



Home Office

# **Action Plan for anti money-laundering and counter-terrorist finance: consultation on legislative proposals**

## **Government Response**

October 2016



**Action Plan for anti money-laundering and counter-terrorist finance: consultation on legislative proposals**

Government Response



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# 1. Ministerial Foreword

This Government is proud of the UK's status as a global financial centre, and equally committed to ensuring we have a world-leading approach to combating financial crime, including money laundering and terrorist financing. We have already taken significant action to tackle financial crime and to improve the reputation of the UK, including our financial and professional services industries. Through the Action Plan for anti-money laundering and counter-terrorist finance, we will forge a new partnership with industry to improve suspicious activity reporting, deliver deeper information-sharing and enable the relentless disruption of criminals and terrorists. We will act vigorously against the criminals and terrorists responsible, to protect the security and prosperity of our citizens, and safeguard the integrity of Britain's financial system.

Our consultation on anti-money laundering and counter-terrorist finance sought the views of interested parties on proposals to further strengthen the response to money laundering and terrorist financing. I welcome the many responses we received and the many expert views they convey. It is clear that all of us, Government, businesses, trade bodies, regulators and civil society, are committed to going further still to make the UK financial system as hostile to the criminal as it is welcoming to the law-abiding.

That is why, alongside this response, we are introducing the Criminal Finances Bill to Parliament. The Bill will make legislative changes to tackle money laundering and corruption; to significantly improve our capability to recover the proceeds of crime; and to counter terrorist financing. The provisions in the Bill have been developed in partnership with representatives of law enforcement agencies, the regulated sectors, and civil society. The principal measures in the Bill are as follows:

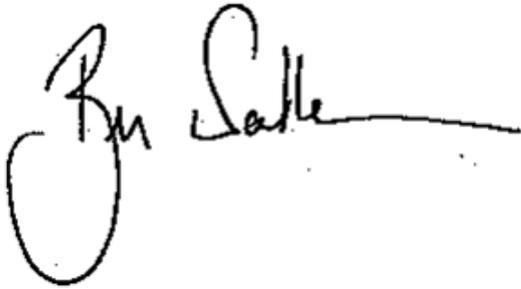
Improving the efficiency and effectiveness of the Suspicious Activity Reports regime (SARs) by: (a) extending the investigative period in which senior officers primarily from law enforcement agencies can prevent a transaction from going ahead, to enable more frequent and effective law enforcement interventions; and (b) creating a new power for the National Crime Agency (NCA) to obtain further information from a regulated business, following receipt of a SAR, to ensure it can carry out its analysis effectively. We have also initiated a SARs reform programme, to make much-needed non-legislative improvements to the operation of the regime.

Building on the success of the Joint Money Laundering Intelligence Taskforce (JMLIT) pilot, we will introduce a new legal gateway to enable private sector firms to share information on suspicions of money laundering and terrorist financing with one another, without fear of litigation. This will ensure that law enforcement agencies have access to SARs that provide a full cross-sector view of the threat, and will help firms better protect themselves.

The Bill will also provide law enforcement agencies with tough new civil forfeiture powers, to enable them to swiftly seize and forfeit criminal funds held in bank accounts, and other stores of value such as precious metals and stones.

**Action Plan for anti-money laundering and counter-terrorist finance: Government Response**

The vast majority of businesses want to comply with the law and those subject to the anti-money laundering regime play a significant part in tackling money laundering and terrorist financing. I am grateful to all those who have contributed to this consultation and look forward to the powers provided in the Criminal Finances Bill marking a step-change in the public-private relationship, through which we will make the UK a hostile environment for those who seek to fund terrorism or move, hide and use the proceeds of crime.

A handwritten signature in black ink, appearing to read "Ben Wallace". The signature is written in a cursive style with a large, looped initial "B" and a long horizontal stroke at the end.

Ben Wallace

Minister of State for Security

## 2. Executive Summary

- 2.1 In April 2016, the Government published an Action Plan for anti-money laundering and counter-terrorist finance, setting out the steps we will take to address weaknesses identified in the October 2015 National Risk Assessment of Money Laundering and Terrorist Financing. The National Risk Assessment identified and assessed the money laundering and terrorist financing risks faced by the UK. It focused on three priorities: a more robust law enforcement response; reforming the supervisory regime; and increasing the UK's international reach. All three are underpinned by a commitment to building a new and powerful partnership with the private sector.
- 2.2 The Government ran a consultation, from April to June 2016, to seek views on potential changes to legislation and options to reform the anti-money laundering and counter-financing of terrorism regime.
- 2.3 The Government received 52 responses from respondents from all of the key areas including a range of trade bodies, regulators, law enforcement agencies, individuals and statutory organisations. Respondents also included umbrella bodies who represent a significant number of individual members. A breakdown of respondents is at page 7.
- 2.4 The Government welcomes the views put forward by respondents and has carefully considered the responses. In light of those responses, and the ongoing consultation that has taken place since April, the Government has decided to reform the UK's anti-money laundering and counter-financing of terrorism regime in the following ways:
- a) Initiating a SARs reform programme, encompassing IT and process improvements, as well as introducing immediate legislative changes to: (a) create a power for the National Crime Agency (NCA) to obtain further information from a regulated business following receipt of a SAR and (b) extend the investigative period in which senior officers primarily from law enforcement agencies can prevent a transaction from going ahead, while they gather the evidence necessary for a law enforcement intervention. The Government does not intend to remove the consent regime at this time, but will continue to explore what actions could be taken to prevent the misuse of the consent regime, whilst continuing to provide legal certainty to reporters and retaining the UK's very powerful money laundering offences.
  - b) Introducing Unexplained Wealth Orders (UWO) which would require an individual to explain the origin of assets that appear to be disproportionate to his or her known income.
  - c) Establishing a new information sharing gateway for the exchange of data on suspicions of terrorist financing and money laundering between private sector firms with immunity from civil liability.
  - d) Introducing tough new civil powers to enable the more effective seizure and forfeiture of criminal proceeds held in bank accounts without the need to secure a conviction.
  - e) A power to enable the seizure and forfeiture of portable high value items used to store and move the proceeds of crime (e.g. gold and precious stones).

- 2.5 The National Risk Assessment also highlighted inconsistencies in the UK's anti-money laundering supervisory Regime. HM Treasury consulted on options for reform of the supervisory regime, alongside the Home Office consultation on legislative proposals. HM Treasury will complete the review of the supervisory regime, taking into account relevant evidence submitted in both the Call for Information on AML Supervisory Regime and the Cutting Red Tape Review, and announce proposed reforms later this year. This Government response document therefore does not include a response to the HM Treasury consultation on supervision, which will be provided separately.

## 3. Analysis of Respondents

3.1 The table below sets out the breakdown by respondent type.

Sector	Number of Responses
Civil Society	4
Financial Services Provider	14
Government Department	1
Individual view	4
Law Enforcement Agency	2
Legal Sector	7
Regulator	1
Representative Bodies (trade bodies and associations, membership bodies and associations, professional bodies and industry bodies)	15
Other	4
Total	52

## 4. Summary of Responses

### *Reform of the Suspicious Activity Reports regime – consent*

*“The consent regime is inefficient and we will consider whether it should be removed. We envisage that it could be replaced with an intelligence-led approach, supported by information sharing through the JMLIT (see below). The statutory money laundering defence provided by the current consent regime would also be removed, although the POCA would be amended to ensure that reporters who fulfil their legal and regulatory obligations would not be criminalised...”*

- 4.1 Respondents strongly support the need to reform the SARs regime, given the UK’s interconnected, international and complex financial system. However, respondents differed on their views regarding the most effective way to achieve this. Whilst some respondents from the financial sector were positive, others questioned whether the proposals would create legal uncertainty and flagged the need to consider and provide clear legal protections for the reporting sector. The majority of legal sector respondents viewed this proposal negatively with one respondent noting that, “[i]t is clear that in order for the removal of the consent regime to be in any way workable, it is either necessary to fundamentally re-shape the principal offences of money laundering or create a new system offering equivalent protection to reporters as is currently afforded by the consent regime”.
- 4.2 Law enforcement respondents had differing views in relation to removal of the consent regime. Whilst one respondent was broadly positive, another set out the possibility that the reforms proposed would negatively impact upon law enforcement agencies’ ability to seize criminal assets. This respondent proposed an alternative approach: extending the 31 day moratorium period. The moratorium period (which currently enables the NCA from preventing a transaction from proceeding for 31 days) allows investigators to gather evidence to determine whether further action, such as restraint of the funds, should take place.
- 4.3 A number of respondents were clear that, if the consent regime were to be abolished, legislation would need to provide adequate protections for individuals operating lawfully in the regulated sectors. Respondents identified a number of risks, including: depriving law enforcement of the ability to disrupt criminal transactions in ‘real time’; a decrease in the financial sector’s business risk appetite; limited provision of evidence under the requirements of the proposed regime; and inadequate protections for reporters. Respondents highlighted the need for complete clarity regarding obligations for the reporting sector and permissible activities, post-submission of a SAR.
- 4.4 It was suggested that, rather than removing the consent regime, the focus should be on improving the existing regime. Some respondents noted that feedback from law enforcement on best practise relating to reporting would be helpful. A number of respondents noted that removal of the consent regime would require change to the principal money laundering offences. One respondent recommended removing the automatic defence to the money laundering offences, making the defence contingent on the quality of information provided. A couple of respondents recommended implementing a tiered system for SARs, whilst another recommended inserting a *de minimus* limit on SARs reporting (this would mean that SARs would not be required when the suspicious activity related to a sum below a certain financial threshold).

- 4.5 It was also highlighted that the new arrangements must be supported by enhanced and streamlined powers for law enforcement to investigate financial crime, extension of public-private collaboration on financial crime and extension of the arrangements to foreign jurisdictions.

***Reform of the SARs regime – Focusing on high risk entities***

*“The SARs regime will be reformed to focus the public and private sector effort on tackling those entities, such as individuals and organisations that pose the highest money laundering and the financing of terrorism risks, rather than targeting transactions. The volume and speed of financial transactions in the 21st century makes a transaction-focused regime less effective. Instead, public and private resources will be directed at the highest risks.”*

- 4.6 Law enforcement respondents were generally positive about the proposal, focusing on the benefits of moving to a risk based approach. Some notes of caution, regarding the need to maintain an ability to capture lower-risk financial crime, were sounded. Respondents from the financial sector were also generally positive. They highlighted a number of benefits in moving towards an entity based SARs regime, including: providing law enforcement with a clearer indication of suspicion; improved risk assessments; an enhanced ability to focus resources; and better two-way understanding of financial crime threats.
- 4.7 Legal sector respondents’ views ranged broadly. Whilst it was noted that moving towards an entity based reporting could lead to a more focused regime, legal sector respondents overwhelmingly stated that the SARs regime should accommodate both entity and transaction based reporting. This view was also held by a number of other respondents, who noted that suspicion is often generated by transactions.
- 4.8 Respondents highlighted that the focus should also be on improving outcomes, as well as limiting cost to business. A number of respondents questioned how entity-based reporting could be made consistent with the current duty to report suspicion, and the obligations contained within the 3<sup>rd</sup> and 4<sup>th</sup> Anti Money Laundering Directives and the Financial Action Taskforce recommendations (FATF, the global standard setting body for anti-money laundering and counter-terrorist financing). One respondent highlighted that, “...reducing the SARs “burden” on reporters and the FIU (Financial Intelligence Unit) should not come at the expense of useful intelligence”. It was also noted that a focus on transactions could be preferable for counter terrorist financing, which may involve multiple entities and smaller sums of money. Some respondents noted that there could be benefit in considering a sector specific regime.

### **Reform of the SARs regime – Powers for law enforcement to direct reporters**

*“...The Government would create powers to enable reporters to be granted immunity for taking specified courses of action (e.g. maintaining a customer relationship when to terminate it would alert the subject to the existence of a law enforcement investigation). The Government would also legislate to provide a power for the NCA to oblige reporters to provide further information on a SAR where there is a need to do so.”*

- 4.9 Financial sector respondents were broadly supportive of this proposal; with one respondent noting that, “...this proposal could do much to fight financial crime”. However it was also noted that clear direction and appropriate legal, financial and regulatory protections should be provided for reporters. Some respondents noted that requests for further information should be restricted to that needed to meet regulations.
- 4.10 One respondent from the regulatory sector noted that, “[t]his will provide an appropriate legislative solution to a challenging issue for reporters”, whilst another respondent noted that the proposal would be helpful as, “...information gathering is key to understanding more about entities, their activities and money flows”.
- 4.11 Law enforcement respondents differed in their views. It was highlighted that this proposal would allow for “...specific and targeted action...” but the risk that these powers may reduce the responsibility on the financial sector to report money laundering suspicions was also stressed. Legal sector respondents viewed this proposal negatively, stating that it would create difficulties in maintaining professional obligations, including observing legal professional privilege. More generally, some respondents felt that co-operation should not be mandatory and there should be a degree of discretion to allow for reputational and commercial protection, and compliance with competition and data protection laws.

### **Enhanced data sharing between private sector organisations**

*“Explore legislation to achieve better information sharing between law enforcement agencies and the private sector, and between private sector entities through the introduction of ‘safe harbour’ information sharing powers.”*

- 4.12 There was strong support, in particular from the financial sector, for new legislation. Respondents noted that data sharing could lead to better reporting and better quality intelligence, leading to an enhanced ability to tackle financial crime. However, it was also noted that any legislative changes should include a framework, standards and guidance on what is appropriate and proportionate for institutions to share. Respondents said that the data sharing arrangements would need to: focus upon clearly defined purposes; be reciprocal; and include non-personal data.
- 4.13 Legal sector respondents differed in their views, which ranged from positive to negative. It was noted that enhanced data sharing could create a more efficient reporting process and greater accuracy of reporting. On the other hand, it was agreed that clear assurances regarding the legality of data provision would be required, in particular that data protection and privacy laws were not overridden. One respondent stated that, “[w]ithout legislation, sharing of confidential, non-privileged information with “private sector” reporters cannot lawfully take place”.

- 4.14 Respondents across sectors asserted that information sharing could only take place if firms could share without fear of legal or regulatory sanction. A number of respondents noted that proposed actions should be consistent with the forthcoming reforms to data protection legislation (Regulation EU/2016/679 (the 'General Data Protection Regulation') and Directive EU/2016/680 (the 'Law Enforcement Directive').
- 4.15 Some respondents questioned whether further legislation was required, given that legislation already exists to allow the private sector to disclose personal data for the prevention or detection of crime under section 29 of the Data Protection Act 1998. One respondent noted that there are specific statutory mechanisms already in existence which could potentially be extended (section 333B of POCA and regulation 24A of the Money Laundering Regulations 2007). Another respondent noted that section 68 of the Serious Crime Act 2007 created a legal gateway to enable the public sector and private sector to share information for fraud prevention purposes. It was suggested that the remit of section 68 could be extended to cover information sharing intended to prevent and detect financial crime.
- 4.16 Respondents' views on the best way to progress this proposal were varied. Some legal sector respondents felt that the, "...principal dialogue should be between law enforcement and the private sector". A law enforcement respondent noted that the private sector should be authorised to share confidential data internally. Another respondent noted that the priority should be improved data sharing within the public sector. A civil society respondent questioned whether data sharing would include charities, and argued that civil society involvement should be on a voluntary basis. Another respondent noted that there would be a significant benefit if the gambling sector were to be involved in enhanced data sharing. Finally, one financial sector respondent noted that information sharing should be cast widely, suggesting that it should include bank to bank sharing, enterprise wide sharing, public and private sector sharing and internal public sector sharing.

#### **Creation of a new power to require individuals to declare their sources of wealth**

*"The Government will explore options for new legal powers. Unexplained Wealth Orders (UWOs) are already used in some countries, such as Ireland and Australia, to tackle this problem. A UWO, when served on the defendant, requires him or her to explain to the court the origin of his or her assets. This can provide critical information on which law enforcement agencies can build their case."*

- 4.17 Law enforcement respondents viewed this proposal positively, noting that it would provide an alternative to reliance on time-pressured cooperation from international jurisdictions. Generally, the financial sector also viewed this proposal positively. Respondents thought that it could: be a powerful intelligence gathering tool, potentially identifying links between jurisdictions; reinforce existing customer due diligence enquiries; and could contribute to greater identification and recovery of assets. A civil society respondent noted that, "[t]his option can help freeze the proceeds of corruption in cases where law enforcement authorities already have a high degree of evidence of corrupt criminality".
- 4.18 On the other hand, legal sector respondents viewed this proposal with concern. While one respondent agreed that it would assist with customer due diligence enquiries, others noted that the presumption of innocence should remain, and considered that the proposal should include an element of judicial scrutiny.

4.19 Respondents noted that a threshold (e.g. reasonable grounds for suspicion that the wealth has been accrued unlawfully) was required. In light of potential civil action, and in order to enforce seizures or support disclosures, the regulated sector would need sufficient protections and redress. Some respondents sought greater clarity on the specifics of the proposal; including on whether a decision would require any action from the regulated sector.

#### **Creation of a linked power to seek forfeiture of assets if they fail to declare their sources of wealth**

*“The Government will also explore whether a new forfeiture power should be created to enable the forfeiture of any assets for which a satisfactory explanation cannot be given to the court.”*

4.20 Law enforcement viewed this proposal positively. One respondent noted that, “[t]o have the desired impact it is vital that assets are frozen once an Unexplained Wealth Order is served as the individual would likely attempt to dissipate or conceal their assets”. Another public sector respondent noted that this proposal would assist with the recovery of criminal finances. Some respondents stated that where it is known or proven that funds are the proceeds of crime, a linked power of forfeiture is appropriate.

4.21 Respondents from the legal sector mostly viewed the proposal with concern, partially due to the reasons set out in the above section, relating to the introduction of an Unexplained Wealth Order. One legal sector respondent stated that, “[a] failure by a person to give an explanation about his ‘wealth’ is not sufficient to prove that it derives from criminal conduct”.

4.22 Respondents from across sectors sought greater clarity as to how the power would be enforced and further detail on the evidence test for forfeiture of assets. One supervisory respondent noted that the scope of the power should be carefully considered. Whilst broadly positive in their views, the financial sector highlighted the need for sufficient protections in order to facilitate enforced seizures. It was noted that the onus should remain with law enforcement to establish their case. It was further noted that innocent citizens with legitimate sources of wealth should be protected.

#### **Creation of an illicit enrichment offence**

*“Some countries have criminalised illicit enrichment, making it a criminal offence to possess assets which cannot be accounted for by way of lawful income. It is a requirement under the UN Convention Against Corruption (UNCAC) for states to consider introducing an illicit enrichment offence and the Government intends to explore whether such an offence will be effective in the UK, and whether it will be compatible with our legal system.”*

4.23 There was support for this proposal within civil society. One respondent noted that the proposal would incentivise Politically Exposed Persons (PEPs), “...to (a) not commit corruption or (b) launder the proceeds of corruption through the UK”. Law enforcement respondents were also supportive; with one respondent noting that the proposal could assist in achieving greater prosecutions of those involved in international corruption. A couple of respondents further noted that the introduction of the offence may have a helpful deterrent effect on those seeking to commit corruption, given the possibility of criminal liability. One supervisory respondent stated that “[t]his [the offence] would send a strong message to those who have committed to public service that trust placed in them shouldn’t be abused”.

- 4.24 However, respondents also highlighted a number of risks associated with the policy. Legal sector respondents typically viewed this proposal negatively; questioning whether existing legislation already criminalises the activities that the government was seeking to criminalise by introducing this offence. The existing offences of: fraud by abuse of position, contrary to section 4 of the Fraud Act 2006; offences contained within the Bribery Act; or the PEP provisions in the Money Laundering Regulations 2007, were suggested as legislative provisions which may cover activity contained within the proposed offence of illicit enrichment. One legal sector respondent raised concerns about the human rights implications; if this offence were to result in a reversal of the burden of proof from law enforcement to defendants.
- 4.25 Financial sector respondents outlined some benefits to the proposal, including: strengthening anti-corruption measures, sending a strong deterrent message, and discouraging abuse of a public position. However, respondents also questioned how the illicit enrichment offence would fit with the Bribery Act. One respondent cautioned that it will continue to be difficult to establish that funds in an account derive from illicit activity; therefore asset recovery may continue to be problematic.

### ***A power to designate an entity as being of money laundering concern***

*“Section 311 of the USA PATRIOT Act enables U.S. regulators to designate entities of ‘primary money laundering concern’. Once a designation is made, banks and other firms are required to take special regulatory precautions in dealing with the entity in question. These designations help U.S. firms protect themselves against the riskiest customers, and can have a very powerful disruptive effect against the entity in question, often, in effect, freezing them out of the international financial system. The Government intends to explore what the UK could learn from the U.S. approach, and to consider how a similar approach could be applied in the UK.”*

- 4.26 Financial sector respondents were positive about the introduction of a power to designate, agreeing that this power would assist them in managing risk to their business, and focus information sharing with UK law enforcement, through the UK Financial Intelligence Unit (UKFIU) and the Joint Money Laundering Intelligence Taskforce (JMLIT). One respondent highlighted that professional enablers inclined to be complicit in money laundering activities may be deterred by the introduction of this power. Law enforcement respondents were similarly positive, noting that the power “...would significantly enhance the ability of the UK financial system to protect itself from specific threats”.
- 4.27 Financial sector respondents were concerned about the transfer of risk to the regulated sector, who would be at risk of civil litigation if commercial decisions had to be taken outside of the precautions set within a designation order. The financial sector was also concerned that the precautions they would need to take could be resource intensive and thought that this should be balanced against the benefits of better risk management.
- 4.28 Legal sector respondents ranged in their views. One respondent noted that, “[t]he threat of designation could have a powerful effect and its use might drive up standards both generally and in particular at those firms who perceive themselves most at risk of becoming designated”, and another noted that the power would simplify the focus of customer due diligence enquiries. On the other hand, there were concerns about the scope of the power and whether there would be disproportionate legal and practical consequences. Points were raised about the level of evidence a designation should be based on, and it was noted that the entity

should have clear administrative and legal routes to challenge designation. Accordingly, law enforcement agencies made clear that the protection of sources during any legal proceedings was a significant issue.

- 4.29 A respondent from civil society raised concerns that this power may have a negative impact on the ability to carry out their work in the host jurisdiction of a designated entity, due to the regulated sector taking an overly risk-averse approach.
- 4.30 Overwhelmingly, respondents agreed that the power should include a form of legal redress for entities.

#### ***Development of a new power to allow money held in bank accounts to be swiftly seized and forfeited***

*“POCA offers a variety of different tools for asset recovery. In practice, however, law enforcement agencies lack a flexible and effective tool to forfeit suspected proceeds of crime held in bank accounts...Therefore, the Government intends to explore whether new powers are needed to enable the quick and effective forfeiture of money held in bank accounts in cases where there is no criminal conviction against the account holder...and there is suspicion that the funds are the proceeds of crime.”*

- 4.31 In recognition of the economic and societal developments since the introduction of POCA, law enforcement respondents noted the importance of introducing this power. Legal sector respondents were generally sceptical in their views, noting that existing powers contained within POCA should be sufficient to achieve the objective of the proposed power. Respondents from across all sectors highlighted the need to ensure that we do not ignore the existing set of criminal and civil powers. The financial sector asked that all obligations are clearly defined, and the legal authority clearly articulated. They were clear in their view that financial institutions complying with any obligations should be fully indemnified and protected from legal action.
- 4.32 One respondent noted that the power would be useful in cases involving small amounts of cash. Another respondent supported increased administrative forfeiture, whilst a third noted that forfeiture should be made as easy as possible, where funds are criminal.

#### ***Power to allow seizure and forfeiture of readily moveable property, such as high value jewelry***

- 4.33 A law enforcement respondent noted that the evidence demonstrates that value is being moved both domestically and internationally through the use of gift cards, precious metals, jewellery and gambling slips. A financial sector respondent cautioned that, without this power, stronger cash controls may divert criminal assets from financial institutions into high value goods. Another financial sector respondent noted that with regard to this proposal, “[s]uch a power would prevent the criminal from realising the proceeds of their criminality, both for immediate use and as inheritable property”. However, others asserted that comprehensive powers to seize, retain and ultimately deprive individuals of their property already exist under POCA, Part 5. Respondents from across sectors also questioned how the provenance of the moveable property would be established.

***Benefit in enabling the administrative forfeiture of the proceeds of crime in uncontested cases, following an initial hearing at a magistrates' court?***

*“The Government will also explore whether, following an initial hearing at a magistrates' court, the new power (to allow money held in bank accounts to be swiftly seized and forfeited) could be used administratively, with forfeitures authorised by senior law enforcement officers where the value held in the account is below a certain limit (for example, £100,000) and the case is uncontested...The Government will also explore whether the same power could also apply to other forms of readily moveable property that may be the proceeds of crime (e.g. jewelry and precious metals).”*

4.34 Again, respondents across sectors provided a range of views in response to this proposal. Respondents considered that it would be challenging to establish that funds are the proceeds of crime, before forfeiture takes place. In order to determine whether this power or civil recovery powers were applicable, guidance would need to be developed. An effective appeals process would need to be in place to ensure appropriate safeguards. With regard to the limit, one respondent suggested that a limit range might be more effective than a flat limit.

***Amend the investigative powers in POCA so they can be sought earlier in the investigative process and applications and administration made more flexible.***

*“Updated POCA financial investigation powers to make them more flexible and effective”*

4.35 There was a divergence of views across sectors in relation to this proposal. One respondent stated that this would, “...lower the threshold for applying for orders and would speed up the actual investigation...”. On the other hand, another respondent questioned why the investigative powers under POCA Chapter 2 of Part 8 (in the Crown Court) were not sufficient. It was also noted that earlier intervention would lead to reduced judicial oversight and potentially increased breach of process.

## 5. Government Response

### *Reform of the SARs regime*

- 5.1 The Government has commenced a SARs reform programme to oversee the changes needed to improve the SARs regime. The programme will cover operational and IT improvements as well as the proposed legislative changes set out below.
- 5.2 Having listened carefully to the views of private and public sector stakeholders, the Government has decided that now is not the right time to remove the consent regime. Instead, the Criminal Finances Bill will deliver two important enhancements to the SARs regime: (a) a new power to extend the moratorium period (currently limited to 31 days) to enable senior officers primarily from law enforcement agencies to gather the evidence necessary to secure a restraint order or other law enforcement intervention; and (b) a new power for the UK Financial Intelligence Unit to obtain information from SARs reporters for the purposes of the FIU's analysis. The SARs regime currently allows the prevention of a transaction from going ahead for a period of 31 days, known as the 'moratorium period', to allow law enforcement agencies to gather evidence to determine whether further action, such as restraint of the funds, should take place. Concerns have been raised that this period, which cannot be extended under current legislation, does not allow sufficient time to develop the evidence, particularly where such evidence may be sought from overseas through mutual legal assistance. The Criminal Finances Bill will amend the Proceeds of Crime Act to allow the extension of the moratorium period by a court, at the request of the senior officer, for periods of up to 31 days, up to a total of 186 days (from the expiration of the initial 31 day moratorium period).
- 5.3 The new power for the UKFIU to obtain information for the purposes of its analysis will bring the UK into full alignment with the recommendations from Financial Action Task Force. The new power, enforceable by a court, will ensure that the FIU can obtain the information it needs to conduct effective intelligence analysis.
- 5.4 The Government has listened carefully to the views provided by respondents on the proposal to reform the 'consent' regime. The consent regime is required to ensure that the very broad and powerful money laundering offences in the Proceeds of Crime Act do not criminalise otherwise law-abiding behaviour. The Government does not want to make changes that would weaken the effectiveness of the money laundering offences, and recognises the need to provide legal certainty to SARs reporters. Having conducted extensive consultations, the Government has not been able to identify a consensus on what should replace the current consent arrangements. The Government will not, at this time, make changes to the consent regime beyond the extension to the moratorium period described above. The Government will keep this issue under review as the SARs reform programme develops, and new IT and operational processes, coupled with improved information sharing, become established.

### ***Reform of the SARs regime – Moving towards an entity based reporting system***

- 5.5 The Government does not consider legislation necessary to bring about the necessary reforms to the SARs regime, in order to make it more focused on the highest risks, and to move towards an entity-based reporting system. For many parts of the regulated sector, particularly the legal and accountancy sector, reporting is already often focused on entities rather than transactions. The Government, through the SARs reform programme, will work with the regulated sector, and particularly the financial sector (which produces the majority of SARs, many of which are transaction-focused) to identify changes to guidance and operational practice to bring about the changes required to ensure that the SARs regime is focused on the highest risk entities.

### ***Enhanced data sharing between private sector organisations***

- 5.6 The Government strongly supports public-private partnership to tackle money laundering and terrorist financing. At the London Anti-Corruption Summit in May 2015, the UK encouraged 21 countries to commit to establishing or strengthening public-private partnerships. Domestically, the National Crime Agency has led a pilot Joint Money Laundering Intelligence Taskforce (JMLIT), which brings together law enforcement agencies and financial sector firms to share information in order to prevent, detect and disrupt money laundering and terrorist financing. JMLIT participants have called for a new legal gateway to enable them to share information directly with one another, with protection from criminal and civil liability, to enable JMLIT to work more effectively. The proposal for new information sharing provisions received strong support from consultation respondents.
- 5.7 The Government will legislate in the Criminal Finances Bill to create a new information sharing legal gateway. It will enable firms in the regulated sector to share information on suspicions of money laundering and terrorist financing with one another, under the legal 'safe harbour' of immunity from criminal or civil liability. It will be subject to sufficient safeguards, so that it is compatible with data protection obligations.
- 5.8 The new powers will also enable the submission of joint suspicious activity reports (SARs) so that firms can provide the whole picture of a money laundering scheme that crosses multiple firms, rather than submitting individual pieces of the jigsaw to the UKFIU. This should improve the intelligence picture available to law enforcement agencies and firms. It should also help firms better understand the risks they face, and enable them to take mitigating actions in response.

### ***Creation of a new power to require individuals to explain their sources of wealth; and creation of a linked forfeiture power***

- 5.9 The Government promoted the strengthening of asset recovery powers at the London Anti-Corruption Summit in May 2015, and announced that it was consulting on the introduction of Unexplained Wealth Orders (UWO). Having listened carefully to the views of consultation respondents, the Government will now legislate in the Criminal Finances Bill to create Unexplained Wealth Orders. They will require those who own assets that are apparently disproportionate to their known income to explain the sources of their wealth, in order to help facilitate the recovery of criminal proceeds. The measure aims to provide law enforcement agencies with the ability to take civil recovery action against property suspected of being bought with the proceeds of corruption and similar criminality.

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- 5.10 An Unexplained Wealth Order would be made by a court, and would require a respondent to explain the origin of the property in question. If the respondent refused to comply with the order, and failed to provide an explanation, the court would be able to make a rebuttable presumption that the property in question is 'recoverable property', under the existing civil recovery powers in POCA. If they did provide a response, that could be considered by law enforcement agencies as they build their case, in a similar way to information provided in response to a disclosure order.
- 5.11 Following its analysis of consultation responses, the Government has decided that a bespoke forfeiture power is not necessary. Instead, the Government will build UWOs into the existing civil recovery structures in the Proceeds of Crime Act. Where appropriate, forfeiture of criminal proceeds will therefore be achieved using those powers.
- 5.12 The Government has listened to concerns about civil liberties and the scheme has been designed with sufficient legal safeguards. The UWO is an investigation power. It will enable civil recovery, which already has safeguards similar to the general safeguards in civil proceedings (see Chapter 2 of Part 5 of POCA). In addition, the UWO will be subject to the relevant property being aggregated to a minimum value threshold (probably £100,000) and there being reasonable grounds to suspect that known income is insufficient to obtain the property. UWOs will be available for use in two scenarios: (a) against any person that law enforcement agencies have reasonable grounds to suspect has links to serious crime; or (b) overseas politically exposed persons (PEPs).

### *Creation of an illicit enrichment offence*

- 5.13 The Government is committed to taking action against international corruption. However, given the very serious issues raised in the consultation responses received, the Government has decided not to proceed with this proposal.
- 5.14 The illicit enrichment offence would reverse the burden of proof in criminal proceedings and would interfere with rights to a fair trial and to the peaceful enjoyment of property. Whilst these are not absolute rights, the Government does not think that the interference with these rights is justified in this case. The Government is also concerned that the offence would have only limited practical effect. The Government is determined to take more effective action against criminal assets laundered into or through the UK. However, many of those who launder the proceeds of corruption, into or through the UK, are not resident here, and would not be within reach of the offence. The Government was also mindful of the fact that few other countries have successfully used the illicit enrichment offence. Therefore, the Government will not be introducing an illicit enrichment offence at this time. Instead, the Government will seek to use Unexplained Wealth Orders and the other powers included in the Criminal Finances Bill, to facilitate more effective asset recovery action.

### *A power to designate an entity as being of money laundering concern*

- 5.15 The Government has listened carefully to the views provided by respondents, on the proposal to introduce a power to designate an entity as being of money laundering concern. The Government is committed to ensuring that the UK is a more hostile environment for those seeking to launder the proceeds of crime; disrupting the money laundering activities of the entity concerned. However, while the principle of the power was welcomed, the responses to the consultation

identified a need for judicial oversight to ensure proportionate use of the power. The Government also took note of the issues raised by law enforcement agencies; regarding the protection of sources from public disclosure during judicial proceedings related to designation, and of the potential financial liability that they may incur.

- 5.16 At this stage, the Government – in consultation with partners in both the public and private sectors – has not yet identified a model for the use of this power; that mitigates the range of concerns that have been raised. We have therefore concluded that it would not be appropriate to legislate in the Criminal Finances Bill, but will continue to explore whether such a power, with the necessary protections, can be developed for a future legislative vehicle.

#### ***Development of a new power to allow money held in bank accounts to be swiftly seized and forfeited***

- 5.17 The Government will legislate to introduce a new scheme to enable swift action to be taken in the Magistrates Courts to seize and forfeit criminal money held in bank accounts. These new powers will close a gap in the current law and enable law enforcement agencies to respond more effectively to both (a) new SARs in the future that reveal the existence of suspected criminal funds in bank accounts; and (b) the significant volume of suspected criminal funds already frozen in bank accounts.
- 5.18 The existing civil recovery powers in POCA have a £10,000 *de minimus* threshold and in practice, given current operational priorities, are rarely used except in high value cases. This leaves a significant gap which means that, at present, funds in bank accounts with a value of below £10,000 can only be confiscated if a conviction is obtained. The Government believes that a wider range of civil forfeiture powers will give law enforcement and prosecution agencies the tools they need to have a greater impact against money launderers.
- 5.19 Administrative forfeiture will be permissible in uncontested cases, but appropriate legal safeguards will be provided to ensure that the new powers are used proportionately and that the rights of the innocent are protected.

#### ***Power to allow seizure and forfeiture of readily moveable property, such as high value jewellery***

- 5.20 Law enforcement agencies have identified a gap in the current legislation that prevents them from being able to take effective action against forms of property, such as precious stones and gambling slips, that are used to launder the proceeds of crime. The Government has decided to legislate to introduce a new power to seize and forfeit readily moveable property.
- 5.21 Respondents asked why existing civil recovery powers in Part 5 of the Proceeds of Crime Act would not be sufficient. There are no powers of seizure in civil recovery and therefore under existing provisions easily moveable and disposable property remains in the possession of the respondent. Such property can therefore easily be dissipated in protracted civil recovery proceedings, even when subject to freezing orders. Further, civil recovery powers have a *de minimus* value threshold of £10,000 and are used in the High Court. In practice, these factors mean that many items suspected of being used to launder the proceeds of crime remain out of the reach of law enforcement agencies.

5.22 The new powers will have a threshold of £1,000 and will be operable in the Magistrates Court. They will have appropriate legal oversight, but should provide a more flexible and swift tool to tackle money laundering.

***Amend the investigative powers in the Proceeds of Crime Act so they can be sought earlier in the investigative process and applications and administration made more flexible.***

5.23 The Government has listened carefully to the concerns of respondents on this issue. The Government will not make wide-ranging changes to the investigative powers in POCA. However, the Government will amend POCA to create disclosure orders for use in money laundering investigations. The Government will also amend POCA to make the authorisation process for disclosure orders more streamlined, by replacing the need for a prosecutor with a senior officer in the investigator's organisation.



