



Detailed Feedback on Draft Economic Crime Legislative Proposals

Sector: Other

Company name/organisation: Electronic Money Association

Contact Details: [Click or tap here to enter text.](#)

Date: 22/11/2021

Anti-Money Laundering and Information Sharing

Q1. Would the proposed disapplication of civil liability provide businesses in the regulated sector with the confidence they need to share customer information for the purpose of preventing and detecting money laundering? Are there any further obstacles to sharing?

The EMA strongly welcomes the Home Office's actions to allow the sharing of information between businesses in the regulated sector.

EMA members have suggested that it could be useful to provide further detail on the type of information that can be shared (including the type of documentation). Greater clarity in this respect would give firms comfort regarding the information that can be shared, and reduce divergence in approach by individual firms. It would encourage firms to share actionable intelligence rather than generic information.

One approach could be to create a non-exhaustive list i.e. "*the type of data and / or information that could be shared includes but is not limited to the following...*" that provides a baseline on the type of data that could be shared, without at the same time restricting the sharing of additional data.

Q2. Does liability for breaches of contract or confidentiality need to be disapplied or could this be adequately addressed by businesses changing their own contractual terms and conditions?

EMA does not have any comments at this stage.

Q3. In the examples highlighted on pages 10 and 11 and in preventing and detecting money laundering more generally, why could the existing information sharing provisions in POCA section 339ZB to 339ZG (as inserted by the Criminal Finance Act 2017), not be used? Why might a new provision be necessary?

We observe that the second example would likely significantly increase the number of requests arriving from other institutions, and therefore appears to be more administratively burdensome. Clarity regarding when data should be shared, and when



firms can reasonably refuse to share information could be useful. The Home Office has indicated that firms will not be obliged to share information with other private entities upon request - it would be helpful to make this clear in the legislation or accompanying guidance.

Q4. How should the thresholds for disclosing information be defined in legislation? Are the proposed purposes on page 9 (“that which will or may assist in enabling the recipient either...”) too broad or too narrow? Are there other purposes for which information should be shared in order to tackle money laundering?

EMA notes that though from a legal perspective the term 'money laundering' is sufficiently broad to cover proceeds of all criminal activity including fraud and tax evasion. However in order to avoid ambiguity, we consider this could be stated more clearly within the proposed legislation or accompanying guidance. Perhaps the term 'economic crime' or another term that clearly encompasses fraud, terrorist financing and tax evasion could be used instead.

Q5. Are there any other types of crime (such as terrorist financing, which may involve clean funds) whose prevention or detection should fall within its scope?

EMA members suggest that terrorist financing should be covered by the scope of these proposals.

Q6. Do the envisaged avenues for redress adequately mitigate the risks of unwarranted exclusion from financial and wider sectors? Do any of these impacts or risks affect firms and companies as well as individuals?

EMA does not have any comments at this stage.

Q7. Do respondents agree that amendments to the tipping off offence are not necessary to facilitate private to private information sharing as described above?

The EMA suggests that POCA should clarify that sharing information in line with the proposals will not constitute tipping off. This would provide safe harbour for firms and support the sharing of information for the purposes of detecting and preventing criminal activity.

Q8. In addition to these proposals, are there any additional legislative changes in the information sharing space – including those which involve public sector sharing - that would strengthen the response to money laundering, whilst protecting a customer’s confidentiality and data protection rights?



EMA does not have any comments at this stage.

Q9. Does the proposed threshold for use of an FIO – for the purpose of the NCA carrying out the functions of a Financial Intelligence Unit – represent a legitimate and proportionate basis for use of the amended power? Should an alternative threshold be considered?

EMA does not have any comments at this stage.

Q10. Would the proposed exemptions to the principal money laundering offences succeed in reducing the reporting burden on businesses? Should further exemptions be considered?

EMA does not have any comments at this stage.

Q11. Should the exemptions apply across the entirety of sections 327 to 329 of POCA - except for 'concealing' or 'disguising' under section 327(1)(a) or (b))? Or should they be limited to certain acts?

EMA does not have any comments at this stage.

Q12: Are there any safeguards or conditions that are needed to avoid any new exemptions being abused?

EMA does not have any comments at this stage.

Q13. Do the proposals around ringfencing adequately address the problems of mixed funds? Is creating an exemption to sections 327 to s329 of POCA the most effective way to solve the problem of mixed funds?

EMA would suggest that an explicit reference to 'joint accounts' is included as an example of commingling of funds as currently there is only reference to mixed funds of a single account holder.

Q14. What legislative proposals could be introduced to solve the problem of comingling/mixed funds for all forms of criminal property i.e. not just money?

EMA does not have any comments at this stage.

Q15. Are both sections of the proposed ringfencing exemption (a) and (b) above necessary? Are there any scenarios in which (a) would be used over (b)?

EMA does not have any comments at this stage.



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Cryptoassets

Q16. Cryptoassets are defined as “cryptographically secured digital representation of value or contractual rights that uses a form of distributed ledger technology and can be transferred, stored or traded electronically” in Schedule 9 to POCA. Is this definition sufficiently broad for the purposes of these proposals?

EMA does not have any comments at this stage.

Q17. Schedule 9 to POCA defines cryptoasset exchange provider as “firm or sole practitioner who by way of business provides one or more of the following services, including where the firm or sole practitioner does so as creator or issuer of any of the cryptoassets involved:

- i. exchanging, or arranging or making arrangements with a view to the exchange of, cryptoassets for money or money for cryptoassets,**
- ii. exchanging, or arranging or making arrangements with a view to the exchange of, one cryptoasset for another, or**
- iii. operating a machine which utilises automated processes to exchange cryptoassets for money or money for cryptoassets;**

Is this definition sufficiently broad for the purposes of these proposals?

EMA does not have any comments at this stage.

Q18. Schedule 9 to POCA defines “custodian wallet provider” (for other purposes) as a firm or sole practitioner who by way of business provides services to safeguard, or to safeguard and administer:

- i. cryptoassets on behalf of its customers, or**
- ii. private cryptographic keys on behalf of its customers in order to hold, store and transfer cryptoassets.**

Is this definition sufficiently broad for the purposes of these proposals?

Q19. What technological barriers (or security features) should be considered when developing new civil and investigatory powers to seize, detain and forfeit cryptoassets?

The EMA would like to highlight that a wide variety of electronic devices can be used to generate cryptoassets. We encourage the Home Office to investigate this area in greater detail before inserting legislative text that may restrict the ability of the law to meet the objective.

Q20. What else should we take into account when developing these powers to investigate, seize and forfeit cryptoassets?



EMA does not have any comments at this stage.

Q21. In what circumstances would it appropriate for any of these new powers to be capable of being used in relation to persons, or cryptoassets, located outside the UK?

EMA does not have any comments at this stage.

Q22. Should new powers to recover cryptoassets make provision for the court to order compensation to be paid to any identifiable victims?

EMA does not have any comments at this stage.

Q23. Should new powers to recover cryptoassets be accompanied by supplementary investigatory powers?

EMA does not have any comments at this stage.

Q24. What difficulties have you encountered securing cryptoassets to prevent their dissipation, or preserve their value (prior to the making of a confiscation order)? Would our legislative proposals address these challenges? If not, why not?

EMA does not have any comments at this stage.

Q25. Is it necessary or desirable to mirror changes we propose to make to proceeds of crime legislation, in particular the civil recovery powers under Part 5 of POCA, in the Anti-Terrorism, Crime and Security Act 2001?

EMA does not have any comments at this stage.

Q26. We welcome your views if there are other proposals that you consider would support the recovery of criminal cryptoassets, not listed above.

EMA does not have any comments at this stage.

Unexplained Wealth Orders

Q27. Provided the respondent is either a PEP or there is a reasonable suspicion that they are involved in serious crime, do you believe that the current income requirement can be applied in a meaningful way to property held by a person other than the beneficial owner (i.e. to trustees and nominees)?

EMA does not have any comments at this stage.



Q28. In circumstances where the income of the holder bears no relation to the value of the property in question (i.e. the property in question was financed by a person other than the respondent), will replacing the current ‘test’ with one which is not linked to the holder's income but focuses instead upon the source of the funds for acquisition of the asset provide clarity?

EMA does not have any comments at this stage.

Q29. Do you agree that the definition of how any individual may “hold” property should be expanded to enable a UWO to be served on a person or company who is reasonably expected to have some form of control over the asset(s) identified in the UWO?

EMA does not have any comments at this stage.

Q30. Do you agree that the interim freezing order time limit should be extended?

EMA does not have any comments at this stage.

Q31. If so, do you agree that 186 days should be the maximum period an interim freezing order can apply, following receipt of a respondent’s response to a UWO?

EMA does not have any comments at this stage.

Q32. Do you agree that enforcement authorities’ liabilities to respondents’ legal costs should be limited in respect of UWOs and interim freezing orders?

EMA does not have any comments at this stage.

Q33. We invite your views on the most appropriate methods of cost-capping, whether by legislation or otherwise.

EMA does not have any comments at this stage.

Q34. We also invite your views if you consider that there are other proposals we should be considering to strengthen the UWO regime

EMA does not have any comments at this stage.

Other

Q35. In addition to the proposals detailed in this paper, what further proposals should the Government consider to tackle economic crime?



EMA does not have any comments at this stage.