



Criminal Finances Bill

Disclosure Orders

- A disclosure order can require any person considered to have information relevant to an investigation to answer questions, provide information or to produce documents.
- Disclosure orders are currently available in the Proceeds of Crime Act 2002 (POCA) for confiscation, civil recovery and exploitation proceeds investigations. They are a powerful tool, but they cannot be used in money laundering investigations.
- The Bill will create disclosure orders for money laundering investigations and will also simplify the existing process to make it easier for law enforcement agencies to use.
- Investigators face increasingly complex investigations. Disclosure orders will give law enforcement agencies an effective, efficient and flexible means of obtaining information in an investigation, particularly in the early stages.

Background

- New legal powers and building new capabilities for law enforcement are key objectives for tackling money laundering and terrorist financing.
- A disclosure order would allow an investigator to have access to important information and documentation that might be difficult to obtain under other investigative orders or would otherwise require multiple applications to court.
- Under existing legislation, law enforcement agencies cannot use disclosure orders for money laundering investigations.
- Currently, an application for a disclosure order is made by a prosecutor on request from an appropriate officer. This is a two stage application process that adds another layer – and another agency – to the application process. The Bill will simplify this process.
- This Bill will also seek to amend the authority level for disclosure order applications. This will create a more efficient process for seeking these orders at court.
- Authority will be sought from within the investigator's own agency, but safeguards against inappropriate applications will be maintained by a stringent process overseen by a senior officer.
- Investigating officers will be able to apply for disclosure orders in confiscation and money laundering investigations.
- A court would issue the order, which may remain in force for the duration of an investigation.
- Use of the power will continue to be subject a code of practice, which will be reviewed as part of the legislative process.

Key facts

- The NCA estimates that the amount of money laundered in the UK could be up to £90 billion.
- Investigators face increasingly complex money laundering and confiscation cases. Where appropriate, a disclosure order is a very powerful and efficient means of obtaining relevant information.

“Money laundering is undoubtedly a problem in the UK, as with any established and large financial centre. If the UK is to remain the centre of global finance, this must be addressed... the success of POCA, and indeed the standing of the UK as global financial centre, is dependent on proactively and effectively tackling it”

Home Affairs Select Committee Report on Asset Recovery, July 2016



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Why do we need disclosure orders?

- Disclosure orders offer an effective, efficient and flexible means of obtaining information in an investigation, particularly in the early stages where it could prove most useful.
- Disclosure orders are already available, but investigators have been making limited use of them as the current process is complicated and resource intensive.
- Courts consider applications for disclosure orders, ensuring this measure is used appropriately.

Why is money laundering currently excluded from the range of investigations for which a disclosure may be sought?

- When POCA was enacted, it was thought that money laundering, being the only criminal investigation in the Act, should be distinct from other investigations.
- However, operational experience has shown that information gathered under other POCA orders can, with care, be used to build a money laundering investigation.
- Bringing money laundering into scope will allow this effective tool to be used in tackling serious and complex crime.

Will amending the authority level benefit confiscation investigations?

- This measure would provide officers with a more streamlined application process, thus encouraging greater use of an underused power. Disclosure orders, where appropriate, provide investigators with a powerful and flexible tool enabling more effective investigation of hidden or disguised assets.

Why seek a disclosure order when there are other orders available?

- Operational experience has shown that complex investigations often result in multiple applications to court. In the case of production orders, for example, courts may have to hear hundreds of applications over the course of an investigation.
- A disclosure order may be used repeatedly in the same investigation, thus potentially reducing the burden on the court and the investigating agency.
- A disclosure order allows an investigator to ask questions of associates or third parties which would not be possible under other orders.

Disclosure orders appear to be a powerful and intrusive tool. What safeguards exist for those subject to an order?

- An officer cannot apply for a disclosure order without the permission of a senior officer. This is a relatively high level of authorisation. Also, the application for an order is made to a court which will not grant the application unless it is satisfied that the information sought is likely to be of substantial value and that it is in the public interest for the information to be provided. Use of the power is also subject to the provisions of a code of practice. Any person/body subject to a disclosure order will have the right to apply for variation or discharge of the order.
- The safeguards within POCA will still apply. POCA provides additional safeguards such as preserving the privilege against self-incrimination and excepting privileged documents from the scope of the order.

Why does the authority level for disclosure order applications need to be amended?

- The current procedure requires the prosecutor to make an application following a request from an appropriate officer (e.g. an Accredited Financial Investigator).
- The Bill would allow for an appropriate officer – who would have greater knowledge of the investigation – to apply directly to the court.

How will this work in practice?

