

Money laundering

Introduction

Money Laundering as a criminal activity involves the concealment of the origin of criminal funds, 'washing' of taint from criminal proceeds, to enable the criminal to reintroduce the funds into the banking and commercial system where they can be used to acquire assets. The money launderer seeks to hide the proceeds of crime in such a way that the police and other prosecuting authorities will not be able to trace where the proceeds have gone.

Money laundering schemes can be very simple or highly sophisticated. Most sophisticated schemes involve three stages:

- **Placement** – this is the first stage where the proceeds of a crime start as cash. The money launderer will have to ensure that the cash is transferred to some non-cash asset without the authorities becoming suspicious
- **Layering** – this involves putting a number of layers or transactions into place. The sole purpose of this is to confuse the audit trail, i.e. the trail from the crime to the final destination of the criminal money.
- **Integration** – this is the final stage where the criminal money is invested in a genuine investment that will give the money launderer a legitimate income.

Prosecutions for money laundering can involve any of these stages in the money laundering process.

Pre POCA Money laundering provisions

The Proceeds of Crime Act 2002 Part 7 (POCA) came into force on the 24 February 2003. Prior to that date money laundering offences were contained in:

- The Drug Trafficking Act 1994 ("DTA")
- The Criminal Justice Act 1988 ("CJA 88")
- The Terrorism Act 2000

POCA replaces the money laundering provisions in the DTA and the CJA 88.

The Money Laundering Regulations 2003 [\[link\]](#) replace the Money Laundering Regulations 1993 and 2001.

If you require information on the law prior to POCA please refer to Archbold 2002 or contact Policy Division.

Relevant Legislation

The money laundering offences are found in the Part 7 POCA which came into force on the 24 February 2003. This updates and reforms the money laundering provisions of the Criminal Justice Act 1988 (CJA 88) and the Drug Trafficking Act 1994 (DTA 94).

POCA contains provisions that cover three areas:

1. The principal money laundering provisions contained in s327 – s329 POCA [\[link\]](#).
2. Provisions that are intended to:
 - encourage reporting of known or suspected money laundering by those in the business sector; and
 - discourage tipping off [\[link\]](#).

For example, under s330 and s331 POCA, a negligence test is introduced, in that those in the regulated sector are under a duty to make reports even if they don't know or suspect but "have reasonable grounds for knowing or suspecting" that another person is engaged in money laundering.

3. The Money Laundering Regulations 2003 which are intended to encourage financial institutions to have established systems to detect and prevent money laundering [\[link\]](#).

Some amendments to POCA are contained in the Serious Organised Crime and Police Act 2005 (SOCPA), which received Royal Assent on 7th April 2005. S103– s108 SOCPA came into force on 1 July 2005. They contain:

- a new defence to the failure to report offences where the person making the report has no information to identify the money launderer or the whereabouts of the criminal property [\[link\]](#);
- a new offence of failing to report on the required form, and other changes to reporting procedures [\[link\]](#);
- a new threshold amount below which deposit-taking institutions need not seek consent to operate accounts [\[link\]](#);
- a change to the legal professional privilege defence for professional legal advisers [\[link\]](#).

S102 SOCPA, which creates a new defence to the main money laundering offences and the failure to report offences where the conduct generating criminal property or the money laundering took place overseas but was lawful there, has not yet come into effect [\[link\]](#).

Principle money laundering offences

Money laundering is defined as an act which constitutes an offence under s327, s328 and s329 POCA or a conspiracy or attempt to commit such an

offence. Money laundering offences also include aiding, abetting, counselling or procuring the commission of one of these offences.

The maximum penalty for the three principal money laundering offences on conviction on indictment is 14 years imprisonment. In all cases, a fine can be imposed instead of imprisonment or as well as imprisonment. There should be no direct arithmetical relationship between the sums involved and the length of sentence, however, sentences close to the maximum have to be reserved for cases where the evidence establishes laundering on a large scale: *R v El-Delbi* [2003] EWCA Crim 1767.

Criminal Property

The three principal money laundering offences all depend upon the property which is being laundered falling within the definition of “criminal property” in s340(3) POCA. The effect of that definition is that the offences are not committed when:

- the property in question is only suspected to be but is not in fact the proceeds of crime;
- the property has been legitimately acquired.

“Criminal property” is property that the alleged offender knows or suspects falls into one of these two categories:

- property that constitutes a person’s benefit from criminal conduct; or
- property that represents (in whole or in part, directly or indirectly) such property.

It does not matter:

- where the property was first acquired in the world, provided that the conduct that gives rise to the benefit would be criminal in the UK;
- when the property was acquired, who carried out the conduct;
- who benefited from it; or
- when the conduct occurred (i.e. could be before or after the passing of POCA).

It is necessary for the Crown to show that the property is the actual proceeds of crime, even if the offence charged is conspiracy to launder the proceeds of crime. *R v Roy Peter Harmer* [2005] EWCA Crim 1; *R v Liaquat Ali & others* [2005] EWCA Crim 87.

“Property” is defined in s340(9) POCA and covers all property wherever situated, including money, real property, personal property and things in action.

Criminal Conduct

One essential element of the money laundering offences is that the proceeds are the benefit of criminal conduct. Criminal conduct is defined as conduct that constitutes an offence in any part of the UK, or would constitute an offence in the UK if it occurred there: s340(2)POCA.

Proving that proceeds are the benefit from “criminal conduct” in money laundering prosecutions will usually be done by circumstantial evidence. Where money laundering offences are proceeded with on the same indictment as the underlying crimes, the underlying criminal conduct will be proved as part of the proceedings as well as the money laundering offence.

Where money laundering is charged on its own without a predicate offence, it is not necessary for prosecutors to prove that the property in question is the benefit of a particular or specific act of criminal conduct. The prosecution need to be able to produce sufficient circumstantial or other evidence from which inferences can be drawn that the property in question has a criminal origin.

Evidence of the criminal origin of proceeds may be provided in money laundering proceedings by:

- circumstantial evidence and/or other evidence;
- accomplice evidence;
- forensic evidence from which inferences can be drawn that money came from drug trafficking (e.g. contamination of cash with drugs);
- evidence of complex audit trails, the complexity of which may enable an expert to indicate that the property was the proceeds of crime;
- evidence of the defendant having no legitimate reason for possessing the property in question, so that a jury may be willing to draw an inference that it is proceeds of crime;

For guidelines on charging practice when considering whether to add money laundering charges to the indictment, see Charging Practice. [\[Link\]](#)

Concealing - S327 POCA

S327 POCA makes it an offence to conceal, disguise, convert, transfer or remove criminal property from the UK. Concealing or disguising criminal property includes concealing or disguising its nature, source, location, disposition, movement or ownership or any rights with respect to it: s327(3) POCA. This replaces s93C CJA 88 and s49 DTA 94.

Arrangements - S328 POCA

S328 POCA deals with assisting another to retain the benefit of criminal conduct. A person commits an offence if they enter into or become 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. This simplifies and replaces s93A CJA 88 and s50 DTA 94.

In *P v P (Ancillary Relief: Proceeds of Crime)* [2003] 3 WLR 1350, the court held that the act of negotiating an arrangement amounted to being “concerned in” an arrangement; and that therefore, an offence under s328 POCA could be committed by a legal professional notwithstanding that he was not involved at the point of execution. This has now been disapproved by the Court of Appeal in *Bowman v Fels* [2005] EWCA Civ 226, which held that the proper interpretation of s328 POCA was that it was not intended to cover or affect the ordinary conduct of litigation by legal professionals, since that ordinary conduct did not fall within the concept of “becoming concerned in an arrangement that facilitates the acquisition, retention, use or control of criminal property”.

Acquisition, use and possession - S 329 POCA

Under s329 POCA a person commits an offence if they acquire, use or possess criminal property. This unifies and replaces s93B CJA 88 and s51 DTA 94.

S329 POCA does not attract the lifestyle assumptions on conviction that ss327 and 328 POCA do under s142 and Schedule 2 POCA.

Defences to money laundering offences

It is a defence to the principal offences in ss327-329 POCA, for a person to show that he made an authorised disclosure under s338 POCA. For example, those working in the regulated sector may need to complete a transaction that they know or suspect could constitute one of the three principal money laundering offences. This section provides the means of obtaining the necessary consent to complete the transaction without committing an offence: *Hosni Tayeb v HSBC Bank plc* [2004] EWHC 1529 (Comm). If prior to carrying out the particular act complained of, the person discloses the circumstances to a police or customs officer, or to the person nominated by an employer to receive such disclosure and obtains consent to act then no offence is committed.

Another defence is available if the person intended to make such disclosure but had a reasonable excuse for not doing so and made the disclosure as soon after the transaction as is reasonably practicable.

Authorised disclosure

Under s338 POCA, a disclosure is authorised if:

- it is a disclosure made to a constable, a customs officer or a nominated officer, by the alleged offender that property is criminal property;
- the disclosure is made before the alleged offender does the prohibited act; or
- the disclosure is made after the alleged offender does the prohibited act but there is a good reason for his failure to make the disclosure

before he did the act, and the disclosure is made on his own initiative as soon as it is practicable for him to make it.

Where an authorised disclosure has been made before doing the prohibited act, the alleged offender may still commit the offence if, having made the disclosure, he fails to obtain appropriate consent.

S339 POCA provides that the Secretary of State can by order prescribe the form and manner in which disclosures relating to the principal money laundering offences are to be made. The form(s) may include a request to the discloser to provide additional information relevant to whether or not to start a money laundering investigation. This request has to come from the relevant law enforcement body, and not from the nominated officer. Someone declining or otherwise failing to comply with a request for additional information does not commit an offence under POCA. However, any information so provided does not breach any restriction on the disclosure of information however imposed.

SOCPA and threshold amounts

S103 SOCPA inserts a threshold amount into the principal money laundering offences so that a deposit-taking body that does an act mentioned in s327, s328 and s329 POCA 2002, does not commit an offence if it does the act in operating an account maintained with it, and the value of the criminal property concerned is less than the threshold amount determined under s339A POCA.

The threshold amount for the purposes of s327(2C), s328(5) and s329(2C) POCA is £250 unless a higher amount is specified, in which event it is that higher amount. The threshold amount for acts done by a deposit-taking body in operating an account can be specified by an officer of Revenue & Customs, or a constable when he gives consent, or gives notice refusing consent or on request from the deposit-taking body. The threshold amount may be varied, and different threshold amounts may be specified for different acts done in operating the same account. The threshold amount for acts done in operating the account must, when specified, be not be less than £250.

Appropriate Consent

Under s335 POCA, “appropriate consent” is the consent of a nominated officer, constable or customs officer to do a prohibited act if an authorised disclosure is made to them.

A nominated officer is someone who has been nominated by their employer to receive reports of suspected money laundering. In practice this will be the Money Laundering Reporting Officer (MLRO) or his deputy. Employers will have reporting processes in place for staff with suspicions to disclose to the MLRO. The nominated officer will act as a filter for reporting, and is placed under a duty to disclose to the National Criminal Intelligence Service (NCIS), if he knows or suspects, or has reasonable grounds to suspect, that another person is engaged in money laundering.

S336 POCA provides that a nominated officer must not give appropriate consent to the doing of a prohibited act unless he has consent from a person authorised by the Director General of NCIS or time limits have expired.

Consent decisions must be made within seven working days. If nothing is heard within that time then the person who disclosed can proceed with an otherwise prohibited act without an offence being committed.

If consent is refused within the seven days, then the constable or customs officer has a further 31 days (the moratorium period), starting from the day of refusal, in which to take further action. If no steps are taken the alleged offender is treated as having appropriate consent and can continue with the prohibited act without an offence being committed.

NCIS

Some disclosures are required to be made to a person authorised by the Director General of NCIS under POCA. NCIS is the UK's Financial Intelligence Unit [link] <http://www.ncis.co.uk/>. As such it receives, analyses and disseminates disclosures of financial information concerning suspected proceeds of crime in order to counter money laundering. These disclosures are also known as suspicious activity reports and can contribute to:

- existing law enforcement operations;
- identify the proceeds of crime;
- prompt investigation into previously unknown criminal activities.

NCIS will become part of the Serious Organised Crime Agency (SOCA) so that references to NCIS will become references to SOCA from a date to be appointed: s1 SOCPA 2005 and SI 2005 No.1521.

During the period from 1st July 2005 to 31st March 2006 the amendments made by s104(3), (4) and (6) Serious and Organised Crime and Police Act 2005 (SOCPA) are to have effect so that the reference in s330(4)(b), s331(4) and s332(4) POCA 02, as substituted by s104 SOCPA, to the Director General of SOCA is to have effect as a reference to the Director General of NCIS.

Protected disclosures

Under s337 POCA, a disclosure which satisfies the three conditions below is not to be taken to breach any restriction on the disclosure of information however imposed. The three conditions are:

- the information or other matter disclosed, came to the person making the disclosure in the course of his/her trade, profession, business or employment;

- the information or other matter causes the discloser to know or suspect or gives him reasonable grounds for knowing or suspecting that another person is engaged in money laundering;
- the disclosure is made to a constable, a custom's officer or a nominated officer as soon as is practicable after the information or other matter comes to the discloser.

Adequate consideration

There is an additional defence, under s329 POCA, for a person who acquired, used or had possession of the property for adequate consideration provided that they did not know or suspect that the goods or services might help another to carry out criminal conduct: s329(2)(c) and (3) POCA. Consideration will not be considered adequate, where the value is significantly less than the value of the property, or the value of its use or possession. Also, goods and services provided in exchange, which are known or suspected to help another to carry out criminal conduct will not be adequate consideration.

SOCPA and Overseas offences

SOCPA s102 introduces a new defence in the main money laundering offences (ss327-329 POCA) and the failure to report offences (s330-332 POCA), so that a person does not commit an offence where:

- it is known or believed on reasonable grounds that the conduct occurred outside the UK; and
- the conduct was not criminal in the country where it took place; and
- it is not of a description prescribed by an order of the Secretary of State.

For the defence to apply the conduct must actually be lawful in the overseas country – it is no defence that the MLRO mistakenly believed that it was lawful.

As at 1 July 2005 s102 SOCPA is not in force.

Disclosure and tipping off

The offences of failing to disclose possible money laundering (ss330-332 POCA), relate to those working in the business sector. The disclosure offences apply to both the regulated sector and unregulated sector, but, there is a greater degree of responsibility required under the regulated sector. Persons employed in the regulated sector are expected to exercise a greater degree of diligence in handling transactions than those employed in other business.

The maximum penalty for the disclosure and tipping off offences is five years imprisonment for conviction on indictment. In all cases, a fine can be imposed instead of imprisonment or as well as imprisonment.

S330 Failure to disclose

The Prosecution must prove for the s330 offence that the money was of criminal origin and thus that money laundering was committed or contemplated.

The failure to disclose offence under s330 POCA replaces s52 DTA 94. A person will commit a failure to disclose offence, where the following conditions are met:

- that he knows or suspects, or has reasonable grounds for knowing or suspecting that another person is engaged in money laundering, s330(2);
- that the information or other matter on which his knowledge or suspicion is based, or which gives reasonable grounds for such knowledge or suspicion came to him in the course of a business in the regulated sector, s330(3);
- that he does not make the required disclosure as soon as is practicable after the information or other matter comes to his attention, s330(4).

SOCPA makes amendments to s330 POCA by inserting s330(3A) POCA, so that an additional condition of making a disclosure is that:

- the person making the disclosure can identify the person mentioned in ss(2) or the whereabouts of the laundered property;
- that that other person or the whereabouts of any of the laundered property, can be identified from the information or other matter mentioned in ss(3); or
- that he believes, or it is reasonable to expect him to believe, that the information or other matter will or may assist in identifying that other person or the whereabouts of any of the laundered property.

Therefore by s330(5) as inserted by SOCPA, a required disclosure is the disclosure of:

- the identity of the other person in s330(2); if known
- the whereabouts of the laundered property, so far as is known; and
- the information or other matter mentioned in s330(3).

Pre-SOCPA a required disclosure needed to be made regardless of the fact that a person making the disclosure could not identify the person or property involved. With the SOCPA amendment a report will only need to be made if the conditions in s330(5) POCA are met. If any of the conditions in s330(3A)POCA are known, they must be set out in the report.

SOCPA inserts into s339 POCA a new offence of making a report otherwise than on the prescribed form, so that a person is guilty of an offence under s339(1A) POCA if they fail to make a disclosure under ss330, 331, 332 or 338 otherwise than in the form prescribed in s339(1) POCA, unless he has a reasonable excuse for doing so, s339(1B). The maximum sentence is a fine not exceeding level 5 on the standard scale, currently standing at £5000 under s37(2) Criminal Justice Act 1982.

The “laundered property” is the property forming the subject-matter of the money laundering that he knows or suspects, or has reasonable grounds for knowing or suspecting, that other person to be engaged in.

Ss331 and 332 POCA

S331 POCA creates a separate offence of failure to disclose in respect of nominated officers who receive disclosures based under s330 POCA and who do not pass the information to the NCIS as the disclosure receiving agency when they know or suspect or have reasonable grounds for knowing or suspecting that another person is engaged in money laundering.

Disclosures under s331 POCA must be made to a person authorised by the Director General of the NCIS. This reflects the policy that disclosures in the regulated sector should be made directly to NCIS, rather than a constable or custody officer. It therefore gives the choice of disclosing directly to the NCIS, or disclosing to a nominated officer who will then pass on disclosures to the NCIS.

Employers outside the regulated sector may also appoint nominated officers to receive authorised disclosures. These nominated officers will also commit an offence if they fail to pass on disclosures made to them in this capacity. By s332 POCA, an offence of failure to disclose by nominated officers outside the regulated sector is created as in s331 POCA.

Tipping off

S333 POCA creates the offence of making a disclosure likely to prejudice a money laundering investigation being undertaken by law enforcement authorities, otherwise known as “tipping off”. Together with s342 (offence of prejudicing a criminal confiscation or civil recovery investigation) this replaces s93D CJA 88 and s53 DTA 94. A person commits an offence if:

- a) he knows or suspects that a disclosure falling within s337 or s338 POCA has been made; and
- b) he makes a disclosure which is likely to prejudice any investigation which might be conducted following the disclosure referred to in paragraph (a).

The tipping off provisions relate to any person, including professional advisers.

Defences to disclosure and tipping off

It is a defence for a person alleged to have committed an offence under ss330-332 POCA 02 to show that he had a reasonable excuse for failing to disclose the information or other matter.

Relevant guidance

In deciding whether an offence has been committed under s330 and s331 POCA the court must take into account any guidance issued by a “supervisory authority or any appropriate body” when deciding whether a person has committed an offence. An appropriate body is defined as “any body which regulates or is representative of any trade, profession, business or employment carried on by the alleged offender”.

Supervisory guidance is issued by the industry’s Joint Money Laundering Steering Group (JMLSG). The JMLSG is made up of the leading UK Trade Associations in the Financial Services Industry. Its aim is to promote good practice in countering money laundering and its publication of Guidance notes gives practical assistance in interpreting the UK Money Laundering Regulations. In December 2004 the Financial Secretary to the Treasury approved the 2003 edition of the JMLSG Guidance Notes for the purposes of sections 330 and 331 of POCA 2002 and regulation 3 of the Money Laundering Regulations 2003. This is currently the only guidance to have received approval **[link]** <http://www.jmlsg.org.uk> .

The FSA also produces a handbook of rules and guidance for the financial services sector **[link]** <http://www.fsa.gov.uk>. Both the FSA and JMLSG also provide guidance as to the role of the MLRO.

There is a defence for employees in the regulated sector where their employer has not provided them with training in the manner specified by the Secretary of State. So that in circumstances where they did not actually know or suspect that money laundering was taking place (but there were reasonable grounds for such knowledge or suspicion) and they had not received training with how to deal with this situation they would have a defence, s330(7) POCA.

Legal Professional Privilege

There is a defence for legal professionals under s330 POCA. Under this it is a defence for a person alleged to have committed the disclosure offence to show:

- he is a professional legal adviser and the information or other matter came to him in privileged circumstances;
- he does not know or suspect that another person is engaged in money laundering; and

- he has not been provided by his employer with such training as is specified by the Secretary of state by order for the purposes of this section.

Note that equity partners in a partnership are self-employed.

If the information or matter comes to a professional legal adviser in privileged circumstances (s330(10) POCA) but it is given with the intention of furthering a criminal purpose the defence will not apply. However an offence would only be committed if the three conditions of s330 POCA were met.

S106 SOCPA amends the failure to report offence under s330 POCA by inserting s330(9A) POCA, so that a matter raised by an employee with his MLRO will not be treated as an internal report so as to trigger the MLRO's reporting requirements if the person making the disclosure to a nominated officer:

- is a professional legal adviser;
- makes it for the purpose of obtaining advice about making a disclosure under this section; and
- does not intend it to be a disclosure under this section.

In *Bowman v Fels* [2005] EWCA Civ 226, the Court of Appeal held that the proper interpretation of s328 POCA 2002 (assisting another to retain the benefit of criminal conduct [\[link\]](#)) was that it was not intended to cover or affect the ordinary conduct of litigation by legal professionals, since that ordinary conduct did not fall within the concept of "becoming concerned in an arrangement that facilitates the acquisition, retention, use or control of criminal property".

The Court of Appeal also considered that:

- Part 7 POCA had to be interpreted in the light of the wording and purpose of Council Directive 91/308 and Directive 2001/97 which it implemented, and as such the directive and POCA did not envisage that any of the ordinary conduct of litigation by legal professionals fell within the concept of being concerned in an arrangement facilitating the acquisition, retention, use or control of criminal property.
- Even if s328 POCA did apply to the ordinary conduct of legal proceedings, it did not override legal professional privilege ("LPP") or a solicitor's implied duty to the court not to disclose information gained from documents disclosed by another party to adversarial litigation and not read in open court. Lawyers will therefore be prevented by LPP as well as duties to the court, from disclosing to the authorities the suspicions which they have in the absence of strong prima facie evidence of a criminal purpose.

For more information on LPP [\[link\]](#).

By s330(14) POCA 2002 and Money Laundering Regulations 2003 (Amendment) Order 2005, the principle in *Bowman v Fels* extends to “other relevant professional advisers”.

A relevant professional adviser is defined as, an accountant, auditor or tax adviser who is a member of a professional body which is established for accountants, auditors or tax advisers (as the case may be) and which makes provision for the testing of competence as a condition of membership, and the maintenance of professional and ethical standards, as well as including sanctions for non-compliance with those standards.

It should be noted that the limited exemption from the requirement to report money laundering does not extend to all accountants, auditors and tax advisers. It will apply only to the extent that they are carrying out effectively the same functions in relation to legal advice:

S330(7B) POCA states that the failure to disclose section will apply to a person if-

- a) He is employed by, or is in partnership with, a professional legal adviser or a relevant professional adviser to provide the adviser with assistance or support,
- b) The information or other matter mentioned in ss(3) comes to the person in connection with the provision of such assistance or support, and
- c) The information or other matter came to the adviser in privileged circumstances.

Defence to tipping off

In relation to s333 POCA, tipping off, it is a defence for a person to show:

- they did not know or suspect that the disclosure was likely to prejudice an investigation;
- The disclosure was made in carrying out a function he has relating to the enforcement of any provision of this act or of any other enactment relating to criminal conduct or benefit from criminal conduct;
- He is a professional legal adviser and the information or other matter came to him in privileged circumstances.

No defence will be available if the disclosure was made with the intention of furthering a criminal purpose.

Conflict of duties

Potential conflict of a bank duties caused by the tipping off provisions may be resolved by the bank making an application to court for directions, *Bank of Scotland v A Ltd* [2001] 1 WLR 751. This may be preferable to the bank taking matters into its own hands in possible breach of its mandate to its client.

However in *Squirrell Ltd v National Westminster Bank and Customs & Excise Commissioners* [2005] EWHC 664 (Ch) a bank froze a client's account without warning or explanation once it suspected that the account contained the proceeds of crime. It was held that once the bank suspected that the applicant's account contained the proceeds of crime, under s328(1) POCA it was obliged to:

- report that to the relevant authority;
- ensure that no transactions were carried out in relation to that account;
- ensure that no disclosure was made which could affect any inquiries the authorities might make.

Therefore the bank in freezing the account did precisely what the legislature intended it to do. The purpose of s328(1) POCA was not to turn innocent third parties like the bank into criminals; its purpose was to put them under pressure to provide information to the relevant authorities to enable the latter to obtain information about possible criminal activity and increase their prospects of being able to freeze the proceeds of crime.

Overseas offences

SOCPA s102 introduces a new defence to the main money laundering offences ss327-329 POCA and the failure to report offences s330-332 POCA, so that a person does not commit an offence where:

- it is known or believed on reasonable grounds that the conduct occurred outside the UK; and
- the conduct was not criminal in the country where it took place; and
- it is not of a description prescribed by an order of the Secretary of State.

As at 1 July 2005 s102 SOCPA is not in force.

Money Laundering Regulations 2003

The Money Laundering Regulations 2003 replace the Money Laundering Regulations 1993 and 2001. They implement Directive 2001/97/EC. The Money Laundering Regulations are addressed to all whose activities comprise "relevant business". They aim to:

- impose administrative requirements on affected firms and entities;
- enable better identification of suspicious transactions internally;
- secure better reporting of such transactions to law enforcement agencies; and
- encourage better record-keeping of a transaction in order to assist any subsequent laundering investigation.

Charging Practice

In considering whether to add money laundering charges generally the following factors should be borne in mind:

- All principal money laundering offences potentially carry heavier penalties than most predicate offences. Therefore money laundering will often be the most serious offence available carrying a maximum of 14 years.
- The underlying offence ought normally to be proceeded with as it represents the conduct giving rise to the criminal proceedings.
- Money Laundering and the underlying criminality are separate offences. Money laundering activities should not be seen as “part and parcel” of the underlying criminality. As the courts have often said in connection with theft and receiving – receiving is the more serious offence because, without handlers and receivers there would be no thieves. However prosecutors should recall that the practice of charging theft and handling in the alternative is followed where the evidence is unclear as to whether the defendant is a thief or a handler. In those types of cases both the underlying crime and the money laundering, will be capable of proof.
- A money laundering charge should be considered where the proceeds are more than *de minimis* in any circumstances where the defendant who is charged with the underlying offence has done more than simply consume his proceeds of crime.
- A charge under s329 of possession of laundered proceeds may not be necessary where, for example, proceeds were simply “kept under the bed”. An application for confiscation of the actual benefit of the offence may be sufficient in those circumstances.
- Where there is any significant attempt to transfer or conceal ill-gotten gains money laundering should normally be considered as an additional charge, in part because the purpose of concealment will be to defeat or avoid prosecution and confiscation.
- A careful judgement will need to be made as to whether it is in the public interest to proceed with the money laundering offence in the event of a plea to the underlying criminality by a defendant who is also indicted for laundering his own proceeds. The prosecutor should take into account whether the laundering activity involves such a significant attempt to conceal ill-gotten gains that a court may consider a consecutive sentence. Prosecutors should not simply proceed with a money laundering charge to trigger the lifestyle assumptions in respect of convictions for money laundering under s327 or s328. To do so for no other reason would attract abuse of process arguments.

- In a mixed case, where the laundering is done by X on behalf of Y (the author of the predicate offence), it may be appropriate to proceed against Y for the underlying crime and X in relation to the laundering offence in the same indictment. This mirrors the position where a thief and handler are prosecuted in the same indictment in relation to the same stolen goods. Where the investigation has followed the money trail and there is a sufficient nexus between the underlying offences and the money laundering then the case may benefit from being run together in one indictment, if it enables the prosecution to be presented in a clear and simple way. The jury will be able to take a global view of the evidence and the inclusion of the launderer on the indictment may strengthen the prosecution case. Care should be taken not to overload the indictment, which could lead to a successful application to sever.