



# Home Office

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Lord Browne-Wilkinson  
Chairman  
Financial Markets Law Committee  
c/o Bank of England  
Threadneedle Street  
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04/03/05

*Dear Lord Browne - Wilkinson*

**FINANCIAL MARKETS LAW COMMITTEE ISSUE 69: PROCEEDS OF  
CRIME ACT – PROPOSED AMENDMENTS TO PART 7 OF PROCEEDS OF  
CRIME ACT 2002**

Thank you for your letter of 26 January enclosing an addendum to FMLC Issue 69 on the amendments to Part 7 of the Proceeds of Crime Act 2002 (POCA).

The Government's proposed amendments to POCA in the Serious Organised Crime and Police Bill are intended to:

- reduce the burden on the regulated sector in complying with the requirements to report money laundering
- respond to other concerns about the legislation which the regulated sector have raised
- improve the effectiveness of the system

I have noted the FMLC's comments on the proposed new defence where overseas conduct is legal under local law. The defence is intended to cover only a limited range of situations. As I said when this amendment was debated during Standing Committee on the Bill in January, its main purpose is to filter out the need for the regulated sector to report on activities such as

the profit from bullfighting in Spain or where businesses are engaged in what is apparently lawful business abroad - for example, in a country, such as Switzerland, which does not have such a detailed system for regulating financial markets as there is in the UK under the Financial Services and Markets Act 2000. Although in many cases the crime that generated the suspected criminal property might not be known, the new defences are directed at circumstances where the person, who would otherwise be required to make a disclosure, knows or suspects the source of the money. The reference to suspicion is relevant because, although the person in this case might suspect that, for example, the bullfighter's money derives from bullfighting, he is unlikely to "know" that this is the case.

In response to points raised in Standing Committee, the Government has made further amendments so that the legality test, in the defence of laundering the proceeds of conduct overseas where that conduct is legal under local law, is applied when the "relevant criminal conduct" took place and not at the time when the disclosure fails to be made. These amendments also deal with the situation where different laws apply in different states.

Turning to the domestic issues referred to in the FMLC paper and the proposed defence to the reporting obligation based on the concept of serious crime and the defendant's awareness of it, our view is that this would create a large loop-hole in the UK's defences against money laundering. It would appear to require a decision as to what activity a person had been engaged in based on evidence which is separate from that derived from the financial transaction. In many cases the person required to make a disclosure (such as a bank clerk) might suspect that the funds derive from crime, without knowing or suspecting any specific crime.

We have also considered the FMLC proposals on the definition of criminal conduct. We have no plans to amend the definition of criminal conduct in section 340 (2) of POCA or of criminal property in section 340(3). Our international obligations under the Financial Action Task Force recommendations require reporting of any suspicion regardless of the sum involved.

In addition the FMLC proposal would fundamentally change the Government's all-crimes approach to money laundering itself. This point was discussed during the passage of the Proceeds of Crime Bill through Parliament. There was a choice to be made between having a threshold linked to serious crimes only, thus reducing the number of reports to be made but losing some helpful material in the process, or requiring the reporting of all crime, providing all the relevant intelligence but at the expense of a larger number of reports to be made and processed. The Government opted for the all reporting approach, and Parliament endorsed this decision. This remains the Government's position. If any transactions or assets are suspect, it is only right that they should be reported.

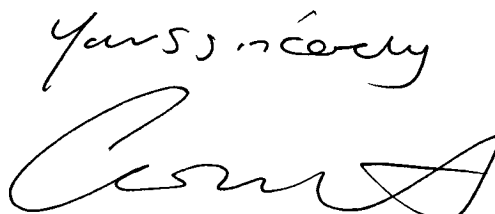
In the Government's view it is right that the criterion should be one related to the threat of money laundering i.e. the capability of an offence to generate considerable profits. That might not in every case be the same as an offence designated as "serious" for instance by reference to its maximum sentence and might unjustifiably exclude potentially profitable regulatory- type offences which the all-crimes approach catches.

An additional concern is that the proposed amendment would require the reporting officer (the person making the disclosure) to be able to identify the specific crime (the predicate offence.)

I am grateful for the considered views in the FMLC paper and addendum. The Committee's main proposal, in paragraph 25 of the paper, in relation to POCA relied on being able to distinguish between "serious crime" and other crime in the context of identifying the source of criminal property. As I have sought to explain above, this is not possible in many cases.

In the addendum to the paper the Committee proposes that the Government should take a power to vary the types of conduct that fall within the definition of "criminal conduct" by secondary legislation. An amendment to add a power to significantly change the effect of primary legislation by subordinate legislation is liable to prove highly controversial in Parliament. Accordingly, the Government is not in favour of such a measure.

In the Anti-Money Laundering Strategy Paper published last October, the Government undertook to continue to monitor the effectiveness of the anti-money laundering regime and to consider whether further changes were necessary once the current legislation had time to bed down. The Home Office, Treasury and NCIS are working closely with the regulated sector to reduce the burden of reporting. For example, we have introduced a Limited Intelligence Value Report so that industry can provide the information necessary to NCIS in summary or bulk format in certain categories of cases. This saves time and reduces costs. We will continue to engage with the regulated sector on the operation of these provisions. There will be further opportunities to amend Part 7 of POCA should the need arise.

  
**Caroline Flint**