
Criminal Finances Bill – information sharing

Home Office

RPC rating: fit for purpose

Description of proposal

The proposal is to introduce legislation to provide a mechanism to allow data sharing between the National Crime Agency (NCA) and the private sector, and among private sector organisations in the regulated sector. This is to support government actions to tackle crime, in particular money laundering. Private sector organisations in the regulated sector, such as banks, currently risk breaching confidentiality if they share client data. The department states that the banking sector has sought legislation to remove the legal risks of sharing data.

More specifically, the proposal would provide the NCA with a statutory power to request information to be provided by businesses in the regulated sector and, while they are not compelled to share this information, the proposal would provide the respondent with some protection from civil liability under the Data Protection Act 2003 for sharing this information.

The proposal would also provide protection from civil litigation when a private sector entity from the regulated sector shares information at the request of another private sector entity from that sector. This second protection applies only when there is a genuine suspicion of money laundering. If money laundering is discovered then this must be shared with the NCA.

Impacts of proposal

The impact assessment (IA) does not state how many businesses might be affected by the proposal. The IA explains that there would be minimal one-off familiarisation costs to businesses and some ongoing costs for managing the process. The department has sought information from the regulated sector, but has been unable to obtain estimates. However, the department explains that participation from the private sector is entirely voluntary and puts forward an estimate of zero net direct cost to business on the premise that businesses will choose to participate only where doing so is, at worst, cost neutral.

The IA explains that the proposal would benefit businesses by allowing them to identify the threat from money laundering more readily, to take measures to inform the authorities and to protect themselves from litigation. The IA states that it has not been possible to monetise these benefits, or the benefits to wider society that would derive from a more effective response to money laundering.

Quality of submission

Although the department provides a limited analysis of the proposal, the IA presents sufficient information to enable validation of an estimated annual net direct cost to business (EANDCB) of zero. This is on the basis that data sharing, both with the NCA and with other private sector entities, is voluntary. Businesses would not have to respond to the proposed measure but it is reasonable to assume that, in doing so, the benefits would be greater than, or equal to, the costs. This is supported by the department's statement that banks have sought this legislation. The IA would benefit from including some description of how banks communicated this to the department, for example whether it was through the consultation or the Joint Money Laundering Intelligence Taskforce.

The department's small and micro business assessment suggests that there would be no penalty for such businesses if they declined to provide information. It also explains that the measure would provide protection for small businesses where they wished to share information.

Although this does not affect the validation of the EANDCB, the IA could be improved by inclusion of more quantitative information, such as the number of organisations affected, the possible scale of additional information sharing and, where possible, illustrative figures for the likely costs and benefits to businesses and wider society (such as the cost of setting up a mechanism to consider requests).

The IA would also benefit from providing further information to support the statement that a business's response to a request from the NCA to share information is an entirely free choice. In particular, the department might like to address whether businesses may feel compelled to respond because of obligations or powers under any other relevant legislation.

The IA states that, because this is a voluntary measure, "*formal monitoring is not seen as proportionate at this stage*". Significant impacts can arise from voluntary measures and the IA would, therefore, benefit from indicating how the impact of the measure and any unintended consequences will be evaluated.

Prior to publication, the IA should also provide additional clarity on the different legislative frameworks operating in this area, in particular the role of the EU General Data Protection Regulation (GDPR). In doing so, the IA should explore more fully:

- the impacts of the proposal as they apply to sharing of personal data between private sector organisations. These impacts could include managing risks around the degree of protection offered and possible increased losses if businesses rely on ineffective protection; and
- how this might affect the potential costs and benefits of the proposal from 2018, given the RPC's understanding that the GDPR will be fully effective from then.

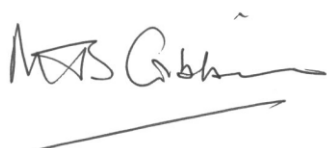
The department's post-implementation review of the proposal should, in due course, also address these issues.

Departmental assessment

Classification	Qualifying regulatory provision
Equivalent annual net direct cost to business (EANDCB)	Zero
Business net present value	Not monetised
Societal net present value	Not monetised

RPC assessment¹

Classification	Qualifying regulatory provision
EANDCB – RPC validated	Zero
Business impact target score	Zero
Small and micro business assessment	Sufficient



Michael Gibbons CBE, Chairman

¹ For reporting purposes, the RPC validates EANDCB and BIT score figures to the nearest £100,000