



Criminal Finances Bill

Power to obtain further information and extend the SARs moratorium period

- Where an organisation in the regulated sector (e.g. a bank, accountancy firm or legal firm) suspects that they may commit a money laundering offence, they are obliged to submit a Suspicious Activity Report (SAR) to the National Crime Agency (NCA), seeking consent to proceed.
- The SARs consent regime has the practical effect of preventing an activity from going ahead for an initial notice period of 7 days, and where appropriate, for a period of 31 days known as the ‘moratorium period’. The moratorium period allows law enforcement agencies to gather evidence to determine whether further action, such as restraint of the funds, should take place.
- There are occasions where the NCA requires further information to be able to undertake proper analysis and make an informed decision on whether to investigate.
- However, the current moratorium period does not always allow sufficient time to develop evidence, particularly where investigators need to obtain evidence from overseas authorities; or undertake complex asset tracing enquiries.
- The Bill will therefore deliver two important enhancements to the SARs regime:
 - a power to extend the moratorium period to enable law enforcement agencies to gather the evidence necessary to secure a restraint order or other intervention; and
 - a power for the UK Financial Intelligence Unit to obtain further information from SARs reporters.

Background

- Money launderers seek to move funds quickly, at times across international borders to distance the funds from their criminal source. Money laundering investigations are multi layered and complex – meaning that it is important to ensure that good quality information is provided to the NCA as soon as possible, and that investigators are allowed sufficient time to gather evidence.
- As part of the Action Plan, the Government has committed to: improving the quality of SARs, the sharing of information between the public and private sector and to enhance the law enforcement response. These proposals will allow:
 - The NCA to obtain further information where the SAR does not contain all the necessary information to enable effective investigations or intelligence development. The intention is to increase the quality of SARs, and to enable improved intelligence analysis for the better identification of risks and threats.
 - Investigators sufficient time to gather evidence related to particularly complex activities, which are linked to overseas grand corruption or other serious crime. The provisions in the Bill provide for the extension of the moratorium period by a court, for up to 31 days. This can be repeated up to 186 days (approximately 6 months), from the end of the initial 31 day moratorium period. The process will have judicial oversight and the interested party will be notified that an application has been made to extend the moratorium period.
- These provisions should increase recovery of the proceeds of crime, stopping money launderers from profiting from their criminal behaviour.

Key facts

- Approximately US \$1.6 trillion was laundered globally in 2009. (UNODC)
- The NCA estimates that the amount of money laundered in the UK could be up to £90 billion.
- Between October 2014 and September 2015:
 - the NCA received 381,882 SARs, of which 14,672 were Consent SARs;
 - the total restrained by law enforcement partners relating to consent requests was over £43,000,000.

“... the ‘moratorium period’ of 31 days for law enforcement agencies to respond to suspicious activity reports is generally inadequate for them to investigate and achieve asset restraint for cases involving grand corruption”

Transparency International, April 2016

“...in cases of complex fraud and money laundering [the existing 31 day moratorium period] makes restraint of assets difficult and at times impossible due to the international nature of economic crime and the level of evidence currently required for a civil restraint”

City of London Police, June 2016

“Key to success will be the partnership between the public and private sectors through sharing of information”

British Bankers Association, May 2016



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What is a Suspicious Activity Report?

- A SAR is a report made to the NCA when a person knows or suspects that another person is engaged in money laundering or terrorist financing, or dealing in criminal property.

What is a Consent SAR?

- The Proceeds of Crime Act 2002 allows persons and businesses to obtain a defence against money laundering charges by seeking consent of the authorities to conduct an activity through the submission of a 'consent SAR' to the UK Financial Intelligence Unit in the NCA.

Why is new legislation needed?

Power to Direct Information

- SARs sometimes omit information which the NCA requires in order to analyse the activity effectively, with a view to pursuing a law enforcement intervention.
- In some cases, the NCA must obtain the further information necessary to build a stronger intelligence picture on money laundering.

Extension to the Moratorium Period

- Where a consent SAR relates to a complex case, and particularly where they need to obtain evidence from overseas authorities, the current moratorium period does not allow investigators time to gather sufficient evidence to instigate criminal investigation or civil recovery proceedings in relation to the suspected money laundering activity.
- Accordingly, the activity may proceed before law enforcement can commence restraint or freezing proceedings over the property concerned.

What information can be sought?

Power to Direct Information

- The NCA will be able to seek any information relating to an issue raised by a SAR, from any member of the regulated sector.
- The NCA, which hosts the UK Financial Intelligence Unit, will be able to obtain information at the request of foreign financial intelligence units, subject to the existence of a SAR in that country.
- The NCA will be required to specify what information is being sought, how it should be provided, and by when.

Will personal data be shared internationally without any controls?

- No, there will be a power for the NCA to seek an order compelling the provision of information, following a request for information where a foreign authority has received a SAR.
- A court may only grant permission if it believes that the information request relates to a SAR received by the foreign authority under corresponding provisions; that the person is in possession of that information and that it will be of substantial value in determining any matter in connection with the SAR received by the requesting authority.
- We are currently determining what safeguards should be in place when the NCA considers whether or not to exercise the power and whether or not to share any information received with the requesting foreign authority.

What are the safeguards?

Power to Direct Information

- Information will only be shared where there is a suspicion of money laundering, and with appropriate oversight.
- There are exemptions from the further information order for privileged information.
- Reporters will be given immunity from any restriction on the disclosure of information such as confidentiality clauses in contracts or the law of confidence, as is already the case with a SAR. The Bill also provides for the discharge or variance of a further information order.

Extension to the Moratorium Period

- The Crown Court provides a senior level of judicial authorisation.
- The parties are represented before the Court and the Court will not extend a moratorium where it would not be reasonable to do so in all the circumstances of the case.
- In order to grant an extension the Court must be satisfied that the investigation is being carried out diligently and expeditiously, and that further time is required in order to progress the investigation.
- Applications may only be made by a senior officer.