

Title: Money Laundering

IA No:

RPC Reference No:

Lead department or agency: Home Office

Other departments or agencies:

Impact

Date: 01/01/2016

Stage: Development/Options

Source of intervention: Domestic

Type of measure: Primary legislation

Contact for enquiries: David Connolly

| Cost of Preferred (or more likely) Option | | | | |
|---|----------------------------|---|-------------------|-------------------------------|
| Total Net Present Value | Business Net Present Value | Net cost to business per year (EANDCB in 2014 prices) | One-In, Three-Out | Business Impact Target Status |
| £6.44m | £m | £m | Not in scope | Qualifying provision |

What is the problem under consideration? Why is government intervention necessary?

Money laundering is the term used to describe the processing of criminal property in order to disguise its illegal origin. Part 7 of the Proceeds of Crime Act 2002 [POCA] forms the basis of the UK's anti-money laundering regime. The scale of money laundering in the UK is estimated to be significantly in excess of £100 billion per year.¹ Valuable resources are wasted processing authorised disclosures with no evidence of a suspicion of criminal property. The cost to businesses of compliance with the UK's anti-money laundering regime has steadily increased in line with the prioritisation of the prevention of money laundering in the international sphere. Legislation is required to clarify POCA and improve the operation of the consent

What are the policy objectives and the intended effects?

- To clarify and codify the scope of reporting obligations under part 7 of POCA;
- To put in place an efficient anti-money laundering regime;
- To reduce the administrative burdens the consent regime places on all parties: and
- To improve the quality of disclosures of suspicious activity sent to the UKFIU and aid a reduction in defensive reporting.

The intended effect is to improve the prevention, detection and prosecution of money laundering and terrorism financing in the United Kingdom.

What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)

1.1 Option 0: Do Nothing

1.2 Option 1: Legislative and non-legislative reform of Part 7 of POCA - involves both legislative and non-legislative change. It is designed to clarify POCA and improve the operation of the consent regime.

1.3 Option 2: Non-legislative mechanism for reform - involves implementing all of the non-legislative reform

1.4 Option 1 is the preferred approach as it represents a proportionate approach and achieves all

Will the policy be reviewed? It will/will not be reviewed. If applicable, set review date: Month/Year

| | | | | |
|--|------------------------|------------------------|-------------------------|------------------------|
| Does implementation go beyond minimum EU requirements? | Yes / No / N/A | | | |
| Are any of these organisations in scope? | Micro Yes/No | Small Yes/No | Medium Yes/No | Large Yes/No |
| What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent) | Traded: | | Non-traded: | |

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible SELECT SIGNATORY: _____ Date: _____

¹ Proceeds of Crime, Report of the Home Affairs Committee (2016-17) HC 25, p 21.

Description: Legislative and non-legislative reform of Part 7 of POCA

FULL ECONOMIC ASSESSMENT

| | | | | | |
|-----------------------------------|-----------------------------------|--------------------------------|--|---------------------|-----------------------------|
| Price Base Year 2017/18 | PV Base Year 2017/18 | Time Period Years 10 | Net Benefit (Present Value (PV)) (£m) | | |
| | | | Low: £2.92 | High: £11.43 | Best Estimate: £6.44 |

| COSTS (£m) | Total Transition (Constant Price) Years | | Average Annual (excl. Transition) (Constant Price) | Total Cost (Present Value) |
|----------------------|--|--|---|---------------------------------------|
| Low | Negligible | | N/A | N/A |
| High | Negligible | | N/A | N/A |
| Best Estimate | Negligible | | N/A | N/A |

Description and scale of key monetised costs by ‘main affected groups’

Other key non-monetised costs by ‘main affected groups’

Transitional costs: Training of members of UKFIU and also the regulated sector, expected to be negligible and form part of regular continuous professional development; new guidance will be required. Supervisory authorities or other appropriate bodies may incur a cost to publish and promote statutory guidance online; Establishing new review panel – voluntary membership with expenses of bi-annual meetings. On-going costs: As the regime becomes more effective there is likely to be increased number of convictions.

| BENEFITS (£m) | Total Transition (Constant Price) Years | | Average Annual (excl. Transition) (Constant Price) | Total Benefit (Present Value) |
|----------------------|--|--|---|--|
| Low | 0 | | £0.35 | £2.92 |
| High | 0 | | £1.37 | £11.43 |
| Best Estimate | 0 | | £0.77 | £6.44 |

Description and scale of key monetised benefits by ‘main affected groups’

Transitional benefits. None identified.
On-going benefits¹: Reduced staffing costs following the fall in requisite reports, UKFIU savings [£57,000] and Banks/Legal firms [£68,000]; Improved quality of reports facilitates less need for clarification: UKFIU savings, [£13,000] and Banks/Legal firms [£15,000]; Standardised template fosters efficiency savings, UKFIU [£114,00] and Banks/Legal Firms [£205,000]; Reduced administrative burden of compliance, UKFIU [£137,00] and Banks/Legal Firms [£164,000]

Other key non-monetised benefits by ‘main affected groups’

Reduced administrative burden of compliance – UKFIU and Banks/Legal firms; Deterrent effect of improved clearing rate as enhanced report quality and general consent regime leads to more successful prosecutions; Fewer innocent entities likely to face the disruption of assets being frozen.

| | | |
|--|----------------------|-------------|
| Key assumptions/sensitivities/risks | Discount rate | 3.5% |
|--|----------------------|-------------|

¹ Annual best estimates

Statutory guidance is capable of re-educating stakeholders, however there is a low to medium risk of that stakeholders will disregard the guidance.

BUSINESS ASSESSMENT (Option 1)

| Direct impact on business (Equivalent Annual) £m: | | | Score for Business Impact Target (qualifying provisions only) £m: |
|---|-----------|------|---|
| Costs: | Benefits: | Net: | |
| | | | |

Description: Non-legislative mechanism for reform

FULL ECONOMIC ASSESSMENT

| | | | | | |
|----------------------------|-------------------------|-------------------------|--|-------------------------|----------------------------------|
| Price Base Year 2017/18 | PV Base Year 2017/18 | Time Period Years 10 | Net Benefit (Present Value (PV)) (£m) | | |
| | | | Low: Negligible | High: Negligible | Best Estimate: Negligible |

| COSTS (£m) | Total Transition (Constant Price) Years | Average Annual (excl. Transition) (Constant Price) | Total Cost (Present Value) |
|----------------------|--|---|---------------------------------------|
| Low | negligible | negligible | negligible |
| High | negligible | negligible | negligible |
| Best Estimate | negligible | negligible | negligible |

Description and scale of key monetised costs by ‘main affected groups’
None identified.

Description and scale of key non-monetised costs by ‘main affected groups’
Establishing new review panel – voluntary membership with expenses of bi-annual or quarterly meetings.

| BENEFITS (£m) | Total Transition (Constant Price) Years | Average Annual (excl. Transition) (Constant Price) | Total Benefit (Present Value) |
|----------------------|--|---|--|
| Low | 0 | N/A | N/A |
| High | 0 | N/A | N/A |
| Best Estimate | 0 | N/A | N/A |

Description and scale of key monetised benefits by ‘main affected groups’
Transitional benefits: None identified
On-going benefits: None identified

Other key non-monetised benefits by ‘main affected groups’
A non-statutory review board provides the basis for improvements in the quality of suspicious activity reporting; a commitment to the regular collection and review of relevant evidence provides the basis for greater insight informing evidence based policy.

| | | |
|--|----------------------|-------------|
| Key assumptions/sensitivities/risks | Discount rate | 3.5% |
| Option 2 presupposes that partnering leading experts, from the affected groups, on a POCA review board will be capable of re-educating the regulated sector about the scope of reporting obligations. There is a moderate risk the benefits collaborative partnership, such as cross-sector agreements on anti-money laundering policy, will not be widespread enough to drive the cultural change needed to improve the overall quality of reporting. | | |

BUSINESS ASSESSMENT (Option 2)

| | | | |
|--|------------------|-------------|--|
| Direct impact on business (Equivalent Annual) £m: | | | Score for Business Impact Target (qualifying provisions only) £m: |
| Costs: | Benefits: | Net: | |
| | | | |

Chapter 4: Evidence Base

Introduction

Technical Glossary and list of acronyms

4.1 A number of technical terms and acronyms are used through this impact assessment and thus it is useful to clearly define them:¹

- (1) **POCA** – For the purposes of this impact assessment, this is a reference to Part 7 of Proceeds of Crime Act 2002, which forms the basis of the UK’s anti-money laundering regime.
- (2) **UKFIU** – The United Kingdom Financial Intelligence Unit (“UKFIU”) sits within the National Crime Agency and is responsible for receiving, analysing and disseminating suspicious activity reports.
- (3) **The regulated sector** – The regulated sector refers to those institutions specified in schedule 9, paragraph 1 of the Proceeds of Crime Act 2002 who are subject to particular obligations under anti-money laundering legislation. This includes a broad range of sectors, such as credit institutions, those providing legal and accounting services and high value dealers.
- (4) **Financial Action Task Force** – The Financial Action Task Force (“FATF”) is an intergovernmental body whose objectives are to set standards and promote effective implementation of legal, regulatory and operational measures for combatting money laundering, terrorism financing and other related threats to the integrity of the international financial system.
- (5) **SAR** – Suspicious Activity Reports (“SARs”), are an electronic or paper document in which the reporter discloses their suspicions of money laundering to the UKFIU, in accordance with their obligations under sections 330-332 and 338 of the Proceeds of Crime Act 2002.
- (6) **Consent regime** – refers to the process by which a person who suspects he or she is dealing with the proceeds of crime can seek consent to complete a transaction by making an authorised disclosure to the UK Financial Intelligence Unit. No criminal offence is committed where an authorised disclosure is made and appropriate consent to proceed with an act otherwise proscribed by sections 327 to 329 of the Proceeds of Crime Act 2002 is given.
- (7) **Moratorium period** – if a request for consent is refused during the statutory seven-day notice period, a statutory moratorium period of 31 calendar days begins. This allows further time for investigation. The Criminal Finances Act 2017 amended Part 7 of POCA to

¹ The acronyms in this glossary are not presented in alphabetical order to aid understanding.

empower a Crown Court judge to grant an extension to the moratorium period up to a further 186 days in total on application.²

- (8) **Required disclosure** – Refers to the obligation to make a report where a person knows or suspects, or has reasonable grounds to suspect that a person is engaged in money laundering. A failure to make a required disclosure is a criminal offence for which reporters can be found personally liable.³ Required disclosures provide law enforcement agencies with intelligence and the opportunity to disrupt criminality.
- (9) **Authorised disclosure** – Authorised Disclosures are voluntary disclosures, triggered when a person who has a suspicion that they have encountered criminal property wishes to do one of the acts prohibited in sections 327-329 of the Proceeds of Crime Act 2002. He or she may make an authorised disclosure to a constable (including officers in the UK Financial Intelligence Unit (“UKFIU”)), customs officer or nominated officer. Authorised disclosures are made by filing a suspicious activity report (SAR, see below).
- (10) **Defence against Money Laundering or “DAML”** –The term used by the UKFIU to describe an authorised disclosure in which the suspicion relates to money laundering – see above, where a reporter seeks a defence to an offence under the Proceeds of Crime Act 2002.
- (11) **Criminal property** – Criminal property is defined in section 340 of the Proceeds of Crime Act 2002 as property that constitutes a person’s benefit from criminal conduct (in whole or part and whether directly or indirectly) where the alleged offender knows or suspects that it constitutes or represents such a benefit.
- (12) **Predicate offence** - A criminal offence which generates the proceeds of crime that may become the subject of any of the money laundering offences.
- (13) **Ringfence** – the ability for credit and financial institutions to preserve in an account a sum equivalent to the value of the funds that are suspected to be criminal.
- (14) **Statutory guidance** – A statute may empower a Minister to issue guidance about the operation of its provisions. Although such statutory guidance is not to be treated as legislation, it is capable of having a legal effect. The courts will give guidance produced under a statutory power greater weight than guidance produced voluntarily.
- (15) **Supervisory authority** – In this report a supervisory authority is a body with responsibility for supervising compliance with anti-money laundering legislation. Schedule 9, paragraph 4 to the Proceeds of Crime Act 2002 lists 25 supervisory authorities.
- (16) **Terrorist financing** – Terrorist financing concerns money or other property likely be used for the purposes of terrorism and any proceeds of the commission of acts of terrorism or acts carried out for the purposes of terrorism.

² Proceeds of Crime Act 2002, s335(6), 335(6A), 336A, B, C, and D and the Criminal Finances Act 2017, Part 1, s 10(2) (s 335(6A) in force, October 2017, subject to transitional provisions specified in SI 2017 No.991 reg 3(1)). See Home Office Circular 008/2018 [Criminal Finances Act: extending the moratorium period for suspicious activity reports]. See also CP 236 at para. 2.23.

³ Reporters who fail to submit a required disclosure will be liable unless they fall within one of the narrow exceptions to the failure to disclose offence. The exceptions available will vary depending on the status of the reporter and whether they were operating within or outside of the regulated sector.

(17) Background

- 4.2 Money laundering, in very general terms, describes the processing of criminal property in order to disguise its illegal origin. The scale of money laundering impacting the UK annually is estimated to be billions pounds, although an exact figure is difficult to quantify. The National Crime Agency estimated it to be in the hundreds of billions,⁴ whereas the Government put it in the region of tens of billions of pounds.⁵ This threatens the integrity and reputation of the UK as a global financial centre and a safe place for investment.
- 4.3 The criminalisation of laundering the proceeds of crime has developed incrementally in the UK. In its first inception, the offence was limited to the proceeds of drug trafficking.⁶ This was later extended to cover “serious crimes”,⁷ to reflect the practice of criminals who make profits from the sale of illegal drugs diversifying into other related crimes.⁸
- 4.4 The biggest change to the UK’s anti-laundering came in 1989 following the establishment of the Financial Action Task Force (“FATF”) - the international standard setter for the prevention and detection of money laundering. In 1990 FATF published its Recommendations to promote legal, regulatory and operational measures for combatting money laundering with a focus on the removal of proceeds from all serious offences, with a view to including the widest range of crimes.⁹ FATFs recommendations are recognised as the international standard setter for anti-money laundering regulation. The recommendations set out a framework of measures to be implemented by its members and monitored through a peer review process of mutual evaluation. As a result, Part 7 of the Proceeds of Crime Act 2002 expanded the UK anti-money laundering regime substantially. It has four key features:
- three principal money laundering offences which criminalise those who suspect criminal property and perform one of the prohibited acts, for example transferring money to another bank account;
 - a duty to report to the United Kingdom Financial Intelligence Unit (“UKFIU”) suspicions that another person is engaged in money laundering. This applies to proceeds derived from any criminal offences regardless of its seriousness, and is bolstered by offences for failure to disclose (“required disclosures”);
 - voluntary disclosures of suspicions of criminal property (“authorised disclosures”) which offer protection from criminal liability if consent to proceed with a transaction is granted by the UKFIU;
 - a prohibition on warning the subject of a disclosure that a report had been made to the authorities or an investigation had begun (“tipping off”) if the disclosure is likely to prejudice an investigation

⁴ National Crime Agency, National Strategic Assessment of Serious and Organised Crime (2018), p 38.

⁵ HM Government, Serious Organised Crime Strategy (2018), p 14.

⁶ Drug Trafficking Offences Act 1986, s 24.

⁷ Criminal Justice Act 1988 Part VI, as amended by the Criminal Justice Act 1993.

⁸ Cabinet Office, Recovering the Proceeds of Crime (2000), p 9.

⁹ For the latest version of FATFs recommendations see, Financial Action Task Force Recommendations, International standards on combating money laundering and the financing of terrorism and proliferation (2012) available at <https://www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/FATF%20Recommendations%202012.pdf>.

- 4.5 Suspicious Activity Reports (“SARs”) are the mechanism by which a reporter discloses their suspicions of money laundering to the UKFIU. The UKFIU received just under 464,000 SARs between April 2017 and March 2018.¹⁰ The emerging trend is a steady annual increase in the number of SARs received year on year.
- 4.6 The legislation creates two distinct types of disclosure: “required disclosures” which are required by law and “authorised disclosures” which are triggered if, in a professional capacity, a reporter suspects that they may be required to deal with criminal property in a way which might attract a principal money laundering charge. This mechanism exists to provide law enforcement agencies with knowledge of illicit money flows and provides opportunities for intervention of suspected criminality at the earliest possible stage. Once an authorised disclosure is received by the UKFIU the transaction it relates to will be paused with immediate effect until a decision is made on consent. The process of granting consent is time consuming and resource intensive.¹¹ Authorised disclosures accounted for about 22,600 of the total number of SARs between April 2017 and March 2018. The unintended consequences of the regime are considered in depth below.
- 4.7 In 2017 the Home Office asked the Commission to review and make proposals for reform of limited aspects of the anti-money laundering regime contained in Part 7 of the Proceeds of Crime Act 2002 and of the counter-terrorist financing regime in Part 3 of the Terrorism Act 2000. We agreed the following terms of reference with the Home Office:
1. The review will cover the reporting of suspicious activity in order to seek a defence against money laundering or terrorist financing offences in relation to both regimes. Specifically, the review focused on the consent provisions in sections 327 to 329 and sections 335, 336 and 338 of POCA, and in sections 21 to 21ZC of the Terrorism Act 2000.
 2. The review also considered the interaction of the consent provisions with the disclosure offences in sections 330 to 333A of POCA and sections 19, 21A and 21D of the Terrorism Act 2000.
- 4.8 To achieve that purpose, the review will analyse the functions of, and benefits and problems arising from, the consent regime, including:
- the defence provided by the consent regime to the money laundering and terrorism financing offences;
 - the ability of law enforcement agencies to suspend suspicious transactions and thus investigate money laundering and restrain assets;
 - the ability of law enforcement agencies to investigate, and prosecutors to secure convictions, as a consequence of the wide scope of the money laundering and terrorist financing offences;
 - the abuse of the automatic defence to money laundering and terrorism financing offences provided by the consent provisions;

¹⁰ The UKFIU received 423,304 SARs between April 2016 to March 2017.

¹¹ The UKFIU have an initial seven-working-day statutory timeframe in which to decide whether or not to grant the reporter consent; see Anti-Money Laundering: the SARs regime (2019) Law Com No

- the underlying causes of the defensive over-reporting of suspicious transactions under the consent and disclosure provisions;
- the burden placed by the consent provisions and disclosure provisions on entities under duties to report suspicious activity; and
- the impact of the suspension of transactions under the consent provisions on reporting entities and entities that are the subject of reporting.

4.9

4.10 The structure of the review will be explained in depth in the following sections of this Impact Assessment. In overview, we conducted an extensive period of research and drafted a Consultation Paper to gather ideas for reform and invited stakeholders to respond to our provisional proposals. During the consultation period we met with stakeholders and spoke at a variety of public events to provide opportunities for potential ideas for reform to be properly scrutinised.

4.11 Together, the consultation responses and comments that we have received have helped to inform the final recommendations published in the Report which accompanies this Impact Assessment.

(1) **Problems under consideration**

4.12 Our Consultation Paper identified four key issues with the UK's anti-money laundering regime:

- (1) the volume and quality of authorised disclosures;
- (2) the misunderstanding of the key principles underpinning the regime, including the concept of suspicion, the defence of reasonable excuse and the meaning and effect of appropriate consent;
- (3) the disproportionate impact of temporary freezing and account closures on subjects of a subject of an authorised disclosure; and
- (4) the overriding burden of compliance with the regime.¹²

4.13 This section will examine the first two problems in tandem and then consider each of the other problems in turn before looking at their impact as a whole.

4.14 **The volume and quality of disclosures and the unintended consequences**

4.15 Valuable resources are wasted processing authorised disclosures with no evidence of a suspicion of criminal property. There are a number of factors that, in combination, contribute to the high volume of authorised disclosures made annually:

4.16 *The “all crimes” approach*

4.17 The “all crimes” approach means that reporters’ obligation to notify the UKFIU of suspect criminal activity extends far beyond the offence of money laundering. Reporters must notify the UKFIU of suspected laundering of the proceeds of any criminal conduct¹³ regardless of the gravity of the

¹² [Anti-Money Laundering: the SARs Regime, Law Comm Consultation Paper 236](#) (2018) (“CP 236”).

¹³ Property is considered to be criminal property if it constitutes a person’s benefit from criminal conduct or represents such a benefit in whole or in part, Proceeds of Crime Act 2002, s 340.

crime. Inevitably, this means that the UKFIU expend resources processing disclosures where there is no real risk of money laundering as it is generally understood or harm to society. For example, breaches of Tree Preservation Orders may generate a requirement for an authorised disclosure to be made, but which is unlikely to be illustrative of further criminality or useful to law enforcement agencies in the investigation of crime. There is a perception that the reporting of minor and regulatory offences shifts the focus away from the detection and investigation of serious crime.

4.18 *Suspicion*

4.19 Understanding when the obligation to make an authorised disclosure is triggered can be challenging. There is no statutory definition for the concept of suspicion. The courts have interpreted the phrase to mean “a possibility which was more than fanciful that the relevant fact existed”.¹⁴ One advantage of setting the threshold so low is the number of disclosures that this generates, enhancing the intelligence picture and generating investigative opportunities. However, the uncertainty and subjectivity of the phrase “more than fanciful” means that it is misunderstood by reporters and inconsistently applied across the reporting sector. This results in the UKFIU receiving a high volume of reports, a number of which are of poor quality, with limited practical value or effect. We estimate that the UKFIU wasted resources processing approximately 4,121 authorised disclosures between October 2015 to March 2017, which did not cross the threshold of suspicion.¹⁵

4.20 *Individual criminal liability*

4.21 A reporter risks the commission of a criminal offence if, in the course of a business or a professional capacity, they fail to make a disclosure to the UKFIU where they suspect that they have encountered criminal property. This threat of criminal liability drives a culture of defensive reporting and an overly cautious approach to reporting paints a false picture of the risk of money laundering in any given transaction. In approximately 15% of cases reporters make authorised disclosures which fall below the requisite standard in fear of prosecution. Consequently, the large volumes of disclosure made to the UKFIU do not necessarily translate into opportunities to disrupt criminality.

4.22 **Lack of proportionality**

4.23 The impact of the consent regime is disproportionate in two ways:

- (a) The impact of pausing a transaction and potentially freezing a whole bank account can have huge implications for the subject of a disclosure. All payments in and out of accounts are blocked, regardless of whether only a proportion of funds are suspected to be of criminal origin. Businesses are prevented from operating and individuals are denied access to their funds. The act of freezing a whole bank account and preventing payments in and out may well on the basis of a suspicion may be disproportionate in some cases.
- (b) The cost of compliance affects the legitimate economy. First, there is cost to businesses in fulfilling their due diligence and reporting obligations which in many instances will be met by the customer. By way of example, UK Finance (formerly the British Bankers’ Association), a trade association representing the banking and

¹⁴ *R v Da Silva* [2006] EWCA Crim 1654, [2007] 1 WLR 303.

¹⁵ CP 236, p 78.

finance industry operating in the UK, estimates that its members are spending at least £5 billion annually on core financial crime compliance.¹⁶ Secondly, the cost of triaging and processing reports within the UKFIU and other law enforcement agencies is met by the tax payer.

4.24 **Burden of compliance**

- 4.25 The cost to businesses of compliance with the UK's anti-money laundering regime has steadily increased in line with the prioritisation of the prevention of money laundering in the international sphere. POCA has been amended by six further Acts since it came into force, many of the changes are as result of European Union Directives¹⁷ and the Financial Action Task Force Recommendations. In addition to the statutory amendments, businesses have a responsibility to familiarise themselves with any relevant sectoral guidance.
- 4.26 The structure of the regime means that there is often an overlap between regulators with differing views on the triggers for statutory reporting obligations. Further to this, an unclear distinction between industry best practices and legal requirements creates unnecessary confusion. The responses to our anti-money laundering consultation illustrated that it is impossible to describe the regime as accessible, it is challenging for reporters to know for certainty whether they are compliant with their obligations.
- 4.27 The burden is shared by all reporters; the banks, the largest reporter by far, spend an estimated £5 billion per annum¹⁸, but smaller businesses are affected as income generated from new clients will not always outweigh the cost of extensive due diligence checks. The UK's status as a competitive global financial centre has the potential to be undermined by legislation and regulation which fails to produce verifiable results or stalls growth.

4.28 **The impact of these problems**

- 4.29 Combined, the factors outlined above drive unnecessary SARs of poor quality and limited practical effect. The regime could be more efficient. The regulated sector expends a disproportionate amount generating these reports and in turn law enforcement agencies are required to do the same to in order to process them within the statutory time-frames. Essential resources are diverted away from the prevention, detection and prosecution of money laundering and terrorist financing.

4.30 **Policy objectives**

- To clarify and codify the scope of reporting obligations under part 7 of POCA;
- To put in place an efficient anti-money laundering regime;
- To reduce the administrative burdens the consent regime places on all parties: and

¹⁶ The British Bankers' Association (now UK Finance) estimated that its members spend at least £5 billion annually on core financial crime compliance <https://www.bba.org.uk/policy/bba-consultation-responses/bba-response-to-cutting-red-tape-review-effectiveness-of-the-uks-aml-regime/> (Last visited 20 June 2019); this figure is not limited to compliance generated by the Proceeds of Crime Act 2002 ss 327 to 329 and 330 to 332.

¹⁷ EU Directives

¹⁸ Joint Home Office and HM Treasury *Action Plan for anti-money laundering and counter-terrorist finance* (2016), para 2.1.

- To improve the quality of disclosures of suspicious activity sent to the UKFIU and aid a reduction in defensive reporting.

4.31 The intended effect is to improve the prevention, detection and prosecution of money laundering and terrorism financing in the United Kingdom.

Rationale for intervention

4.32 The conventional economic approach to government intervention to resolve a problem is based on efficiency or equity arguments. The Government may consider intervening if there are failures in existing government interventions (e.g. waste generated by misdirected rules). In all cases the proposed new intervention itself should avoid creating a further set of disproportionate costs and distortions (e.g. to reallocate goods and services to prioritise those in most need).

4.33

4.34 Part 7 of the POCA, and the consent regime in particular could be significantly more efficient. Valuable time and resources are wasted processing SARs with limited realisable results. Poor quality disclosures hinder law enforcement agencies' ability proactively to investigate crime and protect society from harm by requiring additional processing and further enquiries to be undertaken.

4.35 The statutory requirement to process reports within a seven-working-day period means that the consent regime is both time sensitive and resource intensive. There is scope for a number of reports currently captured by the regime to be removed from the system entirely and processed/substituted as required disclosures. This ensures that vital intelligence and raw data are still submitted while reducing the resources required to process that data. For instance, it is estimated that the UKFIU loses valuable hours each week processing requests for consent to allow banks to indemnify victims of fraud. The UKFIU could benefit substantially by receiving notification of such reports in the format of required disclosures. By reducing the volume of time sensitive cases cost savings can be achieved and overall average time taken to process time-sensitive authorised disclosures can be reduced.

4.36 Minimising delay is vital to ensure that the consent regime is proportionate. The effect of even temporarily pausing a transaction, can have devastating consequences for the subject of a disclosure and disrupt the legitimate economy.

4.37 The urgent need for reform is compounded by the Financial Action Task Force's recent mutual evaluation of the UK's anti-money laundering regime. Their analysis accords with our assessment and suggested a significant overhaul of the SARs regime, with an aim to improving the quality of the financial intelligence available to the competent authorities. As the UK moves towards a post-Brexit era and seeks to attract greater foreign investment, there is a pressing need to proactively reform POCA. The proposed reforms will ensure that the burden of compliance upon businesses is proportionate while safeguarding the UK's reputation within the global financial system.

Options under consideration

4.38 Three policy options are considered in this impact assessment:

- (1) Option 0: Do Nothing
- (2) Option 1: Legislative and non-legislative reform of Part 7 of POCA
- (3) Option 2: Non-legislative mechanism for reform

Option 0: Do nothing

- 4.39 The first option 0 does not alter the status quo, it is included simply as a baseline against the first and second options both of which involve varying degrees of reform. Option 0 is undesirable as the UK's anti-money laundering regime, and the consent regime in particular, would continue to operate inefficiently. Maintaining the status quo would continue to result in wasted resources and lost opportunities to investigate and prosecute money laundering and terrorist financing.
- 4.40 No change fails to meet the intended policy objectives. Areas identified and addressed in option 1 will continue to hinder the UK's ability to prevent, detect and prosecute money laundering and terrorist financing.

Option 1: Legislative and non-legislative reform of Part 7 of POCA.

- 4.41 Option 1, our preferred option, involves both legislative and non-legislative change. It is designed to clarify POCA and improve the operation of the consent regime. A re-consideration of the policy objectives and key principles underpinning the regime threads through all of the suggested proposals within the first option. It is through primary legislation that we propose an obligation on the Secretary of State to produce statutory guidance to address the appropriate application of suspicion, the meaning of appropriate consent and arrangements with prior consent and clarify what may amount to a reasonable excuse. Guidance will assist the regulated sector in complying with their legal obligations under POCA.
- 4.42 Statutory intervention is proposed because it is the most effective way to address the problems that our report identifies and improve the quality of reporting. Putting guidance on a statutory footing would expand the circumstances under which a reporter has a reasonable excuse not to lodge an authorised disclosure, this measure is aimed at reducing the number of SARs filed as a result of a technicality which offer no tangible assistance to law enforcement agencies.¹⁹ It also aims to reduce processing times within the UKFIU. This allows for a reallocation of resources within law enforcement agencies to maximise their potential to prevent crime by ensuring that frontline operations are well staffed and resourced.
- 4.43 This option also includes three additional statutory provisions. The second allows for financial and credit institutions to ringfence criminal property. The third provision that we recommend permits the subject of a disclosure to apply for funds to be released by a Crown Court Judge when an application for an extension of the moratorium period is made. These measures are primarily concerned with mitigating unintended consequences arising from the consent regime and ensuring it operates proportionately, with minimal disruption to the legitimate economy.
- 4.44 Option one also includes a variety of non-legislative reform. At present, oversight of the working of Part 7 is fragmented and regulatory responsibilities overlap. As a result, there are inconsistent interpretations of key legal POCA concepts, common to all sectors, in individual sectoral guidance publications. In our Full Report we suggest the establishment of an Advisory Board with responsibility to review the suspicious activity reporting process as a means to encourage cross-sector collaboration and future proof the regime against newly emerging threats and a diversion of policy objectives at a later date.²⁰

¹⁹ The over-reporting of suspicious transactions is one of the negative unintended consequences of current legislative provision. Reporters are effectively incentivised to submit reports to avoid the risk of criminal liability

²⁰ CP 236, p 53.

- 4.45 A continuation of the data analysis exercise that informed our decisions is also suggested as a non-legislative recommendation for reform.²¹ Statistical analysis of the anti-money laundering regime is a way of measuring whether the cost of the regime is proportionate to the burden of compliance weighted against subsequent convictions and the value of assets restrained, and the effect of pausing a transaction or freezing a the bank account of the subject of a disclosure. A comprehensive analysis, building on our methodology, will provide an further insight into the effectiveness of the consent regime by gaining a perspective of whether authorised disclosures are of a sufficient quality and provide the right information to assist law enforcement.
- 4.46 In addition, we recommend that the Secretary of State use their existing power to prescribe a form pursuant to section 339 of the Proceeds of Crime Act 2002 for reporting suspicious activity. This measure is intended to prompt a reporter to provide law enforcement agencies with essential and necessary information.

Option 2: Non-legislative mechanism for reform.

- 4.47 This option involves implementing all of the non-legislative reform described above. As option 2 is less far reaching than option one it is anticipated that the benefits to be gained, monetary or otherwise, would be less significant. Whilst it is not the preferred option, it will still achieve some of the desired objectives.
- 4.48 The advantage of this option is simplicity, it could be implemented without requiring parliamentary time.

Main stakeholders

- (1) Law enforcement agencies, including the National Crime Agency, National Policing, the Serious Fraud Office.
- (2) Entities in the regulated sector such as credit institutions, legal and accountancy firms and high value dealers.
- (3) Supervisory authority and other appropriate bodies i.e. the Financial Conduct Authority and the Gambling Commission.
- (4) Devolved administrations.
- (5) The Criminal Justice System including the Crown Prosecution Service; HM Courts and Tribunals Service and HM prison service.
- (6) The general public who fall victim to a number of offences encapsulated by the money laundering offences and whose livelihood is impacted by the threat of money laundering and terrorist financing.
- (7) Innocent members of the public whose accounts are frozen and/or closed as a result of a disclosure to the UKFIU.

(8) Scale and scope

²¹ CP 236, P 37.

4.49 The UKFIU received 463,938 SARs between April 2017 and March 2018, almost a 10% increase on the number received during the previous year.²² Authorised disclosures accounted for 22,619 of the total number of SARs, a 20% increase on the previous year. The emerging trend is a steady annual increase in the number of SARs received year on year. See table 1 below

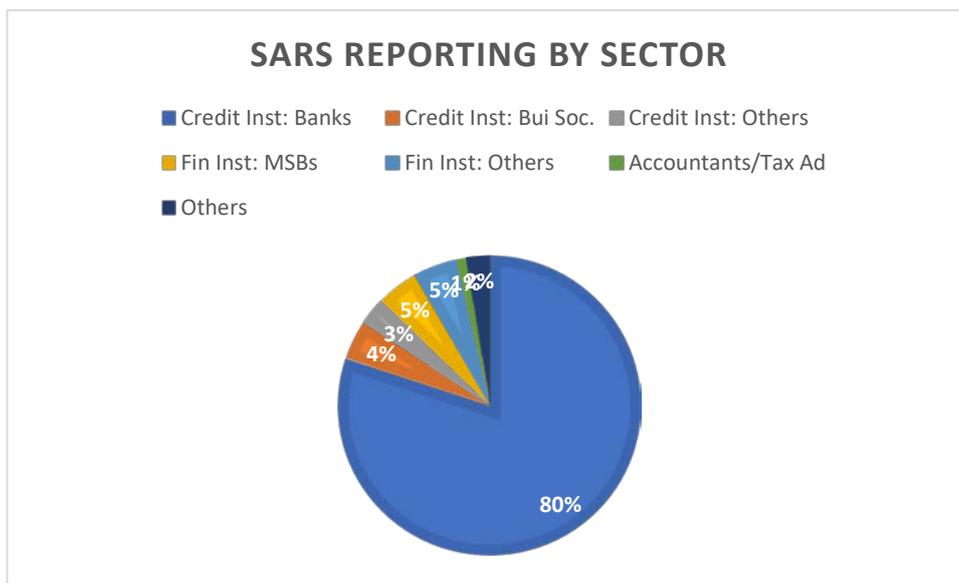
4.50 Table 1: Suspicious Activity Reports [SARs] received, 16/17 to 17/18:

| 4.51 Year | 4.52 Total SARs | 4.53 DAML SARs | 4.54 DAML SARs refused No. and [%] |
|------------|-----------------|----------------|------------------------------------|
| 4.55 17/18 | 4.56 463,938 | 4.57 22,619 | 4.58 1,291 [5.7%] |
| 4.59 16/17 | 4.60 423,304 | 4.61 18,849 | 4.62 n/a |

4.63 Source: Suspicious Activity Reports Annual Report 2018

4.64 Despite accounting for just 5% of the total number of SARs received during this period, an estimated one third of the UKFIU's core budget is spent on processing DAMLs annually.²³ Authorised disclosures are assigned to caseworkers who take informed decisions about the transaction. A decision is required within a statutory period of seven working days, at the end of which consent is deemed to have been granted for the reporter to proceed with the transaction. This safeguard is necessary because an authorised disclosure has the effect of pausing a transaction until a decision on consent has been reached.

4.65 Credit institutions account for the greatest proportion of SARs and banks have the greatest share within this group. See chart 1 below:



4.66

4.67

4.68

4.69 *Money laundering cases*

²² The UKFIU received 423,304 SARs between April 2016 to March 2017.

²³ For 2017/18 the UKFIU's core budget was £3.49 million.

4.70 The number of prosecutions and convictions for money laundering offences is indicated in Table 2 below.

4.71 Table 2: Number of prosecutions/convictions for money laundering offences, 2013-18

| 4.72 | Year | 4.73 | Prosecutions | 4.74 | Convictions | 4.75 | % of successful convictions |
|------|------|------|--------------|------|-------------|------|-----------------------------|
| 4.76 | 2013 | 4.77 | 2349 | 4.78 | 1269 | 4.79 | 54% |
| 4.80 | 2014 | 4.81 | 2095 | 4.82 | 1143 | 4.83 | 55% |
| 4.84 | 2015 | 4.85 | 2307 | 4.86 | 1336 | 4.87 | 58% |
| 4.88 | 2016 | 4.89 | 1998 | 4.90 | 1435 | 4.91 | 72% |
| 4.92 | 2017 | 4.93 | 1906 | 4.94 | 1347 | 4.95 | 71% |

4.96 Source: Hansard written questions, 31/10/2018

4.97

4.98 There has been no comprehensive assessment of the impact that SARs have on investigations and prosecutions. In particular, whether the cost to the legitimate economy of lodging and processing the UK's high volume of SARs is proportionate to the outcomes achieved by law enforcement agencies as a result of the intelligence they provide.

4.99 In our Consultation Paper we identified that, as one of the primary objectives of the consent regime is to provide law enforcement agencies with time to investigate and restrain criminal assets, the effectiveness of the consent regime is often measured in terms of these figures. However, we observed that these statistics have two significant limitation:

- (1) Available statistics do not measure the disruption of money laundering or crime more generally.
- (2) Available statistics fail to illustrate the full extent to which law enforcement agencies use the intelligence provided in disclosures, to inform the basis of investigations, or to complement existing investigations. As the identity of the person who made a disclosure must remain confidential, prosecuting authorities say that they are unable to keep a record of the number of investigations that have been informed by intelligence contained in a SAR.

4.100 The Law Commission's data gathering exercise

4.101 To address these data deficits we conducted our own data analysis exercise with the assistance of the UKFIU. We analysed the content of a sample of authorised disclosures. Our focus was to understand:

- (1) how the test of suspicion was being applied in practice and to measure the likely impact of changing the threshold for reporting to a cumulative test of reasonable grounds to suspect.
- (2) what proportion of authorised disclosures submitted to the UKFIU fell within ten specific categories. These categories were identified by stakeholders during our pre-consultation

phase as SARs likely to be those in which the quality of the intelligence was limited.²⁴ In determining whether these factors were present in each factor we followed a strict formula.²⁵

- (3) in cases where reporters were able to identify the offence which generated the suspected criminal property, whether the offence was serious.

4.102 In order to conduct our analysis, three analysts were provided with access to a sample of authorised disclosures by the UKFIU. Our overall sample size was 536 DAML SARs. In order to ensure that we analysed a representative sample, we requested that the UKFIU randomly select each batch of disclosures. Each sample was selected based on two criteria:

- (a) each batch of SARs within our overall sample should represent an entire day of authorised disclosures lodged with the UKFIU; and
- (b) the whole sample should represent a week of authorised disclosures, covering each day from Monday to Friday but not on consecutive days.

4.103 The analysis of SARs was designed to test our provisional proposals outlined in the Consultation Paper and inform our final recommendations for reform outlined in the Full Report. The qualitative data have provided a unique focal point, notably absent from previous studies of the anti-money laundering regime.

4.104 *General observations*

4.105 We analyse the findings of our research in depth our Consultation Paper. However, some general observations are summarised below:

- (1) There was substantial variance in the quality of disclosures. Some SARs were unnecessarily long and contained irrelevant information which diverted the reader from identifying the essential information in the report whereas other reports were brief and omitted essential information. The projects findings overwhelmingly supported our initial observation that reporters misunderstand their legal obligations under POCA.
- (2) The proportion of disclosures which fell within one or more of the ten categories, varied greatly from one category to another. Authorised disclosure were most common in respect of transactions of a value equal to, or less than, £1000 and duplicate reports. However, these types of disclosure were infrequently filed in respect of historical crimes²⁶.
- (3) The practical effect of replacing an “all crimes” approach with a “serious crimes” approach would be likely to be limited. 97.5% of cases where the predicate offence was identified related to serious crimes.

4.106

The reliability of the data

4.107 Due to time constraints, the sample size of the data analysis is limited to a single week. Inevitably this reduces the reliability of the data if we scale it up, however, this is not to suggest that the sample

²⁴ See Appendix 1 for a list of the types of authorised disclosure identified as generating low intelligence value.

²⁵ See Appendix 2 for the methodology used to identify types of authorised disclosure identified as generating limited intelligence value.

²⁶ For the purposes of our review “historical” crimes are those considered to have been committed 5 years preceding the date of the relevant authorised disclosure.

does not represent a reasonable picture. the UKFIU estimate that they receive an average of 100 authorised disclosures per day, we studied just over that figure on each day of our analysis. Furthermore, each batch represented an entire day of authorised disclosures. Often our findings were consistent with anecdotal evidence that we had gathered from stakeholders prior to the study. Moreover, where there are inconsistencies we do not attempt to overstate the position to conform with our initial observations. The results of the study are reliable and at the very least, they can be used to draw broad conclusions in the subsequent impact assessments. Below we consider a number of possible limitations.

- 4.108 We cannot say for sure that the results of the analysis were not affected by certain reporters opting to make authorised disclosures on specific days of the week. For instance, it was not uncommon for a flurry of disclosures submitted by the same reporter to be analysed in sequence. This might suggest that the data is not as accurate as they could be, if organisations allocate a specific day or time within the working week to make necessary disclosures to the UKFIU. However, we were able to mitigate the effects by conducting the analysis on different days of the week, using a sufficiently large sample size. Furthermore, the converse may also be true that the findings are a more accurate representation of the overall reporting picture if our findings capture common reporting patterns.
- 4.109 Since suspicious activity reporting is based on the reporter's subjective assessment of the facts, the third strand of our objectives, to assess the number of reporters that involved a serious crime, may be imperfect as reporters are not required to and may not be qualified to identify the predicate offence.
- 4.110 Due to the size of the sample, it was divided amongst three analysts. The extent to which an element of subjectivity may have influenced the way each reporter recorded their observations based on the written criteria is unclear. Time constraints did not permit consistency checks, save in particularly complex cases. However, all researchers worked to the same written criteria.
- 4.111 As our sample size represented 2.5% of the total number of authorised disclosures for one year, there is a reasonable likelihood that no anomalies are present in the findings. This is the first piece of research of its kind in any jurisdiction, as such there is no data set that the findings can be measured against to consider the probability of irregularities which may have impaired the accuracy of the study.

4.112

Public consultation process

- 4.113 Public consultation shaped our review of the anti-money laundering regime. On 20th July 2018 we published our Consultation Paper, "Anti-Money Laundering: the SARs Regime".²⁷ This publication set out the regime's most pressing problems and provided a series of provisional proposals aimed to address the weaknesses. The consultation period ran from July to November 2018. We sought views on our proposals from a broad-cross section of stakeholders including law enforcement agencies, reporting entities, academics and prosecuting authorities.

²⁷ CP 236.

- 4.114 We continued to develop our initial ideas during the consultation period in discussion with stakeholders. We met with the Home Office, the National Crime Agency, the Crown Prosecution Service and the Metropolitan Police Service. In an effort to engage a wider audience we spoke at a variety of public events including the Law Society's annual Anti-money laundering and financial crime conference, Cambridge Economic Crime Symposium and UK Finance's Economic Crime Congress. Responses and comment gathered from Consultees helped to inform the direction of policy that we have chosen.
- 4.115 By and large consultees were in favour of our provisional proposals. Several headlines that can be drawn from the analysis of responses include:
- Strong support for the option to submit a single SAR for multiple transactions, and for the retention of the consent regime. Consultees concluded that, whilst imperfect, the regime enables law enforcement agencies to have access to a considerable amount of intelligence that they might otherwise struggle to obtain. The responses concluded that there are difficulties devising an alternative approach that would balance the competing interests of those to whom POCA applies.
 - No consensus for Part 7 of POCA to contain a definition of suspicion. Many felt that a definition could become too prescriptive. Despite this, consultees were overwhelmingly in favour of statutory guidance on the concept of suspicion. One authoritative source with examples was viewed as a better way of improving the consistency of application. Similarly, statutory guidance on reasonable excuse was strongly favoured provided the guidance was non-exhaustive and did not narrow the scope of the exemption.
 - The prospective change to the threshold of reporting for required disclosure from suspicion to reasonable grounds to suspect that a person is engaged in money laundering sparked interesting debate. Consultees were split on the value of additional reporting mechanisms to supplement the consent regime.

Cost and benefit analysis

- 4.116 This Impact Assessment identifies both monetised and non-monetised impacts on individuals, groups and businesses in the United Kingdom, with the aim of understanding what the overall impact to society might be from implementing these options. The costs and benefits of each option are compared to the option 0. Impact Assessments place a strong emphasis on valuing the costs and benefits in monetary terms (including estimating the value of goods and services that are not traded). However, there are important aspects that cannot sensibly be monetised. These might include how the proposal impacts differently on particular groups of society or changes in equity and fairness, either positive or negative.
- 4.117 When calculating the net present value ("NPV") for the Impact Assessment we have used a time frame of ten years, with the present being year 0. We have assumed that the transitional costs and benefits occur in year 0, the current year, unless otherwise indicated. Ongoing costs and benefits accrue in years 1 to 10. We have used a discount rate of 3.5%, in accordance with HM Treasury guidance. Unless stated all figures are in 2017/18 prices, and have been updated using the GDP deflator to adjust for inflation.
- 4.118 This Impact Assessment identifies both monetised and non-monetary impacts in the context of three of three main affected groups:

- Those with reporting obligations under POCA (members of the regulated sector);
- Law enforcement agencies; and
- The subjects of disclosure.

4.119 There may also be some nominal benefits for society at large.

4.120

Option 0: Do nothing [base case]

4.121 There are no realisable benefits if we retain the status quo, the problems with the law that we have identified throughout this Impact Assessment will remain. The burden of compliance on entities with an obligation to report suspicious activity under POCA is substantial. The threat of individual criminal liability coupled with an all crimes approach encourages reporters to defensively report suspicious activity and the UK's law enforcement agencies are overburdened as a result.

4.122 Further to this, the number of time-sensitive and resource intensive disclosures is increasing. As a considerable proportion fail to meet the requisite standard, law enforcement agencies' resources are wasted processing reports of limited intelligence value.

Option 1: Legislative and non-legislative reform of Part 7 of POCA

Costs

Transitional costs

Training

4.123 The UKFIU and members of the regulated sector may incur one off training costs for the adaption of new policies, for example those relating to reasonable excuse. We expect this to be nominal and could be absorbed into normal budgeting.

Guidance

4.124 There will be a one-off cost to the Government to publish and promote statutory guidance online. As noted, members of the regulated sector would be advised to invest in initial training to ensure individuals are able to understand and interpret new guidance. Any additional training could be incorporated into existing company professional development programmes. It is hoped that clearer direction will mean that reporting entities are required to expend less resource on training the nominated officers.

Setting up a new Review board

4.125 There may also be a marginal cost in establishing a new review board with oversight of POCA. However, we estimate that this would be minimal, particularly if members were appointed on a voluntarily basis. There are likely to be negligible costs associated with amendments to existing procedure/legislation as a result of any recommendations.

4.126 As a comparative model we considered the Firearms Consultative Committee, established to keep the working of the Firearms Amendment Act 1988 under review and make specific recommendations for reform. Its members included experts, with extensive knowledge of the possession, use and keeping of a firearm, in the corporate or domestic sense, and the

administration of the Act itself. This included representatives from professional trade bodies and supervisory authorities such as, The Royal Society for the Protection of Animals, the National Rifle Association and the British Shooting Sports Council.

On-going cost

Court costs

4.127 HMCTS and the subject of disclosures may incur costs on applications for the release of funds when the moratorium period is made.

Increased number of cases

4.128 Enhancing the pool of intelligence available to law enforcement agencies is likely to increase in the number of restrained assets, prosecutions and confiscations. Currently convictions take place under a number of different offence Acts with different sentence guidelines. It is therefore not possible to provide a reasonably accurate estimate. By way of illustrative example see table 3 below on the associated costs of Crown Court proceedings including the annual cost per prisoner.

Table 3: Criminal Justice System costs

| | |
|--|----------------|
| Costs ²⁸ | |
| Annual Cost per prisoner | £24,200 |
| Crown Court advocacy | £2,500 |
| Legal aid* [in Crown Court] | £8,400 |
| Crown Court -HMCTS, average hearing time ²⁹ | £1,300 / £1700 |

*Cost per case

Benefits

Transitional benefits

None identified

On-going benefits

4.129 The law in this area will be more transparent, clear and certain as a direct result of our proposals. Much needed clarity will drastically improve the quality of reporting. Key benefits of our proposed reforms are discussed below.

4.130

Reduced staffing cost

²⁸ Rounded to nearest £100

²⁹ Cost variation depending on the offence category

4.131 As a result of required disclosures replacing authorised disclosures as the mechanism notifying the UKFIU of indemnifying victims of fraud the staffing budget can be reduced. Savings are realised as it is no longer necessary to submit an authorised disclosure for consent to indemnify a victim of fraud.

4.132 A scale up of analysis indicated that these currently account for 10% of the total number of authorised disclosures per year. Notwithstanding the remaining obligation to log a required disclosure, the workload for nominated officers (those responsible for making SARs) would reduce as a result of no longer needing to input evidence of their suspicion of criminal property into a disclosure.

4.133 The effect of this specific proposal is likely to be greater for credit and financial institutions, the reporting entities likely to be processing fraud related SARs. However, other institutions would benefit from the reasonable excuse provision in terms of being able to submit a single authorised disclosure for multiple transactions. See table 4 below.

Table 4: UKFIU and Bank/Legal Firms Savings from the reduced number of required reports

| | low estimate | best estimate | high estimate |
|---|----------------|-----------------|-----------------|
| No. of reports ³⁰ | 18,650 | 20,750 | 22,800 |
| Average UKIFU report cost ³¹ | £50 | £ 55 | £61 |
| Reduced % of reports | 2.5 | 5.0 | 7.5 |
| UKFIU savings ³² | £23,000 | £57,000 | £104,000 |
| Bank/Legal firms savings ³³ | £27,000 | £68,000 | £129,000 |
| Total savings | £50,000 | £125,000 | £233,000 |

Assumptions:

- cost of UKFIU report: [£55, best estimate] +/- 10% for high/low estimates

³⁰ Rounded to nearest 50.

³¹ Rounded up to nearest whole number

³² Rounded to the nearest £1000

³³ Rounded to the nearest £1000

- Bank/legal firms account for the greatest proportion of users – cost of report increased by salary uplift of 20%³⁴ [best estimate] +/- 5% for high/low estimate
- Number of reports: [20,750, best estimate] +/- 10%
- Following the new Statutory requirement fewer reports are required, best estimate = 5% reduction with +/- 2.5% high/low estimates

Annual cost savings = £125,000 [best estimate]

Present value over 10 years = £1.04 m

These estimates rely on previous assumptions about how the total figure for compliance was calculated post-Brexit.

Improved report quality

4.134 The general quality of disclosures received by the UKFIU will improve as a result of a greater understanding of the obligations in Part 7 of POCA. The spill-over effect of this is the reduced need for clarifications. Less time will need to be spent making requests of reporters for further information in respect of incomplete authorised disclosures. Currently about 15% of reports require clarification. See table 5 below.

Table 5: UKFIU and Banks/Legal firms savings from the reduction in clarification requests

| | low estimate | best estimate | high estimate |
|---|---------------|----------------|----------------|
| No. of reports | 18,650 | 20,750 | 22,800 |
| Average report cost [UKIFU] | £50 | £55 | £61 |
| Reduced No. of clarification requests | 933 | 1,556 | 2,281 |
| Cost of clarification requests as a % of cost of report | 10% | 15% | 20% |
| UKIFU Savings | £5,000 | £13,000 | £28,000 |

³⁴ 20% differential in median salary of finance/investment analysts vs protective services associate professionals, See Office of National Statistics, Average Salary and Hourly Earnings, Table 14.5a

| | | | |
|------------------------------------|----------------|----------------|----------------|
| Banks/legal Firms Savings | £5,000 | £15,000 | £35,000 |
| Total Clarification savings | £10,000 | £28,000 | £63,000 |

Assumption:

- cost of report: [£55, best estimate +/- 10% for high/low estimates]
- Number of reports: [20,750, best estimate] +/- 10% for high/low estimates
- New % of reports requiring clarification [from current 15%]: 7.5% (best estimate) +/-2.5% high/low estimates
- Banks/legal firms account for the greatest proportion of users. The cost of the UKFIU report is increased by salary differential, 20% [best estimate, +/- 5% for high/low estimates]
- UKFIU and Banks/legal firms cost of report with clarification request is 15% [best estimate] +/- 5% for high/low estimates.

Annual cost savings = £28,000 [best estimate]

Present value over 10 years = £0.24m

Efficiency savings

4.135 More streamlined procedure within the UKFIU translates into efficiency savings. In particular the regulated sector will no longer be overburdened by the need to consult a multiplicity of guidance in order to properly understand the obligation to report suspicious activity.

4.136 The effect of statutory guidance and a drive to re-educate reporters on the appropriate application of suspicion will improve the general quality of reporting so that fewer requests for further information are necessary. See table 6 below.

Table 6: UKFIU and banks/legal firms efficiency savings

| | low estimate | best estimate | high estimate |
|------------------------------|--------------|---------------|---------------|
| No. of reports ³⁵ | 18,650 | 20,750 | 22,800 |

³⁵ Rounded to nearest 50

| | | | |
|---|-----------------|-----------------|-----------------|
| Average report cost | £50 | £55 | £61 |
| Standardised template time savings as % of cost of report | 5% | 10% | 15% |
| UKIFU cost savings | £46,000 | £114,000 | £207,000 |
| Bank/Legal firms cost saving | £106,000 | £205,000 | £345,000 |
| Total Cost savings | £152,000 | £319,000 | £552,000 |

Assumptions:

- Cost of report:[£55, best estimate] +/- 10% high/low estimates
- Annual number of reports:[20,750 best estimate] +/- 10% high/low estimates
- Banks/legal firms account for the greatest proportion of users. The cost of the UKIFU report is increased by salary differential, 20% [best estimate, +/- 5% for high/low estimate
- Standardised template etc = UKFIU time savings of 10% [best estimate] +/- 5% for high/low estimates & Banks/legal firms time savings of 15% [best estimate] +/- 5% for high/low estimates

Annual cost savings = £319,000 [best estimate]

Present value over 10 years = £2.66m

Reduced administrative burden of compliance

4.137 It is difficult to quantify a precise saving as the total expenditure on anti-money laundering compliance varies considerably depending on the size of the reporting body and the complexity of the disclosures they submit. Nevertheless, the effect is generally favourable in the sense that the burden of compliance is somewhat reduced. 23% of authorised disclosures that we analysed were duplicate reports. It is hope that as a result of our recommendations reporters will be aware of the most appropriate reporting route in any given circumstances.

Table 7: UKFIU and banks/legal firms reduced administrative burden

| | low estimate | best estimate | high estimate |
|---------------------------------|-----------------|-----------------|-----------------|
| No. of reports ³⁶ | 18,650 | 20,750 | 22,800 |
| Average report cost | £50 | £55 | £61 |
| Reduced No. of required reports | 7% | 12% | 17% |
| UKIFU cost savings | £65,000 | £137,000 | £235,000 |
| Bank/Legal firms cost saving | £74,000 | £164,000 | £293,000 |
| Total Cost savings | £139,000 | £301,000 | £528,000 |

Assumptions:

- Cost of report: [£55, best estimate] +/- 10% high/low estimates
- Annual number of reports: [20,750 best estimate] +/- 10% high/low estimates
- Banks/legal firms account for the greatest proportion of users. The cost of the UKIFU report is increased by salary differential, 20% [best estimate, +/- 5% for high/low estimate
- Reduced duplication = UKFIU/Bank time savings of 12% [best estimate] +/- 5% for high/low estimates

Annual cost savings = £301,000 [best estimate]

Present value over 10 years = £2.50 m

4.138

4.139

³⁶ Rounded to nearest 50

Deterrent effect of higher clearing rate

4.141 The improved clarity and reduced volume of reports potentially enhances the capacity to identify criminal operations. This in turn lays the foundation for the successful prosecution of money laundering and terrorism financing. This can only be advantageous for the public perception of the regime as a necessary tool.

Economic growth

4.142 Clarity in respect of the concepts central to the regime such as, but not limited to, suspicion may facilitate a decline in defensive reporting. Fewer innocent subjects of disclosure will be affected by account freezing's as a result. In particular firms are likely to face less disruption. With the future possibility of greater diversity of trading partners it is important to have a regime in place that is sufficiently responsive to the changing landscape.

Option 2: Non-legislative mechanism for reform

Costs

Transitional costs

4.143 The Government may encounter one-off, or limited costs in the form of expenses, by establishing an Advisory Board.. A comprehensive qualitative data analysis project may incur costs, but this targeted approach to measuring the effectiveness of the UK anti-money laundering regime could replace existing assessments and resources could be reallocated accordingly.

On-going cost

4.144 None identified

Benefits

Transitional benefits

4.145 None identified

On-going benefits

Improved certainty on regulatory requirements

4.146 The benefits itemised under option 1 are less relevant here. The monetised savings under option 1 refer to legislative changes whilst option 2 refers to non-legislative initiatives. In principle a non-statutory reviewal Board provides the basis for improvements in the quality of reporting. Stakeholders meeting to agree policy objectives and identify weakness in the regime. The trickle-down effect of this is a shared understanding of how the regime should operate in practice. At the very least, the Board would operate as a mechanism for dialogue across sectors, allowing best practices to be shared.

4.147

4.148 Table 7: Summary Annual Costs and benefits for Options 1 and 2 [in £ million]

| 4.149 | 4.150 Low estimate | 4.151 Best estimate | 4.152 High estimate |
|--|--------------------|---------------------|---------------------|
| 4.153 Option 1 | 4.154 | 4.155 | 4.156 |
| 4.157 Transitional costs | 4.158 Negligible | 4.159 Negligible | 4.160 Negligible |
| 4.161 On-going costs | 4.162 N/A | 4.163 N/A | 4.164 N/A |
| 4.165 Transitional benefits | 4.166 0 | 4.167 0 | 4.168 0 |
| 4.169 On-going benefits | 4.170 £0.35 | 4.171 £0.77 | 4.172 £1.37 |
| 4.173 Net Present Value over 10 years | 4.174 £2.92 | 4.175 £6.44 | 4.176 £11.43 |
| 4.177 Option 2 | 4.178 | 4.179 | 4.180 |
| 4.181 Transitional costs | 4.182 Negligible | 4.183 Negligible | 4.184 Negligible |
| 4.185 On-going costs | 4.186 N/A | 4.187 N/A | 4.188 N/A |
| 4.189 Transitional benefits | 4.190 0 | 4.191 0 | 4.192 0 |
| 4.193 On-going benefits | 4.194 Negligible | 4.195 Negligible | 4.196 Negligible |
| 4.197 Net Present Value over 10 years | 4.198 N/A | 4.199 N/A | 4.200 N/A |

4.201

Risks and assumptions

4.202 An improvement in quality of reporting is a prerequisite to the efficiency savings described in this impact assessment. A large majority of our assumptions operate on the premise that statutory-guidance is capable of re-educating stakeholders of the scope of their obligations under POCA. In a sense, we are reliant on guidance as opposed to legislation to drive behavioural change. The desired changes relate largely to the application and interpretation of two *key* concepts underpinning the anti-money laundering regime: suspicion and appropriate consent.

4.203 An improvement in the quality of reporting of suspicious activity is driven by the will of the individual to engage with the regime. It is assumed that individual reporters will acknowledge and

understand statutory guidance in a manner which improves the quality of disclosures of suspicious activity sent to the UKFIU.

4.204 Option 2 presupposes that partnering leading experts, from the affected groups, on a POCA review Board will be capable of re-educating the regulated sector about the scope of reporting. Supposing experts share ideas and develop a common understanding of concepts such as suspicion, appropriate consent and reasonable excuse, these common objectives then need then be applied to updated versions of sectoral guidance.

4.205

SPECIFIC IMPACT ASSESSMENTS

Equality

4.206 A full equality impact assessment is not necessary for this project as we do not expect that any of our proposed options for reform will have any equality impacts. Clarity within the law may result in some marginally positive outcomes.

Health

4.207 We do not anticipate that this project will have any particular impact on the health or wellbeing of any of the individuals who make up our affected groups. The proposed changes are an effort to clarify the scope of Part 7 of POCA and improve the quality of suspicious activity reporting.

Justice

4.208 The impact of our proposals on the Criminal Justice System has been assessed throughout the impact assessment.

4.209 Small Firms

4.210 Small firms, particularly legal firms, may benefit from marginally reduced costs as the procedure becomes less burdensome. But small firms account for a very small proportion of reporting bodies.

Appendix 1: Categories of authorised disclosure identified as those with a limited intelligence value.

4.211 In our data analysis exercise measured for a types of authorised disclosure which, it was generally agreed by stakeholders, generated low intelligence value. The list was as follows:

- (1) low value transactions;
- (2) internal movements of funds within a bank or business with the intention of preserving criminal property;
- (3) duplicate reporting;
- (4) information in the public domain;
- (5) property transactions within the UK;
- (6) multiple transactions on the same account or relating to the same individual or business;
- (7) repayments to victims of fraud;
- (8) historical crime;
- (9) transactions with no UK nexus;
- (10) disclosures instigated by law enforcement agencies.
- (11)
- (12)
- (13)
- (14)
- (15)
- (16)
- (17)
- (18)
- (19)
- (20)
- (21)
- (22)
- (23)

Appendix 2: methodology used to identify categories identified as generating limited intelligence value.

4.212 In determining whether the categories set out in appendix 1 were present we considered a transaction to be:

- (1) whether the information provided met the test of suspicion in *Da Silva*;³⁷
- (2) whether a reporter had provided evidence of one or more objective grounds on which their suspicion that the property in question was criminal property was based;
- (3) whether the SAR related to a transaction for less than £1000;³⁸
- (4) whether the SAR related to a transaction equal to, or less than £250;³⁹
- (5) whether the reporter was seeking consent to move funds internally within their organisation (e.g. from one account to another);
- (6) whether the report was a duplicate; for example, a SAR which replicated information already submitted to another law enforcement agency such as Action Fraud, or a SAR which was related to one we had previously analysed and contained no additional information;⁴⁰
- (7) whether the reporter had lodged a SAR based solely on information that was already in the public domain;⁴¹
- (8) whether the transaction in question related to suspected criminal funds being invested into immovable property within the UK, for instance the purchase of a house or mortgage payments;
- (9) whether the SAR relates to two or more transactions in the same account, or linked accounts;
- (10) whether the reporter's disclosure concerned an historical crime;⁴²

³⁷ *R v Da Silva* [1996] 2 Cr. App. R. 35.

³⁸ The minimum figure permitted for cash seizures

³⁹ This is the value at which deposit taking bodies have a limited exception to continue to make transactions. See Proceeds of Crime Act 2002, s294(3). Proceeds of Crime Act 2002 (Recovery of Cash in Summary Proceedings: Minimum Amount) SI 2006 No 1699, para 2.

⁴⁰ For instance, where a report was identical, or virtually identical, to another authorised disclosure that had already been processed during the data analysis exercise. A good example of this is where the subject of a SAR had committed multiple mortgage frauds. This had prompted the reporter to log several SARs, all of which had articulated the same reasons for suspicion of criminal property, the only differences being the addresses of the properties/value of the house. Ideally a reporter would link this information in a single authorised disclosure to cut down on processing time for the UKFIU.

⁴¹ This may occur for example where the reporter represents a high net worth individual and the property in question suspected to be criminal is widely reported in the media or, where the reporter stated that their suspicions had arisen as a result of something they had seen in the media.

⁴² We defined a historical crime as an offence committed more than five years before the authorised disclosure was made.

- (11) whether the SAR had no UK nexus;⁴³ and
- (12) whether the SAR was filed as a result of an enquiry from a law enforcement officer, or the reporter was invited to make the report by such an officer.
- (13)

⁴³ For the purposes of the data analysis exercise this arose if there was no link to the UK other than that the investigative arm of the reporting organisation is based here. Neither the subject nor the transaction had any links to the UK if, the transaction was in a currency other than pounds sterling, and the subject/s had a foreign address, and any additional information provided, for instance about a victim, could not connect the subject to the UK.