

## Home Office Circular 029/2008

### Proceeds of Crime Act 2002: Obligations to Report Money Laundering – the Consent Regime

**1. THIS CIRCULAR contains guidance on the operation of the “consent” regime in the Proceeds of Crime Act 2002 (POCA). It has been drawn up in consultation with the Serious Organised Crime Agency (SOCA), Association of Chief Police Officers (ACPO), Association of Chief Police Officers ( Scotland), the Crown Prosecution Service, HM Revenue and Customs, Revenue and Customs Prosecutions Office and others. It is being issued to ensure consistency of practice on the part of law enforcement in considering requests for consent under Part 7 of POCA. This is in response to concerns from the financial services industry and other sectors and professions that decisions are taken in an effective and proportionate way, with due engagement with all participants.**

#### Background

2. The Proceeds of Crime Act 2002 (POCA) created a single set of money laundering offences applicable throughout the UK to the proceeds of all crimes; these are known as the principal money laundering offences. There are separate offences of failure to disclose money laundering. These are set out in more detail in Home Office Circular 53/2005. A disclosure of money laundering or that another person is engaged in money laundering is commonly known as a Suspicious Activity Report (SAR). SARs can also be made under the Terrorism Act 2000. SARs submitted by firms in the regulated sector (defined by the legislation) reporting that another person is engaged in money laundering must be made to SOCA.

3. Under POCA individual persons and businesses in the regulated sector are required not only to report before the event suspicious transactions or activity that they become aware of, but to desist from completing these transactions until a specific consent is received. This is the 'consent regime' in section 335 of POCA. A person does not commit one of the principal money laundering offences in sections 327-329 of POCA if he makes a disclosure before the 'prohibited act' takes place and obtains the appropriate consent. (Under certain conditions, as set out in section 338(3), a defence can be obtained by reporting after the event). Such disclosures, or "consent SARs", can be made to any constable or officer of Revenue and Customs. However, current practice is for them to be made to SOCA. Where they are made to a constable or officer of Revenue and Customs they must be forwarded to SOCA as soon as practicable.

4. The "consent" provisions in sections 327-329 and section 335 of POCA have two purposes: they offer law enforcement agencies an opportunity to gather intelligence or intervene in advance of potentially suspicious activity taking place; and they allow individuals and institutions who make reports seeking to consent to proceed with a "prohibited act" the opportunity to avoid liability in relation to the principal money laundering offences in the Act.

#### Consent - the decision making process

5. Decisions on requests for consent to proceed with a transaction or activity ("a prohibited act") are taken by SOCA in consultation with the relevant law enforcement agency. There is a great need to ensure that the practices of all law enforcement agencies are consistent in this area. A policy has been formulated, in agreement with key partner agencies, which sets out the high-level principles by which the law enforcement agencies should make decisions on consent, and how these principles should be applied. In broad terms it is important that law enforcement agencies recognise the potential significant impact that each report and decision can have, for example on whether or not:

- the proceeds of crime are recovered;
- crime is prevented;
- honest individuals and businesses are exposed to financial loss or litigation; and
- the smooth running of commercial business is disrupted

6. The detailed policy is attached at Annex A to this Circular. It is very important that a consistent approach to dealing with requests for consent is adopted by all law enforcement agencies in order that the regime achieves its intended objectives. Against this background, chief officers of police and other relevant stakeholders should adopt and apply this policy in their organisations.