



**Friday December 5, 2008**

## **HOME OFFICE ISSUES GUIDANCE CIRCULAR ON CONSENT REGIME**

The Home Office has today (Friday December 5) issued a circular providing guidance on the operation of the Consent Regime drawn up in the Proceeds of Crime Act 2002 (POCA).

The 028/2008 circular, entitled 'Proceeds of Crime Act 2002: Obligations to Report Money Laundering – The Consent Regime', is aimed at law enforcement and can be downloaded from the Home Office's website [www.homeoffice.gov.uk](http://www.homeoffice.gov.uk).

It has been drawn up in consultation with the Serious Organised Crime Agency (SOCA), the Association of Chief Police Officers (ACPO), the Association of Chief Police Officers (Scotland), the Crown Prosecution Service, HM Revenue and Customs, Revenue and Customs Prosecutions Office and others, and is being issued to ensure consistency of practice on the part of law enforcement in considering requests from consent under Part 7 of POCA.

As mentioned in the second Suspicious Activity Reports (SARs) Annual Report (published in November; downloadable from [www.soca.gov.uk](http://www.soca.gov.uk)) a Home Office consultation on the future of the consent regime closed in March 2008. Responses demonstrated there was no clear way forward on this issue as regards to further amendments to the current legislation.

In light of this, and to concerns voiced by the regulated sector about the burdens and risks they bear in complying with the law in this area, the Home Office is issuing formal guidance to law enforcement agencies in the form of this circular, which sets out, amongst other things, the high-level principles by which decisions to grant or refuse consent under section 335 of POCA should be taken.

The guidance is intended to ensure sound decisions in the Consent Regime are in line with the three principles of the Government's anti-money laundering strategy, which are:

- effectiveness – making maximum impact on the criminal threat;
- proportionality – ensuring the approach is balanced as far as possible in respect of the costs and benefits; and
- engagement – collaborative working amongst Regime participants to ensure success.

The Home Office guidance recommends police and other law enforcement should reflect these principles in their internal guidance or in their consent procedures.

POCA created a single set of money laundering offences applicable throughout the UK to the proceeds of all crimes, known as the principal money laundering offences.

A disclosure of money laundering or that another person is engaged in money laundering is commonly known as a Suspicious Activity Report (SAR). 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.

Under POCA, individuals 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).

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 consent to proceed with a "prohibited act", the opportunity to avoid liability in relation to the principal money laundering offences in the Act.

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 the practices of all law enforcement agencies are consistent in this area, hence today's circular, which sets out the high-level principles by which 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.

Over the last year, the UK Financial Intelligence Unit (UKFIU), which sits within SOCA, has continued to provide reporters of SARs with assurance as to the decision making process for consent requests, and a more pragmatic approach to the Consent Regime's operation has been developed by all participants, which has led to significant results.

**This document has been produced by the UK Financial Intelligence Unit (UKFIU)**