the criminal conduct by reference to which the property concerned is criminal property.

(2C) A deposit-taking body that does an act mentioned in subsection (1) does not commit an offence under that subsection if—

(a) it does the act in operating an account maintained with it, and

(b) the arrangement facilitates the acquisition, retention, use or control of criminal property of a value that is less than the threshold amount determined under section 339A for the act.

(3) For the purposes of this section—

(a) a person acquires property for inadequate consideration if the value of the consideration is significantly less than the value of the property;

(b) a person uses or has possession of property for inadequate consideration if the value of the consideration is significantly less than the value of the use or possession;

(c) the provision by a person of goods or services which he knows or suspects may help another to carry out criminal conduct is not consideration.

The SOCPA 2005, ss. 102(4) and 103(4), include certain amendments to s. 329, namely the insertion of s. 329(2A) to (2C). The insertion of subsections (2A) and (2B) by s. 102(4) is not yet in force, but the section is printed above as so amended.

Indictment, etc.

B22.13

Statement of Offence

Acquiring criminal property, contrary to section 329(1)(a) of the Proceeds of Crime Act 2002.

Particulars of Offence

D on or about the day of . . . . . acquired criminal property, namely . . . . . knowing or suspecting it to represent in whole or in part the proceeds of drug trafficking commited by E.

There may be room for argument as to whether s. 329(1)(a) to (c) each create a distinct offence, or whether they represent three different ways of committing a single offence created by s. 329(1). See the discussion of s. 327 at **B22.6**. The form of indictment shown above should be acceptable in either case. As to procedure and sentence, see **B22.**7.

Elements

B22.14 The Proceeds of Crime Act 2002, s. 329, supplants the Drug Trafficking Act 1994, s. 51 and the CJA 1988, s. 93B. As with s. 327, s. 329 does not distinguish between criminal property that represents the benefit of some other person's crime and that which represents the benefits of a crime which the accused himself has just committed. A thief who uses or retains possession of property that he has just stolen (this being criminal property as defined in s. 340) must therefore be guilty of an offence under s. 29(1)(b) or (c), the maximum penalty for which is twice that for basic theft. It does not follow that such a charge would be appropriate. It might indeed be considered perverse. The structure of the new money laundering offences appears to rely on the assumption that they will be applied sensibly and that prosecutors will not attempt to exploit the more bizarre or extreme possibilities that they create.

Dishonesty is not required under s. 329, nor need the accused know or believe that the property in question is criminal property. Mere suspicion will suffice (see s. 340(3)(b)).

Defences are provided under s. 329(2) to (2C). The wording does not suggest that the accused bears any legal or persuasive burden in respect of those defences, but he must bear an evidential burden. The prosecution therefore need not address any such issues unless these have been raised by the accused. Where property is purchased for 'adequate consideration', s. 329(2)(c) provides a defence to someone who is charged with unlawful acquisition, use or possession under s. 329(1), but this cannot apply if he is charged instead with an offence under s. 327.

Money Laundering, Stolen Goods and Wrongful Credits

B22.15 There are overlaps between the new money laundering offences and several existing offences, including those of assisting offenders, concealing arrestable offences and perverting the course of justice. The most important overlaps, however, appear to be with handling stolen goods (Theft Act 1968, s. 22; see **B4.127** ***et seq***.) and dishonestly retaining a wrongful credit (Theft Act 1968, s. 24A, see **B4.145** ***et seq***.).

The term, 'stolen goods', as defined in s. 24 of the Theft Act 1968, includes money and other property which directly or indirectly represents (or has previously represented) the proceeds of theft, blackmail or a s. 15 deception offence in the hands of the original thief, etc., or in the hands of a dishonest handler of stolen goods. Such property may be criminally 'handled' in a number of ways, but D must be proved to have been dishonest and to have 'known or believed' that the property in question was stolen goods. Mere suspicion is never enough (see **B4.142**). If the goods were allegedly stolen abroad, outside English jurisdiction, it will be necessary to prove the content of the relevant foreign law (see *Ofori* (1994) 99 Cr App R 223). D cannot ordinarily be convicted of handling the proceeds of his own crime, unless he is proved to have done so for the benefit of another. Finally, in cases involving cheques, money transfers or the proceeds of bank accounts, care must be taken to avoid the problems identified (or created) by the House of Lords in *Preddy* [1996] AC 815 (see **B4.148**).

A money laundering offence will often be much easier to establish than any Theft Act offence. By the Proceeds of Crime Act 2002, s. 340(3), the property in question may represent the proceeds of any crime under UK law, and it suffices that D merely suspects this. The exact crime need not be established, nor need anyone have been convicted in respect of it. D may even be guilty of 'money laundering', by using, possessing or retaining the proceeds of his own criminal conduct; but amendments made to the PCA 2002 by the SOCPA 2005, s. 102, will, once in force, ensure that D will not ordinarily be guilty of any of the principal money laundering offences where he knows, or believes on reasonable grounds, that the relevant 'criminal' conduct occurred (or is occurring) in a country or territory outside the United Kingdom, and is not (or was not at that time) criminal under the applicable local law. This defence will not apply if the relevant conduct is of a type described by an order made by the Secretary of State.

Where D's bank or building society account contains the proceeds of thefts or frauds, a money laundering charge may similarly be an easier charge to prove than a charge under s. 24A of the Theft Act 1968. Selection of a money laundering charge would again avoid the need for proof of D's dishonesty or of his knowledge as to the provenance of the funds; and D may commit a money laundering offence by retaining or using the proceeds of a crime committed at any time in the past (e.g., a robbery committed by his father 20 years ago) whereas the s. 24A offence can apply only to wrongful credits made on or after 18 December 1996.

Jurisdiction

B22.16 None of the money laundering offences in the Proceeds of Crime Act 2002 are listed as group A offences for jurisdictional purposes under the CJA 1993, part I (see **A8.4**). This is a surprising omission, given that the offences under ss. 22 and 24A of the Theft Act

1968 are so listed, and that money laundering has been identified as one of the most prevalent transnational offences of recent years; but it must be emphasised that, as long as the money laundering offence takes place in England and Wales, it does not matter if the property concerned is the product of criminal conduct committed elsewhere in the world.

Failure to Disclose Possible Money Laundering

B22.17 Sections 330, 331 and 332 of the Proceeds of Crime Act 2002 create offences of failure to disclose possible money laundering activities (as defined in s. 340(11)). These are not confined (as was the Drug Trafficking Act 1994, s. 52) to cases involving proceeds of drug trafficking. Actual knowledge or suspicion is not required under ss. 330 or 331, nor (apparently) need it be proved that any actual money laundering took place. It suffices in either case that the accused has 'reasonable grounds' for suspicion. Section 330 deals with failures by persons working in the 'regulated sector' (financial services etc.) as defined in sch. 9 to the Act.

Proceeds of Crime Act 2002, s. 330

(1) A person commits an offence if the conditions in subsections (2) to (4) are satisfied.

(2) The first condition is that he—

(a) knows or suspects, or

(b) has reasonable grounds for knowing or suspecting,

that another person is engaged in money laundering.

(3) The second condition is that the information or other matter—

(a) on which his knowledge or suspicion is based, or

(b) which gives reasonable grounds for such knowledge or suspicion,

came to him in the course of a business in the regulated sector.

(3A) The third condition is—

(a) that he can identify the other person mentioned in subsection (2) or the whereabouts of any of the laundered property, or

(b) that he believes, or it is reasonable to expect him to believe, that the information or other matter mentioned in subsection (3) will or may assist in identifying that other person or the whereabouts of any of the laundered property.

(4) The fourth condition is that he does not make the required disclosure to—

(a) a nominated officer, or

(b) a person authorised for the purposes of this Part by the Director General of the Serious Organised Crime Agency,

as soon as is practicable after the information or other matter mentioned in subsection (3) comes to him.

(5) The required disclosure is a disclosure of—

(a) the identity of the other person mentioned in subsection (2), if he knows it,

(b) the whereabouts of the laundered property, so far as he knows it, and

(c) the information or other matter mentioned in subsection (3).

(5A) The laundered property is the property forming the subject-matter of the money laundering that he knows or suspects, or has reasonable grounds for knowing or suspecting, that other person to be engaged in.

(6) But he does not commit an offence under this section if—

(a) he has a reasonable excuse for not making the required disclosure,

(b) he is a professional legal adviser and—

(i) if he knows either of the things mentioned in subsection (5)(a) and (b), he knows the thing because of information or other matter that came to him in privileged circumstances, or

(ii) the information or other matter mentioned in subsection (3) came to him in privileged circumstances, or

(c) subsection (7) applies to him.

(7) This subsection applies to a person if—

(a) he does not know or suspect that another person is engaged in money laundering, and

(b) he has not been provided by his employer with such training as is specified by the Secretary of State by order for the purposes of this section.

(7A) Nor does a person commit an offence under this section if—

(a) he knows, or believes on reasonable grounds, that the money laundering is occurring in a particular country or territory outside the United Kingdom, and

(b) the money laundering—

(i) is not unlawful under the criminal law applying in that country or territory, and

(ii) is not of a description prescribed in an order made by the Secretary of State.

(8) In deciding whether a person committed an offence under this section the court must consider whether he followed any relevant guidance which was at the time concerned—

(a) issued by a supervisory authority or any other appropriate body,

(b) approved by the Treasury, and

(c) published in a manner it approved as appropriate in its opinion to bring the guidance to the attention of persons likely to be affected by it.

(9) A disclosure to a nominated officer is a disclosure which—

(a) is made to a person nominated by the alleged offender's employer to receive disclosures under this section, and

(b) is made in the course of the alleged offender's employment.

(9A) But a disclosure which satisfies paragraphs (a) and (b) of subsection (9) is not to be taken as a disclosure to a nominated officer if the person making the disclosure—

(a) is a professional legal adviser,

(b) makes it for the purpose of obtaining advice about making a disclosure under this section, and

(c) does not intend it to be a disclosure under this section.

(10) Information or other matter comes to a professional legal adviser in privileged circumstances if it is communicated or given to him—

(a) by (or by a representative of) a client of his in connection with the giving by the adviser of legal advice to the client,

(b) by (or by a representative of) a person seeking legal advice from the adviser, or

(c) by a person in connection with legal proceedings or contemplated legal proceedings.

(11) But subsection (10) does not apply to information or other matter which is communicated or given with the intention of furthering a criminal purpose.

(12) Schedule 9 has effect for the purpose of determining what is—

(a) a business in the regulated sector;

(b) a supervisory authority.

(13) An appropriate body is any body which regulates or is representative of any trade, profession, business or employment carried on by the alleged offender.

The SOCPA 2005, ss. 102(5), 104(2), 105(2) and 106(2), include certain amendments to s. 330, principally the substitution of s. 330(4) to (6) and the insertion of s. 330(7A) and (9A). The insertion of subsection (7A) by s. 102(5) is not yet in force, but the section is printed above as so amended.

The guidance referred to in s. 330(8) includes that issued by the Joint Money Laundering Steering Group, in association with the British Bankers' Association. Subscribers to this service may assess their anti-money laundering procedures against current regulatory requirements.

Section 331 creates a broadly similar offence, applicable to nominated officers in the regulated sector, who have themselves received information as to suspected money laundering in consequence of disclosures made to them under s. 330.

Section 332 deals with failures by nominated officers to whom disclosures have been made under s. 337 (protected disclosures) or s. 338 (authorised disclosures).

Penalties and Procedure for Offences under ss. 330 to 332

B22.18 Offences under the Proceeds of Crime Act 2002, ss. 330 to 332, are arrestable offences (PACE 1984, s. 24: see **D1.13**). They are triable either way (s. 334). When tried on indictment they are class 3 offences. The maximum penalty is five years' imprisonment and/or a fine following conviction on indictment; six months and/or a fine not exceeding the statutory maximum on summary conviction.

Tipping-off and Prejudicing Investigations

B22.19 The Proceeds of Crime Act 2002, s. 333(1), creates an offence of making a disclosure likely to prejudice a money laundering investigation which is or may in the future be undertaken by law enforcement authorities. It supplants the Drug Trafficking Offences Act 1994, s. 53(2), and the CJA 1988, s. 93D(2).

Proceeds of Crime Act 2002, s. 333

(1) A person commits an offence if—

(a) he knows or suspects that a disclosure falling within section 337 or 338 has been made, and

(b) he makes a disclosure which is likely to prejudice any investigation which might be conducted following the disclosure referred to in paragraph (a).

(2) But a person does not commit an offence under subsection (1) if—

(a) he did not know or suspect that the disclosure was likely to be prejudicial as mentioned in subsection (1);

(b) the disclosure is made in carrying out a function he has relating to the enforcement of any provision of this Act or of any other enactment relating to criminal conduct or benefit from criminal conduct;

(c) he is a professional legal adviser and the disclosure falls within subsection (3).

(3) A disclosure falls within this subsection if it is a disclosure—

(a) to (or to a representative of) a client of the professional legal adviser in connection with the giving by the adviser of legal advice to the client, or

(b) to any person in connection with legal proceedings or contemplated legal proceedings.

(4) But a disclosure does not fall within subsection (3) if it is made with the intention of furthering a criminal purpose.

The offences previously contained in s. 93D(1) of the 1988 Act and s. 53(1) of the 1994 Act are supplanted by s. 342 of the 2002 Act.

Proceeds of Crime Act 2002, s. 342

(1) This section applies if a person knows or suspects that an appropriate officer . . . is acting (or proposing to act) in connection with a confiscation investigation, a civil recovery investigation or a money laundering investigation which is being or is about to be conducted.

(2) The person commits an offence if—

(a) he makes a disclosure which is likely to prejudice the investigation, or

(b) he falsifies, conceals, destroys or otherwise disposes of, or causes or permits the falsification, concealment, destruction or disposal of, documents which are relevant to the investigation.

(3) A person does not commit an offence under subsection (2)(a) if—

(a) he does not know or suspect that the disclosure is likely to prejudice the investigation,

(b) the disclosure is made in the exercise of a function under this Act or any other enactment relating to criminal conduct or benefit from criminal conduct or in compliance with a requirement imposed under or by virtue of this Act, or

(c) he is a professional legal adviser and the disclosure falls within subsection (4).

(4) A disclosure falls within this subsection if it is a disclosure—

(a) to (or to a representative of) a client of the professional legal adviser in connection with the giving by the adviser of legal advice to the client, or

(b) to any person in connection with legal proceedings or contemplated legal proceedings.

(5) But a disclosure does not fall within subsection (4) if it is made with the intention of furthering a criminal purpose.

(6) A person does not commit an offence under subsection (2)(b) if—

(a) he does not know or suspect that the documents are relevant to the investigation, or

(b) he does not intend to conceal any facts disclosed by the documents from any appropriate officer . . . carrying out the investigation.

It is clear that s. 342(2)(a) and s. 342(2)(b) each create a separate offence. Penalties and procedure for offences under ss. 333 and 342 are the same as for offences under ss. 330 to 332. (See **B22.18**.)