

# Guidance on money laundering reporting obligations in relation to the reintroduction of banking measures under the Immigration Act 2014

## Introduction

1. The purpose of this guidance is to set out the position that HM government takes regarding reporting obligations for banks and building societies, when they are undertaking checks required by the Immigration Act 2014, in conjunction with their existing money laundering reporting requirements under Proceeds of Crime Act 2002 (POCA).
2. Reporters should consider how they can apply points set out in this guidance to streamline reporting and to maintain the wider effectiveness of the suspicious activity reports (SARs) regime.

## Background

3. Section 40A of the Immigration Act 2014 (as amended by the IA16) requires banks and building societies to check if existing account holders are 'disqualified persons'. Where there is a match, they must submit a report to the Home Office. At the same time, where a bank matches a customer against the disqualified persons list (DPL), it may consider itself required, under the Proceeds of Crime Act 2002 (POCA) to submit a SAR to the UKFIU.
4. There is concern amongst reporters that in some cases they will be required to submit two reports: one to the Home Office under the Immigration Act; and one to the UKFIU under POCA. Because the Home Office (Immigration Enforcement (IE)) will receive the DPL match reports in order to pursue enforcement, including prosecution and the seizure of funds accrued by criminal means, these SARs, filed solely on the basis of a match to the DPL, may be of limited value to law enforcement.

## CPS Guidance

5. CPS guidance on the Money Laundering Offences ([Money Laundering Offences | The Crown Prosecution Service \(cps.gov.uk\)](#)) sets out the criteria that must be met in order to pursue a prosecution under section 330 of POCA for "Failure to Disclose"
6. When making prosecution decisions, in England and Wales, the CPS will apply the [Code for Crown Prosecutors](#) which sets out the general principles Crown Prosecutors should follow when they make decisions about

prosecutions, which normally involves applying both stages of the Full Code Test:

- a) **Is there enough evidence against the defendant?** When deciding whether there is enough evidence to charge, Crown Prosecutors must consider whether evidence can be used in court and is reliable and credible, and there is no other material that might affect the sufficiency of evidence. Crown Prosecutors must be satisfied there is enough evidence to provide a "realistic prospect of conviction" against each defendant; and
  - b) **Is it in the public interest for the CPS to bring the case to court?** A prosecution will usually take place unless the prosecutor is sure that the public interest factors tending against prosecution outweigh those tending in favour.
7. In limited circumstances, where the Full Code Test is not met, the Threshold Test may be applied to charge a suspect.

### **Home Office view of reporting obligation**

8. Notifications under the Immigration Act 2014 will also allow the Home Office's criminal and financial investigators to identify and investigate any potential cases of money laundering; therefore, it is the Home Office's view that where information received by a bank or building society:
- a) consists of, or includes information that was obtained solely in consequence of an immigration or status check under the Immigration Act 2014; and
  - b) but for obtaining that information, the business would not have reasonable grounds for knowing or suspecting money laundering,
- then, in those circumstances, reports under s.330/331 of POCA are:
- a) very unlikely to be of any particular value to law enforcement; therefore
  - b) any enforcement action under POCA is unlikely to be in the public interest.<sup>1</sup>
9. It will be for banks and building societies to take a view, in complying with the duties under the Immigration Act 2014, to determine whether a separate SAR is required in any particular case. In particular, if a business has a suspicion about a disqualified person which arises independently from any data supplied on the DPL, this is likely to be important information to submit in a

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<sup>1</sup> In Scotland, the Crown Office and Procurator Fiscal Service follows a [Prosecution Code | COPFS](#) and in Northern Ireland, the Public Prosecution Service for Northern Ireland follows [The Code for Prosecutors | Public Prosecution Service Northern Ireland \(ppsni.gov.uk\)](#). These also set out the legal, evidential and public interest factors that will be considered before bringing any criminal case. In England and Wales, the CPS applies the [Code for Crown Prosecutors](#).

SAR. However, the Home Office encourages reporters to ensure that they have systems in place to streamline the reporting of SARs. The Home Office also hopes that the considerations set out in this guidance will help businesses to minimise their own costs in complying with POCA and the Immigration Act 2014.

10. This guidance has been developed in conjunction with the Crown Prosecution Service; His Majesty's Treasury; the UK FIU; and the Financial Conduct Authority.