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Money Laundering Law

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Summary

Money laundering describes the procedures used to make money which has been acquired from criminal activity appear to have been lawfully acquired. These procedures are typically highly complex and by design hard to trace. Funds, whether generated through organised crime, terrorism or drug trafficking, will be placed within the mainstream economy or financial sector and the source and origin of the funds will be progressively concealed with each transaction.

This Paper outlines the history of successive waves of legislation designed to counter money laundering and its impact on the financial services industry and associated professions. Another Library note (Bank Accounts problems of identification (SN/BT/3366)) deals with the specific issue of difficulties in opening bank accounts because of lack of identification.

1. Introduction

Money laundering describes the procedures used to make money which has been acquired from criminal activity appear to have been lawfully acquired. These procedures are typically highly complex and by design hard to trace. Funds, whether generated through organised crime, terrorism or drug trafficking, will be placed within the mainstream economy or financial sector and the source and origin of the funds will be progressively concealed with each transaction. These transactions must be carried out in such a way as to avoid attracting the attention of the authorities and with it the risk of detection, confiscation and criminal proceedings. Because of the laundering, the funds will appear to be lawful. The first EU money laundering Directive defined it thus:

> The conversion or transfer of property, knowing that such property is derived from serious crime, for the purpose of concealing or disguising the illicit origin of the property or of assisting any person who is involved in committing such an offence or offences to evade the legal consequences of his action, and the concealment or disguise of the true nature, source, location, disposition, movement, rights with respect to, or ownership of property, knowing that such property is derived from serious crime.[1]

By its very nature it is difficult to quantify what the scale of the problem is. The proceeds are hidden and often only come to light in the event of prosecutions. A report by Transparency International quoted the following (widely varying) estimates:

> The scale of illicit financial flows around the world is vast. Given its inherently secretive nature, it is difficult to calculate the exact scale of global money laundering. However, while estimates vary, they provide a rough idea of the magnitude of the problem and of the necessity for the UK to effectively detect, restrain and deter the proceeds of corruption within its jurisdiction.
>
> • Recent US estimates have put the scale of global cross-border flow of the proceeds of crime, including corruption, at US$1.6 trillion.
>
> • The United Nations Office for Drugs and Crime (UNODC) assesses the total amount of money and assets laundered worldwide to be between US$800bn and US$2 trillion annually. Although the variance between these figures is very large, even the most conservative estimates indicate the massive scale of the problem.
>
> • The European Commission estimates that corruption costs European Union member states around EUR120bn per year.[2]

It is difficult to entirely separate legislation dealing with money laundering with more general legislation aimed at, loosely defined, the assets of criminals. This Paper will try to outline the overall impact of

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1 First anti-money laundering Directive 91/308/EEC of 10 June 1991 on prevention of the use of the financial system for the purpose of money laundering, OJ L 344/76 of 28.12.2001.

2 Transparency International; *EMPOWERING THE UK TO RECOVER CORRUPT ASSETS*; May 2015

legislation but will later concentrate upon money laundering and its impact on the financial services industry and associated professions.

2. Development of regulation

2.1 Introduction

There have been several attempts to control money laundering, the focus having shifted over time, often in response to events, from general criminality to drug enforcement and, lately, terrorist activity. Of necessity, money laundering legislation has an international aspect and the story of the development is largely one of an expanding and frequently revised body of law emanating from pan-national sources.

Pre-eminent among these is the Financial Action Task Force (FATF), an inter-governmental body established in 1989 by the Ministers of its Member jurisdictions. FATF sets standards and promotes effective implementation of legal, regulatory and operational measures for combating money laundering, terrorist financing and other related threats to the integrity of the international financial system.

This section charts the introduction and history of various key pieces of legislation. Readers wishing for a summary account of the existing situation only are recommended to look at chapter 2 of the *UK national risk assessment of money laundering and terrorist financing* published by the Treasury and Home Office in October 2015.

2.2 The first Money Laundering Directive

Action on a European level began with the first Money Laundering Directive. This was implemented by Regulation in the UK[3] and came into force on 1 April 1994. Financial institutions are most vulnerable to being party (unwillingly or not) to money laundering and thus are in the 'front line' of restrictions. The main impact of the Directive was to require financial institutions to verify the identity of all customers opening business relations with them (and to keep records of their identification). Staff had to be trained in anti-money laundering practices and suspicions of money laundering had to be reported through a designated officer (usually referred to as the money laundering reporting officer).

2.3 Terrorism legislation

Ancillary legislation drew in other activities within the money laundering remit. The Terrorism Act 2000 (TA 2000) widened the definition of terrorist activity and provisions in Part 3 of the Act imposed duties relating to the disclosure of information about terrorist finance. These duties were replaced and expanded upon by first three parts of the *Anti-Terrorism, Crime and Security Act 2001* which was passed in response to, and within a few months of, the attack on the World Trade Centre on 11 September 2001. ATCSA also included provisions to deal with forfeiture of terrorist property and seizure of terrorist funds

The Home Office's Explanatory Memorandum to the 2001 Act includes the following summary of the provisions in Parts 1-2:

[3] SI 1993 No 1933

> Terrorist property
>
> Part 1 and Schedules 1 and 2 of the Act contain provisions to prevent terrorists from gaining access to their money. They complement provisions in the new Proceeds of Crime Bill and ensure that investigative and freezing powers are available wherever funds could be used to finance terrorism.
>
> The introduction of account monitoring orders enable the police to require financial institutions to provide information on accounts for up to 90 days. The existing requirement to report knowledge or suspicion of terrorist financing has been strengthened, for the regulated sector, so that it is an offence not to report where there were "reasonable grounds" for suspicion.
>
> The Act gives law enforcement agencies the power to seize terrorist cash anywhere in the UK, and the power to freeze assets at the start of an investigation, rather than when the person is about to be charged, reducing the risk that funds will be used or moved before they can be frozen.
>
> Freezing orders
>
> Part 2 creates a new power which enables the Treasury to freeze the assets of overseas governments or residents who have taken, or are likely to take, action to the detriment of the UK's economy or action constituting a threat to the life or property of a national or resident of the UK. The Treasury's previous power to freeze assets, contained in the 1964 Act, is repealed.

The provisions allowing freezing orders (Section 4 of ATCS) were controversially used when the Treasury seized funds that could be used to compensate UK depositors with the failed Landsbanki Icelandic bank during the financial crisis of 2008.
Although the Government had announced plans to reform the main money laundering offences before the 9/11 attack, the attack prompted a rethink of previous proposals.

On 15 October 2001, the then Chancellor, Gordon Brown, set out a range of new actions to be taken against terrorist finances, including the establishment of a regulatory regime for bureaux de change and a multi-agency terrorist finance unit within the National Criminal Intelligence Unit.[4] At the same time, the Home Secretary announced that in addition to the measures in the *Proceeds of Crime Bill*, special controls would be set out in an emergency Anti-Terrorism Bill that would allow the bank accounts of suspected terrorists to be monitored and frozen.

Provisions in the Proceeds of Crime Act 2002 (POCA) enable the police and other law enforcement authorities to seize the proceeds of all crime, including terrorist crime. It brought together previous enactments and, together with the regulations made under it is the basis for most of the important, current, money laundering law. POCA was amended by the Serious Organised Crime & Police Act 2005.

4 'UK action plan on terrorist financing', HM Treasury, 15 October 2001. See also HC Deb 15 October 2001 cc923-53

2.4 The *Proceeds of Crime Act 2002* and Serious Organised Crime and money laundering offences under the Police Act 2005

The *Proceeds of Crime Act 2002* (POCA) contain the three principal money laundering offences:

- Section 327 - An offence is committed if a person conceals, disguises, converts, transfers or removes from the jurisdiction property which is, or represents, the proceeds of crime which the person knows or suspects represents the proceeds of crime.
- Section 328 - An offence is committed when a person enters into or becomes concerned in an arrangement which he knows or suspects will facilitate another person to acquire, retain, use or control criminal property and the person knows or suspects that the property is criminal property.
- Section 329 - An offence is committed when a person acquires, uses or has possession of property which he knows or suspects represents the proceeds of crime.

These offences are triable either in a Magistrates' Court or in the Crown Court and are punishable on conviction on indictment in the Crown Court by a maximum of 14 years imprisonment and/or a fine.

The *Serious Organised Crime & Police Act 2005* made several minor, though welcomed by the professions, amendments. For example, Section 102 allowed that if the source of the funds is criminal in this country but not in the country of origin then the funds are 'clean'. For example, proceeds of bullfighting remitted to the UK are 'clean' despite the fact that bullfighting is a criminal act in the UK. Section 104 eliminated the need to make what are called 'limited value reports' where there is very little to report other than the fact that suspicious activity has taken place. For example if neither the identity whereabouts nor address of the suspect is known, making a report is no longer necessary.

All three of the principal money laundering offences contain certain defences. For example, in the case of each of these offences, it is a defence to have made an authorised disclosure to, and obtain 'appropriate consent' from, the authorities before doing the act which would constitute the offence (see sections 335 and 338 of the Act).

Obtaining consent
Appropriate consent is the consent of a constable, customs officer or an officer from the Serious Organised Crime Agency (SOCA) to proceed with a prohibited act (s.335). A key element of consent is the specification of time limits within which the authorities must respond to an authorised disclosure in circumstances where a consent decision is required. The law specifies that consent decisions must be made within seven working days. If nothing is heard within that time, then the discloser can go ahead with an otherwise prohibited act without an offence being committed. If consent is withheld within the seven working days, then the authorities have a further 31 calendar days in which to take further action such as seeking a court order to restrain the assets in question. If nothing is heard after the end of the 31 day period, then the discloser can proceed with the transaction without committing an offence.

2.5 The second Money Laundering Directive

The second Money Laundering Directive (2MLD) was given effect by the Money Laundering Regulations 2003/3075, made under the *POCA 2002.* This revised the *Money Laundering Regulations 1993*[5] *and 2001.*[6] It is still the basis of many of the procedural aspects of the current money laundering specific legislation.

The main change brought about by the regulation was the extension of the legislation to a wider circle of financial and credit institutions, money services businesses, firms providing legal or accountancy services, casinos, estate agents, and some dealers in high value goods. They were laid as statutory instruments 2003/3074 -3076 on 1st December 2003 and came into force on 1 March 2004.

The regulations prescribed arrangements that had to be in place within firms carrying on relevant business, to forestall and prevent them being used for money laundering. They apply[7], inter alia, to:

- The regulated activities of all financial sector firms i.e. banks, building societies and other credit institutions; individuals and firms engaging in regulated investment activities under FSMA; issuers of electronic money; insurance companies undertaking long term life business, including the life business of Lloyd's of London;
- Bureaux de change, cheque encashment centres and money transmission services (money service businesses);
- The National Savings Bank; Corporate service providers, company formation agents, trust companies and trust service providers or managers;

[5] SI 1993/1933
[6] SI 2001/3641
[7] Regulation 2

- Casinos;
- Dealers in high value goods (including auctioneers) who accept payment in cash of Euro 15,000 or more (either single or linked transactions);
- Lawyers and accountants, when undertaking relevant business.

Persons carrying on relevant business under the regulations are required to establish and maintain appropriate systems and controls to forestall and prevent the firm being used in connection with money laundering covering:

- internal controls and communication;
- identification procedures;
- recognition of suspicious transactions and reporting procedures;
- awareness raising and training of employees; and
- record-keeping.

The Issues

The 2MLD regulations introduced many new requirements with severe legal and criminal consequences to potentially thousands of practitioners, hundreds of thousands of individuals and millions of individual transactions. Aware of this the Government published a consultation on the draft regulations in November 2002[8] and a short analysis of responses in April 2003.[9]

The consultation document explained that in implementing the 2MLD the Government wanted to make the UK regime both a 'proportionate response to the risk of money laundering' but also to minimise 'competitive distortion' between different professions. The consultation document discussed a range of policy options and why extending its scope may be desirable. The arguments and concerns over aspects of the regulations were set out in the consultation document. They are shown below.

- *Client confidentiality*

Some correspondents mentioned the problem of client confidentiality. It is difficult to see, however, what action a government could take on client confidentiality without rendering the whole Directive impotent. The whole point of the Directive is for advisers and financial agents to alert the authorities to suspect activity. The point was raised some time ago in an article in the *Financial Times*. It said:

> The parliamentary members of the special conciliation committee accepted virtually all of a text governing the professional secrecy of lawyers and their clients as proposed by the Belgian presidency of the EU. Tackling the big outstanding problem, the MPs agreed legal advice could be exempted from professional secrecy where a

[8] HM Treasury consultation Proposed revision of the money laundering regulations 1993 and 2001

[9] Treasury press notice, 29 April 2003, summarising responses

> lawyer was taking part in money-laundering activities or knew that his client was seeking advice for money-laundering purposes. But the committee voted down a presidency proposal that lawyers should report their clients to the authorities when there was "reason to believe " the client was seeking advice to launder funds.
>
> Yesterday's discussions in the parliament have thus left resolution of an increasingly bitter dispute between the parliament and member states over money-laundering rules hanging on a phrase. If parliament and member states cannot resolve their differences by mid-November, the legislation will collapse.[10]

- *De minimus reporting value*

Another concern expressed has been the lack of a de minimus reporting value.

The Treasury analysis of responses to the consultation document included a section on the definition of high value dealers:

> Dealers in High Value Goods: The majority of respondents expressed the preference for businesses to be able to choose whether to accept cash transactions for Euro 15,000 or above. The other options of designating certain luxury goods or banning the use of cash over the limit were seen as impractical for the reasons stated in the consultation document. There were several objections to a registration fee being charged.

In this case, there is a de minimus limit, namely £10,000 (approx). This point was picked up in another *Financial Times* article:

> Retailers such as jewellers, antique shops and car dealers who accept payments of more than about £10,000 could unwittingly fall foul of new anti-money laundering regulations, lawyers have warned.
>
> Shops that are paid in cash for big-ticket items will face hefty fines if they cannot formally identify their customers once the laws come into effect in June. The moves, which implement a European Union Directive, are aimed at cracking down on money launderers who invest "dirty" money in luxury goods which are easy to transport and sell.
>
> But few shops are even aware of the rules, which will be slipped into UK law as a statutory instrument under the Financial Services and Markets Act. Fewer still have plans in place to make sure they can comply with the rules, according to retail sector specialists Simon White, retail lawyer at Browne Jacobson, said: "At present there is a complete lack of information being provided for retailers to prepare them for this legislation. "Retailers who accept large sums of money in cash, even innocently, could find themselves under investigation."
>
> Under the rules, any retailer who wishes to accept more than €15,000 will have to implement compliance procedures that include: registering with Customs & Excise, appointing a compliance officer, and training staff in the legislation.
>
> […]

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[10] 'EU fails to find accord on anti-terrorist financing rules', *Financial Times*, 3 October 2001

> The laws are also likely to affect more businesses in Britain than many other EU countries because the government has chosen to interpret the term "high-value dealers" in the widest possible sense. It will include builders and other tradesmen and even less formal cash businesses such as horse auctions.[11]

- *The professions*

The comments with respect to client confidentiality are obviously important here too. The professions though were exercised about the cost of the regulations. In the consultation document, the compliance costs for accountancy and legal services were considered together:

  - *Compliance costs*

Accountancy and legal services

About 65,000 firms in the UK provide (broadly defined) 'accountancy services'. In addition there are over 100,000 qualified solicitors. Many of these, and all the big ones, were registered to carry on investment business, and are thus already subject to the Money Laundering Regulations. Many other businesses already have extensive systems in place pursuant to a code of conduct, and could therefore comply with the regulations with minimal additional cost. However, the Law Society estimated that a medium sized firm (10 partners and 20 associates) whose system was not yet substantially in compliance with the Regulations would incur total annual costs: £16 000. Grossed up to cover the whole sector it estimated costs in the range of £8 million to £16 million for larger firms and perhaps £130 million to £150 million if one included all the smallest practitioners.

- *Identification*

In terms of its impact upon the public, there is probably no bigger issue than the identification rule, the 'know your customer' rule. The extreme difficulty with which many people and groups of people, (returning ex-pats, students, migrants, the elderly etc.) faced in trying to open a bank account has to many been the public face of money laundering.[12]

2.6 The third Money Laundering Directive

Following on from work by international bodies – the Financial Action Taskforce – a new set of regulations were drawn up. These came down to the UK as the third Money Laundering Directive (3MLD) of 15 December 2007.[13]

3MLD reproduces much of the 2MLD but is more detailed and contained new provisions.

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[11] *Retailers face fines under new law to track big cash payments,* Financial Times 5 May 2003

[12] This specific issue is dealt with in a practical way in another Library standard note – Bank Accounts problems of identification (SN/BT/3366) which is available on the intranet.

[13] Directive 2005/60/EC

In particular, it explicitly dealt with terrorist financing; provided new definitions for Politically Exposed Persons (PEPs); introduced the requirement for Money Service Businesses, Trust, and Company Service Providers to be licensed or registered under a fit and proper test; enhanced the customer due diligence regime; encouraged a risk based approach and prohibited anonymous accounts. It requires there to be monitoring and supervision of all the institutions covered by the Directive, and the collection of statistics on the effectiveness of the regime and on feedback. It also carries forward from earlier Directives a system in which institutions should refrain from suspicious transactions until they have informed the FIU (Article 24), and a requirement for something like a tipping off offence (Article 28).

The Treasury published its consultation document in July 2006[14] and the draft regulations consultation on the 22 January 2007.[15] Issues that required comment or were much debated included such things as:

- Definition of accountant and tax advisor
- Some organisations would escape the Directive if their dealings were small and of an occasional basis. 'Small' remains to be defined, currently the Treasury suggest £61,000 or €91,500.
- Should the Directive apply to a wider group of businesses? Currently not, however, the Government has clearly considered the possible inclusion of letting agents.
- The level at which casino's should exercise due diligence with customers – the current Government suggestion is that the threshold above which casinos should act should be set at €2,000 chips exchanged or gambled. There is a substantial section on casinos in the document.
- What customers or products should qualify under the new, risk-based simplified due diligence procedures.[16]
- Enforcement – what powers of entry, search and interrogation should the various supervisory bodies have and which bodies should they be?
- The definition of what activities are included in the operations of a trust or company service provider;
- The 'fit and proper' test – the government wants a limited definition of what makes a company fit and proper, largely based on a list of negative criterion – thou shalt nots – consultation is required on whether a broader 'holistic' approach should be adopted, if so is the new 'catch all' provision adequate for this purpose?

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[14] HM Treasury; Implementing the Third Money Laundering Directive; July 2006.

[15] HM Treasury January 2007

[16] However, things do change. At one time MPs and hence the Library received many complaints about banks and other institutions refusing to open accounts for (amongst others) newly arrived EU migrants because of the ML rules. Later the banks, in particular, competed for the accounts of, especially, Polish migrants who years ago would have had no chance of getting one.

The new regulations were published in July 2007 as *The Money Laundering Regulations 2007* (SI 2007/2157).[17] Resolving some of the issues raised by consultation:

- 'Small' is defined as total turnover of less than £64,000, no transaction more than €1,000, the financial activity is less than 5% of the total annual turnover. (Schedule 2);
- Estate agents are included;
- Casinos are required to either verify the identity of all their customers before they gamble, either in house or remotely, or they are required to do so if the €2,000 threshold is breached. (Regulation 10);
- The 'fit and proper test' is essentially a list of specific thou shalt not have done this or that, capped by a catch-all: *(h) is otherwise not a fit and proper person with regard to the risk of money laundering or terrorist financing.*(Regulation 28);

An article outlining the operational aspects of the 3MLD was published by a partner in Simmons and Simmons solicitors when it was first introduced. It said:

> The Third Directive broadens the scope of applicability of the Second Directive, which was introduced in 2001. In 2001 the anti-money laundering regime was applied for the first time to "gatekeepers". It has now been extended to cover all traders in goods for transactions in cash of €15,000 or more. It also applies to more entrants to the regulated sector, including trust and company service providers and insurance intermediaries. This is one area of the Third Directive that may cause practical issues. Trust and company service providers are often consulted for privacy reasons and they may have the new customer due diligence and supervision requirements. They are currently grappling with the issues presented by this.
>
> The Third Directive is more prescriptive than the Second Directive in that it has mandatory provisions for customer due diligence ("CDD") requirements. Most solicitors practising in England and Wales are well versed in the process of verifying their clients' identities but in a more flexible regime. However, the Third Directive does encourage a risk-based approach.
>
> Article 8 of the Third Directive adds the requirement to identify, where applicable, the ultimate beneficial owner, including, for legal persons, trusts and similar legal arrangements, taking risk-based and adequate measures to understand the ownership and control structure of the customer. Those covered by the Third Directive will also now be required to obtain information on the intended nature and purpose of the business relationship and to monitor that relationship.
>
> Obligations to identify the beneficial owner and understand the ownership and control structure of legal entities are new and difficulties are expected. Legal entities often have companies as shareholders or directors, making it hard to identify the beneficial owner. The issue is also a problem with customers/ clients domiciled in countries with no trade registry.

[17] SI2007/2157 Explanatory Memorandum available at : http://www.opsi.gov.uk/si/em2007/uksiem_20072157_en.pdf

> The Third Directive does on the one hand introduce a detailed regime for CDD but it also introduces a risk-based approach, which the regulated sector in the UK has applied for many years. This allows organisations to tailor their efforts more efficiently to their own business needs. Reduced CDD measures can be applied when the client is a credit or financial institution situated in a non-EU member state, which imposes requirements similar to the Directive. The reduced system can also be used in certain designated cases. Conversely, enhanced CDD measures must be taken in cases where there is a higher risk of money laundering or terrorist financing. This includes those cases where a customer is not physically present for identification purposes and special measures for PEPs (politically exposed persons). In these circumstances there is a requirement to take specific and adequate measures to compensate for the higher risk by requesting more documents or information.
>
> It is likely that lawyers, in order to save time, rely on others to comply with the CDD requirements. The Third Directive now specifically states that a person may rely on a third party for CDD, but the ultimate responsibility for compliance remains with the institution covered by the Directive. This is part of a risk-based approach and should be carefully documented.
>
> The Regulations will also introduce a new scheme of supervisors for each of the sectors not currently supervised or monitored for money laundering purposes. Solicitors will continue to be regulated by the Solicitors Regulation Authority.[18]

3MLD was itself amended by Regulations in 2012 – the *Money Laundering (Amendment) Regulations 2012* (SI2012/2298). The explanatory note on the effect of the amendments can be found here.

The main changes are that it:

- increased the powers of professional supervisory bodies to share information with each other. This means, for example that HMRC, which is responsible for supervising unqualified accountants, will now have wider scope to take matters into consideration to decide whether a person is "fit and proper".
- Relaxed the rules regarding reliance on other bodies 'due diligence' searches, so that fewer checks by different bodies on the same person need be made.
- Estate agents in the UK, but who dealt only with overseas sales are now included

Proposals that would have abolished some criminal penalties for breaches of 3MLR to be replaced by civil penalties imposed by the supervisory bodies were not taken forward.

A further, minor, amendment was effected by the *Money Laundering (Amendment) Regulations 2015* (SI2015/11).

As has been stated previously there is a strong international dimension to money laundering rules. The forum for deciding upon the application and practical implementation of the regulations is the Joint

18 Louise Delahunty, Simmons & Simmons, published Law Society's *Brussels Agenda*, 7 December 2007

Money Laundering Steering Group (JMLSG). This produces (regularly updated) guidance which can be found on its website here:[19]

More information about the global impact and implementation of money laundering legislation can be found on the website of the Anti-Money Laundering Forum.

2.7 The fourth Money Laundering Directive

As has been said earlier the history of anti-money laundering legislation is one of continual change, either of focus or reach. The 4th MLD was agreed on June 2015. Proposing further reforms the EU Commission stated:

> In parallel to the international process, the Commission has undertaken work to assess the application of the 3AMLD and the FTR. This process has entailed commissioning extensive studies by consultants Deloitte and Matrix, as well as multiple contacts with stakeholders and Member State representatives to identify areas of possible change in the future AML framework. The Commission published its own report on the application of the Directive in April 2012.
>
> The results of both studies do not suggest the need for a fundamental overhaul of the EU regime, but highlight a number of areas where practical improvements could be made (e.g. guidance on the risk based approach, ensure better access to information on beneficial ownership and politically exposed persons, etc.).
>
> The most important changes resulting from the new international standards revolve around the move towards less prescriptive and a more risk-based set of rules.

It continues:

> The changes agreed at international level do not represent a fundamental re-calibration of the anti-money laundering rules, but rather a refinement of the rules. Among the most important changes are:
>
> • The reinforcement of the "Risk-Based Approach", applied both by obliged entities and supervisors, coupled with a need to assess AML/CFT risks facing jurisdictions.
>
> • Designation of "Tax Crimes" as a new “predicate offence” (i.e. so that money laundering includes cases where the proceeds of tax evasion were involved). Introduction of a new requirement for all cross-border wire transfers to include beneficiary information and to expansion of the scope to certain e-money and mobile telephony payment products.
>
> • Further clarification and guidance in areas such as customer due diligence, beneficial owner and Politically Exposed Persons (PEPs).
>
> Additionally, from an EU perspective, our own review process has indicated a need to address a number of areas in the EU Directive, for example:
>
> • How to share AML supervisory responsibility between home and host competent authorities. In the wake of the transposition of the Payment Services Directive, concerns have been raised by a

[19] Archive editions of previous guidance can be found on the JMLSG website

> number of Member States, about potential gaps in the AML framework caused by payment institutions operating across borders via networks of retail agents.
>
> • A tightening of the EU's Simplified Due Diligence regime, given that it has been criticised by the FATF as representing too broad a waiver from applying the Customer Due Diligence for certain bodies and products.
>
> • Clarification with respect to EU data protection rules, in particular regarding the ability to transfer information to different parts of an international group (including operating in third countries) for anti-money laundering purposes.
>
> • Enhancing transparency of beneficial ownership information and clarification of the existing 25% ownership threshold
>
> • Enhancement of cooperation and information sharing between EU FIUs – entailing integration of Council Decision 2000/642/JHA into the EU Directive.[20]

An article from Thompson Reuters also indicates that the main difference between the 3rd and 4th MLDs is the shift to a more risk based approach – which was common in the UK in any event. It says:

> Although largely mirroring the FATF recommendations the 4MLD will introduce some important changes for firms. At the heart of the proposals is the introduction of a risk based approach, a stance most UK firms will already be familiar with under the Financial Conduct Authority's (FCA) regulatory regime. Other changes will see the introduction of tax crimes as a predicate offence, the tightening up of beneficial ownership rules, plus amendments connected with politically exposed persons.
>
> The shift away from a purely rules based approach to a risk based approach is one that creates work for firms. Compliance officers and money laundering reporting officers will not have the default position of deferring to the rulebook when implementing the new regime.
>
> Instead they will need to identify, understand and offset any risks and document them clearly. Firms will be held accountable by regulators for any decisions they make under the risk based approach. Countries will also be expected to undertake risk assessments of issues and take measures to offset those risks. Firms' policies and procedures will need to reflect these risk assessments.
>
> The risk based regime does not mean that firms will automatically have to drop risky clients; rather they will need to rationalise and set out the reasons for accepting a new client's business. Eugene McConville, ex-head of financial intelligence at the Serious Organised Crime Agency, said that firms could take on 'riskier' clients as long as the risks are acknowledged and stay on the radar.
>
> "The rules are that it is risk based; it is not you turn everyone down. Ultimately, you look at someone, you make a decision, and you record it," he said.
>
> Jaap Van der Molen, managing director of VDM Associates, said that amendments to the due diligence regime were one of the

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[20] EU Commission press release

> biggest areas of change for firms under the new legislation and reflected the shift towards a risk-based regime.
>
> "There will no longer be automatic exemptions for customer due diligence requirements. Everything has been made risk based ... institutions will have to look at their own risk-based approach and come up with their own views on how to deal with financial institutions in the European Union," he said.[21]

With respect to the implementation of the 4MLD and the accompanying Wire Transfer Regulations,

There was a consultation on implementation, though the outcome changed subsequent to its proposals. Part of the implementation is by way of the and parts are contained in parts of the *Criminal Finances Act 2017*. It came in force in June 2017.

A full statement on the implementation of the Directive and the outcome of other related consultations – e.g. on the supervisory system – can be found in the following written answer from Stephen Kirby.[22]

2.8 The fifth Money Laundering Directive

The fifth Money Laundering Directive was agreed in principle between the EU Member States and the European Parliament in December 2017. The proposed text can be seen here. It will expand the requirement to perform anti-money laundering checks to new categories of businesses, like auctioneers, and increase transparency requirements for the beneficial ownership of both companies and, controversially, trusts.[23]

The EU Commission gave more detail on how and where the new Directive will operate:

> The main changes to directive 2015/849 involve:
>
> > - enhanced access to **beneficial ownership** registers, so as to improve transparency in the ownership of companies and trusts. The registers will also be interconnected to facilitate cooperation between member states. **Access to information** on beneficial ownership is foreseen as follows:
> >
> > public access to beneficial ownership information on companies;
> >
> > access on the basis of 'legitimate interest' to beneficial ownership information on trusts and similar legal arrangements;
> >
> > public access upon written request to beneficial ownership information on trusts that own a company that is not incorporated in the EU;
>
> Member states will retain the right to provide broader access to information, in accordance with their national law.

[21] Thompson Reuters; Fourth money laundering directive: a regulatory shift
[22] HC Deb 15 March 2017; HCWS537
[23] European Scrutiny Committee, Twelfth Report HC 301-xii (2017-19), chapter 14 (31 January 2018).

- addressing risks linked to **prepaid cards and virtual currencies**. The threshold for identifying the holders of prepaid cards is lowered from €250 to €150, and customer verification requirements are extended. Virtual currency exchange platforms and custodian wallet providers will have to apply customer due diligence controls, ending the anonymity associated with such exchanges;

- improving cooperation between the member states' **financial intelligence units**. FIUs will have access to information in centralised bank and payment account registers, enabling them to identify account holders;

- improved checks on risky **third countries**. The Commission has established and regularly updates a harmonised list of non-EU countries with deficiencies in their anti-money laundering prevention regimes. Additional due diligence measures will be required for financial flows from these countries. The list builds on that established at international level by the Financial Action Task Force.

The new Directive is expected to take effect in stages from 2019 onwards, and may have to be transposed in full by the UK during the post-Brexit transitional period.

3.Suspicious Activity Reports

Although complex, the existing money laundering rules have at their heart a simple requirement, namely that, after careful procedures have been followed, if a worker or institution in the financial services or related sectors, has suspicions about a transaction it should be reported to the relevant authorities.

> The body responsible for administering the regulations has changed a number of times in a reasonably short period of time. Originally it was the National Criminal Intelligence Service but this was subsequently subsumed within the Serious Organised Crime Agency (SOCA) in 2006, which in turn was later subsumed within the National Crime Agency (NCA).

The reports of suspect activity are officially called Suspicious Activity Reports or, more generally **SARS**. They have to be made in a prescribed manner on a special form.

Given the nature of what accountants, lawyers, bankers, estate agents etc. were being asked to report upon, i.e. 'suspicions', and the severity of the penalties if they failed to report something that turned out to be criminal, there has been a continual tension between the tendency to report anything on the 'better safe than sorry' principle and the ability of regulators to be able to process information. Reporting everything swamps the resources of the receiving agency and renders the entire system unworkable.

Practitioners have been concerned that for the effort they put in to SARS, very little emerged from it and they were worried about the use of SAR related findings, especially the confidentiality of reported data. Regulators were almost as keen to 'punish' over-zealous reporters as those who failed to do so.

These concerns lead to a review that reported in March 2006 Review of the suspicious activity reports regime *(The SARs Review)* written by the then Head of the Serious Organised Crime Agency (SOCA) Sir Stephen Lander.[24] With respect to the money laundering aspects the Review noted these criticisms:

> There is a perception in the regulated sectors that the SARs regime is broken: that institutions are spending some millions of pounds complying with burdensome legal obligations, yet Government is not similarly committed and there are virtually no results in terms of crimes prosecuted and the seizure of terrorist or criminal funds as a consequence of their efforts. This perception is principally focussed on the AML arrangements, but similar concerns, while muted by a reluctance to criticise post the events of 7 July 2005, were expressed during the review about the parallel CTF arrangements. While it is understandable that these

24 The Sars Review; Sir Stephen Lander; March 2006

> perceptions may have arisen, they are, however, inaccurate. Not only is Government itself also spending sizeable sums on the regime, but there have continued to be significant SAR-related law enforcement successes and intelligence gains from its operation, albeit usually out of sight of those who provided the original lead information. However, as the KPMG, Jill Dando Institute and HMIC reports referred to already have all indicated, and as NCIS as the current FIU itself accepts, there is significant room for improvement in the way the regime functions.[25]

The Report noted that there had been slightly less than 195,000 SARs in 2005, up from 20,000 in 2000. SOCA commented that they could not actively intervene in the SARs process and either give guidance on specific reports, or suggest an appropriate suspicion threshold or even suggest an appropriate volume of responses "In short, the correct Government position on numbers of SARs should be volume neutral".

Information about the workings of the regime can be had from the National Crime Agency annual report – and a SARs-specific Annual Report, which includes activity numbers. Successive Reports reveal the continuing balance sought between volume of SARS reports and their quality. For example, between October 2007 and September 2008 there were 210,524 SAR notifications, of which 956 were passed to the National Terrorist Finance Unit.[26] The table below gives recent figures:

SARS Key Statistics

Year end September	Total SARs	Consent/DAML SARs
2010	240,582	14,334
2011	247,601	13,662
2012	278,665	12,915
2013	316,527	14,103
2014	354,186	14,155
2015	381,882	14,672
2016	419,451	17,909
October 2015 - March 2017	634,113	27,471

SARS Activity Annual Report (various)

The SARS work is now undertaken by the UK Financial Intelligence Unit which sits within the NCA and was a requirement of the third money laundering Directive (see below).

In October 2015, the Treasury/Home Office *National Risk Assessment Report* (see below) commented on the SARs regime. It said:

> The suspicious activity reports (SARs) regime obliges entities in the regulated sector to report suspicions of money laundering or terrorist financing to the UK Financial Intelligence Unit (UKFIU), which is part of the Economic Crime Command in the NCA. Last year, over 350,000 SARs were filed with the UKFIU, the vast majority of them submitted by the financial sector.9 SARs form a

[25] Ibid para 25

[26] SARs Annual Report 2007-8

critical intelligence resource, and enable law enforcement agencies to intervene to prevent suspicious transactions. The SARs regime also provides SARs reporters with a mechanism to obtain a statutory defence from a money laundering or terrorist financing prosecution when they report suspicion.[27]

[27] HM Treasury, Home Office; *UK national risk assessment of money laundering and terrorist financing*, October 2015

4. Future Regulatory Approach

Clearly concerned about the threat which ML poses the UK government began a review of regulation and enforcement. Three documents set out future strategy.

The first is the *High End Money Laundering Strategy and Action Plan* published by the National Crime Agency in December 2014.

The second is a follow-on Report published jointly between the Treasury and the Home Office in October 2015 - *UK national risk assessment of money laundering and terrorist financing*[28]

These were supplemented in April 2016 by a further Treasury/ Home Office document *Action Plan for anti-money laundering and counter-terrorist finance*.

4.1 High End Money Laundering Strategy

High end money laundering relates mainly to major frauds and overseas corruption work, where the raw material of the crime is electronic and cash is only used further down the laundering process to disguise audit trails or extract profits. In this respect, it can be distinguished from the laundering of street cash generated by the activities of organised criminal groups (OCGs).

The Report starts with a gloomy observation about current strategy:

> There is a contrast between the current response to the laundering of OCG-linked street cash, which is relatively well understood and addressed, and high end money laundering, where there is no comprehensive response. A range of different organisations and agencies do look at this aspect of the threat but it is almost always a subordinate part of their investigations into predicate offences, such as fraud and bribery. Moreover, there is no agency with overall responsibility for leading the strategic response to high end money laundering.[29]

Responsibility for the delivery of the strategy will lie with the Economic Crime Strategic Governance Group (ECSGG), which is chaired by the Director of the NCA's Economic Crime Command and the Criminal Finances Threat Group which answers to it.

The broad thrust of their analysis is that the good picture and knowledge of the cash- based low end ML needs to be replicated at the other end. To this aim the following streams of work will begin:

> i) Improving the intelligence picture and cross-agency intelligence flows to better direct the targeting of our multi-agency investigation capability
>
> ii) Improving relationships and levels of co-operation with the private sector and relevant professional/regulatory bodies

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28 HM Treasury, Home Office; *UK national risk assessment of money laundering and terrorist financing*, October 2015

29 National Crime Agency *High End Money Laundering Strategy and Action Plan*, December 2014

> iii) Developing a multi-agency taskforce approach and delivering quality law enforcement interventions
>
> iv) Upskilling financial investigators to enable them to undertake complex and high end money laundering casework[30]

Under the heading of improved intelligence there will be a new unit focussed simply on this area:

> The creation of a new Money Laundering & Corruption Threat Desk within the NCA's Intelligence Hub will mean that, for the first time, there will be a dedicated team of analysts which can draw together the hitherto fragmented intelligence picture around this kind of money laundering and ensure that gaps identified through the National Intelligence Requirements are properly addressed.
>
> This will require close working with cross-sector experts, including the new Centre for Financial Crime and Security Studies, which was established by the Royal United Services Institute (RUSI) in December 2014.[31]

With respect to intelligence sharing there is a new emphasis on sharing of data with the financial sector:

> The Government has established a new Law Enforcement Financial Sector Forum, which is co-chaired by the Home Office, National Crime Agency and British Bankers Association. This group provides an opportunity to drive a shift in the relationship between law enforcement and the financial sector. For example, we can look to develop a joint approach to data sharing both within the financial sector and also between the financial sector and law enforcement.
>
> 21. The Forum has agreed the concept of a physically co-located information sharing mechanism, capable of being operational in early 2015. The aim is to deliver benefits for both private sector and law enforcement, including enabling better management of risk across banks' customer bases (for example allowing them to deny services to criminal customers), and to allow law enforcement to better target and undertake intervention activity. The initial focus of the mechanism will be on money laundering.[32]

4.2 UK National Risk Assessment

The National Risk Assessment built on many of the themes of the December document. The Report's 'Key Findings include:

- The size and complexity of the UK financial sector mean it is more exposed to criminality than financial sectors in many other countries
- UK law enforcement agencies want to know more about the role of the financial and professional services sectors (banks, legal, accountancy and trust and company service providers) in money laundering. They judge the threat in these sectors to be significant, and are still establishing the strength of understanding needed in this area.
- The effectiveness of the supervisory regime in the UK is inconsistent. Some supervisors are highly effective in certain

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30 National Crime Agency *High End Money Laundering Strategy and Action Plan*;
31 National Crime Agency *High End Money Laundering Strategy and Action Plan*
32 National Crime Agency *High End Money Laundering Strategy and Action Plan*

areas, but there is room for improvement across the board, including in understanding and applying a risk-based approach to supervision and in providing a credible deterrent. The large number of professional body supervisors in some sectors risks inconsistencies of approach. Data is not yet shared between supervisors freely or frequently enough, which exposes some supervised sectors where there are overlaps in supervision.

- The majority of those working in the regulated sector are not complicit in money laundering or terrorist financing. However those working in the regulated sector may aid those involved in money laundering, either unwittingly, or through negligence or non-compliance. Non-compliant or negligent professionals have the potential to cause significant harm by facilitating money laundering and causing reputational damage to their profession.
- The law enforcement response to money laundering has been weak for an extended period of time. It has not been a priority for most local police forces (although the metropolitan forces appear to provide a more effective response). Since 2012, the government has invested in developing the capabilities of Regional Organised Crime Units (ROCUs).
- Supervisors and private sector representatives consulted in the course of producing the NRA voiced repeated criticism of the SARs regime. In December 2014 the government committed to reviewing the regime.10 This will provide an opportunity for individuals and firms in the regulated sector, supervisors and law enforcement agencies to make proposals for improvements to the regime, and in particular to ELMER, the database for suspicious activity reports. ELMER is now reaching the end of its life, which may create risks to the effectiveness of the UK's anti-money laundering regime, and will need to be replaced soon.[33]

The priorities for action are identified as:

- plugging intelligence gaps, particularly those associated with 'high end' money laundering through the financial and professional services sectors
- enhancing our law enforcement response to tackle the most serious threats
- reforming the suspicious activity reports (SARs) regime, and upgrading the capabilities of the UK Financial Intelligence Unit (UKFIU)
- addressing the inconsistencies in the supervisory regime that have been identified through this assessment
- working with supervisors to improve individuals' and firms' knowledge of money laundering and terrorist financing risks in key parts of the regulated sector to help them avoid getting drawn into money laundering
- transforming information sharing between law enforcement agencies, the private sector and supervisors, building on the progress already made through the JMLIT

33 HM Treasury, Home Office; *UK national risk assessment of money laundering and terrorist financing*, October 2015

4.3 Action Plan for anti-money laundering and counter terrorism finance

This document was published in April 2016. It outlines Government measures intended to be "the most significant change to our anti-money laundering and terrorist finance regime in over a decade".[34]

It includes a long list of action points distributed amongst the two lead departments, crime agencies, industry groups and other public agencies. A summary of these can be found here. The plan has four priority areas:

A stronger partnership with the private sector

- Law enforcement agencies, supervisors and the private sector working in partnership to target resources at the highest money laundering and terrorist financing risks.
- New means of information sharing to strengthen the application of the risk-based approach and mitigate vulnerabilities.
- A collaborative approach to preventing individuals becoming involved in money laundering.

Enhancing the law enforcement response

- New capabilities and new legal powers to build the intelligence picture, disrupt money launderers and terrorists, recover criminal proceeds, and protect the integrity of the UK's financial system. For example, the Government has established a Task Force, led jointly by the NCA and HMRC, to investigate all forms of illegality stemming from the data related to Mossack Fonseca, the law firm based in Panama.

Improving the effectiveness of the supervisory regime

- Investigate the effectiveness of the current supervisory regime, and consider radical options for improvement to ensure that a risk-based approach is fully embedded, beginning with the understanding of specific risks, and the spotting of criminal activity, rather than a focus on tick-box compliance.

Increasing our international reach

- Increase the international reach of law enforcement agencies and international information sharing to tackle money laundering and terrorist financing threats. The international leadership being shown by the UK through the Prime Minister's Anti-Corruption Summit will lead to greater disruption of money laundering and terrorist financing activities, the prosecution of those responsible and increased recovery of the proceeds of crime, and a greater protection of the UK financial system. The Summit will galvanise the international response and address issues including corporate secrecy, government transparency, the

[34] Home Office/ HM Treasury; *Action Plan for anti-money laundering and counter-terrorist finance*; April 2016

enforcement of international anti-corruption laws, and the strengthening of international institutions.[35]

4.4 Departmental Review of the Efficiency of ML Regime

In March 2017 DBEIS published *Cutting Red Tape: a Review of the UK's Anti Money Laundering and Counter Financing of Terrorism Regime*.

The purpose of the review was to identify any aspects of the supervisory regime (not the underlying regulations but the way in which they are enforced) that make it less effective whilst imposing unnecessary burdens on legitimate, law-abiding businesses. Some of the findings are shown below:

A. Guidance

- i. The large volume of supervisor issued guidance creates confusion and unnecessary costs for business
- ii. The structure of the regime leads to overlapping and duplicated guidance.
- iii. Multiple pieces of guidance fail to clearly distinguish between legal requirements and additional good practice suggestions.
- iv. The Treasury guidance approval process is, in some cases, reported to take over a year to report and only covers checking guidance's compliance with the law.
- v. Some large financial institutions, which have been involved in the drafting, speak highly of the existing guidance. However, some business users of the existing guidance report finding it complex, confusing and hard to understand.
- vi. Multiple firms report feeling forced to hire consultants to help them navigate the regime.

B. Overall approach to compliance and its impact on the effectiveness of the regime

- vii. Businesses feel that the current policy approach is at odds with the approach of many supervisors.
- viii. Some businesses feel that the perceived prescriptive approach, combined with fear of the consequences of making a mistake, results in industry being unwilling to challenge any supervisor issued advice or guidance.
- ix. Companies such as Financial Technology (FinTech) firms reported that their growth is hampered by the inability and unwillingness of banks to adapt to their companies' new business models.
- x. FinTech firms feel that new technological solutions to help companies seeking reliable and cheap ways to comply with the law are not being adopted due to supervisors' apparent preference for traditional methods.

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35 Home Office/ HM Treasury; *Action Plan for anti-money laundering and counter-terrorist finance*, April 2016

- xi. A particularly strong focus on Customer Due Diligence checks by supervisors and in the guidance makes businesses feel unable to act in accordance with their own risk assessments.
- xii. Among the industry supervisors there is no consistent approach to the separation of enforcement / supervision and representation functions.

C.Overall approach to compliance and its impact on the economy

- xiii. The impact of the overall regime is reported to have wider impacts on the economy:

  a. The complexity of customer due diligence requirements hits small businesses particularly hard and thus limits competition in the provision of services.

  b. The current approach discourages customers (both companies and individuals) from moving their bank accounts to more competitive providers and from using different financial products.

  c. The cost of complying with customer due diligence checks on new clients (particularly for SMEs) can outweigh the value of doing business with them.

  d. Companies/individuals in high risk sectors report banks unwilling to accept them as a customer / withdrawing services.

5. Conclusion: does money laundering regulation work?

Money laundering legislation has had a major impact upon business and individuals in the UK in terms of cost and time to set up systems and in the inconvenience faced by people struggling to find adequate identification to prove to their banks or solicitors who they are, often when they have been customers for years.

5.1 Technical assessment

At a technical level, the industry, in particular the financial services industry, does appear to be more at ease with the legislation than it was. Responses from a limited sample of industry representatives suggests that the new risk-based approach works and has made life simpler. However the feedback from smaller firms is less positive as evidenced in the Report published in March 2017 listed above.

There is some evidence that the sector is getting better at knowing when to report and when not to, and, crucially in retail sectors appears to be providing better training for its 'front line' staff. There is, perhaps inevitably, a feeling that public sector prosecutions do not match private industry's considerable efforts sufficiently. Another concern is that where companies have operations in a multiple jurisdictions, efforts made in the UK are undone by lower requirements overseas.[36]

Compliance does not come cheap though. The British Bankers Association estimate that its members are collectively spending at least £5 billion annually on core financial crime compliance.[37]

The response to the 4MLD too is generally positive. The Finance & Leasing Association stated:

> We believe that, on the whole, these draft regulations are a positive response to most of our feedback and more generally to industry input. The Treasury has accepted most of the minor amendments we requested and generally reacted positively to most of our key concerns.
>
> We also welcome the Treasury's continuing consultation and dialogue with experts within the Joint Money Laundering Steering Group (JMLSG) and with sector and industry experts within trade bodies such as the BBA, IMA, ABI and the FLA. It is essential the Treasury maintains this dialogue in order to be able to iron out definitional, scope and supervisory concerns.[38]

The Electronic Money Association responded that "overall the AML regime is workable" although

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[36] Unofficial briefing Association of Foreign Banks

[37] Home Office/ HM Treasury; *Action Plan for anti-money laundering and counter-terrorist finance*, April 2016

[38] Unofficial briefing

> There is some frustration over the investment put into combating financial crime by the public sector however, when the private sector's compliance requirements are increasing. Law enforcement resources and ability to address industry concerns could be improved significantly.[39]

The assessment of Transparency International (TI) is mixed:

> While the UK performs well relative to other international peers, even at the highest estimate, asset freezing and asset recovery are very small in relation to the vast scale of the activity. Based on highly conservative estimates of the scale of proceeds of corruption, the UK is unlikely to have frozen any more than 0.75 per cent of global corrupt financial flows per annum for the period covering 2010-2012.
>
> This is disproportionately low considering London's role as a global financial centre, a professional services centre and an investment hub for luxury property and high-value goods.[40]

In July 2016 the Home Affairs Select Committee produced a Report following its inquiry into proceeds of crime.[41] The particular focus of the Report was on the use of powers to seize assets acquired as a result of criminal activity, it was therefore looking at a broader set of issues than simply money laundering although there are obvious links.

It highlighted an assessment by the National Crime Agency which tried to put the problem into context:

> Some of our witnesses encouraged caution and perspective. Donald Toon of the NCA agreed that the value of money laundered through the UK was likely to be "hundreds of millions of dollars" a year. He went on to highlight, however, that this figure represented a tiny fraction of financial transactions going through the city every day:
>
> It is critical to put that in context when we are talking about a financial system that, in some areas of trading, can involve £1.5 trillion to £2 trillion a day in terms of transactions. It sounds like a large figure, but it has to be put against a very large volume and value of transactions.[42]

5.2 Economic Assessment

At a broader policy level – does the legislation work to prevent crime etc – the answer is less clear. A Home Office/Treasury Action Plan published in April 2016 estimated that "There is no definitive measure of the scale of money laundering, but the best available international estimate of amounts laundered globally would be equivalent to some 2.7% of global GDP or US$1.6 trillion in 2009."[43]

A Transparency Initiative (TI) 'taskforce' examined its efficacy in May 2015:

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39 Unofficial briefing

40 Transparency International; *EMPOWERING THE UK TO RECOVER CORRUPT ASSETS*; May 2015

41 Home Affairs Committee Fifth Report; *Proceeds of Crime*; HC25 2016/17

42 Home Affairs Committee Fifth Report; *Proceeds of Crime*; HC25 2016/17

43 Home Office/ HM Treasury; *Action Plan for anti-money laundering and counter-terrorist finance*; April 2016

> The Taskforce made five key findings:
>
> 1. The levels of asset recovery by the UK are very small compared to the likely amounts of corrupt wealth being laundered
>
> 2. Only a small minority of suspicious activity reports relating to grand corruption are acted on by law enforcement agencies
>
> 3. The timeframe "moratorium period" of 31 days for responding to suspicious activity reports is generally inadequate to investigate and achieve asset restraint for grand corruption cases
>
> 4. Non-conviction based asset forfeiture (NCBAF) civil powers are under-used in cases of grand corruption
>
> 5. The current framework for asset recovery is overly reliant on a conviction in the origin country[44]

The July 2016 Home Affairs Committee Report commented on oral evidence from Robert Barrington, the Executive Director of Transparency International UK:

> "it seems likely that in terms of money laundering going through the UK system every year, it is at least £100 billion". That is a staggering figure, equivalent to twice the size of Panama's whole economy. Mr Barrington went on to explain why the UK was such a target for money launderers:
>
> Clearly one of the things that makes the UK attractive as a centre for money laundering is its historic links with the Overseas Territories and Crown Dependencies, because you can move money very quickly to jurisdictions that are very well-linked and for whom your bank of lawyers and accountants will have very close connections and can easily set up shell companies and so on.[45]

SOCA defined success in one of its early Action Plans as:

> The broad performance framework identified for SOCA by the Home Secretary is designed to reflect the reality of what it has been tasked to achieve. The SOCA Board has determined that, in response to that framework set by the Home Secretary, SOCA will be governed by a performance regime that bears as closely as possible to the reality of outcomes that matter to the people of this country. Its main measures will be:
>
> • the quality of knowledge and understanding of serious organised crime;
>
> • criminal asset performance, where SOCA will contribute to Government wide asset recovery targets. These targets, and SOCA's contribution to them, are currently under review elsewhere within Government;
>
> • dislocation of criminal markets, assessed through evaluation of the impact of SOCA's activity, with an aim of generating evidence of that impact in the form of upward pressure on the price of criminal goods or services, a reduction in UK availability or quality, or evidence that criminals are finding the UK a less attractive market; and

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44 Transparency International; *EMPOWERING THE UK TO RECOVER CORRUPT ASSETS*; May 2015

45 Home Affairs Committee Fifth Report; *Proceeds of Crime*; HC25 2016/17

> • the quality of SOCA's relationships with others, which will be measured through regular structured surveys.[46]

National Risk Assessment

A major assessment of the regulatory regime was published jointly between the Treasury and the Home Office in October 2015 - *UK national risk assessment of money laundering and terrorist financing*[47]

It began with the bad news -

> The NCA judges that billions of pounds of suspected proceeds of corruption are laundered through the UK each year.
>
> Money laundering is also a key enabler of serious and organised crime, the social and economic costs of which are estimated to be £24 billion a year. Taken as a whole, money laundering represents a significant threat to the UK's national security.[48]

Its analysis noted that both the supervision and policing effort of the AML regime had been weak:

> The effectiveness of the supervisory regime in the UK is inconsistent. Some supervisors are highly effective in certain areas, but there is room for improvement across the board, including in understanding and applying a risk-based approach to supervision and in providing a credible deterrent. The large number of professional body supervisors in some sectors risks inconsistencies of approach. Data is not yet shared between supervisors freely or frequently enough, which exposes some supervised sectors where there are overlaps in supervision.
>
> […]
>
> The law enforcement response to money laundering has been weak for an extended period of time. It has not been a priority for most local police forces (although the metropolitan forces appear to provide a more effective response). Since 2012, the government has invested in developing the capabilities of Regional Organised Crime Units (ROCUs).[49]

An earlier (2008) detailed survey of the impact of the combined effects of the legislation published by an academic at Newcastle Business School, concluded that there was very little hard evidence of the benefits of the legislation. Evidence is mainly 'second hand' in the sense that the indicators used are those derived from the system itself, i.e. number of SARS reported. Also, whereas the costs of the regime are born almost entirely by the industry, the 'rewards' are enjoyed by the law enforcement agencies by virtue of increased confiscations etc. The supposed benefit to industry of a 'clean reputation' was thought by some in the industry to be hard to calculate and more thought that

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[46] SOCA *Annual Plan 2006/07,* p 12
[47] HM Treasury, Home Office; *UK national risk assessment of money laundering and terrorist financing*, October 2015
[48] HM Treasury, Home Office; *UK national risk assessment of money laundering and terrorist financing*, October 2015
[49] HM Treasury, Home Office; *UK national risk assessment of money laundering and terrorist financing*, October 2015

publishing how much they spent on enforcement would have a negative impact on their shareholders.[50]

[50] Just How Effective is Money Laundering Legislation? Jackie Harvey, Security Journal 2008 (contact library for access)

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