

Economic Crime reform - Financial Services Bill

Executive summary

- Outdated definitions in the Proceeds of Crime Act (POCA) 2002 are disadvantaging fintechs and their customers, placing unnecessary pressure on law enforcement, and could allow suspected criminals to avoid complying with investigations.
- There is considerable support for updating the definitions in POCA to reflect the growth of fintech - POCA was drafted before the sector existed - but unfortunately legislative proposals have not been forthcoming.
- The problems are getting exponentially worse because the fintech sector is continuing to grow. The UK cannot wait years for this change to be enacted. The fintech sector is therefore calling for the change to be introduced through a simple, highly targeted and uncontroversial amendment to the Financial Services Bill.
- The Bill was [introduced to](#) “boost competitiveness of UK financial services” and to “ensure [the] sector delivers for consumers and businesses”. The Bill already has a [section](#) relating to money laundering so the amendment is firmly within scope.

Proposed amendment

To move the following Clause —

Money laundering: electronic money institutions

(1) The Proceeds of Crime Act 2002 (c. 29) is amended as follows.

*(2) In section [303Z1](#)(1) after “bank” insert
“, authorised electronic money institution”*

*(3) In section [303Z1](#)(6) after “Building Societies Act 1986” insert
“Authorised electronic money institution has the same meaning as in the
Electronic Money Regulations 2011”*

*(4) In section [340](#)(14)(b) after “Bank” insert
“, or
(c) a business which engages in the activity of issuing electronic money”*

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Defence Against Money Laundering reform

- POCA 2002 requires regulated firms to submit Suspicious Activity Reports (SARs) to the National Crime Agency (NCA) every time a firm knows or suspects that a person is engaged in money laundering, regardless of the sums involved. Fintechs are not seeking a change to the SARs regime.
- POCA also requires regulated firms to request a legal defence from the NCA, a Defence Against Money Laundering (DAML), to carry out an activity that would normally be illegal. E.g. transferring a suspicious customer's balance back to its source. DAMLs take 2 weeks to process. During this period, firms cannot communicate with customers or allow them to withdraw their funds.
- An exemption drafted in 2005 means that traditional banks do not need to request a DAML if the transaction they intend to carry out is below £250. Electronic money institutions are required to request DAMLs for all transactions regardless of value, e.g. £2.50.
- Exponential growth in the fintech sector and an inability to use the £250 exemption means that the number of DAMLs has grown from c. 15,000 in 2016 to c. 65,000 in 2019. This number will continue to grow until the exemption is extended to EMIs.
- This exponential growth is placing [significant pressures](#) on fintechs, customers and law enforcement. For example, the NCA's IT systems have struggled to cope with the volumes and resources are being diverted away from fighting economic crime to dealing with administration.
- The proposed amendment would extend the definition of a deposit taking body to include electronic money institutions in the context of the DAML regime.

Account Freezing Order reform

- POCA includes provisions that enable law enforcement agencies to freeze and forfeit funds held in UK bank accounts where there are reasonable grounds for suspecting that those funds are the proceeds of crime.
- In order to freeze funds in an account, a senior law enforcement officer has to apply to the Courts for an Account Freezing Order (AFO).
- Under POCA, AFOs can only be used to freeze funds held in "bank" or "building society" accounts. Technically AFOs can not be used to freeze funds held in fintech accounts. There is a significant risk that criminals will exploit this loophole to avoid complying with AFOs.
- The proposed amendment would update the definitions in POCA meaning that law enforcement could use AFOs to freeze funds held in fintech accounts.