

THE CRIMINAL JUSTICE ACT 2013, PART 2

Introduction

Part 2 of the Criminal Justice Act 2013 ('the 2013 Act') amended the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010 ('the 2010 Act'). The majority of provisions contained in Part 2 commenced on the 14th June 2013. Sections 5, 15 and 16 have yet to be commenced.

Overall, Part 2 makes a few relatively minor changes to the statutory AML regime as contained in the 2010 Act. The principal aim of the 2013 Act was to align certain provisions of the 2010 Act more closely with international AML standards. Therefore, the amendments are mostly of a technical nature, along with some practical changes and clarifications to the language and structuring of some of the provisions of the 2010 Act.

Part 3 of the Act is not relevant to the statutory AML requirements as it relates solely to new enforcement powers in relation to the cessation of mobile communications services in circumstances where there is a serious or imminent threat of activation of an explosive or other lethal device through the use of a mobile communications service.

Part I contains the short title, citation and commencement details. Section 1(2) states that the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010 ('the 2010 Act') and part 2 of the 2013 Act can be collectively cited as the '*Criminal Justice (Money Laundering and Terrorist Financing) Acts 2010 and 2013*'.

What are the changes to the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010?

By theme:

Primarily, the areas of the 2010 Act which have been affected are as follows:

- Addition of detail for making an application for a 'direction or order not to carry out service or transaction';
- Amendment of the definition of 'occasional transaction';
- Tightening of application of CDD (to both standard and simplified CDD);
- Changes to the application of Enhanced CDD;
- Additional areas to be included in internal policies and training;
- Maintenance of CDD records outside of the State;
- Extension of directions which can be issued by a Competent Authority;
- Clarification of the form of the 'Register of Persons Holding Authorisations' to be maintained by the Minister, and allowing for its publication; and,
- Publication of a Register of Persons Directing Private Members' Clubs'.

By section:

Listing the section of the 2010 Act first, followed by the amending section of the 2013 Act, the amendments are as follows:

Section 17(4) CJA 2010 (sec 3) – Direction not to carry out a service:

An application for a direction under section 17 can now be made ex-parte and shall be ‘heard otherwise than in public’.

Section 24 CJA 2010 (sec 4) – Definition of Occasional Transaction:

The definition of ‘occasional transaction’ is expanded to include a lower threshold of €2,000 for customers of private members’ gaming clubs, and €1,000 for certain wire fund transfers (within the meaning of Regulation (EC) No. 1781/2006). The section is also amended to clarify that the usual definition (other than in the case of private members’ gaming clubs or wire transfer funds) applies when the amount of €15,000 is reached, rather than having to exceed €15,000.

Section 25 CJA 2010 (sec 5) – Meaning of Designated Person: (not commenced)

Section 33(1)(c) CJA 2010 (sec 6) – Standard CDD:

This amendment clarifies that standard CDD will apply prior to carrying out any service for a client if there are ‘reasonable grounds to suspect’ that the customer is involved in money laundering. Previously, there had to be ‘reasonable grounds to believe’ that there was a ‘real risk’ of involvement in money laundering or terrorist financing; the threshold is lowered to having ‘reasonable grounds to suspect’ this involvement. Otherwise, the amendment simply re-structures the original text.

Section 34(1) CJA 2010 (sec 7) – Exemptions from section 33 (section 33 relates to standard CDD):

This largely restates section 34(1) (exemption from standard CDD obligations where a specified product or person is involved, i.e., simplified CDD). Section 34(1) previously stated that a designated person did not have to apply CDD measures in respect of specified persons/products; this amendment clarifies that the designated person must take measures to be satisfied that it is a specified person/product before applying the exception. It could be considered that this amendment simply clarifies the wording of section 34(1) such that what was applied as ‘best practice’ is now placed on a statutory footing.

Section 36(1) CJA 2010 (sec 8) – Exemptions from sec 35(1) (section 35 relates to special measures applying to business relationships):

This amendment is similar to the amendment of section 34(1). It largely restates the old text, but also alters it such that the designated person must be “satisfied” that the exemption should apply, “having taken measures as necessary” to establish that it is a specified person/product. Previously, the designated person just had to have reasonable grounds for believing that the exemption was applicable. Again, in a similar fashion to the amendment of section 34(1), this captures what was considered as best practice and puts it on a statutory footing.

Section 37(4) CJA 2010 (sec 9) – Enhanced CDD (PEPs):

This amendment is largely a restatement of the old section. It clarifies that enhanced CDD ought to be applied to existing PEP clients (not just new PEP clients). It also introduces a new subsection (c) – requiring additional measures of monitoring the ongoing business relationship to be carried out, as part of enhanced CDD measures, where considered to be warranted by the risk of money-laundering presented (additional measures including monitoring the source of wealth and funds).

Section 39 CJA 2010 (sec 10) – Discretion to apply Enhanced CDD:

This section is now renamed as ‘*enhanced due diligence in cases of heightened risk*’. This amendment amends section 39 by removing the discretion of the designated person to apply enhanced CDD if s/he wished to do so (previously sec 39(1)); it also removes the option of the designated person of applying enhanced CDD if s/he considered there was a heightened risk present (previously sec 39(2)). Amended section 39 states that if a designated person has reasonable grounds to believe there is a heightened risk, then they are obliged to apply enhanced CDD. This imposes a clearer and stronger obligation on the designated person to apply enhanced CDD in circumstances where they believe there is a heightened risk. It is no longer a discretionary requirement.

Section 54(3) CJA 2010 (sec 11) - Internal policies and procedures and training:

Three new subsections are to be inserted in section 54(3) as subsections (c), (d) and (e); directing that internal policies will have to include (1) keeping CDD information and documentation up to date, (2) the content and application of enhanced CDD measures (to be applied in the context of a heightened risk), and (3) measures to be

taken to combat new ways of money-laundering and terrorist financing which arise as a result of new technologies.

Section 55(7) CJA 2010 (sec 12) - Keeping of records by designated persons:

Inserts a new subsection (7A) which states that records (records evidencing procedures applied and info obtained by the designated person in relation to each client) can be kept outside of the State but they will be subject to the obligation of production at the request of certain bodies or specific authorised officers ((a) a member of the Garda Síochána, (b) an authorised officer appointed under section 72, (c) a relevant authorised officer within the meaning of section 103, or (d) a person to whom the designated person is required to produce such records in relation to his or her business, trade or profession).

Section 60 CJA 2010 (sec 13) – Meaning of ‘competent authority:

This makes a minor amendment in the context of ‘a body corporate, or a body of unincorporated persons’, and the designated accountancy body’ with the removal of the word "employees" from section 60(2)(b)(ii).

Section 71 CJA 2010 (sec 14) - Direction to designated person to comply with obligations under this Part:

By new subsection 71(1)(b), the ‘competent authority’ can now direct the designated person to take specific action to establish procedures etc for complying with their AML obligations. Also, a court “*may*” take failure to comply with directions into account, rather than being obliged to do so, as was the case previously.

Section 84 CJA 2010 (sec 15) - Interpretation (Chapter 9) (Not commenced)

This does a number of things; it renumbers the existing section 84 as subsection (1), it inserts a definition of ‘subsidiary’ into what is now sec 84(1), and finally it inserts a new subsection (2) – the latter clarifies that where the applicant for or the holder of an authorisation is a subsidiary of a credit or financial institution, then any reference to the Minister in Chapter 9 shall be construed as meaning the Central Bank of Ireland, it also limits the application of this new subsection by setting out the paragraphs that it does not apply to.

Miscellaneous sections (sec 16) – Ss. 98(2)(a), 103(1), 104(3) & (4) CJA 2010 (Not commenced)

This makes a few straightforward linguistic amendments to these sections; for example, in section 98(2)(a) “the Minister’s reasons” is to be replaced with “the reasons”.

Section 104 CJA 2010 (sec 17) - Register of Persons holding authorisations:

This clarifies the form of the register to be maintained by the Minister in respect of the register of persons holding authorisations to carry on business as a trust or company service provider.

Section 109 CJA 2010 (sec 18) - Registration of persons directing private members’ clubs:

Two straightforward subsections are to be inserted here; directing the Minister to keep a register of these particular members in a prescribed manner (which is available to the public on their request), and that the details of those on the register may be removed if they cease to be a designated person for the purposes of this provision.