

Call for Information

1. The subject of this Call for Information

In the UK Anti-Corruption Plan, published on 18 December 2014, the Government committed to carrying out a review of the suspicious activity reports (SARs) regime contained in the Proceeds of Crime Act 2002 (POCA) and the Terrorism Act 2000 by July 2015. The purpose of this review is to develop ways of better identifying money laundering and the financing of terrorism, and to prevent the movement and use of the proceeds of crime.

The Serious and Organised Crime Strategy, published in October 2013, highlighted the need for better information sharing between the Government, law enforcement agencies, and the private sector. Businesses need to understand the threat facing them from serious and organised crime in order to protect themselves from becoming a victim, and to implement a risk-based approach to detect and prevent money laundering. In recognition of the importance of this collaborative working between the public and private sector, the Home Office, Bank of England, and the Financial Conduct Authority have established the Serious and Organised Crime Financial Sector Forum. The Forum will also include collaborative working on terrorist financing going forward.

The Government recognises that the current system needs to be reviewed to improve our ability to tackle money laundering and the financing of terrorism. We want to identify how, in collaboration with partners in the regulated sector, a more efficient model can be developed that takes into account the increasing number of SARs and the demands placed upon companies and the NCA in operating the regime, and reduces the burden on businesses in complying with the reporting obligations. This Call for Information is seeking views on the ways in which the suspicious activity reports (SARs) regime could be improved, to develop ways of better identifying money laundering and terrorist financing, to streamline the reporting process, and to prevent the abuse of the UK financial system by criminals and terrorists.

Who should read this

The scope of this Call for Information is the overall operation of the SARs regime, including its legislative foundation, and the way the system operates in practice. We are seeking views on both money laundering and terrorist finance, and this Call should be read particularly by those with responsibilities under POCA or the Terrorism Act 2000 for reporting suspicious transactions, and those with responsibility for oversight or supervision of the regulated sector.

How to respond

The Home Office invites responses on the specific questions raised. The questions can be found in Section 3. This Call for Information will run from 25 February to 25 March 2015.

Please send responses to:

Email to: SARsReview@homeoffice.x.gsi.gov.uk

**Write to: The SARs Review
Home Office
6th Floor Peel
2 Marsham Street
London
SW1P 4DF**

Confidentiality

Information provided in response to this Call for Information, including personal information, may be published or disclosed in accordance with the Freedom of Information Act 2000 (FOIA). 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 and which deals, among other things, with obligations of confidentiality.

In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding.

2. Background

The UK is committed to compliance with its international law obligations in relation to anti money laundering (AML) and counter terrorism financing (CTF), under the Financial Action Task Force (FATF) Recommendations and the 4th EU anti-money laundering directive, which will give effect to those Recommendations. . These instruments require countries to put in place legislation to require reporting of suspected money laundering or the financing of terrorism, to develop and maintain Financial Intelligence Units (FIU), and to work together internationally to tackle these crimes and recover the proceeds of them. The Recommendations expect those in the regulated sector to assess customers and their transactions and report where they have suspicions of money laundering and terrorist financing; supervisors to monitor the effectiveness of the firms' compliance with AML obligations; and the FIUs to analyse and assess the SARs information and provide information on trends and threats to the reporters. The UK anti-money laundering regime and SARs regime are designed to meet these standards.

FATF will assess each country in relation to their technical compliance and effectiveness against those standards. This review will allow the UK to identify areas of good practice, and areas for improvement, ahead of the FATF mutual evaluation of the UK, which is likely to take place in 2018.

SARs play an important role in the ability of the UK to identify money laundering and the financing of terrorism. Part 7 of POCA requires a person to report to the National Crime Agency (NCA) where there are reasonable grounds to know or suspect that another person is engaged in money laundering. Although this requirement to submit SARs applies to any individual, those businesses in the "regulated sector" such as banks, other financial institutions such as money service businesses, and lawyers are obliged to report.¹

The submission of a SAR is a legal obligation. A reporter can avail themselves of a defence against committing a money-laundering offence if they seek the consent of the NCA, under section 335 of POCA, to conduct a transaction or activity about which they have suspicions. There are two possibilities for eliminating this risk - actual consent under s.335(1) or 'deemed' consent under s.335(2). The NCA has seven working days to provide a notice of refusal. If such a notice is not provided, the reporter has deemed consent. If a notice is provided, the NCA has a further 31 days to take action in relation to the transaction.

Whilst the reporter awaits the NCA's decision on consent, the activity or transaction should not proceed. Furthermore, the reporter cannot disclose to the customer the fact that a SAR has been submitted, or any other information that may prejudice the

¹ The list of regulated business sectors is held in the Money Laundering Regulations 2007

NCA's investigation into the reported activity or transaction, as doing so could constitute a 'tipping off' offence under section 333A of POCA. This can place the reporter in a difficult position in not informing the customer of the reasons for delays in their requested activity or transaction, which can in turn result in the collapse of a financial or commercial deal.

Individuals have a defence against a terrorist financing offence under section 21ZA and 21ZB of TACT 2000, if they notify the authorities of their suspicions of terrorist financing and have the consent of the authority to become involved in the transaction. Furthermore, an individual or company has a defence, if they notify the authorities as soon as reasonably practical, of a terrorist financing suspicion after a transaction takes place.

As set out in the annual SARs Report published by the NCA, the number of SARs is rising each year. In 2013/14 more than 350,000 SARs were raised, of which more than 14,000 were raised seeking consent to proceed. In the year to October 2014, 82% of SARs were raised by banks, 12% by credit or other financial institutions, and the remainder from a range of regulated organisations².

² SARs Annual Report 2014, National Crime Agency
www.nationalcrimeagency.gov.uk/publications/464-2014-sars-annual-report/file

3. Information sought

The Call for information seeks the views of respondents on the following areas

- Context
- How can money laundering and the financing of terrorism be better identified
- How can information sharing between and within sectors be improved to prevent crime and protect the regulated sector and the wider financial system
- How can SARs reporting be made more efficient?
- How can the consent regime be improved
- What can we learn from international best practice

We welcome suggestions on all of these, and also an indication of the benefits and risks that would accrue from any changes.

Context

- How would you describe the understanding that your organisation has of the SARs regime?
- How many of your staff are engaged in work to identify suspicious transactions and submit SARs?
- How many SARs did your organisation submit last year?

How can money laundering and the financing of terrorism be better identified?

- What are the current difficulties that you face in identifying and tackling money laundering and terrorist financing? Please describe the specific challenges that you face.
- What changes should be considered to the SARs regime as a whole to improve the ability of the UK to tackle these crimes?
- Looking ahead, what do you see as the future challenges for the SARs regime?
- What action could we take now to meet those challenges?

Improving information sharing

- What needs to change to improve information sharing?
- Should there be changes to the way that information is shared both within the regulated sector, and between the regulated sector, regulators and law enforcement agencies?
- What benefits would you see accruing from such changes?

- What risks do you see from any changes to the way that information is shared?
- Do you see the need for changes to allow sharing of information between private sector bodies?
- Do you believe that the balance between the tipping off provisions and the need to share information between public and private sector bodies is right?
- What outputs would you like to see being provided to you?
- What information that is held by the law enforcement agencies and regulators would be of use to the regulated sector?
- What benefits could you see from receiving information from the reporting system?
- Are the alerts useful to you?
- What are the challenges you face in sharing information internationally relating to suspicious transactions? What impact does this have? How could it be improved?
- What other groups would benefit from access to SARs? What would the benefits be of that access?

Improving the efficiency of reporting

- What do you see as the key difficulties in reporting suspicious activity?
- What improvements would you like to see to the reporting regime? Are there infrastructure or technical changes that you would like to see?
- Is the right sort of information being collected? Should the form on which SARs are made be more structured, and if so, what fields would be helpful?
- Are you able to submit reports in the way that you want? Would you like to be able to submit consent SARs on multiple or linked cases? Should there be joint reporting of SARs?

Improving the consent regime

- Are consent decisions made quickly enough? Is the information provided in consent SARs sufficient to allow a decision to be made?
- Do you believe that the consent decisions are consistent?
- If consent is refused, is the moratorium period long enough, or is it too long?

- If you have had to deal with delays in processing a transaction as the result of a consent SAR, could you provide real case examples where it is known that a transaction/deal has collapsed as a result of that delay.

International best practice

- Are there examples of best practice in other countries that the UK should consider? Are there different models for Financial Intelligence Units that the UK could learn from?
- Do you believe that international cooperation in relation to SARs could be improved, and if so, how?
- How can information exchange be improved between Financial Intelligence Units and law enforcement and other Government agencies in other countries?