

# Money Laundering Law Changes

David Winch, May 2006

**Changes to the law relating to money laundering and reporting of suspicions have now been introduced. The changes involve some amendment to virtually every section of Part 7, Proceeds of Crime Act 2002 (sections 327 - 340) which has caused so much consternation to the financial and legal sectors.**

Some of these changes remove absurdities in the existing legislation. These changes will no doubt be welcome.

Other changes will impose additional requirements.

However the most obvious feature of the proposals is what they do not contain.

In short they could be described as 'The Good, The Bad and The Missing'.

These changes are incorporated in the Serious Organised Crime and Police Act 2005. The Act created the Serious Organised Crime Agency (SOCA) which replaced the National Criminal Intelligence Service (NCIS) in April 2006. However the money laundering changes in the Act came into force on dates from July 2005 to May 2006.

The Act is a major piece of legislation. Sir Stephen Lander, Chair of SOCA, has said: "This is one of the biggest changes in UK law enforcement since the 1960s". Like other legislation before it, the title of the Act fails to explain the breadth of its scope. The Act is not only concerned with 'serious organised crime' but has an impact on most criminal law cases in the UK as well as bringing in a rag-bag of other changes to the law.

## **The good**

Tidying up of the earlier legislation has removed the requirement to report where neither the identity of the suspect nor the whereabouts of the laundered property are known and the report would be unlikely to assist the authorities to uncover these. For example where a shopkeeper client informs his accountant that he has been a victim of shoplifting by unknown persons, a report of this is no longer required. Section 330 Proceeds of Crime Act 2002 (PoCA) has been amended in this connection. So the auditors of Tesco, Sainsbury's and the like now have one less chore to perform!

Another absurdity which is removed (at least to some extent) is that PoCA 2002 required an activity which would be illegal if undertaken within the UK to be deemed criminal even if it were in fact legal in the country in which it was undertaken. So, for example, the legitimate earnings of a Spanish bullfighter were to be regarded as criminal property simply because, within the UK, such bullfighting would have been an illegal activity.

A number of amendments to the principal money laundering offences in sections 327 - 332 PoCA 2002 are made by the new Act to deal with this. However a report is still required where the conduct, had in occurred in the UK, could have been punishable by a term of imprisonment exceeding 12 months (with a few specified exceptions).

An anomaly in the 2002 legislation provided a legal privilege exemption for a lawyer in certain circumstances but no corresponding reporting exemption for his money laundering reporting officer (MLRO). An amendment to section 331 PoCA 2002 now provides this.

The Proceeds of Crime Act 2002 and Money Laundering Regulations (Amendment) Order 2006 has further amended the legislation to clarify the scope of the legal professional privilege exemption under section 330 PoCA 2002 and Regulation 7 MLR 2003. The exemption from the obligation to report to SOCA information received in certain defined circumstances covers solicitors and barristers, and certain qualified accountants, auditors and tax advisers, and their partners and employees.

### **The bad**

Major changes to UK proceeds of crime law came into effect as recently as March 2004 with the introduction of the Money Laundering Regulations 2003 and the wholesale amendment of Schedule 9 of PoCA 2002, which brought the provision of accountancy and insolvency services, tax advice, certain legal services and estate agency within the 'regulated sector'. Little more than a year earlier the bulk of the provisions of the PoCA 2002 had come into effect in February 2003. Further changes to the law in this area so soon are unlikely to be welcome.

However it seems that already the application of the earlier law in practice has revealed that it does not operate entirely as the lawmakers would wish.

One perceived problem with the existing law is the propensity of lawyers in particular to write letters rather than fill in complex and cumbersome forms when reporting their suspicions of money laundering. At present the use of the official forms is optional. SOCA enters the information which it receives into a database. Information from the official forms can be scanned and transferred to the database in two minutes per report on average using optical character recognition technology. Extracting and transferring the relevant information from a letter typically takes 45 minutes.

The new Act contains amendments to sections 334 and 339 PoCA 2002 which will make the use of the official forms mandatory and impose fines for failure to use them without reasonable excuse. As the mandatory forms have not yet been issued this requirement remains effectively in abeyance for the time being.

The authorities are also proposing to make it mandatory for reports to be submitted to SOCA in a prescribed manner in future. It is anticipated that submission electronically or by post or fax will be permitted.

Further amendments require that reports of suspicions shall include, where these are known to the reporter, details of the identity of the person suspected of money laundering and the whereabouts of the laundered property.

Intriguingly, perhaps alarmingly, the Act contains a power for the Secretary of State to amend any Act of Parliament by Statutory Instrument where he considers it appropriate for the general purposes of the new Act. So if the government finds it still has not got it right it will not have the bother of bringing primary legislation before Parliament in order to make yet more changes.

### **The missing**

Reporters will be disappointed, but not surprised, to find that many of their concerns are not addressed in the new Act.

There is a requirement that suspicions of tax evasion be reported to SOCA even where the reporter has already supplied all the information to the H M Revenue and Customs. There is no mention of removing this pointless requirement in the new Act.

Again, there is no proposal to exempt the reporter from an obligation to report to SOCA information which he knows has already been reported to the authorities by another source. For example, should one learn in the course of preparing accounts for a client who is a butcher that he is being prosecuted for selling meat unfit for human consumption, it remains necessary to report to SOCA one's suspicion that he may have committed the offence (presumably there will be reasonable grounds for suspicion if the butcher is being prosecuted).

A welcome amendment would enable 'passporting' of identification, so that if, say, a bank manager introduces a customer of his to you as a prospective new client (whom the bank will have already identified) you would not be required to identify the prospective client all over again. No sign of this either!

### **De minimis introduced**

Perhaps the most galling amendment is the one which introduces a de minimis threshold by way of a new section 339A inserted into PoCA 2002.

The new section permits banks and similar businesses, referred to as 'deposit takers', to allow the operation of customer accounts holding suspected proceeds of crime so long as these operations do not involve an amount exceeding £250 (or any higher amount which may be authorised either generally or specifically).

However there is no proposal to extend the exemption to cover the obligation to report suspicions of trivial criminal offences. So although banks will be allowed to permit the operation of such accounts they will remain under an obligation to report their suspicions in relation to them. Accountants and other professional advisers will also remain under an obligation to report suspicions of the most trivial offences.

### **SOCA online filing and acknowledgements**

SOCA has recently unveiled online filing of suspicious activity reports via its website [www.soca.gov.uk](http://www.soca.gov.uk). Reports filed in this way receive an automated acknowledgement. SOCA has indicated that it will not normally acknowledge reports submitted by fax or post, unless consent has been requested for an otherwise 'prohibited act'.

**David Winch is a forensic accountant specialising in white collar crime including theft, fraud, false accounting, evasion of taxes and duties, drug trafficking, Companies Act offences, money laundering, and associated confiscation, forfeiture and disqualification proceedings, a director of Accounting Evidence Ltd and MLRO Support Ltd, and a co-author of *Money laundering for lawyers: the new requirements and their practical implications* (Butterworths, 2004).**

Accounting Evidence Ltd  
Well House  
Broughton in Furness  
Cumbria LA20 6HS

Tel: 01229 716651

Web: [www.accountingevidence.com](http://www.accountingevidence.com)

Email: [info@accountingevidence.com](mailto:info@accountingevidence.com)

#### Copyright

This document is copyright. However the copyright holder gives permission for this document to be freely copied or distributed with full acknowledgement of its source provided that either the document is copied and distributed in its entirety or that a part or parts not exceeding 200 words is copied or distributed.

#### Disclaimer

This document has been issued by Accounting Evidence Limited. The information in this document is of a general nature and is no substitute for legal or professional advice specific to your circumstances or query. No responsibility can be accepted for any losses (of any nature) arising from reliance on statements, opinions or advice contained in this document.

Legal rights and responsibilities change over time. This document is based on our understanding of the law of England at the time it was written.

This document is provided by Accounting Evidence Ltd and is not the personal responsibility of any director or employee of the company, whether or not it is written in the first person singular or signed by (or on behalf of) an individual or an officer of the company. No personal responsibility is assumed for the advice provided.

© Accounting Evidence Ltd 2006