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11 June 2004 **DAO(GEN)08/04**

Dear Accounting Officer

MONEY LAUNDERING

Summary and Purpose

The Proceeds of Crime Act 2002 and the Money Laundering Regulations 2003 extend the definition of money laundering and the responsibilities of external auditors. Departments need to:

- **Consider the likely impact of the legislation on them; and**
- **Be aware of the responsibilities that the legislation places on external auditors.**

Treasury Contacts

2. Further information on this DAO can be obtained from:

- In respect of the background to this DAO –Richard Fennelly, Assurance Control & Risk Team 020 7270 5792.
- In respect of the MLRs – the Correspondence and Enquiry Unit, HM Treasury 020 7270 4558.

Legislative Background

3. Anti-money laundering legislation includes:

- The Proceeds of Crime Act 2002 (POCA)[1];
- The Money Laundering Regulations 2003 (MLRs)[2]

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[1] http://www.legislation.hmso.gov.uk/acts/acts2002/20020029.htm

4. The POCA Part 7 came into force on 24 February 2003 and the MLRs from 1 March 2004.

5. The POCA criminalizes money laundering (widely defined in section 340(11) of the Act) and places reporting obligations on individuals conducting business in the "regulated sector"[3].

6. The effect of section 452 of the POCA and current regulations made under that section is that the Director of National Savings and his staff are the only Crown servants that can be prosecuted for breach of Part 7 of the Act.

7. The MLRs place obligations on firms carrying out "relevant business" (see regulation 2(2)) to establish systems and procedures which are designed to assist in the fight against financial crime. Failure to comply with these obligations gives rise to criminal liability.

8. The key changes that departments need to be aware of are that:

- The definition of money laundering has been extended to include possessing, or in any way dealing with, or concealing the proceeds of any crime, whether committed by a body or an individual;
- External auditors (for example the NAO) are now required to report, where they know or suspect, or have reasonable grounds to know or suspect, that money laundering has taken place where the information has come to them during the normal course of business.

Impact on Departments

9. The MLRs apply to bodies whose activities, wholly or in part, constitute "relevant business" within the meaning of regulation 2(2) of those regulations. It is for each government department to determine whether or not it is performing relevant business.

10. Departments carrying out such relevant business are required to have internal reporting procedures (regulation 7) including a Money Laundering Reporting Officer (MLRO) to receive money laundering reports and make reports to the National Criminal Intelligence Service (NCIS); to maintain certain identification procedures (regulation 4) and record-keeping procedures (regulation 6); and to establish other appropriate procedures for the purpose of forestalling or preventing money laundering (regulation 3(1)(b)). They are also required to train their employees in those procedures and, more generally, in the recognition of money laundering transactions and the law relating to money laundering (regulation 3(1)(c)). A relevant

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[2] http://www.legislation.hmso.gov.uk/si/si2003/20033075.htm

[3] http://www.legislation.hmso.gov.uk/si/si2003/20033074.htm

business, which fails to maintain the procedures or carry out the training, is guilty of a criminal offence (regulation 3(2)).

11. Departments who are neither in the regulated sector (for POCA purposes), nor engaged in "relevant business" (for MLR purposes) may however wish to act as if they were bound by the MLRs. This decision should be based on a risk assessment of their organisation being one that could be used for money laundering. If the risk is high then department may wish to consider appointing a Money Laundering Reporting Officer and putting in place systems for compliance with the other requirements of the money laundering regulations. Such nominated officers would however not be criminally liable as the Crown exemption mentioned above in paragraph 5 covers them.

12. Government bodies and specifically Accounting Officers have always had responsibilities, as set out in Government Accounting, for ensuring high standards of financial propriety and regularity and for reporting to Treasury certain instances of fraud. The new legislation does not change the requirement for Departments, Agencies and NDPBs to report frauds in line with Chapter 5 of Government Accounting.

External Audit

13. Department should be aware that, whilst the legislation does not extend the scope of audit, external auditors (e.g. NAO) are part of the "regulated sector" and so are required to report to the National Criminal Intelligence Service (NCIS) where they suspect that, as a result of information gained during the course of their normal work, there have been criminal acts that involved financial gain. NAO will be writing to departments soon to explain their responsibilities more fully and the impact of the legislation on their responsibilities. (**Note:** The Auditing Practices Board issued an exposure draft of Practice Note 12 "Money Laundering" on 15 March 2004[4] and plan to issue revised guidance soon.)

Yours sincerely

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4 http://www.asb.org.uk/images/uploaded/documents/PN12%20(Revised)%20Exposure%20Draft%20(March%202004).pdf