

Updating provisions in the Proceeds of Crime Act 2002 and Anti-Terrorism, Crime and Security Act 2001: Payment and E-Money Institutions

1. Problems Under Consideration

- 1.1 The Proceeds of Crime Act 2002 (POCA) and the Terrorism Act 2000 require persons working in the regulated sector to submit a Suspicious Activity Report in respect to information that they receive in the course of their business if they know, or suspect or have reasonable grounds to suspect that a person is engaged in or is attempting money laundering or terrorist financing. Financial services firms are regulated by POCA and the Terrorism Act 2000 and therefore fall under the scope of this obligation. Firms that fail to report suspicious activity and facilitate money laundering could be guilty of an offence.
- 1.2 An authorised disclosure, more commonly referred to as a Defence Against Money Laundering (DAML) SAR, can be submitted to the National Crime Agency (NCA) if a firm suspects that proceeding with a transaction risks them committing a principal money laundering offence under POCA. If the reporting firm gets consent, then it does not commit a principal money laundering offence in POCA when dealing with that transaction in a way that is covered by the consent.
- 1.3 POCA includes provisions for banks and deposit-taking bodies when dealing with transactions where there is suspicion of money laundering if the transaction amount is below £250. Other amounts can be negotiated with the NCA on a case by case basis.
- 1.4 This exemption only applies to banks and deposit-taking bodies. It does not apply to payment institutions and e-money institutions (payment service providers authorised or registered under the Payment Services Regulations 2017 or Electronic Money Regulations 2011 respectively, henceforth referred to as “payment and e-money institutions”). Therefore, payment and e-money institutions operating in the UK (currently estimated to be around 1000 businesses) are required to submit DAMLs for all transactions where there is suspicion of money laundering in order to avoid committing one of the principal money laundering offences, regardless of the amount.
- 1.5 Separately, the Criminal Finances Act 2017 created new account freezing and account forfeiture powers under POCA and the Anti-Terrorism, Crime and Security Act 2001 (ATCSA). These powers enable certain law enforcement officers to apply for an account freezing order (AFO) to freeze a bank or building society account if there is reason to believe that funds present in the account are the proceeds of crime or that the funds are intended by any person for use in unlawful conduct (for example acts relating to terrorism). Once the funds are subject to an AFO, then law enforcement may seek to have them forfeited. AFOs, and subsequent forfeitures, can be used to quickly deny access to funds in cases where it may not be feasible or preferable to undertake a criminal investigation into the holder. Currently, these powers can only be exercised in respect of accounts held at banks and building societies, and as such, funds in accounts held at payment and e-money institutions cannot be frozen using POCA and ATCSA provisions.

2. Rationale for Intervention

- 2.1 The volume of DAMLs received by the NCA has grown substantially with over 62,400 DAML requests received in 2019/2020 (an increase of over 80% from the previous year). This increase has been predominantly driven by the rapidly growing number of DAMLs being requested by payment and e-money institutions. This rapid growth in requests is placing significant resourcing pressures on the firms themselves, their customers, and law enforcement. Further, these requests are often for small amounts and of limited use to law enforcement. By extending the existing DAML exemption for transactions under £250 to apply to payments and e-money institutions, fewer low value DAMLs are likely to be submitted, resulting in reduced compliance burdens on firms and helping to reduce the resource burden on law enforcement.
- 2.2 Currently, the account freezing and forfeiture provisions of POCA and ATCSA only apply to accounts held at banks and building societies. Extending the provisions to apply to accounts held at payments and e-money institutions would prevent this anomaly being exploited by criminals to avoid their funds being frozen and subsequently forfeited using these nimble and effective law enforcement tools.

3. Policy Objective

- 3.1 This measure seeks to reduce the number of low value DAMLs submitted to the NCA by payments and e-money institutions. This measure also aims to reduce the compliance burden on payments and e-money institutions as well as the resource burden on the NCA, reducing the resourcing impact on the NCA, allowing them to focus on high value activities.
- 3.2 The measure will also bring accounts held at payments and e-money institutions in scope of the account freezing and forfeiture powers of POCA and ATCSA, allowing for law enforcement to quickly deny access to funds that are suspected of being the proceeds of crime, or used to fund criminality.

4. Description of Options Considered

- 4.1 **Option 0: Do nothing.** This option would result in the number of DAMLs submitted to the NCA by payments and e-money institutions increasing as the sector continues to grow. This would lead to an increased compliance burden on payments and e-money institutions as well as an increased resource burden on the NCA, reducing the NCA's capacity to investigate crime. This scenario would also result in law enforcement being unable to freeze and forfeit funds held by suspected criminals if the funds are held at a payment and e-money institution, allowing criminals to potentially exploit this anomaly.
- 4.2 **Option 1 (preferred option).** POCA will be amended to bring payments and e-money institutions in scope of the £250 DAML threshold exemption. This would reduce the number of low value DAMLs submitted to the NCA and help to free up law enforcement resource. This option would also extend the account freezing and forfeiture provisions in POCA and ATCSA to include payments and e-money institutions, allowing law enforcement to freeze the funds of

suspected criminals held in these accounts. This would also prevent criminals from exploiting the current anomaly.

5. Policy Outline

- 5.1 POCA provides the statutory basis for money laundering offences in the UK as well as the statutory basis for asset freezing, confiscation and civil recovery in the context of criminal finance. In regard to asset freezing and forfeiture, ATCSA provides for equivalent regimes in the context of terrorism financing.
- 5.2 The measure will amend POCA to extend the £250 DAML threshold provision to payment and e-money institutions. This will allow these businesses to process transactions below £250 where there is a suspicion of money laundering without submitting a DAML and without committing one of the money laundering offences in respect of these transactions.
- 5.3 The measure will also amend POCA and ATCSA so that accounts maintained by payment and e-money institutions are made subject to the powers in Chapter 3B of Part 5 of POCA and Part 4B of Schedule 1 to ACTSA. As such, funds held in payment and e-money institutions will now be subject to powers such as AFOs account freezing orders.

6. Policy Benefits: Summarise key benefits.

- 6.1 This policy will result in a positive overall impact on the public sector (in particular law enforcement) by reducing resource required to respond to and process law utility DAMLs. This reduction in resource requirement will also provide the opportunity for law enforcement to rebalance the resource used to process low value DAMLs towards high value activities such as crime prevention and investigation.
- 6.2 In addition to public sector benefits, this policy will also provide benefits to payments and e-money institutions through a reduced compliance burden as they are no longer required to submit low value DAMLs, equalising the treatment of these institutions with banks and deposit-taking bodies.
- 6.3 A total of 62,400 DAMLs were submitted to the NCA in 2019/2020. Recent DAML analysis has identified that 34% of the DAML sample analysed were DAMLs submitted for values under £250. By expanding this sample to all DAMLs submitted in 2019/2020, some 21,216 DAMLs would fall into the category of below £250. Almost all of these DAMLs are exclusively reported by payments and e-money institutions. Therefore, an estimated 20,000 fewer DAMLs may be submitted each year due to the proposed measure. The reduction in DAMLs is expected to be larger in the future due to the continued growth of the payments and e-money institutions sector.
- 6.4 This measure will also allow law enforcement to freeze and forfeit funds held in payments and e-money institutions, preventing criminals from exploiting this anomaly and protecting victims of economic crime. By extending these provisions to allow for the quick and effective freezing of

funds, law enforcement resource will be saved as they will not be required to pursue alternative options which place a higher resource burden on law enforcement and the courts

7. Policy Costs

7.1 There are expected to be minimal familiarisation costs for payments and e-money institutions in respect to the £250 DAML threshold change as the procedure to submit a DAML is one that those in the regulated sector are already familiar with. In theory, fewer DAMLS being submitted by payments and e-money institutions may result in potential missed opportunities for law enforcement to take action against suspected proceeds of crime. However, the DAMLS that payment and e-money institutions will no longer be required to submit are currently very rarely refused by law enforcement due to their low value. Therefore, the policy change will unlikely make a significant impact in this regard. Reduced submission of DAMLS that are of limited use to law enforcement enables prioritisation of higher priority activities.

7.2 The extension of the account freezing, and forfeiture provisions are unlikely to add significant costs to law enforcement as evidence indicates that large numbers of law enforcement agencies were already applying for AFOs for payments and e-money institutions and thus this can be considered a continuation of existing behaviour. This measure may potentially lead to an increase in court time and cost as more AFOs are applied for against accounts held at payments and e-money institutions although this is expected to be low as many law enforcement agencies were already applying for AFOs for payments and e-money institutions. However, it is likely that law enforcement will not increase their capacity to take on more account freezing and forfeiture orders, rather re-prioritising caseloads in light of this legislative change. Therefore, the cost for the AFO regime remains unchanged.

8. Small and MicroBusiness Assessment (SaMBA)

8.1 The measures set out in this measure apply to all payments and e-money institutions, including small payments and e-money institutions, which may fall within the definition of a small business. Additionally, the provisions of POCA and ATCSA apply to all those in the AML regulated sector, regardless of size, therefore this measure will also apply to small and microbusinesses. However, this measure will not negatively impact small and microbusinesses and will instead reduce compliance burdens for payments and e-money institutions of any size, by enabling them to no longer submit a DAML for transactions suspected of money laundering under £250.

9. Wider Impacts

9.1 There are no wider impacts associated with this measure.

10. Summary

10.1 This measure will extend the £250 DAML threshold exemption in POCA to include payments and e-money institutions in its scope. This measure will also extend account freezing and forfeiture provisions of POCA and ATCSA to include accounts held at payments and e-money

institutions, allowing for law enforcement to quickly and effectively freeze suspected criminal funds.