EXPLANATORY MEMORANDUM TO

THE PROCEEDS OF CRIME (MONEY LAUNDERING) (THRESHOLD AMOUNT) ORDER 2022

2022 No. 1355

1. Introduction

1.1 This explanatory memorandum has been prepared by the Home Office and is laid before Parliament by Command of His Majesty.

1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

2.1 This Order increases the value below which certain transactions can be carried out by certain businesses in operating an account for a customer, from £250 to £1,000, without committing an offence under the Proceeds of Crime Act 2002 ("POCA").

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 This is the first time the power in section 339A of POCA has been exercised.

4. Extent and Territorial Application

4.1 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is the whole of the United Kingdom.

4.2 The territorial application of this instrument (that is, where the instrument produces a practical effect) is the whole of the United Kingdom.

5. European Convention on Human Rights

5.1 Security Minister, Tom Tugendhat, has made the following statement regarding Human Rights:

"In my view the provisions of the Proceeds of Crime (Money Laundering) (Threshold Amount) Order 2022 are compatible with the Convention rights."

6. Legislative Context

6.1 Sections 327 to 329 of POCA are the principal money laundering offences. They prohibit acts committed intentionally by a person in relation to "criminal property", defined in section 340 of POCA as property which is known or suspected to constitute or represent a benefit from criminal conduct.

6.2 The Serious Organised Crime and Police Act 2005 amended sections 327 to 329 of POCA and introduced a new section 339A. These provide that certain firms ("deposit-taking bodies", electronic money institutions and payment institutions: see section 340 for the relevant definitions) do not commit an offence if they do an act in relation to criminal property (other than concealing or disguising) in operating an account

maintained with them, if the value of the property is less than the "threshold amount" of £250. The Secretary of State may by order vary that threshold amount.

7. Policy background

What is being done and why?

7.1 This instrument will amend the existing threshold in section 339A of POCA.

7.2 The monetary threshold will increase from £250 to £1,000; this is to improve the anti-money laundering Suspicious Activity Report (SAR) regime and free up law enforcement resource to focus on opportunities that lead to asset seizure and deliver cost savings to the regulated sector. In consultation with the National Crime Agency (NCA), the Government believes that a threshold of £1,000 would reduce DAML volumes and reduce the burden on the reporting sectors without losing intelligence. The £250 threshold has been unchanged since its introduction in 2005 and was set at £250 to allow living expenses. As the cost of living has increased since then, higher values of payments are now made. Government is amending the existing threshold to reduce the increasing volume of Defence Against Money Laundering (DAMLs).

7.3 A person dealing in suspected criminal property may be liable for one of the primary money laundering offences under POCA. A person can avoid prosecution by submitting a DAML SAR, known as a DAML, to the NCA. DAMLs effectively freeze a transaction until a consent decision is given by the NCA or 7 working days pass, after which businesses can assume consent. This amendment will result in fewer delayed transactions where a DAML is no longer needed. While we continue to do nothing, more customers are experiencing delayed transactions while 7 working days pass after which the business can assume consent.

7.4 The volume of DAMLs is rising steeply, between 2018/19 and 2019/20 they increased by 80% from approximately 34,000 to over 62,2000, and then to c.105,000 in 2020/21. However, many DAMLs do not provide law enforcement with asset seizure opportunities but place burdens on law enforcement and businesses. In 2019/20 only 2% (1,365) of all DAMLs were refused consent, of which only 1,062 progressed towards asset denial.

7.5 The volume of DAMLs is rising steeply, between 2018/19 and 2019/20 they increased by 80% from approximately 34,000 to over 62,2000, and then to c.105,000 in 2020/21. However, many DAMLs do not provide law enforcement with asset seizure opportunities but place burdens on law enforcement and businesses. In 2019/20 only 2% (1,365) of all DAMLs were refused consent, of which only 1,062 progressed towards asset denial.

7.6 The threshold exemption only applies to an act carried out in "operating an account", such as paying expenses – for example, mortgage payments – and so does not apply to other types of action, such as returning funds or property to a customer when terminating a relationship with a customer.

8. European Union Withdrawal and Future Relationship

8.1 This instrument does not relate to withdrawal from the European Union.

9. Consolidation

9.1 There is no plan to consolidate this instrument with any other instrument.

10. Consultation outcome

10.1 The Government issued a targeted consultation paper to consult on a value-based threshold exemption from DAML reporting. The consultation paper sought views from the main stakeholders in the anti-money laundering (AML) regulated sector and wider organisations that are impacted by economic crime. The consultation paper set out 35 questions on measures covering AML, crypto-assets and unexplained wealth orders and was shared with over 100 organisations. Written responses were received from 44 organisations (a response rate of 44%) and approximately 90 per cent of respondents were from within the AML regulated sector.

10.2 The targeted consultation showed that around 95 per cent of respondents supported a value-based threshold exemption, with a few stakeholders concerned that intelligence could be lost. However, this is mitigated by a requirement for a SAR under section 330 of POCA, requiring all businesses in the regulated sector to report suspected money laundering. Some sectors felt that a higher threshold of at least £3,000 would be more beneficial. The Government believe that aligning the monetary threshold with the minimum amount for applying for an accounting freezing order under Part 5 of POCA – and taking account of increasing values of transactions over time – balances the need to raise the threshold with the risk of loss asset seizure opportunities. The monetary value will be kept under review by the public/private cross-sector SARs Advisory Group and will remain capable of being raised or lowered in secondary legislation.

11. Guidance

11.1 Part 1 of the Joint Money Laundering Steering Group (JMLSG) guidance will be updated as part of the wider update for the Economic Crime and Corporate Transparency Bill.

12. Impact

12.1 Individuals and businesses who are customers of deposit taking bodies, electronic money and payment institutions, will be affected. The legislative change is expected to reduce delays for customers. Transactions can be delayed for up to seven working days while the NCA considers a DAML request.

12.2 There is no impact on the public sector. The NCA will benefit as the burden to review DAMLs will be reduced.

12.3 A full Impact Assessment has been published alongside the Economic Crime and Corporate Transparency Bill, which considers the impact of the changes in this instrument.

13. Regulating small business

13.1 The legislation applies to activities that are undertaken by small businesses.

13.2 These measures are legislative exemptions which are not targeted at small and micro-businesses but will affect them as members of the regulated sector. These changes will benefit small businesses who are deposit taking bodies, electronic money and payment institutions covered by the provisions as it is designed to reduce their reporting burden. This should ensure that there are no disproportionate burdens on small and micro-businesses.

14. Monitoring & review

14.1 We do not expect new monitoring and evaluation plans as the proposed legislative measures are amendments that current systems can monitor in terms of DAMLs raised.

14.2 DAML volumes are currently recorded each year by the NCA, and this system will not change, so any changes in DAMLs because of the new measures will be tracked by the current system. A reduction in DAML volumes would be an indicator that the proposed measures are having the intended effect and would therefore be an indicator of success.

14.3 The NCA SARs Annual Report will be an annual source of data on overall reporting volumes. This publication will not provide a breakdown at the level of detail needed for the impact of specific measures. The NCA SARs Annual Report will provide high level figures on DAML volumes, but not the specific types of transaction these relate to. If it is anticipated that a further breakdown of DAML volumes is required, then this data could be requested directly from the NCA. Publication of any further data by the Home Office would depend on the type of data requested. A post implementation review will be undertaken into the Economic Crime and Corporate Transparency Bill approximately three years after Royal Assent to allow the policy to embed and for routine monitoring and feedback from stakeholders to be used to ensure any initial issues are dealt with.

14.4 The Minister of State for security at the Home Office, has made the following statement: “It is not appropriate in the circumstances to make provision for review. The SARs regime is regularly monitored, and I am satisfied that this Order does not impact small businesses”.

15. Contact

15.1 Gabriella Coates at the Home Office can be contacted with any queries regarding the instrument on Telephone: 07436610359 or email: gabriella.coates2@homeoffice.gov.uk.

15.2 Maria Hannan Deputy Director for Criminal Finances and Asset Recovery, at the Home Office can confirm that this Explanatory Memorandum meets the required standard.

15.3 Tom Tugendhat at the Home Office can confirm that this Explanatory Memorandum meets the required standard.