

Amendments to the Money Laundering, Terrorist Financing and Transfer of Funds

Lead department	HM Treasury (HMT)
Summary of proposal	The proposal amends the current Money Laundering Regulations (MLRs) to ensure that they remain effective and proportionate, and that the UK remains compliant with international standards.
Submission type	Impact assessment (IA) – 4 April 2022
Legislation type	Secondary legislation
Implementation date	June 2022
Policy stage	Final
RPC reference	RPC-HMT-5079(2)
Opinion type	Formal
Date of issue	30 June 2022

RPC opinion

Rating¹	RPC opinion
Not fit for purpose	The department has not sufficiently addressed the concerns raised in the RPC's initial review notice. The IA has not provided a proportionate assessment of direct impacts to businesses or robust justification for non-monetised impacts. The IA has not considered whether small and micro businesses (SMBs) could be disproportionately impacted by the proposal. Therefore, the RPC is unable to validate the EANDCB and does not consider the IA as fit for purpose.

Business impact target assessment

	Department assessment	RPC validated
Classification	Qualifying provision	Qualifying regulatory provision
Equivalent annual net direct cost to business (EANDCB)	£-0.5 million (final IA estimate)	Unable to validate

¹ The RPC opinion rating is based only on the robustness of the EANDCB and quality of the SaMBA, as set out in the [Better Regulation Framework](#). RPC ratings are fit for purpose or not fit for purpose.

Business impact target (BIT) score	£-2.3 million	Unable to validate
Business net present value	£4.0 million	
Overall net present value	£4.0 million	

RPC summary

Category	Quality²	RPC comments
EANDCB	Red	The RPC does not consider the calculation of the EANDCB to be fit for purpose. The IA has only quantified the impacts of four of the 14 proposed amendments with insufficient justification for the non-monetised impacts. The IA must provide a more comprehensive assessment of the direct costs to business.
Small and micro business assessment (SaMBA)	Red	The IA does not sufficiently assess the impact of the amendments on small and micro businesses (SMBs) and identify whether they will be disproportionately affected. Although the IA explained why SMB exemption would not meet policy objectives, it must provide stronger consideration on potential mitigation methods.
Rationale and options	Satisfactory	The IA sets out the rationale for intervention, citing the need for timely amendments to the regulations and compliance with international requirements, supported by stakeholder evidence. The IA considers a range of options for the individual measures considered, including justification for the preferred option.
Cost-benefit analysis	Weak	The IA provides a mostly qualitative assessment of potential costs and benefits of the MLR amendments. Although the IA has highlighted the difficulties in undertaking a more quantified approach, the department must provide further details on the data limitations and consider the use of previous MLR IAs or proxies to inform the cost estimates. It is unclear how the department has used the consultation to fill evidence gaps and improve the robustness of the EANDCB estimate.
Wider impacts	Weak	The IA states that it does not anticipate any significant wider impacts with the policy. The IA should provide stronger evidence to support this claim and a more comprehensive assessment of impacts on innovation, trade, and competition.
Monitoring and evaluation plan	Satisfactory	The department commits to undertake a review of this policy. The IA includes reference to an M&E plan for the broader MLRs and explains that this policy will be included in that review. It would benefit from discussion of how policy impacts and effectiveness will be determined. The IA would

² The RPC quality ratings are used to indicate the quality and robustness of the evidence used to support different analytical areas. Please find the definitions of the RPC quality ratings [here](#).

benefit from more clearly setting out what success looks like.

Response to initial review

As originally submitted, the IA was not fit for purpose because it had not clearly distinguished between the direct and indirect impacts, limiting the RPC's ability to assess the robustness of the EANDCB figure. Furthermore, the IA had not provided sufficient justification for non-monetised impacts to businesses. Additionally, the SaMBA did not sufficiently consider whether the proposal will disproportionately impact SMBs and the potential for SMB mitigation methods. The initial review notice also identified areas for improvement in relation to the presentation of impacts, rationale and options, and assessment of wider impacts.

Although the IA has now identified the direct impacts to businesses, it has not provided further quantification of these impacts or sufficiently justified why it has not been proportionate to do so. The IA has not adequately addressed the red-rated point on SaMBA by explaining whether the proposal may disproportionately impact small and micro businesses.

The amendments made by the department in the revised submission has resulted in the NPV of the IA reducing slightly, from £4.4 million to £4.0 million, with the EANDCB unchanged.

Summary of proposal

The UK currently has a set of Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations (MLRs) that were introduced in 2017. The department proposes to amend the MLRs through secondary legislation to comply with international standards, improve detection and prosecution of economic crime and ensure they are an effective deterrent for illicit finance. The overarching objective of proposals are to make the UK a hostile place for illicit finance, protect the UK's reputation as a safe place to conduct business and maintain confidence in the UK's financial system.

The current MLRs are broad in scope and the amendments proposed address different elements. The changes span six main areas:

1. Changes in scope to reflect latest risk assessments – to remove from scope businesses for which the current regulation may not be proportionate, this includes Account Information Service Providers (AISPs) and Art Market Participants (AMPs).
2. Clarificatory changes to strengthen supervision – to provide greater clarity on the remit of the supervisory regime and on what permissions they operate.
3. Expanded requirements to strengthen regime – to improve the governance and reporting of MLR regulations.
4. Information sharing and gathering – to strengthen the information systems in place, ensuring they are reciprocal and up to necessary standards.
5. Travel rule – to introduce requirements for financial institutions to collect information on both originator and beneficiary throughout the length of the transaction.

6. Other areas – to address loopholes and other issues identified with the current MLRs, this includes allowing the FCA to publish notices of refusal to register and removing reference to the redundant Terrorist Asset Freezing etc Act 2010.

A summary of the complete range of proposals that the department are considering can be found in annex A.

EANDCB

The RPC does not consider the calculation of the EANDCB to be fit for purpose. Although the IA has now distinguished between direct and indirect impacts to businesses, it has not provided sufficient justification for non-monetised impacts. Of the 14 MLR amendments proposed, the IA has only quantified the impacts of four of these amendments: the measures related to art market participants, information gathering, travel rules, and bank account portal. The lack of monetisation may have partly resulted in the relatively low EANDCB estimate. The IA must seek to quantify the direct costs and benefits of the proposal or provide a more robust justification for why it is not possible to do so. The revised IA appears to reinforce the earlier justification for the lack of evidence rather than provide specific data limitations associated with each amendment. The department would benefit from making further use of stakeholder consultation, in the provision of evidence, so as to address the RPC's concern over the EANDCB. To address evidence gaps, the department also could consider whether proxies may be appropriate. In addition, the IA could consider whether it may be helpful to draw upon post-implementation reviews of previous MLRs. The IA must assess the robustness of the assumptions and clarify whether these have been tested with stakeholders. In addition, the IA has only considered familiarisation and training costs for some proposals; the IA must explain why it does not anticipate familiarisation and training costs for the other amendments.

SaMBA

The RPC does not consider the SaMBA to be sufficient and fit for purpose. The IA states that the MLRs will apply to all businesses in the AML/CTF regulated sector, regardless of the business size, but does not provide an assessment on whether the amendments may disproportionately impact small and micro businesses (SMBs). The IA must assess the potential disproportionality of impacts and affordability for SMBs. Although the IA sufficiently explains why the exemption for SMBs will not achieve the policy objectives, it does not provide sufficient consideration to whether mitigation factors could be used to reduce the burden on SMBs, in particular in relation to familiarisation and implementation costs. The IA states that around 26% of regulated entities are sole practitioners. The IA must justify why a sole practitioner is an appropriate proxy for SMBs and consider whether small businesses may not be captured within this definition. The department may find it helpful to refer to RPC guidance on SaMBA³.

Rationale and options

Rationale

The IA sets out the rationale for intervention, describing the problem under consideration and policy objectives for each MLR amendment, which appears to be supported by evidence from stakeholders. The IA explains the need for an effective anti-money laundering (AML) and counter-terrorist financing (CTF) regime to combat economic crime and comply with international standards while protecting the UK's reputation as a safe place to do business. In addition, it discusses the necessity to keep pace with the continually evolving money laundering practices. For example, the IA explains that the recent event with Russia and Ukraine highlights the importance of remaining vigilant in tackling illicit finance. The IA would benefit from stating more clearly the markets that are currently, and will continue to be, in scope of the MLRs, and the markets that would become out of scope.

³ <https://www.gov.uk/government/publications/small-and-micro-business-assessment-samba-guidance>

Options

The IA considers a range of options for each of the proposed measures against the 'do nothing' counterfactual, including justification for the preferred option supported by stakeholder feedback. The IA would benefit from providing more granular detail on stakeholder evidence, particularly whether the preferred options are supported by the regulated sector. The IA has not consistently considered whether non-regulatory options would sufficiently address the problem under consideration. Therefore, the IA would, for the benefit of readers, provide more detail on the options considered at the consultation stage and explain why any voluntary option was deemed insufficient to meet policy objectives if possible. The revised IA now includes a discussion on the potential impacts of introducing the policy now instead of waiting for the MLR review to conclude. It explains that although a review report is due to be published by June 2022, further amendments to the MLRs are unlikely to be until 2023 or later, highlighting a need to act now to address identified issues in the regime (paragraph 32). The IA should justify why acting now appears to strike the right balance between cost to business and effectiveness.

Cost-benefit analysis

Evidence and data

While the RPC acknowledges the challenges outlined by the department in undertaking cost-benefit analysis across the range of proposals, the IA must provide more details on the specific data limitations associated with quantifying the impacts of each amendment. The cost-benefit analysis appears largely similar to the one presented in the consultation stage IA. The IA would therefore benefit from explaining how it had used the consultation to improve the evidence base and refine the impact estimates.

Uncertainty, risks and assumptions

The IA should consider the potential uncertainties, risks and assumptions of the cost-benefit analysis. For the four amendments that the department has quantified, it should consider whether the use of sensitivity analysis might be appropriate to capture any uncertainties in the key input assumptions. For example, in relation to the bank account portal measure (6.3), the IA states that there is substantial uncertainty on the deliverability of the benefits, which it estimates to be £3.8 million per year. The IA would benefit from clarifying whether this estimate has been tested with stakeholders for robustness and whether sensitivity analysis might be appropriate.

Wider impacts

Although the IA includes references to wider impacts, the discussion is limited. The IA states that it does not anticipate any significant wider impacts with these measures. The IA should provide more substantial evidence to support this claim and a more comprehensive assessment of the wider impacts, particularly on potential trade, innovation and competition impacts. For example, the assessment of trade impacts would seem important given the policy objective of ensuring that the UK is seen as a safe place to do business. The IA would benefit from assessing how the measures impact potential trade barriers and investment levels in the UK.

The IA would also benefit from discussing the potential impacts on the public sector, including enforcement costs to the regulator, and how that may be passed through to businesses. The IA should also consider the risk of the amendments proposed being misaligned with the recommendations of the MLR review expected to be published in June 2022.

Monitoring and evaluation plan

The department commits to undertaking a review of the policy in 2027. The IA discusses how there is already an M&E plan in place for the broader MLRs and that this policy will be monitored as part of these reviews. The IA outlines a plan to engage frequently with stakeholders in both the public and private sectors to understand how the MLRs are being applied and actively work to resolve any issues. The M&E plan would be strengthened by discussing how the policy effectiveness and compliance costs will be assessed, including explaining the proposed data collection tools and evaluation methods.

Regulatory Policy Committee

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Annex A: Proposed changes to MLRs

Proposed measures		Summary of proposal
1. Changes in scope to reflect latest risk assessments	1.1 Payment service providers	To remove Account Service Providers (AISPs) from scope of the MLRs.
	1.2 Art Market Participants (AMPs)	To amend the AMP definition to clearly exclude artists who sell their own works of art from scope of the MLRs.
2. Clarificatory changes to strengthen supervision	2.1 Suspicious Activity Reports (SARs)	To introduce an explicit legal right to allow supervisors to access, view and consider the quality of the content of the SARs of their supervised population.
3. Expanded requirements to strengthen regime	3.1 Proliferation financing (NF) risk assessment	To introduce a requirement for government to conduct a PF National Risk Assessment for both financial institutions and non-financial businesses and professions.
	3.2 Trust and company service provider services and business relationships	To amend the MLRs to clarify that all forms of business arrangement are required to register with Companies House.
	3.3 Discrepancy report	To amend LRs to make the reporting of beneficial ownership discrepancies an ongoing requirement.
4. Information sharing and gathering	4.1 Information-sharing (regulation 52/52A)	To expand the information-sharing gateway to explicitly include law enforcement agencies. To expand the list of relevant persons to include the term 'Secretary of State'. To enable the FCA to disclose confidential information it receives more widely.
	4.2 Information-gathering (regulation 66/74A-C)	The extend FCA powers to include skilled persons report, power of direction and request specific fees data for Annex I firms, to a similar level they currently have for cryptoasset businesses.

5. Cryptoasset firms	5.1 Travel rule	To require cryptoasset service providers to put in place systems and processes to ensure beneficiary and originator information is transmitted alongside a transfer of cryptoassets.
6. Additional changes to the regulations	6.1 Change in control – cryptoasset firms	To amend the MLRs to allow the FCA to scrutinise proposed changes in control prior to the change, including powers to object and cancel registration.
	6.2 Notices of refusal to register	To allow the FCA to publish notices of refusal to register, setting out the facts of the case and the basis of the FCA’s decision for refusal.
	6.3 Bank account portal	No changes proposed. To continue to require users to request data through existing processes to extract information on bank accounts from financial institutions.
	6.4 Terrorist asset-freezing etc Act 2010 (TAFAs) reference	To remove reference to TAFAs in the MLRs which is now redundant.
	6.5 Exclusions (Reg 15)	To close a loophole and regularise the position to say that if a person’s main activity is an AMP, cryptoasset exchange provider or custodian wallet provider then they would be in scope of MLR requirements.