

Proceeds of Crime Act 2002

AN INTRODUCTION TO UK LEGISLATION | JULY 2020 | THIRD EDITION

UK anti-money laundering legislation is complex and wide-ranging, and it has implications for many professions and sectors. This guide provides a general overview of the legislation for those who are new to the subject.



WHAT IS MONEY LAUNDERING?

The term 'money laundering' refers to the process by which money or other assets acquired through criminal activity are exchanged for, or disguised as, legitimate (or 'clean') money or other assets.¹

All money or property obtained through any form of criminality (including fraud, tax evasion and corruption) which are disguised as clean have been laundered.

OVERVIEW OF THE LAW

The requirements of the UK anti-money laundering regime are set out in the **Proceeds of Crime Act 2002** (the 'Act'), **The Money Laundering, Terrorist Financing and Transfer of Funds Regulations 2017**, **The Money Laundering and Terrorist Financing (Amendment) Regulations 2019** ('the regulations'), the **Terrorism Act 2000**, and the **Counter-Terrorism Act 2008**.

The Act sets out the main money laundering offences and provides for the confiscation and civil recovery of the proceeds of crime. It has effect in England, Northern Ireland, Scotland and Wales.

The regulations require legal, accountancy, financial and other specified professions and sectors to take appropriate steps to prevent their services from being used for money laundering or terrorist financing. The regulations cover:

- risk assessment;
- internal controls;
- client due diligence
- procedures (including those relating to beneficial ownership);
- monitoring and audit;
- recognition of suspicious transactions and reporting procedures;
- education, training and assessment of partners and staff; and
- record-keeping procedures.

A Nominated Officer (NO) and a board member or member of senior management responsible for compliance with the anti-money laundering regime (including those policies and procedures set out above), must be appointed. It is possible to combine the role of NO and senior manager responsible for compliance as long as the individual is sufficiently senior.

It is a criminal offence to be in breach of some regulations. There are also a number of civil sanctions including fines, prohibitions on senior managers and suspensions of authorisation.

WHO DOES IT APPLY TO?

The principal offences in the Act (ss327-329 and 342) apply to conduct committed by any person (individuals or corporates) in the UK. It also provides for confiscation orders and civil recovery of the proceeds of crime, which can apply to anyone in possession of criminal property or benefits obtained from criminal activity.

The remainder of the legislation applies to a number of professions and sectors which are collectively known as 'relevant persons' or the 'regulated sector'. These include:

- credit institutions;
- financial institutions (including internet banks);
- auditors;
- insolvency practitioners;
- external accountants;
- tax advisers;
- independent legal professionals (including solicitors and barristers);
- trust or company service providers;
- estate agents;
- high-value dealers (defined as a firm or trader dealing in any transaction of €10,000 or more);
- casinos;

- art market participants; and
- crypto asset exchange providers.

These individuals and businesses should follow the anti-money laundering rules and/or guidance issued by their anti-money laundering supervisor. This may be a statutory regulator such as the Financial Conduct Authority (FCA), HMRC or the Gambling Commission, or a designated professional body.

The **Office for Professional Body Anti-Money Laundering Supervision** (OPBAS) – which is part of the FCA – was set up by the government in 2018 to ensure that the professional body AML supervisors in the legal and accountancy sectors provide consistently high standards of supervision.

WHEN IS AN OFFENCE COMMITTED?

An offence is committed in the following circumstances.

- When a person conceals, disguises, converts, transfers or removes from the jurisdiction any criminal property. This includes the actions of an individual carrying out transactions in the course of their employment or business (s327).
- When a person becomes concerned in an arrangement that they know or suspect facilitates the acquisition, retention, use, or control of, criminal property by, or on behalf of, another person (s328).
- When a person acquires, uses, or has possession of, criminal property without adequate consideration (s329).

All of the above offences require the individual to have either knowledge or suspicion that the property being laundered is criminal property.

Criminal property includes property obtained as a result of criminal conduct committed anywhere in the world, provided that the criminal conduct would also be an offence if it

were committed in the UK (subject to certain exemptions).

There is a further offence that can be committed when a person prejudices an investigation into money laundering by telling someone else that they know or suspect that an investigation has, or will be, started, or by interfering with material likely to be relevant to the investigation (s342).

If you are ever in doubt about whether conduct falls within the scope of the legislation, always seek appropriate legal advice.

INTERNATIONAL CONSIDERATIONS

The **Financial Action Task Force on Money Laundering** is an intergovernmental body which aims to combat money laundering and terrorist financing. It sets the international standards which its members are committed to implement through legislation and regulation. It maintains a list of high-risk and non-cooperative jurisdictions which have deficiencies in their anti-money laundering systems or a demonstrated unwillingness to cooperate in anti-money laundering efforts (the '**FATF list**'). It also publishes guidance for regulated sectors on anti-money laundering.

REPORTING CONCERNS

The regulated sector is required to disclose suspicions of money laundering and to avoid 'tipping off' the suspect. Authorised disclosures (called a 'suspicious activity report' or SAR) are made to the **National Crime Agency**. Failure to make an appropriate disclosure and tipping off the suspected launderer are both criminal offences under the Act.

The money laundering legislation sets no lower limit on the definition of laundered money, with the exception of deposit-taking bodies. Reports should therefore be made to the NO even for low-value concerns.

A report should be made in the following circumstances.

- Any person employed in a regulated business must report knowledge or suspicion of money laundering when such knowledge or suspicion arises during the course of their business. A failure to do so could lead to a prosecution under s330 of the Act.
- Third parties outside the regulated sector can make voluntary reports as a matter of public interest. This

is called a protected disclosure and does not breach any restriction an individual may have on the disclosure of information, for example confidentiality (s337).

The nominated officer

The NO is an individual nominated to receive disclosures under s330 of the Act. The NO is required to consider any disclosures made and either give consent to the person making the disclosure to proceed or make a SAR to the NCA. Failure by an NO to make a report is an offence under s331 of the Act.

Persons employed in the regulated sector and NOs are guilty of an offence if they fail to report matters of knowledge or suspicion. An offence is committed if they know or suspect, or they have reasonable grounds for knowing or suspecting, that another person is engaged in money laundering.

A person can consequently commit an offence if there were reasonable grounds for knowing or suspecting, even if they did not personally know or suspect. This means that a person can commit a criminal offence for negligently failing to make a report.

Tipping off

An offence is committed under s333A of the Act if a person, having made an authorised or protected disclosure, makes a further disclosure that is likely to prejudice a money laundering investigation being carried out by law enforcement authorities. For example, they inform a client that a transaction cannot be progressed because they are waiting for consent from the NCA.

A person has a defence to a charge of tipping off if:

- they did not know or suspect that the disclosure was likely to prejudice an investigation;
- the disclosure was made in connection with a function relating to law enforcement; or
- the information was passed on in circumstances that amount to legal privilege.

It is an offence both to continue a business arrangement without consent and to inform a person associated with the transaction that the report has been made. A person working within the regulated sector can avoid any criminal liability by following a simple rule: if you know or suspect money laundering, make a report to the NO and do not tell anyone else.

WHEN SHOULD A PERSON BE SUSPICIOUS?

There are a number of circumstances that may cause suspicion. These will vary between industries and sectors. Some common situations that should raise suspicions include:

- transactions with no obvious commercial purpose;
- transactions that are inconsistent with the party's known resources;
- transactions where the source of the funds is unknown or hidden; and
- large cash deposits.

THE RISKS OF NON-COMPLIANCE

Failure to report suspicions of money laundering can result in criminal or regulatory penalties which may include a term of imprisonment, a fine or both. However, a person has a defence to such a charge if:

- they make an authorised disclosure;
- they intended to make an authorised disclosure but have a reasonable excuse for not having done so; or
- the information received is subject to legal professional privilege.

FURTHER INFORMATION

Financial Conduct Authority for guidance for **financial services firms**.

Joint Money Laundering Steering Group for guidance for **financial industry sectors**.

HMRC for information on the **business sectors covered by the regulations**.

Also see the **resources** section of our website.

Notes

¹ The technical definition of money laundering is much wider.

This helpsheet was kindly prepared by David Bacon at Thomson Reuters Practical Law.

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