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TECH 8/04

**ANTI-MONEY LAUNDERING
(PROCEEDS OF CRIME AND TERRORISM)**

SECOND INTERIM GUIDANCE FOR ACCOUNTANTS

Guidance issued by the Consultative Committee of Accountancy Bodies [CCAB] in February 2004, to assist accountants in fulfilling the requirements of the anti-money laundering sections of the Proceeds of Crime Act 2002 and the Money Laundering Regulations 2003. This Guidance represents the current position recommended by the Institute of Chartered Accountants in England and Wales, and will be taken into account by the Institute in considering whether members have complied with their obligations under the law and ethical requirements of the Institute. However, it is expected that further Guidance will need to be developed and issued in due course. Legal advice has not been taken on this version of the Guidance. If in doubt as to the action they should take, members are advised to take their own legal advice.

The Guidance is as concise as possible, given the need to provide comprehensive coverage. In particular, it does not include the extensive guidance on the verification of the identity of clients provided by TECH 15/99 (also issued as Handbook Statement 1.304). Members requiring additional guidance in this area are advised to consult less formal guidance issued by the Institute or the guidance issued by the Joint Money Laundering Steering Group, for the financial services sector. A Helpline is also available, for the resolution of telephone queries from members of the Institute.

Members are invited to provide comments on this Interim Guidance for incorporation in future versions of this guidance. Comments should be directed to Sharon Grant, CCAB, Chartered Accountants Hall, PO Box 433, Moorgate Place, London EC2P2BJ or by e-mail to AMLresponses@ccab.org.uk, to arrive by 14 May 2004.

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Guidance issued by the Consultative Committee of Accountancy Bodies [CCAB] for accountants in fulfilling the requirements of the anti-money laundering sections of the Proceeds of Crime Act 2002 and the Money Laundering Regulations 2003.

The anti-money laundering legislation lays significant obligations on all citizens who encounter money laundering, or could be involved in it. This Guidance has been drawn up for the assistance of accountants working outside relevant business (as defined in the Money Laundering Regulations 2003) as well as those within it. Although the obligations are greater and more detailed for those working within the scope of “relevant business”, accountants working outside this sector are recommended to obtain a general knowledge of the legislation, of their obligations under it and of the obligations of their colleagues working within the regulated sector. In particular, members of the CCAB bodies working outside the regulated sector will be expected to have read the Executive Summary and Section 27 of this Guidance.

Legal advice has not been taken on this version of the Guidance. If in doubt as to the action they should take, accountants are advised to take their own legal advice.

The interpretation of certain sections of the law remains uncertain at the present time, and the Institute and other CCAB member bodies are in urgent consultation with Government, to obtain clarification as soon as possible. In particular, additional Guidance will be issued as soon as possible, on differential reporting for matters of lesser intelligence value and on whether suspicions should be reported in cases where they have been formed in circumstances which would otherwise be legally privileged.

Comments are invited on this Guidance, which will be taken into account in the development of the final version of the Guidance. Comments should be directed to Sharon Grant, CCAB, Chartered Accountants Hall, PO Box 433, Moorgate Place, London EC2P2BJ or by e-mail to AMLresponses@ccab.org.uk, to arrive by 14 May 2004.

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1. EXECUTIVE SUMMARY

ALL ACCOUNTANTS WORKING IN THE UK

- I. Accountants are covered by two pieces of anti-money laundering legislation, the Proceeds of Crime Act 2002 (*the Act*) and the Money Laundering Regulations 2003 (*the Regulations*) which come into force on 1 March 2004, along with the existing Terrorism Act 2000 (as amended by the Anti-terrorism Crime and Security Act 2001)(*the TA 2000*). These introduce major changes to accountants' responsibilities, and potential criminal liability, for all accountants working in the UK, but particularly for accountants working in practising firms and any other relevant business (as defined in *the Regulations*).
- II. *Money laundering* now includes possessing, or in any way dealing with, or concealing, the proceeds of any crime. It has a very wide definition, details of which are contained in *the Act*. For the purposes of this guidance, it also involves similar activities relating to terrorist funds, which include funds that are likely to be used for terrorism, as well as the proceeds of terrorism.
- III. Any person involved in any known or suspected *money laundering* activity in the UK risks a criminal conviction carrying a jail term of up to fourteen years. In assessing whether an *individual* had knowledge or suspicion, the Courts are likely to take into account the level of skill and experience held by that *individual*, including a professional qualification. "Knowledge" in this context is likely to include wilful blindness. It is a defence against a charge of money laundering to make a disclosure to the National Criminal Intelligence Service (NCIS) or in accordance with an employer's anti-money laundering procedures (if any). Guidance on what constitutes *money laundering*, and how it can be reported, is given below, together with further guidance on requirements for those employed in relevant business.
- IV. Accountants working wholly or mainly outside the UK will still need to exercise caution in relation to the UK legislation. The legislation will apply to those who carry out any professional work in the UK, even where this takes the form of a limited assignment or an occasional client meeting.

ACCOUNTANTS WORKING IN RELEVANT BUSINESS, INCLUDING ACCOUNTANCY PRACTICE

- V. Accountants working in practice or other *relevant business* must report knowledge or suspicions of *money laundering* (whether involving a *client* or other party) to NCIS, or in accordance with their employer's anti-money laundering procedures, or otherwise face the prospect of criminal liability.

This includes circumstances where such accountants should have been suspicious (i.e., where they have reasonable grounds for suspicion) as well as where they are suspicious. *Reports* can be faxed to *NCIS* on 0207 238 8286.

VI. *Relevant businesses* will have to:

- **Appoint a nominated officer (usually known as the money laundering reporting officer or *MLRO* and referred to as such in this guidance) to receive *money laundering reports* from colleagues and to make *reports* to *NCIS*.**
- **Train relevant principals and employees on the requirements of the legislation, including how to recognise and deal with potential *money laundering*, how to report to the *MLRO*, and how to identify *clients*.**
- **Verify the identity of new clients and keep records of the evidence obtained.**
- **Establish appropriate internal procedures to forestall and prevent *money laundering*.**

These obligations will apply to sole practitioners with employees. Sole practitioners without employees will have slightly different legal requirements, because they do not have to appoint an *MLRO*, but in other respects are recommended to follow this guidance.

VII. *Businesses*, principals and employees face significant criminal penalties where they breach the requirements of the new legislation.

VIII The Proceeds of Crime Act came into force on 24 February 2003. For accountants undertaking investment business, and any other accountants who were subject to the Money Laundering Regulations 1993, the reporting offences in the Act applied from 24 February 2003. However, the new offence, of failure to report a *money laundering* suspicion, as well as the requirements outlined in paragraph VI, will impact accountants in practice, and in other sectors providing *relevant business* for the first time, from 1 March 2004.

2. BACKGROUND AND PURPOSE

2.1 This guidance has been prepared for the members of the following CCAB bodies working in the UK:

- The Institute of Chartered Accountants in England and Wales.
- The Institute of Chartered Accountants in Ireland.
- The Institute of Chartered Accountants of Scotland.
- The Association of Chartered Certified Accountants.
- The Chartered Institute of Management Accountants.
- The Chartered Institute of Public Finance and Accountancy.

and also for any other persons acting as an accountant, whether or not they are engaged in *relevant business* (including the provision of *accountancy services* by way of business). The term “*accountancy services*” is not defined in either the Proceeds of Crime Act 2002 (*the Act*) or the Money Laundering Regulations 2003 (*the 2003 Regulations*) but a definition has been included in section 28 below. The guidance is also recommended for use by those providing insolvency services, tax advice, audit services or services in relation to the formation, operation or management of a company or trust, to the extent that these are not covered by guidance issued by a more appropriate body.

2.2 Much of the guidance relates to procedures required of *businesses* and *individuals* carrying out *relevant business*. However, all accountants are recommended to be aware of the primary money laundering offences, how they might be committed and how they should be reported to NCIS. The term “*relevant business*” is discussed further in section 27.4 below.

2.3 The primary legislation covered by this guidance is *the Act*, sections 327-340, section 342 and Schedule 9 and the Terrorism Act 2000 (as amended by the Anti-terrorism Crime and Security Act 2001) (*the TA 2000*) and associated regulations. The guidance covers relevant sections of *the 2003 Regulations*, which are Treasury regulations implementing the Second EC Money Laundering Directive (2001/97/EC). *The 2003 Regulations* were laid before Parliament on 28 November 2003 and come into force 1 March 2004 for purposes relevant to this guidance.

2.4 This guidance does not deal with the requirements of the Financial Services Authority’s (FSA) Money Laundering Sourcebook (to which *businesses* with an FSA authorisation must have regard). However, it does cover the requirements on firms with a licence to provide non-mainstream financial services from one of the CCAB bodies, under the Designated Professional Body provisions of Chapter XX of the Financial Services and Markets Act 2000.

2.5 This guidance is intended to assist *individuals* and *businesses* to understand and comply with the requirements of *the Act*, *the TA 2000* and *the 2003 Regulations*. This guidance does not constitute legal advice and *businesses*

should be aware that alternative interpretations of the law may be possible. If *businesses* wish to adopt alternative interpretations they are encouraged to take legal advice first. Similarly, for situations and issues not covered by this guidance, it may be appropriate for *businesses* to obtain legal advice.

- 2.6 This guidance has not been approved by the Treasury. However, the Courts will be free to take it into account in relation to the work of accountants and related trades and professions, as will regulators and in particular the disciplinary functions of the professional bodies for accountants.
- 2.7 *The Act and the 2003 Regulations* impose obligations both on organisations and *individuals*. The term *businesses* is used throughout this document to refer to organisations undertaking *relevant business* including any body or sole practitioner providing accountancy services by way of business. The term *individuals* refers to both principals and employees. The obligations on *individuals* are generally dealt with separately from the obligations on *businesses*. However, *individuals* should familiarise themselves with the obligations imposed on *businesses*.
- 2.8 *The Act and the 2003 Regulations* impose different obligations depending on the nature of the *business's* or *individual's* business or role. The principal distinctions are that *the 2003 Regulations* apply only to those conducting *relevant business* and set out the systems and procedures required to be implemented by such *businesses*. *The Act* and *the TA 2000* impose extended reporting offences on those in the regulated sector. The scope of “relevant business”, as defined in *the Regulations* and the “regulated sector” as defined in *the Act* and *the TA 2000* are identical. In this guidance the term “*relevant business*” is applied to both. When reading this guidance, *businesses* and *individuals* who do not carry out *relevant business* need to interpret the guidance accordingly. This guidance assumes that many *businesses* and most accountancy firms will find it easier, and possibly more effective, to apply the requirements to all of their services and has therefore been drawn up on that basis. That is, however, a decision for each *business* to take.
- 2.9 *The Act* imposes criminal sanctions on anyone who commits an offence of *money laundering*, tipping off or prejudicing an investigation. It also creates a reporting offence for *MLROs* in the non-regulated sector. The *money laundering* offences under *the TA 2000* are defined differently, notably to include funds intended for use in terrorism, as well as the proceeds of terrorism. *The TA 2000* also requires everyone forming a belief or suspicion of terrorist *money laundering* in the course of their trade or profession to make a *report*. None of these requirements are confined to those in the regulated sector.
- 2.10 More detail on the offences under the legislation are given in Appendix 2. Definitions and abbreviations are provided in section 28.

3. THE LEGISLATION

3.1 The Proceeds of Crime Act

The Act re-defines *money laundering* and the *money laundering* offences. It creates new mechanisms for investigating and recovering the proceeds of crime, and revises and consolidates the requirement on *businesses* and *individuals* to report knowledge of, suspicion of or reasonable grounds to suspect *money laundering*.

3.2 The 2003 Regulations

3.2.1 Whilst *the 2003 Regulations* replace and significantly expand the scope and coverage of the Money Laundering Regulations 1993 (*the 1993 Regulations*), the “failure to report” offences introduced by *the Act* have applied to *businesses* and *individuals* conducting business within the scope of the 1993 Regulations since 24 February 2003. The *money laundering* offences (ss 327-328), and those of tipping off(s(333) and prejudicing an investigation (s342) have applied to all *individuals* since 24 February 2003.

3.2.2 *The 2003 Regulations* apply to *relevant business*, and extend the previous definition of *relevant financial business* to include, inter alia:

- the provision by way of business of *accountancy services*;
- the activities of a person appointed to act as an insolvency practitioner within the meaning of section 388 of the Insolvency Act 1986 or Article 3 of the Insolvency Northern Ireland Order 1989;
- the provision by way of business of advice about the tax affairs of another person;
- the provision by way of business of audit services by a person who is eligible for appointment as a company auditor under section 25 of the Companies Act 1989 or Article 28 of the Companies (Northern Ireland) Order 1990;
- the provision by way of business of services in relation to the formation, operation or management of company or a trust and
- dealing in goods, whenever a transaction involves accepting a cash payment of 15,000 euro or more (high value dealers).

Further discussion of *relevant business* is included in section 27 below.

3.2.3 The key requirements imposed on *businesses* by *the 2003 Regulations* include the requirement to establish procedures to confirm the identity of new *clients*, to appoint a Money Laundering Reporting Officer (*MLRO*) to whom principals and employees must make *money laundering reports*, to establish systems and procedures to forestall and prevent *money laundering*, and to provide relevant *individuals* with training on *money laundering* and awareness of the *business's* procedures in relation to *money laundering*. These requirements are set out more fully in section 14.2 below.

3.3 The TA 2000

3.3.1 The third key component of *money laundering* legislation is *the TA 2000*, which relates to the proceeds of terrorism and terrorist financing. The relevant offences under *the TA 2000* and the Terrorism (United Nations Measures) Order 2001 are summarised in Appendix Two.

3.3.2 The interaction of *the Act*, *the TA 2000* and *the 2003 Regulations* means that, in general, *businesses* and *individuals* will now be required to make a *report* where there are reasonable grounds to know, believe or suspect *money laundering* whenever such grounds come to the *business* or *individual* in the course of the *firm's* business. Further detail is provided in Appendix Two.

4. MONEY LAUNDERING

4.1 *Money laundering* is the term used for a number of offences involving the proceeds of crime or terrorist funds. It now includes possessing, or in any way dealing with, or concealing, the proceeds of any crime. For the purposes of this guidance, it also involves similar activities in relation to terrorist funds, which include funds that are likely to be used for terrorism, as well as the proceeds of terrorism.

4.2 Someone is engaged in *money laundering* under *the Act* where they:

- Conceal, disguise, convert, transfer or remove (from the United Kingdom) criminal property;
- Enter into or become concerned in an arrangement which they know or suspect facilitates (by whatever means) the acquisition, retention, use or control of criminal property by or on behalf of another person; or
- Acquire, use or have possession of criminal property

And they know or suspect that the property in question constitutes or represents a benefit from criminal conduct.

4.3 Property is criminal property if it:

- Constitutes a person's benefit in whole or in part (including pecuniary and proprietary benefit) from criminal conduct; or
- Represents such a benefit directly or indirectly, in whole or in part; and
- The alleged offender knows or suspects that it constitutes or represents such a benefit.

4.4 Criminal conduct is conduct which constitutes an offence in any part of the United Kingdom or would constitute an offence in any part of the United Kingdom if it occurred there.

4.5 For the avoidance of doubt criminal property includes (but is by no means limited to):

- the proceeds of tax evasion;
- a benefit obtained through bribery and corruption (including both the receipt of a bribe and the income received from a contract obtained through bribery or the promise of a bribe);
- benefits obtained, or income received, through the operation of a criminal cartel; and
- benefits (in the form of saved costs) arising from a failure to comply with a regulatory requirement, where that failure is a criminal offence.

- 4.6 It should be noted that there are thousands of criminal offences in the United Kingdom which, if committed, are likely to result in a person benefiting from an offence and, if he has the necessary knowledge or suspicion, thereby committing one of the *money laundering* offences. Both the *money laundering* offences and criminal property are very widely defined. Further information, including the statutory references, is included in Appendix 2.
- 4.7 An element of intent is required before many criminal offences can be committed. For example, theft can only be committed where the offender is dishonest and has an intent to permanently deprive. Where no offence has been committed, no *money laundering* can arise. In some cases, where the monetary proceeds of a suspected theft or tax fraud are small, it may be that the perpetrators were acting in error, or in the mistaken impression that they had permission to act as they did. However, in cases where there are reasonable grounds to suspect that an offence has been committed, a report must be made. It may be that criminal intent is suspected where, for example, there is a pattern of suspect behaviour, or where the act giving rise to the proceeds is clearly criminal, such as acts involving drug trafficking, paedophilia or terrorism.

5. OFFENCES

- 5.1 The main *money laundering* offences are set out in sections 327 to 329 of *the Act*. Further offences relating to the requirements to *report money laundering*, and tipping-off, are set out in sections 330 to 333. Additional offences are contained in sections 336 and 342 of *the Act* and in *the TA 2000* and related regulations. More detailed information on these offences is contained in Appendix Two.
- 5.2 The key point to note is that *the Act* introduces an ‘all crime’ reporting regime. That is, *money laundering* offences can relate to the proceeds of any criminal activity. This effectively means that *MLROs* will need to report to the National Criminal Intelligence Service (*NCIS*) when they have suspicion or reasonable grounds to know or suspect that a criminal offence, which gives rise to criminal proceeds, has been committed. This applies regardless of whether that offence has been committed by a *client* or by any other party. The *report* must be made as soon as practicable. The breadth of the definition of *money laundering* is demonstrated by the fact that it includes the possession of the proceeds of an offender’s own crime. Some examples include cost savings resulting from breaches of health and safety regulations, property acquired by theft, cartel offences under the Enterprise Act, and tax evasion (both of direct and indirect taxes).
- 5.3 In addition to the offences under *the Act*, all persons, *individuals* and *businesses* alike, already have an obligation to *report* belief or suspicion of the proceeds from, or finance likely to be used for, terrorism, or its laundering. This obligation relates to information that came to them in the course of their business or employment. This is required by *the TA 2000* which is applicable throughout the United Kingdom whether or not persons are involved in regulated or *relevant business*. Where *individuals* are involved in business in the regulated sector, they have an obligation to make a *report* where there are reasonable grounds for them to know or suspect that the relevant offence under *the TA 2000* has been committed, as well as when they have actual knowledge. *Reports* in relation to terrorism may be made using the *NCIS* disclosure report in the same way as for *reports* under *the Act*.

6. KNOWLEDGE AND SUSPICION

6.1 Generally speaking, knowledge is likely to include:

- Actual knowledge.
- Shutting one's mind to the obvious.
- Deliberately refraining from making inquiries, the results of which one might not care to have.
- Deliberately deterring a person from making disclosures, the content of which one might not care to have.
- Knowledge of circumstances which would indicate the facts to an honest and reasonable person.
- Knowledge of circumstances which would put an honest and reasonable person on inquiry and failing to make the reasonable inquiries which such a person would have made.

6.2 Suspicion is not defined in existing legislation. Case law and other sources indicate that suspicion is more than speculation but it falls short of proof or knowledge. Suspicion is personal and subjective but will generally be built on some objective foundation and so there should be some degree of consistency in how a *business's MLRO* treats possible causes of suspicion.

6.3 *Businesses* should also be alert to the fact that an objective test applies to the offence of failure to report in the regulated sector under section 330 of *the Act* and under *the TA 2000*. That is, *businesses*, and *individuals*, would commit an offence even if they did not know or suspect that a *money laundering* offence was being committed, if they had reasonable grounds for knowing or suspecting that it was. In other words, if another reasonable person in the same position would have been suspicious and made a *report*, a person who does not make a *report* may have committed an offence.

6.4 In considering whether a *report* is required, judgement needs to be made about whether there are "reasonable grounds" for knowledge or suspicion in a particular case. "Reasonable grounds" should not be confused with the existence of higher than normal risk factors which may affect certain sectors or classes of persons. For example, cash-based businesses or complex overseas trust and company structures may be capable of being used to launder money, but this capability of itself is not considered to constitute "reasonable grounds". Existence of higher than normal risk factors require increased attention to gathering and evaluation of "know your customer" information, and heightened awareness of the risk of *money laundering* in performing professional work, but do not of themselves require a *report* of suspicion to be made.

6.5 For "reasonable grounds" to come into existence, there needs to be sufficient information to advance beyond speculation that it is possible that someone is laundering money, or a generalised assumption that low levels of crime (e.g. not declaring all cash takings) are endemic in particular sectors.

6.6 Considering the following three points may be of assistance in determining whether there are reasonable grounds for knowledge or suspicion that someone is committing a *money laundering* offence:

- Does the conduct under scrutiny fall within that which is potentially criminal?
- If so, is the person or entity under scrutiny suspected of having engaged in this conduct such that proceeds resulted?
- What factors and information have led to the formation of knowledge or suspicion, i.e. how will the grounds for the *report* be described to NCIS?

It is important to note section 340(3)(b) of *the Act* which specifies that “property is criminal property if it constitutes a person’s benefit from criminal conduct ... and the alleged offender knows or suspects that it constitutes or represents such a benefit”.

6.7 The client confidentiality over-ride provisions contained in sections 337(1) and 338(4) are only available in certain circumstances. The requirements include:

- knowledge or suspicion, or reasonable grounds for knowledge or suspicion, that a person has committed a *money laundering* offence (section 337(3)); or
- a prohibited act (acts mentioned in sections 327(1), 328(1) or 329(1)) will be or has been committed.

Disclosure without reasonable grounds for knowledge or suspicion will increase the risk of a *business* or an *individual* being open to an action for breach of confidentiality.

7. ABSENCE OF DE MINIMIS CONCESSIONS

- 7.1 *Money laundering reports* need to be made irrespective of the quantum of the benefits derived from, or the seriousness of the offence. This is necessary because there are no de-minimis concessions contained in *the Act, the TA 2000 or the 2003 Regulations*.
- 7.2 The lack of de minimis concessions does not mean that accountants are required to report instances in which they are aware of matters which merely give a higher than normal reason for speculation or a raised level of professional scepticism, rather than reasonable grounds to suspect that someone is engaged in *money laundering*. Additional guidance on the appropriate action to be taken under these circumstances is given elsewhere in this guidance and particularly in section 6 and paragraph 4.6.

8. CLIENT CONFIDENTIALITY

- 8.1 The making of a *report* based on knowledge, suspicion or reasonable grounds for such takes precedence over *client* confidentiality considerations. *The Act* provides protection for any breach of any duty under the laws of the constituent parts of the United Kingdom to keep confidential the information that gives rise to the knowledge, suspicion, or reasonable grounds to suspect *money laundering*. These provisions apply to those inside or outside the regulated financial sector, and include *reports* that are made voluntarily in addition to *reports* made in order to fulfil reporting obligations.
- 8.2 The *MLRO* should disclose all information that is relevant to the suspicion and the type of report being made. There may well be many details that are not relevant that should not be disclosed.
- 8.3 Similar protection is provided under *the TA 2000*.
- 8.4 For guidance in relation to information subject to legal professional privilege, see section 12 below.

9. TIPPING OFF

- 9.1 Care should be taken not to tip off a money launderer, as this will constitute an offence under *the Act*. There are also similar offences under *the TA 2000*. The offence can be committed when there is knowledge or suspicion that a *report* has been made, or, for terrorism related offences, also that a *report* will be made. This includes internal *reports* made to a nominated officer (i.e. the *MLRO*). Similarly, if any disclosure is made which is likely to prejudice any investigation by the authorities, an offence may be committed. *Businesses* should exercise caution when disseminating knowledge that a *money laundering* suspicion has arisen, and that a *report* has been made. More detailed guidance on the offence of tipping-off is contained in Appendix Three.
- 9.2 Tipping off will only arise where disclosures are made which are likely to prejudice an investigation which might be conducted following the *report*. This does not prevent *businesses* and *individuals* discussing with clients, and advising on, issues regarding prevention of money laundering or other related matters, on a non-specific basis. Similar considerations apply to the offence of prejudicing an investigation, outlined in Section 9.3 below.
- 9.3 It must be noted that, whilst tipping off requires a person to have knowledge or suspicion that a *report* has been or will be made, a further offence of prejudicing certain investigations is included in Part 8 of *the Act*. Under this provision, it is an offence to make any disclosure which may prejudice an investigation of which a person has knowledge or suspicion, or to falsify, conceal, destroy, etc documents relevant to such investigations. A further offence of making a disclosure which is likely to prejudice a terrorist investigation applies under *the TA 2000* when a person knows or has reasonable cause to suspect that a terrorist investigation is being or will be conducted, regardless of whether a *report* has been made. More detailed information on these offences is given in Appendix Two.

10. TAX RELATED OFFENCES

- 10.1 Tax related offences are not in a special category. The proceeds or monetary advantage arising from tax offences are treated no differently from the proceeds of theft, drug trafficking or other criminal conduct. This includes tax offences committed abroad if the action would have been an offence were it to have taken place in the United Kingdom. There is no need for there to be any consequential effect on the United Kingdom's tax system.
- 10.2 Tax evasion offences will fall within the definition of *money laundering*. This includes both the underdeclaring of income and the overclaiming of expenses. For direct tax, common criminal offences generally involve some criminal intent or dishonesty. For indirect tax section 167(3) Customs and Excise Management Act 1979 provides that a wide range of innocent/accidental errors are criminal offences even though they are, in practice, generally dealt with under the civil penalty regime. The effect of Section 340 of *the Act* is that there cannot be a money laundering offence where the person involved does not know or suspect that a benefit results from criminal conduct. One interpretation of the law is that innocent errors which constitute criminal offences do not need to be reported. It is expected that *NCIS's* reporting guidance will state that they do not consider that section 167(3) offences should be reported, in the absence of intent. Notwithstanding this, a tax payer may acquire the relevant knowledge or suspicion when they are advised that they have submitted an incorrect return. Further, firms and *individuals* should be wary of relying on what might be seen as "technical" defences in any situations where they consider that they have information which would be of interest or importance to law enforcement. :
- 10.3 The legislation impacts tax advisers who are about to make, or who offer or provide services that could lead to, disclosures of misstatements to the Inland Revenue or HM Customs and Excise, on behalf of their *clients*, or who will be encouraging their *clients* or potential *clients* to make such disclosures. If there are reasonable grounds to know or suspect that potential disclosures to the Inland Revenue or to HM Customs and Excise relate to criminal conduct, then a *report* should be made to *NCIS* as well. *The Act* requires that *reports* to *NCIS* be made as soon as practicable.

11. PENALTIES

- 11.1 Offences may be tried in a Magistrate's Court or in a Crown Court depending on severity. Cases tried in a Magistrate's Court can attract penalties up to the maximum fine (£5,000), up to six months imprisonment, or both. Cases tried in the Crown Court can attract unlimited fines and the following terms of imprisonment:
- up to fourteen years, for the main *money laundering* offences,
 - up to five years, for the failure to *report* offence and the tipping off offences, and
 - up to two years imprisonment for contravention of the systems requirements of *the Regulations*.
- 11.2 All the *money laundering* offences may be committed by a *business* or an *individual*. Where *businesses* fail to comply with *the Regulations*, an *offence* will also be committed by any officer or partner who consented or connived at the commission of an offence by *the business*, or where the offence was attributable to any neglect on their part.
- 11.3 Under sections 331 and 332 of *the Act*, there are specific offences of failure by *MLROs* to pass on to *NCIS* knowledge or suspicions of (or in the case of s 331, reasonable grounds to know or suspect) *money laundering* which came to them as a result of *reports* they have received. The offence under Section 332 applies to any *MLRO* appointed by a business whether or not it carries out any *relevant business*.

12. LEGAL PRIVILEGE

- 12.1 Legal privilege can provide a defence for a professional legal adviser (section 330 (10)) to a charge of failing to report suspicions of *money laundering*. This only applies where information is received in privileged circumstances, and where the information is not communicated to or by the lawyer with the intention of furthering a criminal purpose (section 330(11)). There is no specific provision in *the Act* providing the same protection for accountants or for persons who are not legally qualified who provide legal advice. A legally qualified person working in any context, and advising his employer, can claim the defence. This covers in-house solicitors working as such.
- 12.2 *Businesses* may consider that they are in possession of legally privileged information impressed with the privilege of a third party (including a client), for example, where they have been instructed by a lawyer on behalf of his client in respect of legal proceedings. If a *report* under *the Act* would result in the disclosure of that information, the *business* may wish to take legal advice to ascertain whether there are any grounds which may form a defence in respect of the failing to disclose offences under sections 330 to 332 of *the Act*, or whether a report should be made notwithstanding the existence of third party privilege.
- 12.3 At the time this Guidance is issued, discussions are being undertaken with Government, over how legal privilege should be interpreted when access to privileged information by accountants leads them to form a money laundering suspicion. *Individuals* who encounter a dilemma over whether or not they should report matters which they believe should be treated as privileged, and therefore confidential, are advised to consult their MLRO, and may wish to do so on a no names and non-specific (to the extent possible to determine whether matters are privileged) basis initially. The MLRO will then need to establish whether privilege applies before deciding on further action. Reasons for the conclusion reached should be recorded. The MLRO should bear in mind that he may have an obligation to make an onwards 'no names' *report* to NCIS; the fact that he does not know the identity of those involved is no defence if he is otherwise obliged to make a *report*. The extent to which the MLRO is covered by the privilege defence (if it was available to the *individual* making a report to him) is also currently under discussion with Government.

13. GEOGRAPHICAL COVERAGE & EXTRA-TERRITORIALITY

- 13.1 The legislation applies to *businesses* operating in the United Kingdom, including to *businesses* working from a United Kingdom office for a *client* who is based abroad. *Businesses* with foreign offices, and particularly *businesses* with *individuals* temporarily working abroad or on secondment, may wish to seek legal advice in relation to the need for procedures for those *individuals* to ensure that the *individuals* and the *business* comply with the United Kingdom's legal requirements as well as the local legal requirements.
- 13.2 Irrespective of the strict legal position a United Kingdom *business* may wish to consider putting in place a *business wide money laundering* strategy to protect its global reputation and United Kingdom regulated business, particularly when the United Kingdom *business* exercises control over the business performed outside the United Kingdom, or outsources United Kingdom business to offshore locations.
- 13.3 In the UK legislation, *money laundering* is defined to include not only actions in relation to the proceeds of crimes undertaken in the UK, but also in relation to the proceeds of an act which takes place abroad but which would have been an offence if it had taken place in the UK. There are a number of actions which would be an offence in the UK, but which due to a number of reasons (including social and cultural background) will not be offences in the jurisdiction in which they occur. Examples could include breaches of health and safety rules. There is no exemption from reporting these instances, but it may be appropriate for them to be reported only in an abbreviated and/or aggregated form covering a number of examples. *NCIS* guidance on the use of their abbreviated form of *report* (see paragraph 20.3) should be followed. In any case, suspicions relating to terrorism, drug trafficking or similar offences should always be the subject of a full *report*, no matter what the attitude of the jurisdiction involved.

14. WHAT BUSINESSES NEED TO DO

14.1 This section should be read in conjunction with Transitional Arrangements (see section 24 below).

14.2 *From 1 March 2004 businesses need to maintain the following procedures, in respect of all relevant business:*

- Appoint an *MLRO* and implement internal reporting procedures.
- Train *individuals* to ensure that they are aware of the relevant legislation, know how to recognise and deal with potential *money laundering*, how to report suspicions to the *MLRO*, and how to identify *clients*.
- Establish internal procedures appropriate to forestall and prevent *money laundering*, and make relevant *individuals* aware of the procedures.
- Verify the identity of new *clients* and maintain evidence of identification.
- Maintain records of *client* identification, and any transactions undertaken for or with the *client*.
- *Report* suspicions of *money laundering* to *NCIS*.

Records of client identification need to be maintained for five years after the termination of a client relationship by any part of the firm providing *relevant business*. Records of transactions also need to be maintained for five years, from the date when all activities in relation to the transaction were completed.

15. THE MLRO

- 15.1 *The 2003 Regulations* require *businesses* to appoint a nominated officer to receive internal reports. This officer is usually called the money laundering reporting officer or *MLRO*. This should be one of the first matters to be addressed by *businesses*. The person appointed as the *MLRO* should have a suitable level of seniority and experience. In many accounting firms and similar *businesses* the principal, or one of the principals, would be a suitable person. There is no obligation on a sole practitioner to appoint an *MLRO* where the sole practitioner does not employ any staff, or act in association with any other person.
- 15.2 *Individuals* should make internal *reports of money laundering* to the *MLRO*. The *MLRO* is then required to consider the internal *report* in the light of any relevant information available to the *business*. If, on consideration, the *MLRO* concludes that he has knowledge or suspicion (or reasonable grounds for knowledge or suspicion) of *money laundering*, then the matter should be reported to *NCIS*. If in doubt, *MLROs* may wish to seek legal advice and, if a *report* is not made, they should document the reasons why not. Documentation is very important when deliberating whether to make a report to *NCIS*. Being able to demonstrate a reasonable process, diligently undertaken in good faith and in accordance with relevant guidance, may assist an *MLRO* in being able to defend himself against allegations of failing to disclose.
- 15.3 The *MLRO* can delegate these tasks to other *individuals*. However, *MLROs* cannot relieve themselves of their responsibility. The *MLRO* can be held to be personally liable if they receive *reports of money laundering* but fail to make a *report* to *NCIS*, where required to do so. As a result, the *MLRO* needs to ensure that they do not take a ‘hands off’ approach to their duties, and should seek to maintain control over the internal processes. Other offences that the *MLRO* could commit are set out in Appendix Two.
- 15.4 It will be necessary for *businesses* to develop alternative procedures for situations where the *MLRO* is going to be unavailable for a period of time, since *reports* have to be made as soon as is reasonably practicable. It would generally not be acceptable to delay filing a *report* with *NCIS* in such a situation. An acceptable solution would be to nominate or appoint an appropriate deputy *MLRO* to consider the validity of internal *reports* and decide whether the matter should be reported to *NCIS*.
- 15.5 *Businesses* are required to establish and maintain internal procedures and ensure that *individuals* are adequately trained. It may be appropriate for *MLROs* to take responsibility for fulfilling these requirements.

16. TRAINING

- 16.1 *Businesses* are required to take appropriate steps to ensure that relevant *individuals* are provided with training on the provisions of *the 2003 Regulations*, the main *money laundering* offences (both those in *the Act* and those in *the TA 2000*), and on how to recognise and deal with situations that may involve *money laundering*. Training will ideally enable *businesses* to establish a culture of complying with *money laundering* requirements. It is recommended that *businesses* document the provision of training to enable them to demonstrate their compliance.
- 16.2 The level of training provided to *individuals* should be appropriate to their role and seniority within the *business*. Apart from knowledge of the main *money laundering* offences, relevant *individuals* are not expected to have a detailed knowledge of what constitutes a criminal offence beyond that knowledge which could reasonably be expected of a person of their position and seniority. The training should cover the basic obligations of *businesses* under *the Act*, *the TA 2000* and *the 2003 Regulations*, what the *individual* is expected to do to ensure that the *business* fulfils those obligations, and on what the *individual* is expected to do to fulfil their personal obligations. It should also include information on how to recognise and deal with activities that may be related to money laundering. Finally, relevant *individuals* need to be made aware of the *business's* procedures to forestall and prevent *money laundering*, including the *business's* identification, record keeping and reporting procedures.
- 16.3 Training does not need to be performed in-house, although in many instances *businesses* may prefer to conduct training by this route. Attendance by *individuals* at conferences, seminars and training courses run by external organisations, or participation in computer based training courses, may be taken to represent an effective method of fulfilling the training obligations imposed on *businesses*. However, common sense judgement should be used to determine the appropriateness of any course, seminar or conference.

17. INTERNAL PROCEDURES

Businesses will need to review their existing internal control procedures to ensure that they include measures appropriate to forestall and prevent *money laundering*. Where necessary, modifications should be made to existing procedures. It is difficult to provide guidance on particular procedures, as the services offered by various *businesses* will result in differing risks and vulnerabilities. However, it is recommended that *businesses* include consideration of the following.

- *Client* acceptance procedures, including provisions as to identification (Section 18) and gathering “know your *client*” information, including the client’s expected patterns of business, its business model and its source of funds. Such information not only assists in spotting suspicious transactions or activity but also enhances the ability of the *MLRO* to make sound judgements on whether to make disclosures and assists in increasing the quality of those disclosures.
- Controls over *client* money, and transactions passing through the *client* account with particular reference to the identity of the *client*, the commercial purpose of the transaction and the source and destination of the funds.
- Advice and other services to *clients*, the nature of which could be of use to a money launderer.
- The appropriateness of internal reporting lines.
- The role of the *MLRO*.

18. IDENTIFICATION PROCEDURES

- 18.1 Subject to the transitional arrangements (see section 25 below), *businesses* need to be able to establish that new *clients* are who they claim to be.
- 18.2 In formulating their approach, *businesses* may wish to consider the risks attaching not only to different types of clients, but also different types of services. Based on these risk assessments, *businesses* can determine the appropriate degree of information that may be required in respect both of “know your *client*” and identification evidence.
- 18.3 By way of example, basic identification procedures for individuals, private companies and trusts who have been met face-to-face are illustrated below. These may not be appropriate in all circumstances. For example, more thorough procedures may be appropriate for offshore trusts in high-risk jurisdictions.
- 18.4 Identification procedures for an individual would typically include seeing, and taking copies of, evidence establishing the *client’s* full name and permanent address. An official document with a photograph is particularly valuable evidence of identity. This would most likely take the form of a new style driving licence or a passport, with a separate document being used to confirm the address, such as a recent utility bill. There are legal restrictions on the copying of passports. Photocopies of passports should be in black and white, should be limited to the personal details pages and should not be used other than for purposes of identification under *the Regulations*.
- 18.5 For private companies, partnerships or sole traders, the *business* needs to establish the identity of the entity itself, its business activity, and, where appropriate, having taken into account the risk profile of the client, the identities (as illustrated above) of the owners, principal directors, partners and sole traders. Suitable evidence of identity for the entity may include a copy of the certificate of incorporation, evidence of the company’s registered address, and a list of shareholders and directors.
- 18.6 For trusts the key identification requirements will generally involve ascertaining the nature and purpose of the trust, and the original source of funding as well as the identities of the trustees/controllers, principal settlers and beneficiaries.
- 18.7 In the case of insolvency work, and some other circumstances, it is possible that some lack of co-operation may be encountered in certain circumstances. Guidance for members carrying out insolvency work has been issued by the Association of Business Recovery Professionals (R3).

- 18.8 *Businesses* might also wish to check the names of new *clients* against lists of known terrorists and other sanctions information. Certain lists can be found in Appendix 4.
- 18.9 Chapter 4, Know Your Customer and Identification Evidence, of the *JMLSG* Guidance Notes, provides useful additional guidance in relation to the identification of clients, including those operating through other forms of business structure. The *JMLSG* Guidance Notes are tailored for use by organisations regulated by the FSA, but Chapter 4 should be able to be adapted and applied to the business of accountants.
- 18.10 Records of identification are required to be maintained for a period of five years after the business relationship has ended. *Businesses* will need to ensure that records are not inadvertently destroyed by one department, where another is still within the five year period or has embarked on a new business relationship with the *client*.

19. BANKING AND CLIENT MONEY

- 19.1 Practising accountants are reminded of a related identification issue. The “Charter for the European Professional Associations in support of the fight against organised crime” was signed on 27 July 1999 on behalf of the *CCAB* bodies. The Charter requires firms to verify *client* identity when handling *client* money. This is of significance for firms that hold any *client* money in their ordinary or designated *client* money bank accounts. Those with *client* money bank accounts denominated in foreign currencies should take particular care. Please note that this is not a new requirement, and should already be followed by firms.
- 19.2 Special care needs to be taken when handling *clients’* money in order to avoid participating in a *transaction* involving *money laundering*. Such services may be considered to represent a higher than normal risk and so require a higher level of “know your *client*” and identification procedures. Handling a *client’s* money may also give rise to constructive trust issues (see section 21 below).

20. REPORTING SUSPICIONS TO NCIS AND REQUESTING CONSENT

- 20.1 *NCIS* co-ordinates the holding and dissemination of information amongst the law enforcement agencies. To assist in dealing with the volume of *reports* and inputting to their database, *NCIS* has designed standard disclosure forms for full and abbreviated disclosures. These are in the format preferred by *NCIS*, but their format is not currently prescribed by law. Copies of both the standard forms of report and guidance for their use will be available on the *NCIS* web site from 1 March.2004 The guidance will include a listing of those categories of *report* for which the abbreviated form is appropriate. The abbreviated *report* will be used not only for individual *reports* of lesser intelligence value, but also for aggregated *reports* where a number of low intelligence value *reports* (where these comply with criteria set by *NCIS*) can be made in one abbreviated *report*. A wide number of the types of reportable instances encountered in the course of an audit or similar engagement may be aggregated for reporting purposes. It will not be available for use in any instance where there is any likelihood that the law enforcement authorities (including the tax authorities or any regulator) will find the *report* valuable in deciding to undertake an investigation.
- 20.2 It is recommended that *MLROs* use these disclosure forms, and the associated guidance when filing *reports* with *NCIS*, though they are not mandatory and any alternative form may be used. It is recommended that *reports* are sent in by post or by fax, unless an assured form of secure electronic submission is available. *Businesses* must state the basis of their knowledge or suspicion, and should be able to provide other required information that is relevant to the *report*, where it is already available or where obtaining it does not delay the *report* or raise tipping off concerns. *Businesses* may not have available all the information requested, such as bank account details or records of individual *transactions*, in which case they may be omitted. A copy of the disclosure form will be available on-line from the *NCIS* web-site (<http://www.ncis.co.uk>) along with a guide to completion, from 1 March 2004. In the meantime, the old form of standard report is still available. Reports using both the old and new standard forms of report will be acceptable, for some time. *Businesses* may wish to consider applying to use money.web, a secure on-line reporting system provided by *NCIS*.
- 20.3 *Businesses* and *individuals* are recommended to have regard to the need to minimise the risk of their name (or the names of parties who are not suspected of money laundering) being linked to a *report* of suspicion by other than the appropriate authority. When making reports, the following steps may be employed to enhance confidentiality of the source of the *report*:
- showing the name of the *business* or *individual* making the *report* once only on the front sheet of the reporting form as the source ID and not anywhere else in the *report*; and

- not including the names of the personnel either making *reports* to the nominated officer or who are involved in the client work giving rise to the *report*.

In most circumstances, this will result in the name of the *MLRO* being given as the contact, for response to queries.

- 20.4 *NCIS* or the law enforcement authority undertaking an investigation will contact the *business* (usually the *MLRO*) if they have any queries about the disclosure. *Businesses* and *individuals* should be cautious in responding to requests for additional information, and generally route them through the *MLRO*, to ensure their response is covered by appropriate protection against claims for breach of confidentiality. Except for requests for clarification or explanation of material already included within a suspicion report made to *NCIS*, it is recommended that disclosure of further information takes place only:
- in response to a Court order or other legal powers requiring disclosure, such as those available to the Serious Fraud Office; or
 - after careful consideration, and documenting the justification for making a disclosure in the public interest.
- 20.5 If the *business or individual* considers that any action that they may have planned to take, or may be asked by their client to take, would be a *money laundering* offence under Sections 327 – 329 of *the Act*, a request for *consent* must also be made either with or after the related *report* is made to *NCIS*. Until consent is received, no action by the *business or individuals* which could be considered to constitute an offence under Sections 327 – 329 of *the Act* must take place for a period of seven working days (starting the first working day after the request for *consent* is made to *NCIS*), unless *NCIS* gives *consent* for it to go ahead. This could mean that particular work for a *client* has to stop until *consent* is given (although see also section 24.2 below – Cessation of Work). Failure to observe this requirement places *MLROs, individuals* and *businesses* at risk of committing offences under sections 327 to 329 and 336 of *the Act*. It is also an offence for the *MLRO* to consent to any such action after an internal *report* has been made to him and before the seven day period has expired, in the absence of *consent* by *NCIS*. *NCIS* interpret the consent provisions narrowly. For example, the payment of suspect funds into and out of the *business's client* account could be considered as separate *transactions*. The lapse of seven days following a *consent* to a payment into the account may not count towards the consent period for the payment out of the account, e.g., by way of repayment of the funds. If the *client* requests repayment, a further *report* and request for *consent* may have to be made. If this could result in a delay, it may give rise to tipping off issues. Therefore, when time is particularly pressing, the *business* should mark this on the disclosure form and that *consent* is requested, fax it to *NCIS* (0207 238 8286), and follow up with a phone call to the Duty Desk (tel: 0207 238 8262/8607).

- 20.6 To avoid undue delay and uncertainty, it is important that *businesses* contact *NCIS* immediately it becomes apparent that a request for *consent* needs to be made. All requests for *consent* must be made in writing.
- 20.7 *Businesses* and *individuals* need to note that it is not possible to receive *consent* to any action other than one which would otherwise constitute an offence under Sections 327 – 329 of *the Act*, i.e. it is not possible to get *consent* to tip off or prejudice an investigation. The Guidance in para 22.2 should be followed where *businesses* or *individuals* are concerned as to whether an intended communication to a third party may constitute either tipping off or be prejudicial to an investigation.
- 20.8 If no response is received from *NCIS* within the seven working days, *NCIS* are deemed to have provided the *consent* requested, and the *business* is entitled to proceed. *Consent* is not required when the *business* has made a *report* but has no involvement in the suspected *money laundering* and is not in any other way assisting it. For example, if the *report* concerns a matter that had been observed in a *client's* business when providing unconnected services. *Businesses* are referred to Appendix Two, where the offences under Sections 327 to 329 of *the Act* are set out more fully.
- 20.9 Where *NCIS* refuses to issue its *consent*, and provides notice of its refusal, there is a further moratorium period of 31 calendar days starting on the day that the *business* receives the refusal notice from *NCIS*. During the moratorium period the *MLRO* cannot consent to, and the *business* and *individuals* cannot proceed with, the matter in respect of which *consent* was requested and refused. At the expiry of the moratorium period *NCIS* is deemed to have *consented* to the request and the *business* is then entitled to proceed.
- 20.10 *Businesses* may, on occasion, wish to make reports where the identity of the person believed to have acted in a criminal fashion is not known. In such cases, to avoid rejection of disclosures for insufficient information, *businesses* should at least include in the “subject” or “associated subject” fields the name of the business or individual affected by the criminal conduct, or any other parties connected to the incident. The “subject” or “associated subject” fields are not reserved only for those in respect of whom knowledge or suspicion is being reported, but may also be used for individuals and entities connected to or affected by the transaction or activity being reported. This assists *NCIS* in building as full a picture as possible of the circumstances.

21. CONSTRUCTIVE TRUSTS

- 21.1 A conflict can sometimes arise between the *money laundering* legislation and civil law. A *business* may suspect that certain assets are the proceeds of crime and make a *report* about them. In such circumstances, it is possible that the victim of the original crime may be the true owner of the assets and have a civil claim to recover them. Such assets could be sums of money which have passed through an accounting firm's *client* bank account. If the firm has notice that such assets are not rightfully owned by the *client* then there is a risk that the firm may be considered to be a constructive trustee for the true owner. If the firm has any indication that this may be the case, then the report to *NCIS* should make clear the possible constructive trustee position.
- 21.2 If the firm has made a *report* about funds in its client bank account and the *client* subsequently requests the funds to be moved or otherwise paid away, a further *report* should be made to *NCIS*. If *NCIS* refuse to consent to the transfer of funds, and they are therefore retained, the firm is unlikely to be prosecuted for "tipping off", provided the reason given to the *client* for the refusal to complete the *transaction* is agreed with *NCIS*. However, the firm might incur civil liability to the *client*. Even if *NCIS* consents to the transfer of the funds and the firm follows *NCIS*' advice, the firm may find itself liable as a constructive trustee of the true owner. However, if the firm fails to transfer the funds because it is concerned about the constructive trust issue it may become liable for tipping off. The position regarding constructive trusts is complex and it would be advisable to obtain legal advice where appropriate.

22. INTERACTION OF DIFFERENT REPORTING DUTIES

- 22.1 Accounting firms and other *businesses* may well, on occasion, be in a position of having to fulfil other reporting duties after reporting suspicion to *NCIS*, to which different reporting standards may apply. Examples may include audit reports on financial statements; reports to regulators under Statement of Auditing Standards (SAS) 620 (revised); section 394 Companies Act 1985 statements on resignation as an auditor, reports on directors' conduct within the terms of the Company Directors Disqualification Act 1986 and reports under section 218 of the Insolvency Act 1986. Members of professional bodies may have obligations to report misconduct by members of the same body.
- 22.2 In some cases, it will not be necessary to refer to the substance of the matter reported to *NCIS* in other reports. If it is considered necessary, firms may find the following principles useful when pursuing their other reporting duties, in order to reconcile their otherwise conflicting responsibilities:-
- For the generality of reports for *clients*, or for publication, it should be noted that it is not possible to obtain consent to “tip off”. However, *businesses* should request contact with the relevant investigating authority to see if wording can be agreed for reports which satisfies both the *business's* other duties and the needs of the relevant law enforcement authority. If such wording can be agreed, it is unlikely that the business will know or suspect that the report will prejudice an investigation, which is an essential element of the tipping off offence.
 - where reports are required to regulators or government agencies, which are not intended for publication or receipt by clients, caution is still required as regards tipping off and it is recommended that *businesses* seek to identify a person within the organisation to whom they are reporting that has the requisite appreciation of *the Act* and appropriate seniority, thus mitigating the risk of tipping off; and
 - if a suitable compromise cannot be reached that reconciles the duties of *businesses* to make other reports with the need to avoid tipping off, *businesses* should seek legal advice and potentially the directions of the Court to protect themselves.
- 22.3 If suspicion has been reported, or may be reported, *businesses* and *individuals* need to be cautious in responding to professional clearance letters. Similar considerations apply as those set out in section 22.2 above. In particular, it is recommended that *businesses* and *individuals* do not respond to questions in professional clearance letters concerning either their satisfaction as to the identity of an entity or individual or as to whether any report of suspicion has been made, or contemplated.
- 22.4 There may also be professional requirements, for example, for auditors to report matters to those charged with governance under the APB's Statement of Auditing Standards 610, or to clients under ethical or practical guidance issued by accountancy bodies. These requirements should be interpreted in the light of the need to avoid tipping off. Further consideration of this is given in Appendix 3.

23. RISK-BASED APPROACH

23.1 In applying the requirements for *client* identification, in determining for *client* acceptance and monitoring purposes the level of “know your *client*” information considered desirable, and in relation to the level of scepticism that should be adopted, *businesses* may apply a risk-based approach. Certain business activities are more likely to involve *money laundering* than others. However, it should be remembered that money launderers are not obvious. On the contrary, they rely on appearing plausible. They may be deceitful on occasions and omit revealing relevant facts to their accountant.

23.2 *Businesses* need to be aware in particular of the risks attaching both to types of services and types of clients in respect of:

- being used by a *client* or third party to launder money (e.g., through *client* accounts);
- being used to design arrangements to facilitate *money laundering* (e.g., trusts and complex offshore structures);
- the *client* laundering money; and
- third parties using the *client* to launder money.

24. WHAT BUSINESSES ARE NOT REQUIRED TO DO

Whilst the new legislation imposes new requirements on *relevant business*, it is worthwhile pointing out what *businesses* do not need to do, or indeed, what they should avoid doing. In particular, *businesses* are not required to carry out any additional procedures to seek out *money laundering*, but only to be in a position to recognise and report potential *money laundering* which they encounter in the course of their normal work.

24.1 Investigating Suspicion in Accounting Firms

Suspicious are the result of an accounting firm applying a healthy level of objectivity and professional experience to the information it comes across in the ordinary course of providing *accountancy services* or other *relevant business*. Firms are not required to carry out investigative work beyond what they would normally do as part of their professional relationship. Indeed, to do so might well involve committing the offence of tipping off. *MLROs* are required to consider information available to the firm, when deciding whether to make a *report* to *NCIS*. Further investigations into possible *money laundering* should be left to the law enforcement agencies.

24.2 Cessation of Work

There is no automatic need to cease working for a particular *client* where a *business* has filed a *report*. In particular, no *consent* is required from *NCIS* to continue to carry on any function where a *report* has been made under section 330 of *the Act*, and the *business* will not itself commit one of the main *money laundering* offences by continuing its work for the *client*.

The primary reason to cease work on a particular *transaction* would be that the *business* would assist a money launderer by continuing with the work, in circumstances where the *business* has not received *consent* from *NCIS*. Further guidance on this is given in Reporting Suspicious to *NCIS* (see section 20 above). Regardless of whether the *business* ceases or continues to work, care must be taken to ensure that the potential money launderer is not tipped off.

24.3 Resignation

There is no obligation for a *business* to continue to act for a *client* where it does not believe that it is in its commercial interests to do so, or would be incompatible with professional or ethical requirements. However, in circumstances where a *report* has been made, care must be taken to avoid tipping off the *client* or a third party. Further guidance on this matter is given in Appendix Three.

25. TRANSITIONAL ARRANGEMENTS

- 25.1 *Businesses* and *individuals* which became subject to the failure to *report* offence under *the Act* from 24 February 2003 (that is *businesses* (including sole traders) and *individuals* within them conducting business within the scope of *the 1993 Regulations*, that is *relevant financial business*) generally do not need to report knowledge, suspicion, or reasonable grounds to suspect *money laundering* if all the information that gave rise to that knowledge or suspicion came to the *business's* or the *individual's* attention before that date. A similar transitional provision is included in *the 2003 Regulations* and the amendment to Schedule 9 of *the Act*. This means that *businesses* or *individuals* not within the regulated sector before 1 March 2004 will only need to *report* knowledge or suspicions of *money laundering* if part or all of the information that gave rise to that knowledge or suspicion came to the attention of the *business* or *individual* on or after that date (or if a *report* is necessary for another reason, such as because the *business* or the *individual* would otherwise commit one of the main *money laundering* offences). Even where there is no obligation to *report*, the information which gave rise to a suspicion will still be useful when evaluating whether any new information gives rise to a need to make a *report*, and may be reported, if desired, under section 337 of *the Act*.
- 25.2 Despite the transitional provision outlined above, *businesses* should be aware that they may still be under an obligation to make a report under *the TA 2000*, or alternatively *businesses* may wish to consider making a *report* under section 337 of *the Act* in respect of historical matters..
- 25.3 *MLRO's* have a personal obligation, under section 332 of *the Act*, to *report* any knowledge or suspicion of *money laundering* which they have as a result of an internal *report*, even if they, and the person reporting to them, and/or their business, are not within the scope of *the 1993* or *2003 Regulations*. This applies in respect of knowledge or suspicions formed as a result of information which came to them, partially or wholly, on or after 24 February 2003.
- 25.4 Unless specified below, *businesses* will not need to implement and maintain identification procedures for *clients* until 1 March 2004. From that date, *businesses* are obliged to confirm the identity of new *clients* for *relevant business*, but are not obliged to do so for existing *clients* for *relevant business* with whom there is already a *business relationship*.
- 25.5 *Businesses* which are authorised under *FSMA 2000*, or are otherwise bound by *the 1993 Regulations*, have to maintain identification procedures under *the 2003 Regulations* except in relation to *clients* with whom a *business relationship* was formed before 1 April 1994 (reg 30(1)). That is the date the outgoing *1993 Regulations* took effect. *Businesses* which are authorised by the *FSA* need to follow the *FSA's* requirements as well.

25.6 Whilst mindful of these commencement dates, *businesses* are advised to determine for themselves whether to maintain identification procedures for existing *clients*, particularly where the perceived risk inherent in a *client's* business, structure or location is considered to be high. Know your *client* requirements may also be inherent in audit and some other professional requirements, which may inter-relate with those in place as part of a *business's* anti-money laundering procedures.

26. MONEY LAUNDERING LEGISLATION OUTSIDE THE UK

- 26.1 *Businesses* are under no obligation under United Kingdom legislation to acquaint themselves with the *money laundering* legislation in other countries. However, if they visit other countries to provide services to United Kingdom or foreign *clients*, or have branches abroad, it would be wise to do so, in order to avoid committing any offences in those countries.
- 26.2 *Businesses* should be aware that some countries, for example the United States, have legislation with extra-territorial affect. The most significant effect would be on *businesses* with *clients* dealing in United States dollars.

27. NON-PRACTISING ACCOUNTANTS

- 27.1 Accountants employed in business will be subject to *the Act* and *the 2003 Regulations* where they are employed by an entity that falls within the scope of *the Act* and *the 2003 Regulations* (see section 27.4 below for more details). Such accountants should apply the guidance provided by their employers, guidance issued by the relevant regulator or trade association or, in the absence of such guidance, the aspects of this guidance that relate to the obligations on *individuals* and *relevant businesses*.
- 27.2 Accountants employed outside *relevant business* will generally not be subject to the failure to report offence imposed by section 330 of *the Act* nor *the 2003 Regulations*. However, they should be aware that they could still commit offences under *the Act*. In particular, they could commit one of the primary *money laundering* offences (offences under sections 327-329 of *the Act*), the offence of tipping off (section 333), or the offence of prejudicing an investigation (section 342). Therefore, they should at least familiarise themselves with the areas of this guidance that describe those offences. If their employer has nominated an *MLRO*, or similar officer, the accountant should normally report their suspicions to that person. If for any reason that is not possible or appropriate, *individuals* may report direct to *NCIS*. The guidance given in section 20 and Appendix one may be of assistance in these circumstances. In either case, *businesses* and *individuals* are covered by the confidentiality over-ride provisions contained in both *the Act* and *the TA 2000*. This protection covers voluntary *reports*, of *money laundering*, where the information giving rise to knowledge or suspicion did not arise in the context of *relevant business*.
- 27.3 All accountants remain subject to *the TA 2000* which is applicable throughout the United Kingdom, regardless of the nature of the business of their employer. It requires them to report possession of, and other activities relating to, terrorist funds, which include funds which are likely to be used for terrorist purposes as well as the proceeds of terrorism.
- 27.4 *Relevant business* is defined in paragraph 2(2) of *the Regulations*. Apart from what might be summarised as banking, investment business (and other *FSMA 2000* regulated activities) and accountancy or audit, the scope of sections 330 and 331 of *the Act* and *the 2003 Regulations* includes (in summary):
- Money service operators;
 - Estate agency work;
 - The business of operating a casino;
 - Insolvency practitioners;
 - Tax services;
 - The business of providing legal services, involving financial or real property transactions;
 - Company and trust formation, operation or management; and
 - The business of dealing in goods which involves accepting payments in cash of 15,000 Euro or more (“high value dealers”).

Individuals or businesses involved in the provision of management consultancy services or interim management should be particularly alert to the possibility that they could be within the scope of the duty to report under Sections 330 and 331 of *the Act* and the requirements of *the 2003 Regulations* because they may supply the service of forming, operating or managing companies, or provide *accountancy services*.

- 27.5 Money service operators and high value dealers are regulated by HM Customs and Excise as set out in Part III of *the 2003 Regulations*.

28 DEFINITIONS AND ABBREVIATIONS

<i>(The) Act</i>	The Proceeds of Crime Act 2002.
<i>(The) 1993 Regulations</i>	The Money Laundering Regulations 1993. SI 1993 No 1933
<i>(The) (2003) Regulations</i>	The Money Laundering Regulations 2003. SI 2003 No 3075
<i>Accountancy services</i>	<p>Any service provided to a third party by way of business, which meets all of the following criteria:</p> <ul style="list-style-type: none">(a) The form and substance of the relationship between the service provider and the recipient are that of professional advisor/ client, rather than employee/employer;(b) The service pertains to the recording, review or reporting of financial information for the service recipient; and(c) The service does not relate solely to the provision and/or installation of software for the production of financial records. <p>Accountancy practice, including that carried out on a part time basis, is included within this definition, but not non-commercial arrangements, such as when a company provides accounting services for other companies under common ownership.</p>
<i>Applicant for business</i>	A person seeking to form a <i>business relationship</i> , or carry out a <i>one-off transaction</i> , with a <i>business</i> acting in the course of relevant business carried on by the <i>business</i> in the UK. Referred to as a <i>client</i> in this guidance.
<i>A business</i>	A company, partnership or other organisation carrying on relevant business, within the meaning of <i>the Regulations</i> . This includes accountancy practices, whether structured as partnerships, sole practitioners or corporate practices.

<i>Business relationship</i>	Any arrangement for the carrying out of <i>transactions</i> on a regular basis where the value of those <i>transactions</i> , or the total amount of any payments to be made by any person to any other in the course of the arrangement is not known at the outset. The agreement of terms of engagement with a <i>client</i> would be indicative of the start of a business relationship.
<i>CCAB</i>	Consultative Committee of Accountancy Bodies.
<i>Client(s)</i>	See <i>applicant for business</i> . This term is inclusive of the customers of a <i>relevant business</i> , as well as clients of a professional practice.
<i>Consent</i>	Permission given, generally by <i>NCIS</i> , for the carrying out of any action that would constitute a <i>money laundering</i> offence in the absence of that permission. The definition and ruling legislation for the giving of consent is in Section 335 of <i>the Act</i> , which also deals with the passing of the consent from the <i>MLRO</i> to the <i>individual</i> concerned.
<i>FSA</i>	Financial Services Authority.
<i>FSMA 2000</i>	Financial Services and Markets Act 2000.
<i>Individuals</i>	Includes the partners, directors, subcontractors, consultants and staff of a firm of accountants and employees of other <i>relevant businesses</i> .
<i>JMLSG</i>	Joint Money Laundering Steering Group.
<i>Money laundering</i>	For the purposes of this guidance, money laundering is defined to include those offences relating to terrorist finance, which require to be reported under the <i>TA 2000</i> , as well as the principal money laundering offences as defined in <i>the Act</i> . These offences are outlined in Appendix Two.
<i>MLRO</i>	Money Laundering Reporting Officer. This term is used to describe the nominated officer appointed under paragraph 7(1) of <i>the Regulations</i> and section 331 of <i>the Act</i> .
<i>NCIS</i>	National Criminal Intelligence Service.

<i>One-off transaction</i>	Any <i>transaction</i> other than one carried on in the course of an existing <i>business relationship</i> .
<i>Relevant business</i>	For the purposes of this Guidance, this includes “relevant business” as defined in paragraph 2(2) of <i>the Regulations</i> , and also “the regulated sector” as defined in the Proceeds of Crime Act Schedule 9 (as amended). These two categories are identical in their scope and include the provision of <i>accountancy services</i> by way of business. See sections 3.3.2 and 27.4 for more details on the scope of this definition.
<i>Relevant financial business</i>	A phrase used in The Money Laundering Regulations 1993 to define their scope as including, amongst other things, regulated activities as defined by the <i>FSMA 2000</i> .
<i>Report</i>	A report made by an <i>individual</i> who knows or suspects that <i>money laundering</i> is taking place, or has reasonable grounds for knowing or suspecting that it is. The report may involve a particular activity or <i>transaction</i> , and may be external (generally from the <i>MLRO</i> to <i>NCIS</i>) or internal (generally from an <i>individual</i> to the <i>MLRO</i>).
<i>(The) TA 2000</i>	Terrorism Act 2000 (as amended by the Anti-Terrorism Crime and Security Act 2001).
<i>Transaction(s)</i>	<i>JMLSG</i> and <i>FSA</i> guidance is that this includes the provision of advice. This guidance follows that approach.

NCIS Disclosure Form and Guidance Notes

NCIS has produced standard disclosure forms which may be used by *businesses* when filing *reports* with NCIS. A copy of the standard disclosure forms will be included in this Appendix as soon as possible. Alternatively, they can be accessed from NCIS's web-site (<http://www.ncis.gov.uk/disclosure.asp>) complete with drop down menus and a guide to completion, from [1 March 2004].

It is recommended that *businesses* use the standard disclosure form when filing *reports* with NCIS

[This appendix to be updated when new standard forms/differential reporting guidance is available from NCIS]

CRIMINAL OFFENCES UNDER THE ANTI-MONEY LAUNDERING LEGISLATION

Offences Under The Proceeds of Crime Act 2002

Money Laundering Offences

The following are *money laundering* offences under the specified sections of *the Act*:

- s327 “Concealing” criminal property (including concealing or disguising its nature, source, location, disposition, movement, ownership or rights attaching; converting, transferring or removing from any part of the UK).
- s328 “Arranging” (entering into or becoming concerned in an arrangement which the *business* or an *individual* knows or suspects facilitates the acquisition, retention, use or control of criminal property by or on behalf of another person).
- s329 Acquiring, using or possessing criminal property.

The offences under sections 327, 328 and 329 are wider than they may initially appear, because of the width of the definition of criminal property (see sections 4.3 and 4.5 above).

Defences to the offences under sections 327, 328 and 329 include:

- A *report* was made to *NCIS* or the *MLRO* in respect of the act (ie, the concealing, arranging, acquiring etc.) and consent was received from *NCIS* or the *MLRO*, before the act took place.
- A *report* was made to *NCIS* or the *MLRO* after the act, where there was a good reason for the failure to make the *report* before the act took place, and was made on the reporter’s own initiative and as soon as practical.
- It was the intention to make a *report* to *NCIS* or the *MLRO* but there was a reasonable excuse for not having done so.

For section 329, it is also a defence if the property is acquired or used for adequate consideration, so long as it is not known or suspected that the goods or services provided may help another person in carrying out criminal conduct.

Provisions on the interpretation of these offences and other matters within the *money laundering* Part of *the Act* are included within section 340. In particular, the following sub-sections should be noted:

- The *money laundering* offences are defined in terms of criminal property. Under sub-section 340(3) criminal property does not include a benefit from criminal conduct, where the alleged offender does not know or suspect that property constitutes or represents such a benefit.

- Under section 340(11), *money laundering* includes not only an act which constitutes an offence under sections 327, s328, or s329, but also:
 - An attempt or conspiracy or incitement to commit such an offence;
 - Aiding, abetting, counselling or procuring the commission of such an offence; or
 - An act which would constitute any of these offences if done in the UK.

Failure to Report Offences

Other offences under *the Act* include:

- s330 Failure by an *individual* in the regulated sector to inform NCIS or the *business's MLRO*, as soon as practicable, of knowledge or suspicion (or reasonable grounds for knowing or suspecting) that another person is engaged in *money laundering*. For this purpose, *money laundering* is as defined in section 340(11) of *the Act*, and includes an attempt to launder money and aiding and abetting, as well as the offences in sections 327 to 329.

Defences include that there was a reasonable excuse for not having made a report to the *MLRO* or *NCIS*; or that the person does not know or suspect *money laundering* and their employer has not provided them with appropriate training.

The Court is obliged to take into account whether a person followed relevant guidance issued by a trade or professional body and approved by the Treasury, in deciding whether this offence was committed.

- s331 Failure by *MLROs* in the regulated sector to make the required *report* to *NCIS* as soon as practicable if an internal *report* leads them to know or suspect, or gives them reasonable grounds to know or suspect, that a person is engaged in *money laundering*.

It is a defence that there was a reasonable excuse for not having made a *report*. The Courts are obliged to take into account whether the person followed relevant guidance in deciding whether the offence was committed.

Section 332 creates a similar offence for *MLROs* who are not in the regulated sector. The key difference is that such *MLROs* must have knowledge or suspicion to commit the offence (reasonable grounds is not enough) and the Court is not obliged to take account of relevant guidance.

Businesses should obtain legal advice before relying upon the reasonable excuse defences to the offences in section 327-332. Courts have defined reasonable excuse narrowly in other contexts. Each case will turn on its own facts. Circumstances that give rise to a reasonable excuse are likely to encompass the fear of physical violence or other menaces which make it unreasonable for the potential reporter either to disclose their suspicions or to refuse to act for the *client*. The extent to which they extend beyond this is unclear.

Tipping Off and Other Offences

- s333 The offence of tipping-off occurs when the *MLRO*, or any *individual* makes a disclosure which is likely to prejudice any investigation which might be conducted following a *report*, if they know or suspect that such a *report* (including an internal one) has been made. It is a defence if the person did not know or suspect that the disclosure was likely to prejudice the investigation.
- s342 Any *individual* who knows or suspects that an investigation into *money laundering* (or certain confiscation or civil recovery investigations) is being, or is about to be, conducted, makes a disclosure which is likely to prejudice the investigation or if they falsify, conceal, destroy or otherwise dispose of documents relevant to the investigation (or causes or allows this to take place).
- s336 *MLROs* also commit an offence if they consent to a transaction which they know or suspect is *money laundering* under ss 327 to 329, where consent has not been received from *NCIS* (either express, or implied by the passing of the seven day notice period or the 31 day moratorium period).

Offences Under the Terrorism Act 2000 (as amended by the Anti-terrorism, Crime and Security Act 2001)

Money Laundering Offences

There are a number of offences under *the TA 2000*, which trigger an obligation to make a *report*. For the purposes of this guidance, all of these offences (outlined below, and as defined in sections 15 to 18 of *the TA 2000*) are included within the definition of *money laundering*.

Someone is engaged in *money laundering* under section 18 of *the TA 2000* if they enter into or become concerned in an arrangement which facilitates (by concealment, removal from the jurisdiction, transfer to nominees, or in any other way) the retention or control of terrorist property. It is a defence if the person did not know and had no reasonable cause to suspect that the arrangement related to terrorist property.

Property is terrorist property if it is:

- Likely to be used for the purposes of terrorism; or
- The proceeds (whether wholly or partly, directly or indirectly) of the commission of an act of terrorism, or of acts carried out for the purposes of terrorism.

Further offences under *the TA 2000* which trigger a reporting obligation are:

- s15 Terrorist fund-raising (receiving, providing or inviting another to provide money or other property, where a person intends, or has reasonable cause to suspect, that it may be used for the purposes of terrorism).
- s16 Use of money or other property for the purposes of terrorism, or, possession of money or other property where a person intends or has reasonable cause to suspect that it may be used for the purposes of terrorism.

- s17 Funding arrangements (entering into or becoming concerned in an arrangement as a result of which money or other property is to be made available to another, when a person knows or has reasonable cause to suspect that it may be used for the purposes of terrorism).

Other terrorism offences which constitute *money laundering* for the purposes of this guidance include:

- Making funds available (making funds or financial (or related) services available directly or indirectly to or for the benefit of a person who commits, attempts to commit, facilitates or participates in the commission of acts of terrorism, or for the benefit of a person controlled, owned, or acting on behalf of such a person). This offence is created by the Terrorism (United Nations Measures) Order 2001.

Failure to Report Offences

It is an offence under section 19 of the *TA 2000* for any person who believes or suspects that another person has committed an offence under sections 15 to 18 to fail to make a report as soon as reasonably practicable, where the information on which his belief or suspicion is based comes to them in the course of their trade, profession, business or employment.

Section 21A (inserted by Schedule 2 of the Anti-terrorism Crime and Security Act 2001) extends this offence, for people carrying on business in the regulated sector, to include an objective test. That is to include those with knowledge or suspicion, and also those with reasonable grounds for knowing or suspecting. For this purpose, the “regulated sector” has been extended by the Treasury by Order, and brought into line with *relevant business* as defined in *the 2003 Regulations*.

There is a defence, in relation to both these failure to report offences, of reasonable excuse. In relation to the section 21A (regulated sector) offence, the Courts are required to take into account relevant guidance, which has been approved by the Treasury.

It is also an offence under *the TA 2000* (section 38B) for a person to fail to make a disclosure as soon as reasonably practicable to a constable if they have information which they know or believe might be of material assistance:

- In preventing the commission by another person of an act of terrorism; or
- In securing the apprehension, prosecution, or conviction of a person for a terrorist offence.

It is a defence for a person to prove that he had a reasonable excuse for not making the disclosure.

Tipping Off Offences

Section 39 of *the TA 2000* creates offences where:

- A person discloses anything which is likely to prejudice a terrorist investigation, or interferes with material (including falsifying, concealing, destroying or disposing of it

or permitting someone else to do so) likely to be relevant to the investigation, where he knows or has reasonable cause to suspect that a constable is or is proposing to conduct a terrorist investigation.

- A person knows or has reasonable cause to suspect that a disclosure to the police under *the TA 2000* has been made, and he makes a disclosure which is likely to prejudice any resultant investigation or interferes with material likely to be relevant to such an investigation.

It is a defence if a person did not know or have reasonable cause to suspect that the disclosure or interference was likely to affect a terrorist investigation, or that he had a reasonable excuse for the disclosure or interference.

Offences Under The Money Laundering Regulations 2003

The *2003 Regulations* include the offences summarised below.

- Regulation 3 Persons who carry on *relevant business* in the United Kingdom must:
 - Comply with the requirements of *the 2003 Regulations*, in respect of identification procedures, record keeping procedures and internal reporting procedures;
 - Establish other appropriate procedures for the purpose of forestalling and preventing *money laundering*; and
 - Take appropriate measures, so that relevant employees are made aware of the relevant law on *money laundering* (including terrorist related *money laundering*) and trained in how to recognise and deal with possible *money laundering*.

An offence is committed by a *business* which does not comply with these requirements, or by a partner or officer of the *business* where they consented to or connived at the contravention of these requirements or the contravention was attributable to any neglect on their part.

- Regulation 28 The Treasury may direct any person who carries on *relevant business*:
 - Not to enter into or proceed further with a *business relationship*;
 - or
 - Not to carry out or proceed further with a *one-off transaction*.

in relation to a person who is based or incorporated in a country (other than an EEA state) to which the Financial Action Task Force has decided to apply counter measures. An offence is committed by persons who fail to comply with such a direction.

Tipping Off

In order to commit the offence of tipping off under *the Act*, *businesses* and *individuals* need to:

- know or suspect that a *report* has been made under *the Act* (this includes both internal *reports* and *reports* to *NCIS*); and
- know or suspect that their actions are likely to prejudice an investigation which might be conducted following that *report*.

Under *the TA 2000*, tipping off can also be committed when *businesses* and *individuals* know or have reasonable cause to suspect that a *report* will be made.

It is important to note that the offence of tipping off covers not only tipping off the suspect that a *report* has been made, but any other disclosure of information that might be prejudicial to an investigation, such as informing a third party who then warns the suspect, or making a public statement which is likely to hinder an investigation.

The offence of prejudicing an investigation set out in section 342 of *the Act* does not require knowledge or suspicion of a *report* having been made, simply that an investigation is underway or may begin. In this context an investigation means a confiscation investigation, a civil recovery investigation or a money laundering investigation.

Nothing prevents a *business* from making normal commercial enquiries to learn more about a *transaction* or to determine whether a concern amounts to a suspicion. This cannot amount to tipping off if it is done before an internal *report* is made, and the *individual* has no knowledge or suspicion that a *report* has been filed with *NCIS*. Once a *report* has been made, *businesses* and *individuals* should take care in making any further enquiries and should consider only doing so under the *MLRO's* direction. In addition, caution is required where circumstances exist, such that the offence of prejudicing an investigation may be committed.

Clients and potential *clients* may seek to ask direct questions as to the intentions of *businesses* and *individuals* as regards reporting to *NCIS* or whether any such *reports* have been made. Responses need to be considered in the light of the dangers of tipping off and prejudicing an investigation, and *businesses* may wish to consider taking a standard position of refusing to comment or to respond in any way to all such enquiries, and make clear that this is a standard response.

It is unlikely to be regarded as tipping off if a *business* places a notice in its reception area or includes a standard paragraph in every engagement letter to the effect that it is obliged to *report* any knowledge, suspicion or reasonable grounds to suspect *money laundering* to *NCIS*. Clearly, there are circumstances where tipping off could occur, for example where a *firm* sends such an engagement letter immediately after they have been informed of a potential crime. In considering whether to include such a notice in reception, or standard paragraph, *firm's* may wish to take into account that it is not necessary to do so and may not be desirable. *Reports* to *NCIS* are made under the operation of statutory requirements, and as such may be included under standard paragraphs on confidentiality within engagement letters provided such paragraphs allow for disclosure of information in

accordance with applicable law and regulation and the orders of a Court with jurisdiction over the matter in question..

Auditors making a report to those charged with governance, in accordance with Statement of Auditing Standards 610, issued by the Auditing Practices Board, will need to take into account the possibility of tipping off. Disclosure to directors or senior management may constitute tipping off if, for example, the auditors suspected the management or Board of the *client* of being complicit in the suspected *money laundering* or of being likely to pass on information to others, or take any actions which in turn could prejudice a *money laundering* investigation. Similar issues arise, when considering whether to discuss possible *money laundering* suspicions with *clients'* internal audit function or *MLRO*. It would be advisable for *businesses* to record the reasons for their decisions in this area.

Additional Sources of Guidance

Joint Money Laundering Steering Group Guidance

The Joint Money Laundering Steering Group (*JMLSG*) issues guidance for banks and other businesses in the regulated financial services which has been developed over the last ten years. The *JMLSG's* Guidance Notes are widely regarded as the leading source of guidance on anti *money laundering* practice in the United Kingdom. It is published by the Joint Money Laundering Steering Group, Pinners Hall, 105-108 Old Broad Street, London EC2N 1EX.

The *JMLSG* Guidance Notes are written for the financial sector authorised by the *FSA*. Much of the terminology and references reflect this, though other *businesses*, including accountancy practices will find that some of the guidance is both appropriate and useful, for application in their business.

Chapter 4, Know Your Customer and Identification Evidence, is particularly comprehensive and is recommended to accountants for further guidance. The following chapters and appendices may also be relevant:

- Chapter 2 What The UK Law, Regulations And Financial Sector Rules Require
- Chapter 5 Recognising and Reporting Suspicious Activity
- Chapter 7 Record Keeping
- Appendix C Existing UK law

Useful Web-sites

When seeking further information in relation to *money laundering*, a list of useful web-sites would include (but is by no means limited to):

- Consultative Committee of Accountancy Bodies
<http://www.ccab.org.uk>
- Institute of Chartered Accountants in England and Wales:
<http://www.icaew.co.uk/moneylaundering>
- Institute of Chartered Accountants in Ireland:
<http://www.icaei.ie>
- Institute of Chartered Accountants of Scotland:
<http://www.icas.org.uk>
- Association of Chartered Certified Accountants:
<http://www.accaglobal.com>
- Chartered Institute of Management Accountants:
<http://www.cimaglobal.com>
- Chartered Institute of Public Finance and Accountancy:
<http://www.cipfa.org.uk>

National Criminal Intelligence Service:

<http://www.ncis.gov.uk>

NCIS disclosure template can be downloaded from:

<http://www.ncis.gov.uk/disclosure.asp>

Her Majesty's Stationery Office:

<http://www.hmso.gov.uk>

Joint Money Laundering Steering Group:

<http://www.jmlsg.org.uk>

Auditing Practices Board:

<http://www.frc.org.uk/apb>

Financial Action Task Force:

<http://www.fatf-gafi.org>

Bank of England information on terrorist Organisations:

<http://www.bankofengland.co.uk/sanctions>

Treasury listing of known terrorists:

<http://www.treas.gov/offices/enforcement/ofac/sdn/index.html>

US Government listing:

<http://www.fbi.gov/mostwant/terrorists/fugitives.htm>