

Title: Criminal Finances Act – SARs moratorium extension IA No: HO0284 RPC Reference No: RPC-3506(1)-HO Lead department or agency: Home Office Other departments or agencies: National Crime Agency	Impact Assessment (IA)			
	Date: 20-06-17			
	Stage: Enactment			
	Source of intervention: Domestic			
	Type of measure: Primary legislation			
	Contact for enquiries: public.enquiries@homeoffice.gsi.gov.uk			
RPC Opinion: GREEN				

Summary: Intervention and Options

Cost of Preferred (or more likely) Option				
Total Net Present Value	Business Net Present Value	Net cost to business per year (EANDCB in 2014 prices)	One-In, Three-Out	Business Impact Target Status
£-0.3m	£m	£m	Not in scope	Qualifying provision
What is the problem under consideration? Why is government intervention necessary? <p>The UK National Risk Assessment of money laundering and terrorist finance (NRA), published in October 2015, found that high-end money laundering into and through the UK, particularly linked to grand corruption and major fraud, is a significant threat. The suspicious activity report (SARs) regime is a critical element of the UK's response to that threat. However, law enforcement agencies often have insufficient time to respond to intelligence provided by the private sector. In complex cases, particularly where material is needed from overseas, the current moratorium period does not allow sufficient time to gather evidence and carry out the investigation. The Government has legislated to address these gaps.</p>				

What are the policy objectives and the intended effects? <p>The policy objectives are to prevent an activity taking place where a disclosure has been made reporting that the activity is suspicious in accordance with S. 338 of the Proceeds of Crime Act 2002 (POCA) whilst law enforcement gather information for the purposes of commencing either a criminal investigation or civil recovery proceedings. This includes making an application for the appropriate order restraining or freezing the assets authorised disclosure under S. 338. The policy is also intended to better utilise the regulated sector intelligence and compliance, as submitted through consent SARs. It should lead to increased disruption of money laundering.</p>

What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base) <ol style="list-style-type: none"> Do nothing. There will be no changes made to existing legislation. Legislate to permit extensions to the moratorium period for consent suspicious activity reports. (Preferred option) This will enable the moratorium period to be extended upon application by the relevant senior officer (from primarily law enforcement agencies NCA, HMRC, the police, SFO etc.) to allow the moratorium period for consent SARs to be extendable for periods of up to 31 days, up to a maximum of 186 days. This will lead to more informed decisions on investigations.

Will the policy be reviewed? It will be reviewed. If applicable, set review date: By 03/2022						
Does implementation go beyond minimum EU requirements?			N/A			
Are any of these organisations in scope?			Micro Yes	Small Yes	Medium Yes	Large Yes
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)			Traded:		Non-traded:	

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible Minister  Date: 20-06-2017

Summary: Analysis & Evidence

Policy Option 1

Description: Do nothing

FULL ECONOMIC ASSESSMENT

Price Base Year	PV Base Year	Time Period Years	Net Benefit (Present Value (PV)) (£m)		
			Low: Optional	High: Optional	Best Estimate:

COSTS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
	Low	Optional		
High	Optional		Optional	Optional
Best Estimate				

Description and scale of key monetised costs by 'main affected groups'

No change from baseline.

Other key non-monetised costs by 'main affected groups'

No change from baseline.

BENEFITS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
	Low	Optional		
High	Optional		Optional	Optional
Best Estimate				

Description and scale of key monetised benefits by 'main affected groups'

No change from baseline.

Other key non-monetised benefits by 'main affected groups'

No change from baseline.

Key assumptions/sensitivities/risks N/A	Discount rate	
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BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:			Score for Business Impact Target (qualifying provisions only) £m:
Costs:	Benefits:	Net:	

Summary: Analysis & Evidence

Policy Option 2

Description: Enhance SARs regime

FULL ECONOMIC ASSESSMENT

Price Base Year 2016	PV Base Year 2016	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: Optional	High: Optional	Best Estimate: -0.3

COSTS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	Optional		Optional	Optional
High	Optional		Optional	Optional
Best Estimate			0.03	0.30

Description and scale of key monetised costs by 'main affected groups'

Costs for Crown court hearings for granting further extensions to the moratorium period.

Other key non-monetised costs by 'main affected groups'

Banks may incur a reputational risk in addition to a time delays.
There is space for legitimate transactions conducted by individuals to face delays in completion.

BENEFITS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	Optional		Optional	Optional
High	Optional		Optional	Optional
Best Estimate				

Description and scale of key monetised benefits by 'main affected groups'

None

Other key non-monetised benefits by 'main affected groups'

Give law enforcement sufficient time to reach the restraint stage, leading to potentially millions of pounds of criminal assets identified in the SARs to be restrained.

Key assumptions/sensitivities/risks

Discount rate 3.5%

The number of extensions to the moratorium period is estimated to be 173 per year. This is based on the SARS Annual Report 2015, which is produced by the NCA.

BUSINESS ASSESSMENT (Option 2)

Direct impact on business (Equivalent Annual) £m:			Score for Business Impact Target (qualifying provisions only) £m:
Costs:	Benefits:	Net:	

Evidence Base (for summary sheets)

A. Strategic Overview

A.1 Background

1. Financial profit is the driver for almost all serious and organised crime, and other lower-level acquisitive crime. The UK drugs trade is estimated to generate revenues of nearly £4bn each year and HMRC estimate that over £5bn was lost to attacks against the tax system in 2012/13. Criminals launder their money – moving, using and hiding the proceeds of crime – to fund their lifestyles and to reinvest in their criminal enterprises. The best available estimate¹ of the amounts laundered globally are equivalent to 2.7% of global GDP, or US\$1.6 trillion in 2009, while the National Crime Agency (NCA) assesses that billions of pounds of proceeds of international corruption are laundered into or through the UK. This threatens the integrity and reputation of our financial markets.
2. In October 2015, the Government published the National Risk Assessment for Money Laundering and Terrorist Financing (NRA), identifying a number of risks and areas where the regimes that combat those threats could be strengthened. The Action Plan for anti-money laundering and counter-terrorist finance, published in April 2016, contained a range of measures to build on the UK's risk-based approach to addressing these areas. The Criminal Finances Act is a core part of our approach to achieving that objective.
3. POCA contains three money laundering offences, relating to: concealing criminal property (s327); entering into arrangements to facilitate the acquisition, retention, or use or control of criminal property (s328); and the acquisition, use and possession of criminal property (s329).
4. These offences are drawn much more widely than required by the Financial Action Task Force (FATF), which sets international standards on anti-money laundering and counter financing of terrorism), the relevant UN conventions and EU directives. In particular, the minimal mental element in the offences (founded on mere suspicion that property is or represents a person's benefit from criminal conduct) and the lack of any requirement for criminal intent creates the risk of unintentional commission of the offences by innocent people. In recognition of this fact, the offences include a statutory defence which can be obtained by any person by making an authorised disclosure to the NCA and obtaining consent. These are commonly referred to as 'consent SARs' (consent Suspicious Activity Reports).
5. 'Consent SARs' are different to and separate from the requirement to report suspicion that another person is engaged in money laundering, contained in s330 POCA. S330 which applies to the regulated sector only. There were about 380,000 SARs 2014/2015, of which about 15,000 were consent SARs.

A.2 Groups Affected

6. The groups affected by this legislation include:
 - Law enforcement agencies, including the NCA, territorial police forces, the Serious Fraud Office (SFO), and other prosecuting authorities.
 - Entities in the regulated sectors i.e. banks, accountancy firms, lawyers, estate agents.
 - Regulatory bodies, such as the Financial Conduct Authority (FCA).
 - The Criminal Justice System including HM Courts and Tribunals Service;
 - Overseas Governments and other international bodies, such as the FATF.
 - The general public, whose safety and security is impacted by the threat of serious and organised criminals.

A.3 Consultation

¹ *Estimating illicit financial flows resulting from drug trafficking and other transnational organized crimes*, UNODC 2011

Within Government

7. We have consulted with the NCA, police forces, the Crown Prosecution Service (CPS), the SFO and HM Revenue and Customs (HMRC).

Public Consultation

8. The public consultation took place through the Action Plan for anti-money laundering and counter-terrorist finance, which was published on 21 April 2016, with the consultation finishing on 2 June 2016. A Government response was published alongside the Bill in October 2016.
9. We have also consulted further with banks on the detail of the proposals.
10. Following the introduction of the Bill, consultation with law enforcement agencies and the regulated sector was maintained to ensure that they could continue to provide their views and shape this measure during the Bill's passage.

B. Rationale

11. The Consent SAR regime provided the NCA and other law enforcement agencies with a moratorium period of 31 calendar days, during which they can investigate whether money laundering is taking place. In complex cases, and particularly where there was a need to obtain evidence from overseas, the moratorium period did not allow LEAs sufficient time to gather evidence and carry out the investigation to the stage where they were able to apply for restraint, a property freezing order, or secure that other actions are taken.

C. Objectives

12. The policy objective is to prevent activity taking place where a disclosure has been made on suspicious activity, in accordance with S. 338 of POCA, before law enforcement agencies have had sufficient time to investigate that suspicion.
13. The policy is also intended to better utilise the regulated sector intelligence and compliance, as submitted through consent SARs. The policy should lead to increased disruption of money laundering.

D. Options

14. The following options have been considered:

- Option 1 is to make no changes (do nothing).
- Option 2 is to legislate. This is the preferred option. Enhance the SAR regime, through an extension to the investigative period (i.e. the 'moratorium' period) where law enforcement can investigate a SAR prior to consent being granted. This will be a renewable period of up to 31 days, for a maximum period of 186 days.

Further information on the preferred option

15. The trigger for the extension is that the law enforcement agency (LEA) has determined that their investigation cannot be completed within the existing moratorium timeframe. They will need to be able to demonstrate to the court that the extension will allow the LEA to take the investigation forward. The application can be made by any Constable or Customs Officer or SFO, NCA, Crown Office or FCA officer at a senior rank.

16. The LEA will be required to show that the activity or the entity responsible for the activity is under active investigation, and that action is being taken. This could include providing the court with the details of a Mutual Legal Assistance request, and the reasons why the moratorium period needs to be extended.
17. The LEA can apply to the Crown Court for approval to extend the moratorium, for up to 31 additional days. This may be repeated up to a maximum of 186 days from the date of the end of the initial 31 day moratorium period. Only one extension period of up to 31 days can be sought at any one time.
18. The Officer making the application must notify the reporter and the party or parties to whom it reasonably appears to the officer have an interest in the property to which the moratorium extension application relates. This will avoid the situation where the regulated sector business received reputational or legal costs from action by the originator.
19. The effect of this change is to allow law enforcement to continue investigating the activity they believe to be suspicious, but otherwise the regime remains the same.

E. Appraisal (Costs and Benefits)

GENERAL ASSUMPTIONS & DATA

20. The SARs Annual Report 2015, produced by the NCA, reports the following volumes of SARs, consent SARs, and other data.

Key statistics	Oct 2014 to Sept 2015		Oct 2013 to Sept 2014	
Total SARs	381,882		354,186	
Consent SARs	14,672		14,155	
Consent SARs refused (and %)	1,374	9.40%	1,632	11.50%

21. It is estimated that 10.5% of refused consent SARs cannot be taken forward because the moratorium period is too short – amounting to 144 cases per year.² It is further estimated that there will be 173 extensions per year, since some cases may be extended multiple times. The proportion of cases that are extended multiple times is subject to particular uncertainty.

OPTION 2 – extendable moratorium period

COSTS

22. There will be ongoing costs for Crown court hearings to grant further extensions. The yearly volume of cases used have been as calculated above, resulting in an estimated 173 extensions per year. Discussions with MoJ officials suggest a variable cost of approximately £450 per hour of Crown Court sitting time. Policy colleagues have estimated that each extension will be on average half an hour long, giving a cost per extension of £225. This gives an annual cost of £38,925 or cost of £0.3m in present value over 10 years.
23. There are not expected to be costs to the private sector. The consent SAR mechanism is already in place and regulated sector businesses are already familiar with the process. The extensions will place no new burden or ask business to do something they do not already do; the difference will be the length of time regulated sector businesses may be asked to not proceed with activity. Section F on risks deals with what may have been costs to the sector but which are removed through the policy design, namely reputational or legal costs.
24. There is a risk that ongoing costs may be imposed on legitimate transactions via delays caused by extensions. However, this has been mitigated through the creation of a strict threshold which consists

² The proportion is based on an NCA review on reasons that refused consent SARs are not progressed to restrained stage over a 5 month period, covering a sample of cases.

of various requirements that must be fulfilled in order for an extension to be granted. The specifics of these requirements are set out within the Enforcement section below.

BENEFITS

- 25. Extensions will make better use of intelligence flowing from the reporting sector to law enforcement, the period will allow law enforcement sufficient time to reach the restraint stage. There are case studies, below, evidencing the amounts that are not restrained due to the moratorium period elapsing to be in the millions. For these cases, the benefits in money restrained are likely to outweigh the cost of pursuing court-granted extensions.
- 26. This is estimated from a 5 month sample of cases that failed to reach the restraint order stage due to the length of the moratorium period. Over the 5 month period, £102.7 million was potentially available to use by the subjects of those requests including corrupt PEPs, drug traffickers, fraudsters and human traffickers.³ This is based on a sample of cases, implying the total amount that could be restrained over a 12 month period may be higher, although the actual amount recovered will depend on successful LEA action.

1. Sub-Saharan Africa

In July 2015, the NCA refused four consent SARs totalling over €9m connected to alleged corruption in a country in sub-Saharan Africa. The NCA disseminated the intelligence to partners including the country where the corruption was alleged to have taken place. Nothing further was heard from the African state, but there was interest from two European jurisdictions, both of which were impacted by the case. The NCA engaged extensively with both countries and one sent an international letter of request (ILoR) to the UK to request restraint of the assets. Unfortunately, the ILoR was not of sufficient quality to support the grant of a restraint order and the moratorium period expired before the ILoR could be amended to meet the standard demanded by UK courts. As a result consent was granted by default after 31 days.

2. Caucasus

In June 2016, consent was sought in relation to an individual who is under investigation in a country in the Caucasus. This particular consent SAR related to transactions totalling c£1.25m. The NCA liaised extensively with the relevant national authorities via our international liaison officer in Turkey and also directly when they visited London, where they sought further help and assistance in compiling an ILoR. Despite this close liaison, the authorities were unable to submit an ILoR within the 31 day period. As a result consent was granted by default after 31 days.

BUSINESS IMPACT TARGET

- 27. There are no direct costs or benefits to business from these measures.

SMALL AND MICRO BUSINESS ASSESSMENT

- 28. Small and micro businesses make up the vast majority of the regulated sector by number of businesses. There will therefore likely be small and micro businesses who constitute the reporter for a consent SAR, and similarly, there may be occasions when law enforcement needs more time to

³ Internal NCA review.

assess the correct decision. It would not be appropriate to exclude small and micro businesses from this measure since this would disrupt the policy aim of allowing sufficient time for law enforcement to make a decision, on potentially quite important cases. The measure will not cause additional burden for compliant businesses.

F. Risks

OPTION 2 – extendable moratorium period

29. There is a risk that regulated sector entities who do not process the activity are subject to civil liability. The current policy covers this risk. Regulated sector entities will have legal cover for complying with law enforcement agencies.
30. There is a risk that regulated sector entities suffer reputational loss due to the delay in processing activity. If they are unable to explain to their clients the reason for the delay, since doing so may constitute a tipping off offence, firms will lose reputation for conducting timely business. The current policy covers this risk, in the main. It is proposed that at the first extension, where the hearing is held inter partes, the originator of the activity will be informed about the law enforcement action.
31. There is a risk that the estimated 173 estimated extensions per annum may be larger in reality. This may be to an extent to which the courts and LEA will have too many to administrate, leading to a 'clogging up' within the system.

G. Enforcement

32. This is not a regulatory measure. As under the current consent regime, the moratorium extension would only apply in cases where under S. 335 of the Proceeds of Crime Act, the appropriate Officer may give consent to the carrying out of a 'prohibited act' (i.e. the acts mention in 327(1), 328(1) or 329(1) of POCA) within a 'notice period' of 7 days of receipt of the authorised disclosure. In order to apply for a moratorium extension, a Constable or Customs Officer at a senior rank would need to apply to a judge for an extension to the moratorium period. The Crown Court (in England & Wales and Northern Ireland) and the High Court of Justiciary (in Scotland) would have the power to grant the moratorium where an investigation is being undertaken expeditiously in relation to those suspicions for the purpose of determining whether there is sufficient evidence to undertake further action under POCA 2002 (including confiscation, civil recovery action and use of Part 8 investigation powers). Law enforcement would also need to demonstrate that further time is required in order to allow the investigating officer to obtain material necessary for those purposes, and that the extension of the moratorium period is proportionate in all the circumstances of the case.
33. In all cases the extension hearing will be held inter partes. There will be a procedure under which application could be made to the Judge to exclude information to be relied upon in the proceedings from one or more of the parties and their representatives. This should also provide for the potential for one or more of the parties being excluded from any part of the hearing at which such information would be under consideration at the Hearing. We will specify the grounds on which a Judge may exercise his discretion to exclude material.
34. In order to develop this policy we consulted with a number of stakeholders and a public consultation took place through the Action Plan for anti-money laundering and counter-terrorist finance, which was published on 21 April 2016, with the consultation finishing on 2 June 2016.

H. Summary and Recommendations

35. Option 2 is preferred. It achieves the policy objectives and can provide useful tools to law enforcement to tackle money laundering.

I. Implementation

36. The powers will be commenced by order subject to operational needs and the passage of any necessary secondary legislation/publication of statutory guidance. Where appropriate, this will be on a common commencement date.

J. Monitoring and Evaluation

37. This is not a new power but an extension of an existing power. The NCA, who we believe will be the main user of the extension power, will monitor their usage of the power; which the Home Office will evaluate.

K. Feedback

38. Feedback will be delivered from the regulated sector to their supervisors, and through existing supervisory groups to the Money Laundering Advisory Committee. Feedback will also be sought through the Financial Sector Forum; which is jointly chaired by the Home Office, the NCA and the British Banking Association.