

Money Laundering and the Proceeds of Crime

The government has recently introduced tough new rules to crack down on money laundering and the proceeds of crime. The new rules affect a wide range of people and in this bulletin we consider how your organisation may be affected.

Money laundering - significant changes to what this means

Most of us imagine money launderers to be criminals involved in drug trafficking or terrorism or to be someone like Al Capone. However new legislation has expanded significantly the definition of what we might have traditionally considered as money laundering. While the general principles remain; money laundering involves turning the proceeds of crime into apparently 'innocent' funds with no obvious link to their criminal origins, what has changed is that the definition now includes the proceeds of any criminal offence, regardless of the amount involved.

The new legislation and why it has been introduced

The two key pieces of legislation are the Proceeds of Crime Act 2002 (The Act) and the Money Laundering Regulations 2003 (The Regulations). The Act re-defines money laundering and the money laundering offences, and creates new mechanisms for investigating and recovering the proceeds of crime. The Act also revises and consolidates the requirement for those affected to report knowledge, suspicion or reasonable grounds to suspect money laundering. See the panel above right for some of the more technical terms of the Act. The Regulations contain the detailed procedural requirements for those affected by the legislation. In the main, the new Regulations come into force on 1 March 2004.

Certain businesses have been affected by anti-money laundering requirements for some time, for example, banks and other financial institutions. These businesses have been required to put in place specific arrangements to prevent and detect money laundering. The new regime requires many more businesses to introduce procedures to combat money laundering and the criminal activity that underlies it. As money launderers have resorted to more sophisticated ways of disguising the source of their funds, new legislation aimed at catching those involved has become necessary.

Technical terms

Under the Act, someone is engaged in money laundering if they:

- conceal, disguise, convert, transfer or remove (from the United Kingdom) criminal property
- enter into or become concerned in an arrangement which they know or suspect facilitates (by whatever means) the acquisition, retention, use or control of criminal property by or on behalf of another person or
- acquire, use or have possession of criminal property.

Property is criminal property if it:

- constitutes a person's benefit in whole or in part (including pecuniary and proprietary benefit) from criminal conduct or
- represents such a benefit directly or indirectly, in whole or in part and
- the alleged offender knows or suspects that it constitutes or represents such a benefit.

Who is caught by the new legislation?

The legislation relates to anyone in what is termed as the 'regulated sector', which includes but is not limited to:

- accountants and auditors
- tax advisers
- dealers in high value goods (including auctioneers) whenever a transaction involves accepting a total cash payment equivalent to €15,000 (around £10,000) or more
- casinos
- estate agents
- some management consultancy services
- company formation agents
- insolvency practitioners
- legal advisers
- bureau de change.

continued overleaf



The implications of being in the regulated sector

Those businesses that fall within the definition are now required to establish procedures to:

- confirm the identity of new clients
- appoint a Money Laundering Nominated Officer (MLNO) to whom money laundering reports must be made
- establish systems and procedures to forestall and prevent money laundering and
- provide relevant individuals with training on money laundering and awareness of their procedures in relation to money laundering.

If your business is caught by the definition you may have already received guidance from your professional or trade body. Please do come and talk to us if you would like to discuss in more detail how the requirements of the Regulations will affect you. Later in the bulletin we consider how the Regulations will affect those of you with cash sales who may be caught as High Value Dealers.

The implications for customers or clients of those in the regulated sector

As you can see from the list on the previous page, quite a wide range of professionals and other businesses are affected by the new legislation. Those affected must comply with the new laws or face the prospect of criminal liability (both fines and possible imprisonment) where they do not.

Procedural changes

In your dealings with any business that is affected by the new legislation you may soon notice a few procedural changes. For example, in common with banks and other financial institutions, accountants will be required to verify the identity of new clients with effect from 1 March 2004. This will most likely involve seeing and taking copies of photographic identification such as a passport or new style driving licence and a copy of a recent utility bill. These are needed to establish both an individual's identity and current address. For those of you in business or operating a charity for example, the identity of your organisation itself must be established perhaps by checking records at Companies House or at the Charity Commission. The law requires these records to be maintained for five years after a client relationship has ended.

For existing clients at 1 March 2004, while there is no specific requirement to verify

identity, this may be necessary, for example, where a new director or shareholder or a new partner is introduced into a company or partnership respectively.

As we mentioned previously, the definition of money laundering has been extended to include the proceeds of any crime. Those in the regulated sector are required to report knowledge or suspicion (or where they have reasonable grounds for knowing or suspecting) that a person is engaged in money laundering ie has committed a criminal offence and has benefited from the proceeds of that crime. These reports should be made in accordance with agreed internal procedures, firstly to the MLNO, who must decide whether or not to pass the report on to the National Criminal Intelligence Service (NCIS). For more information about NCIS see the panel at the foot of this page.

Is your business vulnerable?

Criminals are constantly searching for new contacts to help them with their money laundering. Certain types of business are more vulnerable than others. For example, any business that uses or receives significant amounts of cash can be particularly attractive. To counter this, the Regulations now require businesses that deal in goods and accept cash equivalent to €15,000 (around £10,000) to register with Customs and Excise and implement anti-money laundering procedures. If you think that your business may be affected you can find out more under High Value Dealers on the back cover of this bulletin.

National Criminal Intelligence Service (NCIS)

NCIS is a government body that works on behalf of all UK law enforcement agencies in the fight against serious and organised crime. NCIS has an Economic Crime Branch and its most important function is to analyse the suspicious activity reports (SARs) that it receives from those in the regulated sector and disseminate this information to the relevant law enforcement agency.

The Regulations require those in the regulated sector to report all suspicions of money laundering to NCIS. To assist in dealing with the volume of reports and inputting to their database, NCIS has designed a standard reporting template, which is available on their website (www.ncis.gov.uk), upon which they prefer reports to be made.

By acting as a coordinating body, NCIS collates information from a number of different sources. This could potentially build up a picture of the criminal activities of a particular individual, which only become apparent when looked at as a whole. This information can then be passed on to the relevant authorities to take action.

You can imagine that if a drug dealer went along to a bank on Monday morning and tried to pay in the weekend's takings, the bank would notice it and report it unless the sum was relatively small. If criminals can find a legitimate business to help them by taking the cash and pretending that it is the business's money being paid in (in exchange for a proportion!), then that business can put the cash into the bank without any questions being asked.

Take for example the mobile telephone business that has had a fairly steady turnover of £10,000 per week for the last couple of years but suddenly begins to bank £100,000 in cash each week. Without a clear, rational and plausible explanation, this type of suspicious activity would clearly be reported to NCIS.

However perhaps a less obvious example of possible money laundering could be where an individual comes into an antiques shop and offers to buy a piece of furniture for £12,000 in cash. Not too many sellers would have insisted upon a cheque in the past! This person may be a money launderer who then goes to another shop and sells the antique for say £9,000, being quite prepared to suffer the apparent loss. This time the criminal asks for a cheque that can then be paid innocently into a bank account, making the money look legitimate.

The new legislation aims to put a stop to this type of activity. Those in the regulated sector are required to report any transactions that they have suspicions about.

Reporting suspicions of money laundering under the new regime

However it is not simply the more obvious examples of suspicious activities that have to be reported. The government has insisted upon there being no de minimis limits within the legislation. This means that very small proceeds of crime have to be reported to NCIS. There are thousands of criminal offences in the United Kingdom which, if committed, are likely to result in a person benefiting from an offence and thereby having

A criminal offence?

Overpayments

What would you do where you received an overpayment perhaps against a sales ledger invoice? Would you inform your customer, be they a multi-national company or a sole trader, or send the money back? Or would you leave the money sitting in your bank account and on the ledger until the customer asked for it? After a couple of years would you write the overpayment off and treat the money as your own?

Depending upon the circumstances, if you were to write the overpayment off, do you think that this act could be construed as theft? The very act of writing off the overpayment could be a criminal offence, from which you have benefited. If in the course of their business with you, this comes to the attention of someone in the regulated sector, they would be required to report any suspicion that they had that you had committed a criminal offence. Without a de minimis limit it would not matter whether the amount involved was £2 or £2,000,000.

Tax evasion

Deliberate tax evasion is likely to be regarded as a criminal offence (of cheating the public revenue). For example, not correcting an error such as claiming input VAT back on a company car when the error is discovered. If the decision not to correct the error results in tax that should be paid going unpaid or a repayment that was not due being made, this is likely to be a reportable offence under the new regime.

Do note however that making an error is not itself a criminal offence! It is the decision not to rectify the error that gives rise to the intention to evade tax. In the example above, if an overpayment has been received from the Inland Revenue and there have been no steps to notify the relevant tax authority, this could constitute a criminal offence and trigger the reporting procedures.

criminal property. The two examples above illustrate the extent of the new legislation.

Tipping off

There is also an offence known as 'tipping off' under the Act. This is what would happen if a person in the regulated sector were to reveal that they knew or thought that a suspicious activity report had been made, say for example, to their customer or client. Where this disclosure would be likely to prejudice any investigation by the authorities, an offence may be committed. As you can imagine, if you were to ask an accountant or estate agent whether they had made any reports about you, they would not be able to discuss this with you at all. If they did, they could break the law and could face a fine or up to five years imprisonment or both.

The new legislation brings a number of professions and businesses into the regulated sector. Complying with the requirements of both the Act and the Regulations requires those affected to introduce a number of new procedures to ensure that they meet their legal responsibilities. If you would like to discuss how the new legislation could affect you and your organisation please do contact us.

Disclaimer - for information of users

This bulletin is published for the information of clients. It provides only an overview of the legislation and regulations in force at the date of publication, some of which were still in draft form at the time of going to press. No action should be taken without consulting the detailed legislation or seeking professional advice. Therefore no responsibility for loss occasioned by any person acting or refraining from action as a result of the material contained in this bulletin can be accepted by the authors or the firm.

High Value Dealers

The Regulations place new onerous registration and procedural requirements on businesses that deal in goods and accept large cash payments. Customs and Excise has been given the responsibility for controlling High Value Dealers (HVDs), with the Regulations coming into force on 1 April 2004.

Am I affected?

A business (including dealing as an auctioneer) is defined as a HVD where it deals in goods and whenever a transaction involves accepting a total cash payment of €15,000 (around £10,000) or more. Such transactions are known as High Value Payments (HVPs).

Businesses that only occasionally accept such transactions are included. Businesses that do not accept large amounts of cash or deal in services are not affected.

How will my business be affected?

If your business does deal in goods and does accept large cash payments then you will be required to:

- register with Customs and Excise and pay an annual registration fee
- implement policies and procedures to protect yourself from being used by money launderers.

If you don't know whether you will sell goods for this amount and do not register, you will be obliged to refuse any qualifying transaction or insist upon payment by another means. Alternatively, you may delay a qualifying transaction and register with Customs and Excise.

The importance of the new regime

The law imposes very severe penalties on anyone involved in money laundering. The Regulations require HVDs to adopt anti-money laundering procedures to protect themselves against abuse by money launderers and the risk of prosecution. As we have mentioned previously, cash based businesses are particularly attractive to money launderers.

The registration process

Customs and Excise form MLR100 must be completed. Customs will then send a certificate showing an MLR number within 45 days. Every legal entity through which a HVD is run must be registered. An annual fee of £60 is payable for each HVD trading

premises that is required to be registered.

If you fail to register you could be liable to a civil penalty if you carry out a HVD transaction.

What anti-money laundering policies and procedures are required?

These can be summarised into the acronym **CATCH**:

Confirm the identity of your customers

HVDs must establish the identity of any customer whenever a transaction involves accepting a total cash payment of €15,000 (around £10,000) or more. Establishing identity requires you to be satisfied that your customer is who they claim to be by obtaining evidence of their name and address.

Appoint a Money Laundering Nominated Officer (MLNO)

This is a very important role within the business and should be performed by a suitably senior person. The main roles of the MLNO should be to:

- establish the necessary procedures to implement the requirements of the Regulations
- receive and review reports of possible money laundering from others involved in the business
- decide whether to report to NCIS.

Train your staff

All managers and anyone involved in your business who deals with customers must be trained to be aware of:

- the law regarding money laundering offences
- your business's policies and procedures relating to the prevention of money laundering
- identification and know your customer procedures
- recognition and handling of transactions which may be related to money laundering

- internal reporting

- record keeping.

Staff should be trained regularly and training should be repeated very two years.

Control your business by having anti-money laundering systems in place

You must put in place clear written policies and procedures relating to the prevention of money laundering and make employees aware of them. You must ensure that any suspicious activity or transactions are properly identified and reported.

Hold all records for at least five years

Only records relating to HVPs need to be kept but there are several different types of record.

- **Customer ID.** Legible copies of the forms of identification presented should be retained. Customer ID records should be kept for at least five years from the date that the relationship with the customer finishes.
- **Business records.** Records of HVPs must be kept and should include the name and address of the customer. The transaction details should also be kept but in many cases where invoices are retained, a cross-reference to this will be sufficient.

These records should be kept for five years. Records of reports and other correspondence with NCIS should also be retained for at least five years.

Failure to comply

Businesses may be liable to a civil penalty of up to £5,000 for failing to comply with a registration requirement. Failing to comply with responsibilities under the Regulations could lead to either prosecution or a civil penalty.

If you think that you may be affected by the new rules (perhaps because you sell goods for large amounts of cash) please do come and talk to us. We can help with the necessary registration process and the development and implementation of suitable policies and procedures.