

Home Office Impact Assessment

Title: Economic Crime and Corporate Transparency Bill 2022 - Exemptions for handling mixed suspected criminal and legitimate property (formerly called ringfencing)
IA No: HO0402
RPC Reference No:
Other departments or agencies: None.

Date: 13 January 2023
Stage: Final
Intervention: Domestic
Measure: Primary Legislation
Enquiries: Tom Bell
tom.bell38@homeoffice.gov.uk

RPC Opinion:

Business Impact Target: Non qualifying provision

Cost of Preferred (or more likely) Option (in 2021 prices)

Net Present Social Value NPSV (£m)	29.2	Business Net Present Value BNPV (£m)	29.2	Net cost to business per year EANDCB (£m)	-3.4
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What is the problem under consideration? Why is government intervention necessary?

The Government must legislate to create exemptions for defence against money laundering suspicious activity reports (DAML SARs, known as DAMLs) to enable proportionate access to legitimate property. Under the current law, when a business submits a DAML due to suspicious property (that may be mixed with legitimate property), the common practice is to freeze the entire property. This risks economic harm to a customer who cannot access legitimate property. To create a more proportionate system and mitigate economic harm to a potentially innocent party, Government seeks to amend legislation. This will provide legal protection to enable access to the value of legitimate property without requiring a DAML for the act.

What are the strategic and policy objectives and the intended effects?

The strategic objective is to restore confidence in the criminal justice system (CJS). The policy objective is for anti-money laundering (AML) regulated sector institutions to take proportionate action to preserve criminal property. The intended outcome is reporters no longer needing a DAML, reducing risk of account holders pursuing civil proceedings. Success will be measured by a reduction in DAMLs for transactions up to the value of a customer's legitimate property enabling proportionate access.

What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)

Option 1: 'Do-nothing' and allow innocent parties to suffer economic harm where all assets are frozen. This does not meet the Government's objective.

Option 2: Preserve suspected criminal property, either by transferring suspected illicit funds into another account (same firm) or prevent the value of property held falling below the value of the suspected criminal property, enabling access to the value of legitimate property. The legislation is permissive and the intention is for a firm in the AML regulated sector to take an approach that works for their business model. **This is the Government's preferred option.**

Main assumptions/sensitivities and economic/analytical risks	Discount rate (%)	3.5
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There is a risk that volumes will increase over the appraisal period volumes are assumed to remain at 2019/20 levels. There is considerable uncertainty over the large range taken from the Deloitte stakeholder survey, which had a small sample size. Acts to preserve property may pose risks of 'tipping off' individuals under suspicion when they still have access to funds. This is more likely where banks move money from an account rather than freezing the suspected criminal portion.

Will the policy be reviewed? It will be reviewed. If applicable, set review date: October 2026.

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible Minister



Date:

23/01/2023

Summary: Analysis & Evidence

Policy Option 2

Description: Exemptions for handling mixed suspected criminal and legitimate property (Economic Crime and Corporate Transparency Bill 2022).

FULL ECONOMIC ASSESSMENT

Year(s):	Price Base	2021/22	PV Base	2022/23	Appraisal	10	Transition	1
Estimate of Net Present Social Value NPSV (£m)							Estimate of BNPV (£m)	
Low:	13.5	High:	71.2	Best:	29.2	Best BNPV	29.2	

COSTS, £m	Transition Constant Price	Ongoing Present Value	Total Present Value	Average/year Constant Price	To Business Present Value
Low	0.03	N/A	0.03	N/A	0.03
High	0.52	N/A	0.52	N/A	0.52
Best Estimate	0.15	N/A	0.15	N/A	0.15

Description and scale of key monetised costs by 'main affected groups'

Familiarisation costs to credit and financial institutions are estimated to be **£0.03 to £0.52 million**, with a central estimate of **£0.15 million** in year 1 only. **Total costs** are estimated to be **£0.03 to £0.52 million (PV)**, with a central estimate of **£0.15 million (PV)** over 10 years.

Other key non-monetised costs by 'main affected groups'

Acts to preserve property carry the risk of 'tipping off' individuals under suspicion while they can access property. 'Tipping off' refers to informing the subject of a disclosure that they are potentially under investigation, but it has not been possible to monetise this risk. If businesses choose to alter their internal processes there may be some administration costs, but as the legislation is permissive it is assumed that businesses that would face large costs to do so would choose not to.

BENEFITS, £m	Transition Constant Price	Ongoing Present Value	Total Present Value	Average/year Constant Price	To Business Present Value
Low	N/A	13.5	13.5	3.4	13.5
High	N/A	71.7	71.7	8.5	71.7
Best Estimate	N/A	29.4	29.4	8.5	29.4

Description and scale of key monetised benefits by 'main affected groups'

Total benefits are estimated to be **£13.5 to £71.7 million (PV)**, with a central estimate of **£29.4 million (PV)** over 10 years. These are driven by cost savings for financial and credit institutions having to raise fewer DAMLs.

Other key non-monetised benefits by 'main affected groups'

Businesses in the AML regulated sector and individuals with suspected mixed assets would no longer face financial hardships as they could access legitimate property, for example, for living expenses. Businesses would face lower legal risks and would likely have greater customer satisfaction. This may reduce numbers of civil proceedings as customers could access legitimate property without knowing that they cannot access suspicious property, potentially reducing legal expenses. There may be a small benefit to the National Crime Agency (NCA) if fewer DAMLS are submitted. These are not monetised due to a lack of data.

BUSINESS ASSESSMENT (Option 2)

Direct impact on business (Equivalent Annual) £m:										
Cost, £m	0.02	Benefit, £m	3.4	Net, £m	3.4					
Score for Business Impact Target (qualifying provisions only) £m:					N/A					
Is this measure likely to impact on trade and investment?					N					
Are any of these organisations in scope?			Micro	Y	Small	Y	Medium	Y	Large	Y
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)				Traded:	N/A	Non-Traded:	N/A			

PEOPLE AND SPECIFIC IMPACTS ASSESSMENT (Option 2)

Are all relevant Specific Impacts included?	Y	Are there any impacts on particular groups?	N
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Evidence Base (for summary sheets)

A. Strategic Objective and Overview

A.1 Strategic Objective

1. Organised crime groups (OCGs) continue to be relentless in their pursuit of financial gain and government collaborative efforts must match and exceed their relentlessness.
2. The strategic objective of this proposal is to restore confidence in the criminal justice system (CJS).
3. This intervention is one of several interventions considered for reforming economic crime legislation. Government have listened to colleagues in law enforcement and the private sector and have heard the case for further legislative reform on economic crime, particularly to: enable effective information sharing; continue to improve the overall system response to money laundering (informed by the 2019 Law Commission Review¹ on aspects of the Suspicious Activity Reporting (SARs) regime and its ongoing review of the confiscation regime), and to strengthen the Government's ability to recover the proceeds of crime.
4. The measure considered in this impact assessment (IA) relates to a series of proposals aimed at reducing the regulatory burden on the anti-money laundering (AML) regulated sector. Other proposals include increasing the current £250 threshold for submitting a Defence Against Money-Laundering Suspicious Activity Report (DAML SAR, known as a DAML) up to £1,000 for certain categories or report and introducing additional exemptions for DAMLs to exit a relationship and pay away property on the condition that it would exclude cases where a business suspects that someone other than the customer has an ownership right or interest over the property.

A.2 Background

5. A SAR is a piece of information which alerts law enforcement that certain client or customer activity is in some way suspicious and might indicate money laundering or terrorist financing. The regulated sector has an obligation to submit a SAR to the United Kingdom Financial Intelligence Unit (UKFIU) in such circumstances or risk committing a Failure to Report offence under the Proceeds of Crime Act 2002 (POCA 2002), sections 330-332. A Defence Against Money Laundering Suspicious Activity Report, henceforth referred to as a DAML, can be requested from the National Crime Agency (NCA) where a reporter has a suspicion that property they intend to deal with is in some way criminal.
6. A DAML provides a defence against the principal money laundering offences in sections 327-329 of POCA 2002, while providing intelligence to the UKFIU. DAMLs effectively freeze a transaction until a consent decision is made by the UKFIU or seven working days have passed, after which the business can assume consent. This means that businesses are regularly waiting for seven working days before being able to assume consent, where no decision is given, before proceeding with an action. In that period, the reporter cannot inform the customer that the delay is because a DAML has been submitted, as telling them would amount to a potential tipping off offence. The NCA is empowered to provide these criminal defences in law under section 335 of POCA 2002. Reviewing these requests for a defence and disseminating to wider LEAs for input are the primary task of the UKFIU's DAML Team². Between 2018/19 and 2019/20 the number of DAMLs submitted increased by 81 per cent from 34,543 to 62,408.

¹ https://s3-eu-west-2.amazonaws.com/lawcom-prod-storage-11jsxou24uy7q/uploads/2019/06/6.5569_LC_Anti-Money-Laundering_Report_FINAL_WEB_120619.pdf

² <https://www.nationalcrimeagency.gov.uk/who-we-are/publications/167-defence-against-money-laundering-daml-faq-may-2018/file>

7. Chapter 8 of the Law Commission's 2019 Anti-Money Laundering report³ outlines the problems that arise where suspected criminal property is mixed with legitimate property. In current practice, the entirety of the funds or property are treated as criminal property and frozen by the business, regardless of the amount or proportion suspected to be criminal. This can have severe economic consequences for the people or businesses whose accounts or property are practically frozen.
8. In cases where a business suspects that a part of a customer's assets are proceeds of criminal activity, it is often standard practice for the business to freeze the entire account or property. For instance, an individual may receive a monthly salary from their employer and have £2,000 of legitimate funds in their bank account. They may make what the bank believes to be a fraudulent loan application and receive a further £1,000. Most businesses in this instance would freeze the entire account containing £3,000, even though the bank's suspicion relates only to the £1,000 in loaned funds. The bank would then make a DAML to the NCA and seek consent for any attempt made by the customer to withdraw any of the funds. Under the proposal, the customer could withdraw funds without a DAML as long as the value of the suspected criminal property (£1,000) is maintained in the account. If the business wants to act on the value of the suspected criminal property (for example, a transaction that would take the value held below that of the suspected criminal property), they will need to seek a DAML for the act.

A.3 Groups Affected

9. Businesses in the regulated sector will be affected. In some cases, they will no longer be required to submit a DAML but will instead be able to submit a required disclosure (SAR), resulting in cost savings.
10. Individuals will be affected. Legitimate property value will no longer be frozen when it is suspected that some property is the proceeds of crime, mitigating the risk of negative economic consequences for individuals.
11. Law enforcement will be affected. Although a required disclosure (SAR) would still be made where a business takes action to preserve suspected property, those disclosures are not processed in the same way as DAMLs. It follows that law enforcement agencies may not be immediately alerted to the suspected criminal property.

A.4 Consultation

12. This IA accompanies the bill on 'Reforming Economic Crime Legislation'.
13. To enable the handling of mixed property to take place the Government issued a targeted consultation paper to consult on introducing an exemption to the substantive money laundering offences (s327-329 of POCA 2002) which would enable institutions to take action to preserve suspected criminal property while enabling access to the value of legitimate property. Specifically, the exemption would apply to businesses in the AML regulated sector that, when a suspicion arises that some part of a customer's property is criminal, conducts any act which consists of transferring those funds into another account within the same firm; or preventing the value of property held not to fall below the value of the suspected criminal property, while enabling access to the legitimate property.
14. The targeted engagement sought views from key stakeholders in the AML regulated sector and wider organisations that are impacted by economic crime. The engagement exercise paper set out 35 questions on measures covering Anti Money Laundering (AML), cryptoassets and Unexplained Wealth Orders (UWOs), and was shared with over 100 organisations. Written responses were received from 44 organisations.

³Anti-money laundering: the SARs regime. https://s3-eu-west-2.amazonaws.com/lawcom-prod-storage-11jsxou24uy7q/uploads/2019/06/6.5569_LC_Anti-Money-Laundering_Report_FINAL_WEB_120619.pdf

15. It is the Government's view that enabling institutions to enable access to legitimate property while retaining criminal property in this way will address the issues around reasonable living expenses raised in the Law Commission AML Review 2019, since under this proposal an individual who has had their property frozen will still be able to access their legitimate funds. During engagement with stakeholders, a majority (60%, with some asking for further clarification) were in favour of this approach as it provides a proportionate response to the issue by allowing individuals and businesses access to their property and providing legal protection to reporters who intend to preserve or isolate suspected criminal property. General feedback noted in principle that this is a sensible and practical solution to the risks of economic loss to those subjected to a DAML. Ringfencing, as a way to handle mixed property was also a recommendation from the Law Commission⁴. Respondents expressed a desire for flexibility in the approach to the preservation of suspected criminal property so that business model disruption would be minimal to achieve the same outcome. There is some concern about how this will work with multiple accounts or types of property – assets have been categorised as property to enable flexibility in application and use by wider sectors dealing in property other than cash.

B. Rationale for intervention

Problem under consideration

16. The practice of freezing entire accounts or property, regardless of the value of the property that is suspected to be criminal, can have significant economic consequences for a customer. Any customer who is the subject of a DAML will be unable to access funds or property during the statutory seven-day notice period whilst the National Crime Agency (NCA) considers the request for consent. Their property may be frozen for a longer period if their case extends into the moratorium period. After the recent changes in the Criminal Finances Act 2017 (CFA 2017), there is now the prospect of extending the moratorium period up to a maximum of 186 days. For customers this means that they may not be able to receive any legitimate income such as social security benefits or their salary. Any direct debits or standing orders will also fail during this time. If the customer is a business, it will be unable to receive income or make payments to customers, employees, and suppliers. This can prove particularly disproportionate in cases where the account is subsequently cleared of suspicion.

C. Policy objective

17. The policy objective is to allow businesses to, when dealing with property that contains a mix of suspected criminal and legitimate property, enable the funds in the account or property to be accessed as normal as long as the value maintained does not drop below that suspected to be criminal. This provides a more proportionate response to the nature of the suspected criminality, given that the system is based on suspicion.

D. Options considered and implementation

Option 1: Do nothing

18. This option would entail no further government intervention to address problems associated with mixed property. DAMLs would continue to be submitted under current guidance and exemptions.

⁴ https://s3-eu-west-2.amazonaws.com/lawcom-prod-storage-11jsxou24uy7q/uploads/2019/06/6.5569_LC_Anti-Money-Laundering_Report_FINAL_WEB_120619.pdf

Costs and benefits for the other options assessed in this IA are measured relative to the 'do nothing' position (which represents the counterfactual in this analysis).

Option 2: Preserving suspected criminal property, either by transferring suspected illicit funds into another account within the same firm or preventing the value of property held falling below the value of the suspected criminal property. **This is the Government's preferred option.**

- The problems associated with mixed suspicious and legitimate property could be solved by allowing businesses to retain funds to the value of the suspected criminal property.
- Using the example outlined above, funds could be retained by transferring £1000 (the equivalent value of the suspected fraudulent loan money) into another account within the bank. Alternatively, funds or property could be retained by not allowing the value to fall below the suspected value of the criminal property (£1000 in the above example). This would ensure that the suspected offender could not spend the proceeds of their crime but would allow them access to their legitimate income. To enable the business to allow access to the value of legitimate property to take place, the Government wishes to introduce an exemption to the substantive money laundering offences (s327-329) through primary legislation. Specifically, the exemption would apply to institutions who, when a suspicion arises that property is proceeds of crime, conducts any act which consists of transferring those funds into another account within the same firm or allows access up to the value of the non-criminal property. The exemption is also on the condition that it would exclude cases where a business suspects that someone other than the customer has an ownership right or interest over the property. This would provide banks with greater confidence to retain funds in these cases. Where the business intends to do an act that would take the value of property held below that of the value of suspected criminal property, a DAML would be required.

E. Appraisal

General assumptions and data

19. The general assumptions used in this IA are as follows:

- The appraisal period for measuring the impacts of the proposed DAML Review is 10 years and starts in 2022/23.
- A 3.5 percent per-year social discount rate is used.⁵
- Per year costs and benefits are in 2021/22 prices unless otherwise stated.
- The proposal is assumed to be operational in the first year of the appraisal period without any incremental implementation of benefits.
- All calculations using median hourly wages are taken from the Annual Survey of Hours and Earnings (ASHE) 2020 Table 14.5a. There were concerns that the pandemic could have impacted the 2020 figures, and may therefore under-estimate costs. However, 2020 figures, once inflated to price year 2021/22, are closely in line with the ASHE 2019 data. Although more recent data does exist, the ASHE 2020 data has been used as the 2021 data appears to be impacted by the pandemic.
- All costs and benefits are relative to the 'Do Nothing' **Option 1**.

⁵ [The Green Book \(publishing.service.gov.uk\)](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/938046/The_Green_Book_2020.pdf).

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/938046/The_Green_Book_2020.pdf

Inputs

20. The Law Commission examined how many DAMLs involved preserving criminal property. They looked for cases when the reporter explained that the bank had made an internal transfer of funds. They identified nine cases out of a total sample of 563 (1.6 per cent) that met this criterion⁶.
21. Between April 2020 and March 2021, the UKFIU received 105,107 authorised disclosures (DAMLs)⁷. Using this figure, 1.6 per cent of these authorised disclosures relate to internal transfers. In these circumstances, it can be inferred that approximately 1,000 authorised disclosures would be affected by any legislative amendment to exempt the reporter from criminal liability. Although the proposed legislation impacts the whole regulated sector, the 1.6 per cent figure is the best available evidence to use as a proxy, and as such, it is likely that the estimated exemptions could be an underestimation.
22. Data from the NCA shows that DAML volumes have been increasing year on year. Table 1 shows the number of DAMLs reported each year since 2016/17 and the respective percentage increases. Based on the most recent four years of data, DAML volumes have been increasing between 20 and 81 per cent each year, with an average of 55 per cent each year⁸. It is not expected that DAMLs will continue rising at such a high rate as 81 per cent per year for the next ten years. As such, a conservative approach is taken with a low, central and high range of 10, 20 and 55 per cent applied for the percentage increase in DAML reports expected to be exempted per year⁹. The uncertainty around factors driving DAML volume growth trends informs the additional assumption that the growth rate applies for the second and third year in the modelled period before levelling off. Table 1 shows the assumed increase in the volume of DAMLs under the Low, Central and High (L,C,H) scenarios.

Table 1, Percentage increase in DAML reports per year, 2016/17 to 2020/21.

Year	Number of DAMLs	Percentage increase (%)
2016/17	18,849	N/A
2017/18	22,619	20
2018/19	34,543	53
2019/20	62,408	81
2020/21	105,107	68
Average percentage increase (%)		55

Source: NCA DAML data 2016-2021.

23. The mixed assets proposal was welcomed by participants in the targeted engagement, suggesting that it is possible that businesses would apply the proposal more often or that more would make use of the ability to do so if the law was reformed.
24. It is difficult to estimate how many cases might benefit if reporters who chose to preserve criminal property were protected from liability for a principal money laundering offence because it has not been possible to get data on the number of cases where reporters have been implicated for a money laundering offence specifically related to acts to retain criminal property or enable access to legitimate property where this is mixed together.
25. Estimates for the cost saving of submitting a SAR instead of a DAML are presented as a range based on stakeholder survey responses. The range of cost saving estimates of submitting a SAR instead of a DAML are based on an informal survey of regulated entities across different sectors,

⁶ https://s3-eu-west-2.amazonaws.com/lawcom-prod-storage-11jsxou24uy7q/uploads/2019/06/6.5569_LC_Anti-Money-Laundering_Report_FINAL_WEB_120619.pdf

⁷ UKFIU SAR Annual report 2020 - <https://www.nationalcrimeagency.gov.uk/who-we-are/publications/480-sars-annual-report-2020/file>

⁸ UKFIU Suspicious Activity Reports Annual Report 2018. <https://nationalcrimeagency.gov.uk/who-we-are/publications/256-2018-sars-annual-report/file>.

⁹ The average of 51 per cent is taken as the high estimate, 20 per cent as the central estimate, and 10 per cent (half of the central estimate) as the low

with a sample size of 14. To align with the Law Commission evidence of DAMLs involving preserving criminal property, the costs savings for banks from the survey is presented in Table 2¹⁰.

Table 2, Cost saving of submitting SAR vs DAML, £, 2020/21 prices.

Input	Banking		
	Low	Best	High
Total cost saving of submitting a SAR vs DAML (£)	750	1,500	2,250

Source: (DAML) SG3 workshop participants survey, Home Office commissioned – 22nd October 2020

Appraisal

- 26. Once a regulated sector business employee becomes suspicious that the business is holding criminal property for a customer, the employee is at risk of committing one of the three principal money laundering offences by dealing with them, for example, by making a transaction. The business can make an DAML to gain consent for the act.
- 27. When a DAML is submitted, this triggers a statutory seven-working-day notice period during which the UKFIU processes the report and decides whether to grant or refuse consent, which can happen before the end of the seven-day period. If a request for consent is refused during the seven-day notice period, a statutory moratorium period of 31 calendar days begins. The business remains prohibited from taking any further action and, in practice, the property is frozen. Freezing the property prevents the subject of a DAML from dissipating the frozen property.
- 28. In effect, once a business suspects that property represents a benefit from criminal activity, they are compelled to make a disclosure or risk committing a principal money laundering offence if they cannot avail themselves of another exemption or defence in Part 7 of POCA 2002. For example, if a reporter fails to submit a DAML and gain a consent, they may be able to rely on the defence of reasonable excuse after the fact, but the risk falls squarely on the reporter, and this is untested in the courts.
- 29. There are anticipated to be familiarisation costs for the AML regulated sector to be aware of the new exemptions. There are not anticipated to be public sector familiarisation costs, as the exemptions will impact businesses reporting SARs and DAMLs but will not impact the way that UKFIU receive SARs and DAMLs.

COSTS

Set-up Costs

Familiarisation Costs

- 30. It is assumed that all firms in the financial services sector read between 400 and 600 words on a screen or on paper in order to become familiar with the new exemptions (400, 500, and 600). This gives an estimate of between one and five minutes per person to become familiar with new legislation¹¹. It is assumed that between one and four people in each firm will need to become familiar with the new legislation¹². Typically, time will be spent building an understanding of what the legislation means and its relationship with existing policies. The Financial Conduct Authority (FCA)

¹⁰ This cost data is in 2020/21 prices. Also, the costs savings for the other sectors in the survey were the same as for banks, except for legal firms. However, solicitors and legal firms account for approximately 1% of DAMLs raised in 2021, and as such, they have little impact on the average cost savings.

¹¹ Based on readingsoft average of 200wpm with 60per cent comprehension, slightly uplifted to allow for full comprehension [Speed Reading Test Online - http://www.readingsoft.com/](http://www.readingsoft.com/)

¹² Number of readers in each firm is a weighted average that accounts for the size of firms in the business population. The assumption on the number of readers in each category of firm size differ. For micro firms, the number of readers is assumed to be two (low), three (central), and three (high). For small firms (two, three, and five respectively), medium firms (two, five, 10), and for large firm (five, 10, 20). Approximately 83 per cent firms in the financial sector are sole proprietors, this informs the overall low scenarion assumption of one reader per firm.

regulated nearly 51,000 firms in 2021, and this is taken to be the number of firms in the regulated sector¹³. The FCA figure is used as a proxy due to lack of alternative accurate number of businesses in the wider AML regulated sector. Due to FCA data suggesting that there are approximately 17,400 employees in financial crime roles in the regulated sector¹⁴, it is likely that the estimated familiarisation costs are an overestimate because the central scenario assumes over 150,000 employees will need to familiarise themselves with this legislation.

31. For all firms, time has been valued using data from the ASHE 2020 Table 14.5a. The analysis uses a median wage figure for financial institution managers and directors (standard occupational classification (SOC) code 1150) of £26.00 per hour¹⁵, which is then uplifted by the non-wage share of costs of 22 per cent to reflect the marginal product of labour¹⁶.

32. The values used to estimate the familiarisation costs are presented in Table 3 and given as:

$$\text{Number of firms} \times \text{number of readers in each firm} \times \text{average familiarisation time} \times (\text{median financial institution managers and directors wage} \times \text{non-wage uplift of 22\%})$$

33. The estimated cost lies in a range of **£0.03 to £0.52 million**, with a central estimate of **£0.15 million** in year 1 only (2021/2022 prices). Business engagements during the targeted consultation did not indicate that any additional dissemination of information costs or training would be needed, so these costs are not included in the familiarisation costs to businesses.

Table 3, Familiarisation Costs to business in year 1 only, (volume, hrs, £ million 2021/22 prices).

Estimate	Number of Firms	Number of Readers in each firm	No. words to be read	Reading speeds	Average Familiarisation Time (hours)	Hourly cost (£)	Total cost to business, Year 1 only (£ million)
Low	51,000	1	400	700	0.02	31.83	0.03
Central	51,000	3	500	400	0.03	31.83	0.15
High	51,000	4	600	200	0.08	31.83	0.52

Source: Assumption, Readingsoft, ASHE 2020, Table 14.5a.
 Note: Figures may not sum exactly due to rounding.

Ongoing costs

There are no monetised ongoing costs for the proposals. This is because the legislation is permissive, so it is assumed that businesses will only implement preservation measures where it leads to a net benefit for them.

Non-monetised costs

Implementation costs

34. The legislation will be permissive (allow an organisation or individual to do something but not force it to comply) and it is assumed that businesses will only implement measures where it benefits them. Businesses who choose to take steps to preserve property may need to set up a system, for example, to prevent the bank balance falling below a certain value, or a system of moving suspected illicit funds into an alternative account. As preserving criminal property legislation would be permissive legislation and voluntary to use, it is assumed that businesses that would face large ongoing costs implementing such a system would choose not to.

¹³ About the FCA - <https://www.fca.org.uk/about/the-fca>
¹⁴ Financial Crime: analysis of firms' 2017-2020 REP-CRIM data - <https://www.fca.org.uk/data/financial-crime-analysis-firms-2017-2020/#f-chapter-id-key-observations-staff-in-financial-crime-roles>
¹⁵ Earnings and hours worked, occupation by four-digit SOC: ASHE Table 14 - Office for National Statistics. <https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/earningsandworkinghours/datasets/occupation4digitsoc2010ashtable14>
¹⁶ Non-wage cost is 17.9% (from Eurostat), take 18/(100-18) = 18/82 = 22% and uplift by this amount. https://ec.europa.eu/eurostat/databrowser/view/LC_LCI_LEV_custom_2052124/default/table?lang=en

Administration Costs

35. For the proposed change, the actions of the AML regulated sector are expected to be similar to their current procedures for submitting a DAML. Whilst there might be steps for businesses to determine what proportion of an individual's property is suspected to be criminal proceeds, this cost is expected to be minimal as businesses should already carry out this work when completing the DAML.

'Tipping off' risks

36. One complicating factor arises from the risk of informing the subject of a DAML or SAR that they are potentially under investigation. Reporters must not inform the subject that a SAR or DAML has been lodged or that an investigation is being contemplated or carried out, known as tipping off.
37. The costs of 'tipping off' individuals or businesses under suspicion would be great and under current law would be considered an offence under section 333 of POCA 2002.
38. This cost is likely to be more applicable where suspicious funds are moved to another account. Having all suspected illicit funds moved to another account may effectively tip off an individual that they are under suspicion as they may be unable to see their funds.
39. While this risk still applies when suspicious funds are kept in the existing account, or property is frozen to the value of the suspected criminal property, this is much less likely than when money is moved. Individuals under suspicion would need to attempt to use or withdraw property greater than the value of the non-suspicious property and find themselves unable to do so to suspect that they are under suspicion. This reduces the risks of 'tipping off' an individual under suspicion.

Total Costs

40. Total estimated costs lie in a range of **£0.03 to £0.52 million (PV)**, with a central estimate of **£0.15 million (PV)** over 10 years.

BENEFITS

Set-up Benefits

41. There are no monetised set-up benefits for the proposals.

Ongoing Benefits

Benefits to AML regulated sector Institutions

42. Currently businesses who act to preserve suspicious property must submit a DAML. Under options that permit preservative actions, it is likely that many would only have to submit a SAR instead, which is much less costly to produce for businesses.
43. While some DAMLs would still need to be submitted in some cases, for example, where the business wants to undertake an act on the suspicious property, given that it is likely more preservation would take place if there was legal protection for businesses.
44. The cost saving estimates of submitting a SAR instead of a DAML are based on an informal survey of regulated entities across different sectors, with a sample size of 14. Table 4 represents the range of cost saving estimates from the banks surveyed, inflated to 2021/22 prices, and rounded to the nearest 100.

Table 4, Cost saving of submitting a SAR instead of a DAML, £, 2021/22 prices

Estimate	Cost saving of submitting a required disclosure (SAR) instead of an authorised disclosure (DAML) (£)
Low	800
Central	1,500
High	2,200

Source: (DAML) SG3 workshop participants survey, Home Office commissioned – 22nd October 2020.

45. It is assumed that banks ringfence at a rate of 1.6 per cent¹⁷ and that DAML volumes increase at a constant rate of between 10 and 55 per cent each year, with a central estimate of 20 per cent each year (average based on the most recent five years of DAML data). These percentage rises are based on DAML volumes for the latest five years recorded by the NCA. Table 5 represents the expected number of DAMLs exempted per year. As explained, the 1.6 per cent is the best available proxy based on banks, and as such, the estimated exemptions could be an underestimation as the proposed legislation impacts the whole regulated sector.

Table 5, Expected number of DAMLs that will be submitted as SARs per year, following the legislative exemption

Year	Low	Central	High
2022/23	1,700	1,700	1,700
2023/24	1,900	2,000	2,600
2024/25	2,000	2,400	4,000
2025/26	2,000	2,400	4,000
2026/27	2,000	2,400	4,000
2027/28	2,000	2,400	4,000
2028/29	2,000	2,400	4,000
2029/30	2,000	2,400	4,000
2030/31	2,000	2,400	4,000
2031/32	2,000	2,400	4,000

Source: NCA DAML data 2016-2021, Law Commission AML SARs report

46. The values used to estimate the benefits are presented in Table 4 and 5 and given as:

$$\text{Number of DAMLs exempted} \times \text{cost saving of submitting SAR instead of DAML}$$

47. The estimated benefit lies in a range of **£13.5 to £71.7million**, with a central estimate of **£29.4 million**.

Cost saving of submitting a SAR instead of a DAML

48. There is some uncertainty regarding the estimated cost saving from submitting a SAR instead of a DAML. The cost saving estimates used in the main analysis above are based on a stakeholder survey of 14 firms. Internal Home Office analysis based on engagement with two stakeholders suggested that the cost saving from submitting a SAR instead of a DAML is around £300. This lower figure has not been used in the main analysis due to considerable limitations: it is based on responses from two banks, which may not be representative of all credit and financial firms, whilst the stakeholder survey takes a larger sample size from a range of sectors, and the figure does not allow for a range to be calculated. With a lower cost saving of £300, the estimate of the net benefits

¹⁷ [Law Commission - Anti-money laundering: the SARs regime](https://s3-eu-west-2.amazonaws.com/lawcom-prod-storage-11jsxou24uy7q/uploads/2019/06/6.5569_LC_Anti-Money-Laundering_Report_FINAL_WEB_120619.pdf)

would be **£6.5 million (PV)** across 10 years, meaning a more conservative cost saving estimate would still return a net benefit.

Non-Monetised Benefits

UKFIU Benefit

49. Changing the law in this area will make interpretations over mixed funds more transparent, clear, and certain as a direct result of these proposals. This may reduce the number of clarification requests to UKFIU. Given the small number of DAMLs that involve preservation actions this benefit may be negligible, as only 15 per cent of DAMLs are accompanied with clarification requests¹⁸. The expectation is that any cost savings due to reduced clarification requests would be minimal, but due to the high-level uncertainty around whether there would be fewer clarification requests (and if so, how many) this has not been monetised.

Businesses and individuals subject to suspicion would not face financial hardships

50. There is a lack of clarity and uncertainty about how businesses should approach the problems of mixed suspicious and legitimate property. This poses the risk of economic harm to the subjects of disclosures. These measures should allow individuals to access property while under suspicion which will help cover living expenses.
51. Whilst businesses and individuals are under suspicion at present the practice is to freeze their entire property. Under the proposal they would be able to access the value of legitimate property, thereby reducing the economic harm. This only benefits individuals and businesses where part of their property is under suspicion. There is no data available on how many individuals and businesses this benefit would come to.
52. The size of this benefit is uncertain as it depends on which individuals or businesses are under suspicion. If businesses are prevented from failing, and if individuals are prevented from missing mortgage payments this benefit could be sizable. It is unclear how many businesses and individuals would benefit from these provisions.

Reduced Civil Proceedings

53. It is possible that if individuals under suspicion can access some of their property, they are less likely to commence civil proceedings due to not knowing that they are the subject of a DAML. This would lead to a cost saving to both the courts and to either the individual or business who loses the case. There are numerous fees that are paid in a civil case depending on the amount of money claimed¹⁹. The wage rate for judges is taken from the Ministry of Justice (MoJ) judicial fees MoJ judicial salaries²⁰. The cost of a magistrates court judge is £148,820 and for a High Court Judge is £192,679²¹. Taking an average of these two figures, divided by working hours²², gives the estimated hourly cost of a judge as around £84.40. However, it is unclear how long these proceedings would take. It is also not possible to estimate what proportion of people would no longer commence civil proceedings following these changes, due to lack of data. Therefore, even if it were possible to estimate the length of time spent on these proceedings, there is no robust data available on the

¹⁸ See footnote 10

¹⁹ [EX50 - Civil and Family Court Fees -](#)

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/986795/ex50-eng.pdf

²⁰ [judicial-fee-salary-21-22 -](#)

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1020732/judicial-fee-salary-21-22.pdf

²¹ Salary groups 4 and 5.1.

²² Judges are assumed to work 253 days a year, given 104 weekend days, 30 days annual leave and 10 days public holidays. Court sitting is 10:30am to 4:30pm but judges work into the evening/at weekends and are not paid overtime for this, therefore it is assumed that their working day is on average 7 hours. [Working hours | Courts and Tribunals Judiciary -](#)
<https://www.judiciary.uk/about-the-judiciary/judges-career-paths/terms-of-service/working-hours/>

baseline number of proceedings these cost savings would apply to, so it has not been possible to monetise benefits.

Other Benefits for AML regulated sector Institutions

54. In practice, some firms already feel forced to take a pragmatic approach and isolate or taking preservative action on suspicious property. If exemptions were set out in law, then the legal risks to businesses would be mitigated.
55. Businesses also benefit as the measure should improve customer satisfaction. If individuals under suspicion could still access their property, they are less likely to be dissatisfied with businesses.

Total Benefits

56. Total estimated benefits lie in a range of **£13.5 to £71.7 million (PV)**, with a central estimate of **£29.4 million (PV)** over 10 years.

Total cost and benefit, NPSV, BNPV, EANDCB

57. The total cost for the preferred option lies in the range **£0.03 to £0.52 million (PV)**, with a central estimate of **£0.15 million (PV)** over the 10-year appraisal period. The total monetised benefits are **£13.5 to £71.7 million (PV)**, with a central estimate of **£29.4 million (PV)** over 10 years.
58. The estimated Net Present Social Value (NPSV), which is the total discounted benefits minus the total discounted costs, lies in a range of **£13.47 to £71.2 million**, with a central estimate of **£29.2 million (PV over ten years)**.
59. The Business Net Present Value (BNPV) lies in a range of **£13.47 to £71.2 million (PV)**, with a central estimate of **£29.2 million (PV)** over ten years. The annual net direct cost to business (EANDCB²³) lies in a range of **-£1.6 to -£8.3 million**, with a central estimate of **-£3.4 million (PV over 10 years)**.
60. Table 6 displays: total cost, total benefit, the Net Present Social Value, the Business Net Present Value, and the Estimated Annual Net Direct Cost to Business. These figures are presented in 2021/22 prices using 2022 as the base discounting year.

Table 6, Total costs and benefits, NPSV, BNPV and EANDCB, £ million, PV over 10 years (estimated in 2021/22 prices, 2022/23 present value base year), 2022.

Costs	Low	Central	High
Total set up costs	0.03	0.15	0.52
Total ongoing costs	0.00	0.00	0.00
Total costs	0.03	0.15	0.52
Total benefits	13.50	29.38	71.73
Net present social value (NPSV)	13.47	29.23	71.21
Business net present value (BNPV)	13.47	29.23	71.21
Net direct cost to business (EANDCB)	-1.56	-3.40	-8.27

Source: Home Office internal analysis, 2022.

Value for Money

²³ EANDCB is defined as the Equivalent Annual Net Direct Cost to Business (EANDCB) and is used by the Regulatory Policy Committee (RPC) to verify the economic impact on business of qualifying regulatory provisions that come into force during the course of a parliament.

61. For a policy to be considered VfM, it must achieve the strategic and policy objectives. **Option 2** considered in this IA is likely to meet the policy and strategic objectives as it provides AML regulated entities with the flexibility to take action to preserve criminal property and allow access to the value of non-criminal property, which should address the issues around reasonable living expenses raised in the Law Commission Review²⁴, since under this proposal an individual who has had their property frozen will still be able to access their legitimate property and thus mitigates the risk of economic harm.
62. The measures – if implemented – would result in benefits of **£29.4 million** (PV) over 10 years, all of which are cost savings to businesses. Although the estimated costs are borne by the businesses, they are relatively low, and businesses will only act on the legislation if the benefits outweigh the costs. The monetised familiarisation cost is 0.5 per cent of the estimated benefit, and the central BNPV and NPSV of **£29.2 million** (PV) indicates the benefits outweigh the costs of this policy. The reduced costs to business provide both economic value and efficiency gains as businesses won't have to raise an expensive DAML, and can raise a SAR instead, which in turn might allow them to allocate resources to better use.
63. The proposed measure is also expected to improve the effectiveness of the legislation. The AML regulated sector institutions are expected to benefit from reduced legal risks associated with enabling access to legitimate property and through increased customer satisfaction. The UKFIU may benefit from a reduction in clarification requests. Individuals and businesses are expected to benefit through reduced economic harm of being under suspicion, as they will be able to access their legitimate property. It is also possible that there will be a reduction in civil proceedings associated with the economic harm of being under suspicion, which would be an additional benefit to individuals and would also free up judges' time. Given the range of groups expected to benefit from the new measure, it is likely that the benefits will outweigh the costs. For the taxpayer, this is a more effective and efficient use of resources, and if it meets the objective it will achieve value for money.

Impact on small and micro-businesses

64. According to Business Population Estimates 2021, around 99 per cent of the total business population is made up of small businesses (0 to 49 employees)²⁵. **Option 2** seeks to remove legal risks to firms, so there are no specific exemptions targeted at small and micro-businesses, but they are likely to benefit. **Option 2** is a permissive measure and so there is a reasonable expectation that business will adopt these changes only where they lead to net benefits for business.

F. Proportionality

65. As this is a Final stage IA, impacts have been monetised as far as possible, making use of findings from Home Office targeted consultation with the regulated sector and LEAs. The impact estimates associated with the proposed changes are indicative only.
66. Whilst the IA would have benefited from the monetisation of all the identified benefits and costs, a proportional approach was taken to monetise benefits and costs that were considered to have material impacts and had robust data, with those expected to have minimal impacts unmonetised. In most cases of unmonetised benefits or costs, there was either a lack of data or considerable data challenges. The analysis has assessed all significant costs to business.

G. Risks

²⁴ https://s3-eu-west-2.amazonaws.com/lawcom-prod-storage-11jsxou24uy7q/uploads/2019/06/6.5569_LC_Anti-Money-Laundering_Report_FINAL_WEB_120619.pdf

²⁵ [2021 Business population estimates for the UK and the Regions: Statistical Release - https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1019907/2021_Business_Population_Estimates_for_the_UK_and_regions_Statistical_Release.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1019907/2021_Business_Population_Estimates_for_the_UK_and_regions_Statistical_Release.pdf)

67. There is some uncertainty around the estimated cost saving from submitting a SAR instead of a DAML, which could reduce the expected benefits of the measures. The main analysis uses a range of cost saving estimates gathered from expert workshops to account for this uncertainty, but these estimates are still inherently uncertain due to the small sample size that may not be representative of the whole regulated sector. Nevertheless, one respondent to the survey was responsible for roughly one third of the total SARs submitted to the NCA in 2020, and two respondents were responsible for submitting roughly 30 per cent of the total DAMLs submitted in 2020. And as such, there is a considerable degree of confidence that the data provided is representative of the credit and financial sector, which translates to lower degree of uncertainty on the estimated benefits from costs savings.
68. There is uncertainty regarding the volume of DAMLs expected to be raised each year. DAMLs have been rising significantly in recent years. The potential impact of this uncertainty has been accounted for by modelling low, central and high scenarios for the forecasted increase in DAMLs raised (10, 20, and 56 per cent) in the main analysis. This shows that the net impact is still positive even when using the low scenario. However, this assumes that the volume of DAMLs raised will follow a broadly similar trend as over the past few years, and this is a highly uncertain assumption (made in the absence of any data to suggest otherwise). It has also been assumed that DAMLs are unlikely to continue rising at a rate of 81 per cent per year for the next ten years. However, if this was the case the net benefit would be significantly higher.
69. There is a risk that preserving acts may 'tip off' individuals so they know they are under suspicion, and that individuals may be able to access property that is later determined to be illicit, which would not be possible if the whole property was frozen. If an individual is 'tipped off', there is a risk that they will withdraw a larger portion of their legitimate funds than they would have otherwise. If these funds are later determined to be criminal, they could not then be seized. However, this risk is not anticipated to be significant, as it is unlikely to represent a large number of cases, and the risk of people withdrawing large amounts of money later determined to be criminal is low, so the impact on the overall economic benefit is expected to be minimal.
70. The monetised costs do not include the emotional or financial costs to individuals whose frozen property are later deemed legitimate. Although the lack of data means this cost wasn't monetised, this cost is not expected to materially impact the NPV and VfM of the measures. In addition, the proposed measure is an improvement on current legislation where all property is frozen, and as such, there are benefits not monetised.
71. There is a risk that the setting up of new account to hold the suspicious funds might not be easier for businesses than the current system. This risk is deemed low because the creation of accounts is a simple administrative process for businesses, also as the use of the exemption is voluntary, businesses wouldn't do this if the costs outweigh the benefit.

H. Wider impacts

72. There are no anticipated wider impacts of these proposals.

I. Trade Impact

73. There are no anticipated trade or investment implications of the measure.

J. Monitoring and evaluation (PIR if necessary)

74. As this is a Bill considering amendments to economic crimes across a range of areas which may have costs and benefits to business, a post implementation review (PIR) will be conducted by the Home Office in October 2026.
75. As the proposal is at final stage. There are no new monitoring and evaluation plans as the proposed legislative measures are amendments that current systems can monitor in terms of DAMLs raised.
76. DAML volumes are currently recorded by the NCA and this system will not change, so any changes in DAMLs raised as a result of the new measures will be tracked by the current system.

K. Specific impact tests.

Impact Assessment Checklist

Mandatory specific impact test - Statutory Equalities Duties	Complete
<p>Statutory Equalities Duties</p> <p>The proposals aim to make the DAMLs system more effective and proportionate, by creating legislative exemptions for submitting DAMLs for certain acts. This aims to reduce the volumes of reports that are ineffective and do not provide utility for law enforcement for asset denial and reduce the burden on reporters and law enforcement. To improve the proportionality of the SARs regime on mixed (known or suspected) 'criminal' and legitimate property, the Government propose an exemption for businesses across the AML regulated sector to take action relating to the non-suspect elements of the property only, whilst retaining the criminal property and discourage firms from freezing the whole amount. The exemption is also on the condition that it would exclude cases where a business suspects that someone other than the customer has an ownership right or interest over the property. This would provide banks with greater confidence to retain funds in these cases.</p> <p>The reform the DAML regime is to make the system more targeted and proportional, with improved outcomes and benefits for reporters and law enforcement. This is not considered to be advantageous or disadvantageous to any particular group. At present the Government are unaware of any possible direct or indirect impacts.</p> <p>There are wider societal benefits from DAML reform, including enabling faster repayment of funds to victims of crime and fewer delayed customer transactions. There is no discrimination to any of the protected groups in relation to the beneficiaries of an improved regime.</p> <p>The SRO has agreed to these summary findings of the Equality Impact Assessment.</p>	<p>Yes</p>

Any test not applied can be deleted except **the Equality Statement**, where the policy lead must provide a paragraph of summary information on this.

The Home Office requires the **Specific Impact Test on the Equality Statement** to have a summary paragraph, stating the main points. **You cannot delete this and it MUST be completed.**

Economic Impact Tests

<p>Small and Micro-business Assessment (SaMBA)</p> <p>The SaMBA is a Better Regulation requirement intended to ensure that all new regulatory proposals are designed and implemented so as to mitigate disproportionate burdens. The SaMBA must be applied to all domestic measures that regulate business and civil society organisations unless they qualify for the fast track. [Better Regulation Framework Manual] or [Check with the Home Office Better Regulation Unit]</p> <p>Option 2 seeks to remove legal risks to firms, so there are no specific exemptions targeted at small and micro-businesses, but they are likely to benefit. Option 2 is a permissive measure and so there is a reasonable expectation that business will adopt these changes only where they lead to net benefits for business.</p>	<p>Yes</p>
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Annex A: Questions and responses to the targeted consultation paper

A targeted consultation took place over the period, 1 November and 30 November 2021 with 40 organisations. The engagement paper set out 35 questions on measures covering Anti Money Laundering (AML), cryptoassets and Unexplained Wealth Orders (UWOs), with three questions related to mixed assets. There were 22 responses (55% response rate) while 18 organisations chose not to respond (45%). The summary findings include:

Q.13 Do the proposals around ringfencing adequately address the problems of mixed funds? Is creating an exemption to sections 327 to 329 of POCA 2002 the most effective way to solve the problem of mixed funds?

- Twenty responded, and 60 per cent (12) responded positively while some responses requested further clarification or areas of consideration.
- In almost all responses, the responding organisation explained its position.

Q14. What legislative proposals could be introduced to solve the problem of comingling/mixed funds for all forms of criminal property, that is, not just money?

- Seven responded. Suggestions included consideration for the value of non-cash property, volatile assets such as crypto currency and protection for firms.
- In some cases, the organisation explained their position.

Q15. Are both sections of the proposed ringfencing exemption ((a) and (b) above necessary? Are there any scenarios in which (a) would be used over (b)?

- Nine responded, of which seven directly answered that (a) and (b) should be included.
- In some cases, the organisation outlined their position.

Table A.1 Full list of respondents to targeted consultation paper in relation to Ring Fencing, 2021.

Respondents	Response type
Association of Accounting Technicians	Partial
Association of British Insurers	Full
Association of foreign banks	Full
Chartered Accountants of Ireland	Full
CILEx Regulation	Summary
Electronic Money Association	Partial
Federation of Small Business	Partial
Gambling Commission	Partial
Gemini	Partial
HMRC	Summary
Institute for Chartered Accountants	Partial
Institute for Chartered Accountants of Scotland	Partial
Kraken	Full
Law society of Northern Ireland	Partial
NIE Department of Justice	Summary
The Payments Association	Partial
Royal Institution of Chartered Surveyors	Partial
RUSI	Summary
Santander	Full
Scottish Government	Full
UK Finance	Full
Ziglu	Partial

Non-respondents

Association of Tax Technicians
Bar Council
Bar Standards Board
Bank of England
Betting and Gaming Council
Betaway (gaming)
British Vehicle Rental and Leasing Association
Chartered Institute of Taxation
Chartered Institute of Management Accountants
Cifas
Deloitte
Digivault
Institute of Financial Accountants
National Pawnbrokers Association
Property Mark
Serious Fraud Office (SFO)
Solicitors Regulation Authority
Spotlight on Corruption