These notes refer to the Serious Crime Act 2015 (c.9)
which received Royal Assent on 3rd March 2015

SERIOUS CRIME ACT 2015

EXPLANATORY NOTES

TERRITORIAL EXTENT

Part 1: Proceeds of Crime

Commentary on Sections

Chapter 4: Investigations and co-operation etc

Section 37: Exemption from civil liability for money-laundering disclosures

107. Part 7 of POCA obliges an individual to report to the NCA where there are reasonable grounds to know or suspect that a person is engaged in money laundering. Although this requirement to submit "Suspicious Activity Reports" ("SARs") applies to any individual, SARs are mostly made by businesses in the "regulated sector" such as banks, other financial institutions and accountants.

108. The submission of a SAR removes the risk of prosecution for an offence in relation to money laundering. A reporter can also remove the risk to them of committing a money-laundering offence by seeking the consent of the NCA, under section 335 of POCA, to conduct a transaction or activity about which they have suspicions. The NCA has seven days to respond.

109. Whilst the reporter awaits the NCA's decision on consent, the activity or transaction must not proceed. Furthermore, the reporter cannot disclose to the customer the fact that a SAR has been submitted, or any other information that may prejudice the NCA's investigation into the reported activity or transaction, as doing so would constitute a "tipping off" offence under section 333A of POCA. This can place the reporter in a difficult position in not informing the customer of the reasons for suspension of their requested activity or transaction, and could result in the collapse of a financial or commercial deal.

110. Failing to carry out a customer's instructions whilst waiting for authorisation can therefore expose financial institutions and others to the risk of civil litigation. The courts (see *Shah and others v HSBC Private Bank (UK) Ltd* [2010] EWCA Civ 3) have, however, held that whilst customers can require such institutions to prove that the suspicion that gave rise to the SAR was reasonable, provided the suspicion is so proved, the institution cannot be held liable for loss suffered by the customer as a consequence of the institution's failure to carry out promptly the customer's instructions.

111. This section amends section 338 of POCA to make express statutory provision in relation to the UK's obligation under the third EU Anti-Money Laundering Directive (Directive 2005/60/EC) to ensure that persons who make disclosures to relevant authorities in good faith must be protected from civil liability for doing so.