

Annex A: Consultation on legislative proposals

The Action Plan contains a number of proposals on which the Government wishes to consult, as they will involve potential changes to legislation. These are:

- Removal of the SARs consent regime
- New powers for law enforcement agencies to require reporters to take actions in relation to their customers, and to request further information on SARs
- Data sharing between private sector organisations to tackle money laundering and terrorist financing
- The creation of a new power to require individuals to declare their sources of wealth
- The creation of a linked power to seek forfeiture of assets if they fail to declare their sources of wealth
- The creation of an illicit enrichment offence
- A power to designate an entity as being of money laundering concern
- Development of a new power to allow money held in bank accounts to be swiftly seized and forfeited
- Changes to the civil recovery powers to allow administrative seizure up to £100,000.

Section 2(a): Public-private partnership

1. The Government is seeking views on the change in focus of the SARs regime from one on transactions to one on the entities responsible for money laundering and terrorist financing.
 - What benefits are there for the reporting sector in moving the focus of the SARs regime from *transactions* to *entities* for tackling money laundering and the financing of terrorism?
 - What would be the effect on costs to business in making that shift?
2. To support that change, the Government is considering removing the current consent regime.
 - What are the risks in removing the consent regime, and how could these be overcome?
 - If the current SARs consent regime is replaced, removing the statutory defence for SARs reporters, what legal protections should be available for reporters who unwittingly come into the possession of criminal property?

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- What would be the costs to your business of this change?
3. Should a reformed SARs regime include powers for law enforcement agencies to direct reporters to take certain actions, including maintaining a customer relationship, and provide legal cover for the reporter to do so?
 4. The Government is proposing to provide legislative cover to support better data sharing within the private sector.
 - What legislation and guidance needs to be in place to allow effective sharing of information between private sector firms in order to prevent and detect financial crime?
 - What benefits would you see from having the ability to develop SARs in partnership / report jointly with other private sector entities?
 - What can we learn from the U.S. experience of data sharing between private sector entities under the s314 of the USA PATRIOT Act?
 5. Under the EU 4th Anti-Money Laundering Directive (4AMLD), Financial Intelligence Units are required to have a power to request further information in relation to a SAR. How should such information be gathered, and should it be regarded as part of the overall SAR?
 6. The Government wants to support the financial sector in dealing with suspected proceeds of crime held in suspended bank accounts.
 - What new powers are required to allow the criminal funds held in UK bank accounts to be forfeited more easily?
 - What safeguards should be put in place around any new powers in order to protect innocent account holders?
 - In uncontested cases, should administrative forfeiture be permitted, in the same way that POCA already enables the administrative forfeiture of cash?

Section 2(b): Enhanced law enforcement response

7. What do you see as the benefits of introducing a power to require individuals to explain the sources of their wealth?
8. Would you see a benefit in a linked forfeiture power where the explanation is not satisfactory or no explanation is provided?
9. What benefit would you see in an illicit enrichment offence, targeting those who use their public position to enrich themselves? What are the potential impacts on business?
10. The Government is considering the introduction of a power to enable the Government to designate entities of primary money laundering concern.
 - What benefit would such a power provide?
 - What would be the impact of such a power on firms in the regulated sector?

- What legal recourse should be available for designated entities who wish to challenge their designation?
 - What can the UK learn from the U.S. experience of using section 311 of the USA PATRIOT Act?
 - What would be the costs to your business?
11. What benefit would you see in the provision of a power, similar to the provisions for cash seizure, to allow seizure and forfeiture of other forms of readily moveable property such as high value jewellery or precious metals?
 12. What benefit would you see in enabling the administrative forfeiture of the proceeds of crime in uncontested cases, following an initial hearing at a magistrates' court? Should a limit be set on the value of property that could be administratively forfeited, and what should that limit be?
 13. If we amend the investigative powers within POCA so they can be sought earlier in the investigative process, and make applications and administration more flexible, what would be the impact on your business?
 14. In addition to the proposals in this Action Plan, are there additional powers that UK law enforcement agencies should have to tackle money laundering?

Responses

The Home Office welcomes your views in response to the questions posed in this Annex.

The Government would be keen to hear examples of how the proposed changes may help or hinder the AML/CTF regime in the UK in practice. This will help ensure evidence-based policy decisions in these areas.

Electronic responses are preferred and should be sent to:
Action_Plan@homeoffice.gsi.gov.uk.

Questions or enquiries specifically relating to this consultation should also be sent to the above email address. Please include the words CONSULTATION VIEWS or CONSULTATION ENQUIRY (as appropriate) in your email title. **If you do not wish your views to be published** alongside the Government response to this consultation, please **clearly** specify this in your email.

Hard copy responses may be submitted to:

Action Plan questions on tackling money laundering & terrorist financing
Home Office
6th Floor Peel Building
2 Marsham Street
London
SW1P 4DF

Confidentiality and Disclosure policy

Information provided in response to this consultation, including personal information, might be published or disclosed in accordance with the access to information regimes. These are primarily the Freedom of Information Act 2000 (FOIA) and the Data Protection Act (DPA). If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply with and which deals, amongst other things, with obligations of confidence.

In view of this it would be helpful if you could explain to the Home Office why you regard the information you have provided as confidential. If Government receives a request for disclosure of the information, the Home Office will take full account of your explanation, but it cannot give an assurance that confidentiality will be maintained in all circumstances.

An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department. Your personal data will be processed in accordance with the DPA, and in the majority of circumstances, this will mean that your personal data will not be disclosed.

Timetable

The closing date for responses to be submitted is 2 June 2016.