

Call for Evidence:
Review of the UK's AML/CFT
regulatory and supervisory regime

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Chapter 1

Introduction

Background

1.1 The Economic Crime Plan 2019-22, published in 2019, set out the collective public-private response to economic crime. It set out seven priority areas which reflected the most significant barriers to combatting economic crime and offered the greatest scope for collaborative work between the public and private sectors.

1.2 Action 33 of the Economic Crime Plan committed HM Treasury to a comprehensive review of both the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 ('the MLRs') and the Oversight of Professional Body Anti-Money Laundering and Counter Terrorist Financing Supervision Regulations 2017 ('the OPBAS regulations').

1.3 This commitment aligns with an extant legal duty in both these sets of regulations to review their regulatory provision, which must set out the objectives intended to be achieved, assess the extent to which the objectives are achieved, assess whether the objectives remain appropriate, and assess the extent to which they could be achieved in another way which involves less onerous regulatory provision. The MLRs require HM Treasury to publish this report no later than 26 June 2022.

1.4 The Economic Crime Plan commits the review to considering the effectiveness and scope of the regulations, the proportionality of the duties and powers they contain, the effectiveness of enforcement actions taken under the MLRs, and the interaction of the MLRs with other pieces of legislation. There is considerable complementarity with the work within the private sector on how to improve the effectiveness of AML/CTF regimes, including the Wolfsberg Group's paper on demonstrating effectiveness, and this review will look to work in partnership with initiatives in the private sector to improve the effectiveness of their AML/CTF systems.

1.5 Following the UK's departure from the European Union, the UK has greater autonomy in setting AML/CFT regulations. This review offers the opportunity to ensure the AML regime responds to the UK's particular circumstances and risks, is as effective as possible in preventing and detecting illicit finance, and supports UK competitiveness by ensuring the UK is a clean and safe place to do business.

The Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017

1.6 The UK has had regulations intended to prevent money laundering in place for nearly thirty years. Over time, these have evolved in line with international standards set by the FATF, an intergovernmental body which promotes effective implementation of measures for combatting money laundering and terrorist financing along with other threats to the integrity of the international financial system, and multiple EU Money Laundering Directives. The most substantial recent revision was in June 2017, transposing the European Fourth Money Laundering Directive and the Funds Transfer Regulation, which were themselves heavily informed by a substantial rewrite of FATF international standards in 2012. . Since 2017, the MLRs have been amended, most significantly through the transposition of the Fifth Money Laundering Directive in January 2020.

1.7 Through these revisions, the MLRs have expanded in scope, bringing in new sectors outside of the original financial industry focus, and extending the requirements falling on those in scope to ensure an understanding of the beneficial ownership structure of those involved in transactions. The MLRs are designed to detect and prevent money laundering and terrorist financing before it occurs, both directly through the UK's financial institutions and through enablers who may be involved in transactions such as lawyers, accountants and estate agents. They seek to do this while minimising the burden on legitimate customers and businesses.

1.8 The scope of this legislation, and the international standards that inform it, covers both money laundering, and terrorist financing. As drawn out in detail in recent National Risk Assessments, money laundering includes how criminals change money and other assets into clean money or assets that have no obvious link to their criminal origins. Money laundering can undermine the integrity and stability of our financial markets and institutions. It is a global problem and represents a significant threat to the UK's national security. Money laundering is a key enabler of serious and organised crime, which costs the UK at least £37 billion every year¹. The NCA assesses that is highly likely that over £12 billion of criminal cash is generated annually in the UK and a realistic possibility that the scale of money laundering impacting on the UK (including through UK corporate structures or financial institutions) is in the hundreds of billions of pounds annually.

1.9 Terrorist financing involves dealing with money or property that a person knows or has reasonable cause to suspect may be used for terrorism. There is an overlap between money laundering and terrorist financing, as both criminals and terrorists use similar methods to store and move funds, but the motive for generating and moving funds differs. The UK has a comprehensive anti-money laundering and counter-terrorist financing (AML/CTF) regime, and the government is committed to ensuring that the UK's financial system is effectively able to combat ML/TF.

¹ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/752850/SOC-2018-web.pdf

The Oversight of Professional Body Anti-Money Laundering and Counter Terrorist Financing Supervision Regulations 2017

1.10 The National Risk Assessment of Money Laundering and terrorist financing 2015 highlighted scope for improvement across the UK's AML/CFT supervisory regime, particularly among the professional body supervisors. This was also a deficiency identified in the UK's 2018 Mutual Evaluation Report by FATF. The government reviewed the regime and established the new Office for Professional Body AML/CFT Supervision (OPBAS) in 2018 to oversee professional body AML supervisors.

1.11 OPBAS is focused on supporting and ensuring the 22 professional bodies meet the high standards set out in its sourcebook. Where they do not, OPBAS has powers to investigate and penalise poor standards, including public censure and recommending Treasury remove a professional body as an AML supervisor.

The planned scope of this review

1.12 This call for evidence supports the review which will aim to assess the UK's AML/CFT regulatory (the MLRs and OPBAS regulations) and supervisory regimes. Our intention is to do this by looking at three themes in this document:

1. The overall effectiveness of the regimes and their extent (i.e. the sectors in scope as relevant entities),
2. Whether key elements of the current regulations are operating as intended
3. The structure of the supervisory regime including the work of OPBAS to improve effectiveness and consistency of PBS supervision.

1.13 We fully intend to maintain our efforts to uphold FATF international standards, in particular the application of a risk-based approach to applying our regulatory framework. We see this review as aimed at the improving effectiveness of our system, in line with FATF's own rebalancing towards measuring effectiveness rather than technical compliance.

1.14 Although the review will consider important areas of overlap with the Proceeds of Crime Act 2002 (POCA), for example the feedback system of high-value intelligence to law enforcement resulting from activity under the MLRs, and the role of AML/CFT supervisors in the Suspicious Activity Reporting (SAR) regime, it does not aim to recommend significant changes to the operation of POCA or other legislation. The Home Office also intend to consult shortly on a package of legislative proposals related to economic crime.

A Call for Evidence

1.15 This call for evidence covers a broad range of questions across the regulatory and supervisory regimes. It seeks views from industry, law enforcement, supervisors

and the broader public and civil society on the systemic effectiveness of the regimes and how they contribute to the overarching objective of countering economic crime, and on the specific application and effectiveness of particular elements of the regimes.

1.16 The questions posed are deliberately broad, to ensure the range of experiences of respondents can be returned, and help HM Treasury understand which areas of the regimes are working well, are well understood, and are contributing to high impact activity that supports the UK's economic crime objectives, and which areas are in need of reform. Not all areas examined in this document will necessarily, or are assumed, to require significant policy reform or legislative change.

1.17 HM Treasury has undertaken a series of pre-consultation workshops with stakeholders to help inform the scope of the review and this call for evidence. As well as the call for evidence, HM Treasury will undertake further engagement with stakeholders during the review process.

1.18 A final report setting out the findings of the review and, where relevant, possible options for reform will be published no later than 26 June 2022. Further consultation may be conducted in response to the findings of this review.

Statutory Instrument 2022

1.19 As well as this call for evidence, HM Treasury is publishing a consultation document on potential amendments to the MLRs. Any which are adopted subject to this or subject to further internal consideration will be taken forwards through focused secondary legislation due to be laid in Spring 2022 (SI 2022). These amendments are being made now since they are either time-sensitive or relatively minor, proposals for change which are in development.

1.20 The amendment of the regulations during the review process should not have any bearing on its findings, as the SI will make limited changes which will not affect the broader findings and recommendations of the review.

1.21 The call for evidence and consultation document will be published around the same time, but are separate documents with distinct purposes. We understand many stakeholders will wish to respond to both documents, and ask that they clearly demarcate which document they are responding to within their submissions and by reference to the specified, numbered, questions in each.

Chapter 2

Systemic review

2.1 This section of the review will consider the systemic functioning of the regulatory regimes. HM Treasury will break this down into three key areas in order to form a judgment on how well our currently regulatory regime effectively prevents ML/CT; considering the effectiveness of the system, the extent of its application and the evidence we have of enforcement action being taken.

2.2 The first element of this will include a holistic look at the outcome of improvements made in recent years and how requirements imposed by the MLRs either contributes to high-value or low-value activity. It will also seek to uncover elements which have created unintended consequences, or which aren't achieving the outcomes or behaviours intended.

2.3 This section will also consider the extent of the AML/CFT regime, to ensure the sectors in scope of the regulations remain proportionate based on risk posed, and whether any sectors currently out of scope should be brought in scope.

2.4 Finally, this section will consider the effectiveness of enforcement actions taken under the MLRs. This will include consideration of the enforcement powers provided under the MLRs, and whether they remain appropriate and proportionate, and if their use by supervisors and law enforcement is effective and dissuasive.

Effectiveness

2.5 The Financial Action Task Force defines AML/CFT effectiveness as the extent to which financial systems and economies mitigate the risks and threats of money laundering, and financing of terrorism and proliferation¹.

2.6 As the MLRs are only one component of our overall response to this ML/TF threat, POCA and law enforcement agencies being another critical element. Therefore the specific aims of the regulatory and supervisory regimes being reviewed here are narrower. The MLRs are focused specifically on the prevention of proceeds of crime and funds in support of terrorism from entering relevant sectors, the detection and reporting of any illicit activity by sectors in scope, and the effective supervision of those sectors.

2.7 The FATF Methodology is the international standard for assessing AML/CFT effectiveness. The FATF Mutual Evaluation of the UK in 2018 found that a strong point of the UK system was that "all entities within the FATF definition of financial institutions and all Designated Non-Financial Businesses and Professions (DNFBPs) are subject to comprehensive AML/CFT requirements and subject to supervision. Supervisors' outreach activities, and fitness and proprietary controls are generally

¹ FATF methodology, p.15: <https://www.fatf-gafi.org/media/fatf/documents/methodology/FATF%20Methodology%2022%20Feb%202013.pdf>

strong. Each supervisor takes a slightly different approach to risk-based supervision. However, while positive steps have been taken, there are weaknesses in the risk-based approach to supervision even among the statutory supervisors”². FATF also noted inconsistencies among the private sector in terms of compliance, and particularly on SARs reporting.

2.8 Measuring the effectiveness of our impact against illicit, and often obscured, activity is inherently challenging; and so we will not seek within the scope of this review to diverge from FATF’s established approach. However, we will build on this assessment of the effectiveness of the UK regime, by considering commonalities across previous reports, including the FATF Mutual Evaluation, the Supervision Reports produced by HM Treasury and OPBAS, and the Cutting Red Tape review of the UK’s AML/CFT regime. Where common areas for improvement are identified, the review will consider the efforts made to target those deficiencies and aim to assess the outcome of those interventions.

2.9 An effective set of MLRs will be well designed and drafted to support our objectives; will be well understood and applied by the regulated sector, with non-compliance proportionately and dissuasively addressed by supervisors; and the totality of activity generated by compliance will be focussed towards the most significant threats to the UK system whilst reducing administrative burdens as far as possible. We see the MLRs as primarily supporting FATF Immediate Outcomes 3, 4, and 5 though they will of course contribute to other outcomes under that framework. For the purposes of this section of the review, we set out the objectives as :

Primary objectives:

- The regulated sector act to identify, prevent and report suspicious transactions
- Supervisors take a risk-based approach to monitoring compliance, and make proportionate and dissuasive use of their powers and enforcement tools.
- Accurate and up-to-date Beneficial Ownership information is collected, maintained and made available to competent authorities so as to prevent the exploitation of UK corporate vehicles and other forms of legal personality

Secondary objective:

- The regulated sector work in partnership with supervisors and the government to improve collective understanding of the ML/TF threat, which in turn ensures compliance activity is focussed on the highest risks and the regulated sector provides valuable information to law enforcement.

² Several specific recommendations for improvement for most supervisors, later embedded in the Economic Crime Plan, though none were made to the Gambling Commission

(i) Recent improvements to the regulatory and supervisory regimes

1. What do you agree and disagree with in our approach to assessing effectiveness?
2. What particular areas, either in industry or supervision, should be focused on for this section?
3. Are the objectives set out above the correct ones for the MLRs?
4. Do you have any evidence of where the current MLRs have contributed or prevented the achievement of these objectives?

2.10 The MLRs contain both mandatory requirements, and a number of risk-based requirements which rely on the judgment of the relevant person. A common critique by stakeholders is that in totality the MLRs, drive the regulated sector to expend too much effort on the mandatory requirements rather than other activities (such as proactive information sharing between entities) which contributes more meaningfully and directly to driving bad actors out of the system and preventing illicit transactions.

2.11 The review will also consider the effectiveness of the MLRs in driving activity which most contributes to the overarching objectives of the AML/CFT regime (high impact activity). This will explore whether a significant proportion of financial crime resource is consumed in activity which makes a limited contribution towards the objectives set out above and whether there is scope to rebalance resource towards higher impact activity.

2.12 Activity may contribute indirectly to these aims, for example fit and proper testing preventing criminal actors from operating money service businesses which could be used to process illicit funds.

2.13 Activity should be considered low value if it does not contribute to the overarching objectives of the system.

(ii) High-impact activity

5. What activity required by the MLRs should be considered high impact?
6. What examples can you share of how those high impact activities have contributed to the overarching objectives for the system?
7. Are there any high impact activities not currently required by the MLRs that should be?
8. What activity required by the MLRs should be considered low impact and why?

2.14 A further approach to improving effectiveness, by targeting activity, could be for government to publish a list of strategic priorities. The UK already publishes regular National Risk Assessments of money laundering and terrorist financing which set out our understanding of the key vulnerabilities within our system and the strength of the mitigations in place. We would welcome views on what additional value an articulation of our priorities, as the United States recently published³, would offer supervisors, law enforcement and the regulated sector in targeting their activity.

(iii) National Strategic Priorities

9. Would it improve effectiveness, by helping increase high impact, and reduce low impact, activity if the government published Strategic National Priorities AML/CTF priorities for the AML/CTF system?

10. What benefits would Strategic National Priorities offer above and beyond the existing National Risk Assessment of ML/TF?

11. What are the potential risks or downsides respondents see to publishing national priorities? How might firms and supervisors be required to respond to these priorities?

Extent

2.15 The sectors in scope of the MLRs are defined by Regulation 8 and currently include credit institutions; financial institutions; auditors, insolvency practitioners, external accountants and tax advisers; independent legal professionals; trust or company service providers; estate agents and letting agents; high value dealers; casinos; art market participants; cryptoasset exchange providers; and custodian wallet providers.

2.16 The risks inherent in each sector in scope the MLRs can vary, as demonstrated in the National Risk Assessment of Money Laundering and Terrorist Financing 2020. Changes to the extent of the regulated sector have often been informed by changes to international standards, for example the inclusion of cryptoasset exchange providers and custodian wallet providers. Changes have also been made where risk assessments suggest a heightened risk in sectors currently outside of scope. Sectors, or sub-sectors, may also be removed from scope if assessments show they are so low risk that inclusion under the MLRs becomes disproportionate. Factors which may trigger such a consideration, in addition to new evidence of specific instances of exploitation for money laundering and terrorist financing, may be evidence of a significant change in the scale or accessibility of these sectors; or the recent or anticipated emergence of transformative technologies; or possible new vulnerabilities or weakened mitigations emerging.

2.17 Recent suggested changes to the boundaries of the regulated sector have included:

³ [https://www.fincen.gov/sites/default/files/shared/AML_CFT%20Priorities%20\(June%2030%2C%202021\).pdf](https://www.fincen.gov/sites/default/files/shared/AML_CFT%20Priorities%20(June%2030%2C%202021).pdf)

- **Account Information Service Providers (AISPs) and Payment Initiation Service Providers (PISPs).** This will be considered in greater detail in our SI 2022 consultation document.
- **Bill Payment Service Providers and Telecom, digital, and IT payment service providers (BPSPs/TDITPSPs).** Also addressed in the SI 2022 consultation document.
- Further subsectors of gambling. Casinos are already AML regulated. An expansion could include **off-course betting shops** and **online betting**, where there is some evidence they pose equivalent risks to casinos.
- **Antiquities**, which do not fall under the current art market provisions but pose similar risks.

(iv) Extent of the regulated sector

12. What evidence should we consider as we evaluate whether the sectors or subsectors listed above should be considered for inclusion or exclusion from the regulated sector?

13. Are there any sectors or sub-sectors not listed above that should be considered for inclusion or exclusion from the regulated sector?

14. What are the key factors that should be considered when amending the scope of the regulated sector?

Enforcement

2.18 In an effective regime, one of the functions which supervisors carry out is ensuring that supervised businesses are AML/CFT compliant. The overall design and priorities of the supervision system is clearly a critical element of an effective AML/CTF system, and so we have decided to consider it in-depth as a standalone chapter of this review. Here, we consider the narrower question of whether supervisors have adequate powers to supervise or monitor and ensure compliance by their supervised firms with requirements to combat ML/TF.

2.19 HM Treasury publishes an annual report on the performance of AML/CTF supervisors⁴. It is notable that there have been very few criminal prosecutions under the MLRs to date, though the FCA recently announced it has launched its first criminal proceedings under the MLRs. We would welcome views in this section on if the relatively low number of prosecutions this represents a failing of the current enforcement, in the context of alternative civil regulatory powers.

2.20 This section focuses on the ability – powers and tools available to supervisors the consistency in their application and their impact – of supervisors to enforce AML/CFT compliance over their supervised community. FATF Recommendations require that supervisors should have available a sufficient range of enforcement tools e.g. powers to enter premises without a warrant and to limit conditions of

⁴ <https://www.gov.uk/government/publications/anti-money-laundering-and-counter-terrorist-financing-supervision-report-20182019>

business activities, to ensure AML/CFT compliance. Furthermore, the choice in which enforcement tool to be used should be proportionate to the severity of the AML/CFT breach. To ensure consistency in outcome there should also be consistency in the application of the enforcement tools - enforcement measures should lead to adequate changes in behaviour in the supervised business to ensure AML/CFT compliance.

(v) Enforcement

15. Are the current powers of enforcement provided by the MLRs sufficient? If not, why?

16. Is the current application of enforcement powers proportionate to the breaches they are used against? Is

17. Is the current application of enforcement powers sufficiently dissuasive? If not, why?

18. Are the relatively low number of criminal prosecutions a challenge to an effective enforcement regime? What would the impact of more prosecutions be? What are the barriers to pursuing criminal prosecutions?

Chapter 3

Regulatory review

3.1 As well as reviewing the systemic effectiveness of the MLRs, it is important to consider the effectiveness of particular elements of the MLRs and their application in the AML/CFT regime. Some elements of the regulations are prescriptive in their application to ensure a baseline minimum standard and drive consistency, while others rely on the intelligent application of a risk-based approach to the specifics of each regulated industry. Supporting industry in applying this risk-based approach is a core element of the FATF methodology and fundamental to ensuring a dynamic and responsive set of rules that can be used by a wide set of diverse regulated sectors and subsectors.

3.2 This section responds to feedback from industry, law enforcement, supervisors and civil society that some specific regulations may not consistently or proportionately support their aims of the MLRs overall, or represent a disproportionate burden. This includes regulations and ways of working which are intended to

- support risk-based decision making, particularly around due diligence;
- support the adoption of new technology;
- maximise the utility of suspicious activity reporting activity;
- prevent the entry of bad actors into the regulated sector; and
- support the regulated sector in meeting their responsibility to accurately interpret how the MLRs apply to their specific circumstances

3.3 Taking each in turn, in this chapter we consider the effective application of a risk-based approach by regulated entities. This should lie at the heart of their compliance with the MLRs, and the extent to which business feel able to take risk-based decisions. It will assess the extent to which a risk-based approach is supported by the current regulatory framework.

3.4 The adoption of new technology by relevant entities to aid their obligations in meeting the MLRs is of growing interest and importance. While the MLRs are not prescriptive over how businesses should adopt or use particular technologies, the review will consider the extent to which the MLRs allow for the adoption of new technologies by businesses in a responsible and appropriate way while meeting their obligations under the MLRs.

3.5 This section also considers the potential for AML/CFT supervisors to play a greater role in the UK's SARs regime. The questions in this document build on more immediate proposals in our consultation document for the 2022 SI. This may involve supervisors requesting information on intelligence and other assistance provided to

law enforcement and sight of SARs submitted by their supervised population, in the course of their supervisory duties, to inform their evaluation of firms' understanding of risk, ensure firms are appropriately responding to potential threats identified by SARs. This role could also support broader SARs reform objectives to improve the quantity and quality of SARs reporting.

3.6 The fit and proper regime under Regulation 58 and the approvals regime under Regulation 26 are key to preventing the entry of malicious or criminal individuals to the regulated sector. Currently these are two separate tests within the MLRs, applying different requirements to different parts of the AML regulated sector. Other tests of fitness are integrated into wider FCA and Gambling Commission regimes, and the membership conditions for professional bodies.

3.7 Finally, this section will consider the guidance regime that supports the application of the regulations by each sector. Currently, a single piece of sector-specific guidance is approved by HM Treasury ministers for each sector in scope of the regulations. This provides guidance on the interpretation of the regulatory requirements to aid businesses in understanding what is required to be compliant with the MLRs.

Risk-based approach

3.8 In line with international standards, the MLRs are deliberately not prescriptive. Instead they provide flexibility in order to promote a proportionate and effective risk-based approach. A risk-based approach, which effectively identifies and assesses ML/TF risks and puts in place systems and controls to manage and mitigate them, should be the basis for relevant persons' compliance with the requirements of the MLRs. The flexibility provided for by a risk-based approach should allow for a more efficient use of resources, as relevant entities can focus resources and take enhanced measures in situations where the risks are higher and apply simplified measures where the risks are lower. Consequently, this should lead to more effective targeting of activity being undertaken across the AML/CFT regime.

3.9 However, barriers to pursuing a risk-based approach may often be present. These could include an insufficient understanding of risk, concerns about demonstrating compliance with the MLRs or issues with applying specific aspects of the MLRs that should aid in employing a risk-based approach. The call for evidence seeks views on these barriers, and possible solutions.

(i) Barriers to the risk-based approach

19. What are the principal barriers to relevant persons in pursuing a risk-based approach?

20. What activity or reform could HMG undertake to better facilitate a risk-based approach? Would National Strategic Priorities (discussed above) support this?

21. Are there any elements of the MLRs that ought to be prescriptive?

Understanding of Risk

3.10 Relevant persons are required by Regulation 18 of the MLRs to take appropriate steps to identify and assess the risks of money laundering and terrorist financing to which their business is subject. This must consider information made available by their supervisory authority, have regard to the National Risk Assessment, and specific risk factors.

3.11 Relevant persons are required by Regulation 19 to establish and maintain policies, controls and procedures to mitigate and manage effectively the risks identified by the assessment required by Regulation 18. This should be the basis for the application of the risk-based approach by relevant persons and a poor understanding of risk will prevent the efficient targeting of resources to best counter money laundering and terrorist financing.

(ii) Understanding of risk

22. Do relevant persons have an adequate understanding of ML/TF risk to pursue a risk-based approach? If not, why?

23. What are the primary barriers to understanding of ML/TF risk?

24. What are the most effective actions that the government can take to improve understanding of ML/TF risk?

Supervisory expectations of a risk-based approach

3.12 Supervisory authorities are required to effectively monitor the relevant persons for their own sector and take measures to secure compliance with the MLRs. As well as a requirement to adopt a risk-based approach, while exercising their duties supervisors must take account of the degree of discretion permitted to relevant persons in taking measures to counter ML and TF.

3.13 Regulation 18 requires relevant persons to provide their risk assessment, as well as any information on which the risk assessment is based, to their supervisory authority on request. Supervisors must take appropriate measures to review the risk assessments carried out by relevant persons and the adequacy of the policies, controls and procedures put in place to manage and mitigate identified risks.

3.14 Through this assessment and documentation, relevant persons should be able to demonstrate a risk-based approach to their supervisory authority and know their supervisor must take the degree of discretion allowed to them into account. However, stakeholders have given the view that they do not believe supervisors allow for discretion in the application of a risk-based approach, and instead expect a 'tick-box approach'.

(iii) Expectations of supervisors to the risk-based approach

25. How do supervisors allow for businesses to demonstrate their risk-based approach and take account of the discretion allowed by the MLRs in this regard?
26. Do you have examples of supervisory authorities not taking account of the discretion allowed to relevant persons in the MLRs?
27. What more could supervisors do to take a more effective risk-based approach to their supervisory work?
28. Would it improve effectiveness and outcomes for the government and / or supervisors to publish a definition of AML/CTF compliance programme effectiveness? What would the key elements of such a definition include? Specifically, should it include the provision of high value intelligence to law enforcement as an explicit goal?
29. What benefits would a definition of compliance programme effectiveness provide in terms of improved outcomes?

Reliance, Enhanced Due Diligence and Simplified Due Diligence

3.15 While the MLRs are deliberately not prescriptive of the measures that should be put in place to manage and mitigate ML/TF risk, they provide for differing levels of due diligence to be applied based on the risks presented. These include the use of enhanced due diligence and simplified due diligence for situations presenting high or low risk respectively, and reliance on the CDD measures of another relevant person. These should support and enhance a relevant person's risk-based approach, but feedback from businesses suggests they can be confusing or difficult to adopt in practice.

3.16 Enhanced due diligence (EDD) must be applied for any case identified as presenting a high risk of ML or TF. It is also required for a business relationship with a person established in a high-risk country as listed in UK statute in line with FATF assessments, in relation to correspondent relationships, where a customer is a PEP, where a customer has been found to have provided false or stolen identification documentation or information, and in any case where a transaction is complex or unusually large, there is an unusual pattern of transactions, or a transaction has no apparent economic or legal purpose.

3.17 EDD should target areas of known high ML/TF risk. However, a common concern raised is that the list of mandatory requirements for implementing EDD has become overly prescriptive for businesses and acts counter to the application of a risk-based approach. Some stakeholders perceive banks de-risk entire categories of potentially higher risk customers rather than go to the effort of individually risk assessing them.

3.18 Simplified due diligence (SDD) may be applied where a relevant person determines that a business relationship or transaction presents a low level of risk. This must consider the relevant person's risk assessment, relevant information made available by its supervisory authority and relevant risk factors. Where SDD measures are applied, the relevant person must continue to comply with CDD and discrepancy reporting requirements, but can adjust the extent, timing or type. Relevant persons must also carry out sufficient monitoring to detect any unusual or suspicious transactions.

3.19 SDD should allow for less resource to be targeted at lower risk activity, improving effectiveness and efficiency. However, stakeholders have expressed concern that they do not feel able to apply SDD in all appropriate situations. This may be linked to either the requirements imposed by the MLRs or concerns about justifying decisions to supervisory authorities.

3.20 It is possible to rely on a third party's CDD or discrepancy reporting measures, though the liability for CDD remains with the relevant person establishing the business relationship or conducting the transaction. The relevant person relying on a third party's CDD must ensure they put the appropriate arrangements required by Regulation 30 in place. These are intended to ensure a relevant person can confidently use the CDD activity of others, to meet their own legal responsibility.

3.21 Reliance should allow relevant persons to avoid the duplication of CDD measures on a customer where the customer already has a business relationship with another relevant person. This is particularly relevant in sectors where relevant persons often work closely together, for example solicitors and barristers. However, concerns are often raised about relevant persons feeling unable to utilise reliance to meet their obligations under the MLRs. This may be due to difficulties in putting the required arrangements in place, or third parties being unwilling to allow their CDD measures to be relied upon.

(iv) Application of enhanced due diligence, simplified due diligence and reliance

30. Are the requirements for applying enhanced due diligence appropriate and proportionate? If not, why?

31. Are the measures required for enhanced due diligence appropriate and sufficient to counter higher risk of ML/TF? If not, why?

32. Are the requirements for choosing to apply simplified due diligence appropriate and proportionate? If not, why?

33. Are relevant persons able to apply simplified due diligence where appropriate? If not, why? Can you provide examples?

34. Are the requirements for choosing to utilise reliance appropriate and proportionate? If not, why?

35. Are relevant persons able to utilise reliance where appropriate? If not, what are the principal barriers and what sort of activities or arrangements is this preventing? Can you provide examples?

36. Are there any changes to the MLRs which could mitigate derisking behaviours?

New technologies

3.22 Interest in new technologies is growing, especially in how they interact with existing regulations, and what potential they have to help tackle financial crime. However, as discussed in recent National Risk Assessments¹, the embryonic nature of emerging technologies – like cryptoasset, considered elsewhere in the review – and the growth of fintech firms, also offer criminals the opportunity to exploit unforeseen vulnerabilities in the financial system and regulations. International and domestic AML standards need to leverage the potential of these emerging technologies, but also keep up with the threats they pose when exploited.

3.23 Globally, the Financial Action Task Force (FATF) is exploring the opportunities and challenges of new technologies for AML/CFT. For example, they published guidance² on digital identity technology in March 2020 to clarify how digital identity systems work, and how they can be used to conduct certain elements of customer due diligence as part of a risk-based approach to AML/CFT. They published two further reports in July 2021 on the opportunities and challenges of new technologies³, and a stocktake of technologies facilitating advanced analytics⁴.

3.24 In the UK, the public and private sectors are working together to explore how to promote innovation solutions which could improve the effectiveness and efficiency of private sector preventive measures to tackle financial crime with new technologies. The Innovation Working Group (IWG) was set up under the Economic Crime Plan to bring together expertise to help identify: where these technologies provide opportunities to tackle financial crime; where they are facing barriers to adoption; and what solutions are available to help overcome these barriers. DCMS is also pioneering work in this space by developing the ‘UK Digital Identity and Attributes Trust Framework’, which outlines the rules organisations should follow to use digital identity, including how to protect against fraud and misuse, and a framework for abiding by regulations like the MLRs.

3.25 With new technologies – such as Privacy Enhancing Technologies (PETs); Legal Entity Identifiers (LEIs); and, personal digital identity technology – continuing to gain prominence, this call for evidence provides a timely opportunity to gather views on whether the MLRs appropriately enables the safe and effective use of

¹ [NRA_2020_v1.2_FOR_PUBLICATION.pdf \(publishing.service.gov.uk\)](#)

² [Documents - Financial Action Task Force \(FATF\) \(fatf-gafi.org\)](#)

³ <https://www.fatf-gafi.org/media/fatf/documents/reports/Opportunities-Challenges-of-New-Technologies-for-AML-CFT.pdf>

⁴ <https://www.fatf-gafi.org/media/fatf/documents/Stocktake-Datapooling-Collaborative-Analytics.pdf>

existing and future technologies by private sector entities to tackle money laundering and terrorist financing.

3.26 Considering the above, the questions posed in Box 3.E are a call for evidence to help us identify whether the MLRs, as currently drafted, are in any way stymying wider adoption of technologies such as (though not limited to) PETs, LEIs, or digital identities; and, where they are, to help us consider how we can amend them in a way that could improve adoption of these innovations. A second question takes a more specific look at whether and how the MLRs are influencing the adoption of digital identity. We are however cognisant that the MLRs are only one regulatory vehicle that influences industry's decision making. Given this, we are asking a secondary, broader, question on whether the government and industry should both be doing anything more widely to increase adoption of new technologies to mitigate the threat of illicit finance.

(v) How the regulations affect the uptake of new technologies

37. as currently drafted, do you believe that the MLRs in any way inhibit the adoption of new technologies to tackle economic crime? If yes, what regulations do you think need amending and in what way?

38. do you think the MLRs adequately make provision for the safe and effective use of digital identity technology? If not, what regulations need amending and in what way?

39. more broadly, and potentially beyond the MLRs, what action do you believe the government and industry should each be taking to widen the adoption of new technologies to tackle economic crime?

Supervisors' role in the SARs regime

3.27 Suspicious Activity Reports (SARs) are the method by which individuals and businesses should report suspicions of possible illicit activity relating to money laundering and terrorist financing to law enforcement. An effective SARs regime is integral to the UK's response to economic crime and is often vital to combatting other criminal activity

3.28 The MLRs are not the legislative basis for the SARs regime – the obligations falling on members of the regulated sector, and those not within the regulated sector are specified in POCA and TACT. However, it is arguable that under the MLRs, the current role of supervisors in considering and assessing the quality of SARs is unclear and limited, resulting in an inconsistent application

3.29 There is pre-existing provision in Schedule 4 of the MLRs which allows supervisors to collect information regarding the quantity of SARs it, as a supervisory authority, or any of its supervised persons has submitted. However, stakeholders have expressed concerns about a lack of clarity on whether supervisors can also access or assess the contents of those SARs. We are exploring through the SI 2022 consultation document, the merits of explicitly providing supervisors the legal

permission to directly request SARs from members of their supervised population as part of their monitoring approach.

3.30 Separately, in this review, we would like to consider the case for new substantive legal obligations on supervisors to bring the consideration of SARs into the core of their activity, and to explore the role supervisors can play in driving up standards in the quality of SARs submissions made by the sectors in support of an effective law enforcement response. More widely, we are interested in exploring whether the provision of high value intelligence by firms to law enforcement should be explicitly recognised as an objective of the regulatory regime, and as part of supervisors' assessments of firms' AML/CTF controls.

3.31 Supervisors could be asked to review SARs submitted by their supervised population, as part of their wider supervisory assessments. They could consider to what extent the quantity and quality of SARs submitted reflects the firm's own risk assessment, as well as risks and priorities highlighted at a national level. Supervisors could use guidance issued by the UKFIU to help assess the quality of those SARs and provide relevant feedback to regulated entities. They could also ask firms for wider evidence of intelligence and other support they have provided to law enforcement. This aims to improve standards and support a more efficient and effective use of the SARs process and increase the intelligence and information value of SARs to law enforcement and their activities.

3.32 A step further would be a more substantial integration of the supervision, enforcement and reporting spheres. Supervisors could be expected to, where consistently poor behaviour with regards to SARs was identified, take appropriate action available to them through their existing toolbox of enforcement powers. This could be in response to consistently submitting poor quality SARs or where failures to submit a SAR in relevant circumstances have been identified. .

(vi) SARs reporting

40. Do you think the MLRs support efficient engagement by the regulated sector in the SARs regime, and effective reporting to law enforcement authorities? If no, why?

41. What impact would there be from enhancing the role of supervisors to bring the consideration of SARs and assessment of their quality within the supervisor regime?

42. If you have concerns about enhancing this role, what limitations and mitigations should be put in place?

43. What else could be done to improve the quality of SARs submitted by reporters?

44. Should the provision of high value intelligence to law enforcement be made an explicit objective of the regulatory regime and a requirement on firms that they are supervised against? If so, how might this be done in practice?

Gatekeeping function

3.33 Under the MLRs, supervisors are given the responsibility to act as ‘gatekeepers’ to the regulated sector. They have the responsibility to seek to prevent bad actors from operating within the regulated sector in the first place, by refusing registrations which have a very high risk of facilitating criminal activity. Over time and as the result of related regulatory regimes, several separate tests have developed which look at different information, and may apply in a partial or overlapping way to different sectors within the AML regulated industry.

3.34 We would like to consider if the current set of tests cumulatively acts as an effective gatekeeping system, or if we should consider any elements of reform. Suggested reforms include consolidating these different tests, mandating that further or different information be considered, mandating their application when new individuals take up relevant positions in an already registered company, creating the power for supervisors to reapply the tests, or ensuring consistent penalties for non-compliance.

3.35 Regulation 26 (the ‘approvals’ test) of the Money Laundering Regulations 2017 is a provision designed to prevent criminals convicted in relevant areas from operating in key roles in legal and accountancy businesses, estate and letting agents, high value dealers and art market participants. Supervisors must grant such an application unless the applicant has been convicted of an offence listed in Schedule 3 of the Money Laundering Regulations 2017. Acting in a key role, without approval, is a criminal offence.

3.36 Regulation 58 (known as the ‘fit and proper’ test) of the Money Laundering Regulations 2017 is a provision designed to ensure the appropriateness of firms and individuals applying for registration. This includes those exercising significant control in TCSPs, MSBs, Annex 1 firms⁵ and under Regulation 58A, cryptoasset businesses. Relevant supervisors consider information required under Reg 57 and a broader range of indicators to determine fitness and propriety, including but not limited to looking at previous breaches of the MLRS, being subject to a POCA confiscation order or findings of misconduct by another professional body. This is a judgement the supervisor may take based on the overall set of evidence. The FCA has set out in detail the information that is sought for cryptoasset business registration applicants such as business plans, systems and controls, governance arrangements and money laundering risk assessments. For individuals responsible for management and money laundering compliance in cryptoasset business they must satisfy the FCA that they have good reputation and appropriate knowledge and skills for their role.

3.37 Outside of these tests specified within the MLRs, there are a number of other gatekeeping standards that will apply to some relevant persons in the AML regulated sector. For example, the FCA has an extensive regime and detailed handbook provisions for firms it regulates under FSMA to assess fitness and propriety of roles which require approval. The Senior Managers and Certification

⁵ <https://www.fca.org.uk/firms/money-laundering-terrorist-financing/registration>

regime requires all FCA authorised firms to have a specific senior manager function with responsibility for overseeing the firm's efforts to counter financial crime.⁶

3.38 The Gambling Commission grants business and personal licences on the basis of in-depth integrity, financial and criminality checks in line with the requirements of the Gambling Act 2005. They also run 'maintenance checks' every five years where personal licence holders must renew the evidence provided, including criminality checks.

3.39 Professional bodies who act as supervisors also have additional and bespoke tests of appropriateness/fitness for membership of their organisations that require evidence beyond that considered under Regulations 26 and 58 (involving both educational and training requirements as well as character suitability).

Relevant sectors and factors

Gatekeeper test	Sectors in scope	Relevant factors
Regulation 26 'Approvals' test	legal and accountancy businesses estate and letting agents high value dealers art market participants.	Conviction of a criminal offence listed in schedule 3 of the MLRs
Regulation 58 'Fit and proper' test	TCSPs MSBs Cryptoasset businesses Annex 1 firms	Conviction of a criminal offence listed in schedule 3 of the MLRs Consistent failure to comply with the Money Laundering regulations Risk that the business may be used for money laundering or terrorist financing Skills and experience, and has acted or may be expected to act with probity
Additional tests outside of the MLRs	Professional Body conditions of membership	

⁶ Electronic Money and Payment Services firms are also subject to additional conditions of authorisation or registration as set out in the Electronic Money Regulations 2011 and Payment Services Regulations 2017.

	Gambling Commission business and personal license conditions	
	FCA requirements for FSMA regulated firms	

3.40 While these tests have a common intent, they ask for different information and some individuals may be subject to more than one of them in order to register to conduct AML regulated activity. These variable standards are not dynamically linked to the risk that different sectors may pose. Currently there are no clear powers for supervisors under the MLRs to actively reapply these tests once registration of a relevant person has taken place, or mandate that some of these tests are applied in advance of individuals taking up relevant positions in a firm which is already registered, though there is an obligation on individuals and entities to inform supervisors of relevant changes in circumstances.

3.41 We would like to consider if the current set of tests cumulatively acts as an effective gatekeeping system, or if we should consider any elements of reform. Suggested reforms include consolidating these different tests, mandating that further or different information be considered, creating the power for supervisors to reapply the tests, or ensuring consistent penalties for non-compliance.

(vii) Gatekeeping tests

45. Is it effective to have both Regulation 26 and Regulation 58 in place to support supervisors in their gatekeeper function, or would a single test support more effective gatekeeping?

46. Are the current requirements for information an effective basis from which to draw gatekeeper judgment, or should different or additional requirements, for all or some sectors, be considered?

47. Do the current obligations and powers, for supervisors, and the current set of penalties for non-compliance support an effective gatekeeping system? If no, why?

48. To what extent should supervisors effectively monitor their supervised populations on an on-going basis for meeting the requirements for continued participation in the profession? Is an additional requirement needed for when new individuals take up relevant positions in firms that are already registered?

Guidance

3.42 The MLRs allow for relevant persons to consider any guidance which has been issued by the FCA or issued by any other supervisory authority or appropriate body and approved by the HM Treasury ("relevant guidance").

3.43 For example, guidance may be taken into account by relevant persons when determining what policies, controls and procedures would be appropriate and proportionate for their business, what training measures may be appropriate, and what EDD measures may be required for particular persons identified as a PEP or a family member or known close associate of a PEP.

3.44 Supervisory authorities must take any relevant guidance into account when deciding whether a relevant person has contravened a relevant requirement imposed on them by the MLRs. Similarly, in deciding whether a person has committed an offence under regulation 86 the courts will consider whether the person followed any relevant guidance.

3.45 To avoid confusion and inconsistent guidance within sectors, HM Treasury approves a single piece of guidance for each sector, drafted either by the supervisory authority/authorities, or by another appropriate body. This aims to address issues raised in the Cutting Red Tape Review that guidance issued by individual supervisors could lead to differing interpretation of the same legislation.

3.46 However, concerns from stakeholders remain about the length or complexity of some pieces of guidance, possible inconsistencies between different guidance documents, particularly for relevant persons who operate in multiple regulated sectors, and delays in drafting and approving guidance following the transposition of 5MLD. Stakeholders do not hold a consensus view on whether guidance should seek to be comprehensive or should move away from a prescriptive approach to how to interpret the regulations. As a result, there is considerable variation in the length and detail provided by different sector guidance documents.

3.47 There are also overlaps with guidance issued by other bodies which will be important to relevant persons under the MLRs. For example, guidance issued by Home Office on suspicious activity reporting.

(viii) Guidance

49. In your view does the current guidance regime support relevant persons in meeting their obligations under the MLRs? If not, why?

50. What barriers are there to guidance being an effective tool for relevant persons?

51. What alternatives or ideas would you suggest to improve the guidance drafting and approval processes?

Chapter 4

Supervisory review

4.1 Under the MLRs, HM Treasury is responsible for appointing AML/CTF supervisors. There are 25 AML/CFT supervisors in the UK supervising relevant persons required to comply with the MLRs. The supervisors include 22 legal and accountancy professional bodies and 3 public sector organisations; the FCA, HMRC and the Gambling Commission.

4.2 Working closely with both statutory supervisors and the 22 PBSs, HM Treasury seeks to ensure they deliver upon the government's objective of a robust and risk-based approach to supervision, applying dissuasive sanctioning powers when necessary, while minimising unnecessary burdens on regulated firms.

4.3 Under the MLRs, supervisors are required to apply a risk-based approach to their supervisory activities. They also work with industry experts to provide guidance for their populations, to assist them in guarding against money laundering risks.

4.4 The FATF Mutual Evaluation Report found that the UK's AML/CFT supervisory regime was moderately effective. It noted in particular that supervisors' outreach activities, and fitness and proprietary controls were generally strong, and that although positive steps had been taken in supervisors applying a risk-based approach, weaknesses remained in the approach of every supervisor (apart from the Gambling Commission). The points for improvement identified in the MER were taken forward through the Economic Crime Plan.

4.5 This section of the report aims to assess the effectiveness and appropriateness of the UK's supervisory regime in meeting its objectives. This will consider the overall structure of the regime, including both statutory and professional body supervisors, the strengths and weaknesses of the regime, particularly any supervisory gaps which result from the structure, and possible options for reform, for example consolidation of the supervisory bodies or the creation of a single body with oversight of the whole regime.

4.6 These wide-ranging questions are not intended to indicate an established desire to depart from the current model of supervision, but to test its ongoing effectiveness. In line with that thinking, the review will also consider the work of OPBAS since its inception in 2018. This will assess its work to raise standards and drive the effectiveness and consistency of PBS supervision and AML information sharing across the regime. It will also consider if OPBAS's remit remains appropriate and review the OPBAS Regulations to ensure their provision remains sufficient and proportionate for OPBAS's remit.

Structure of the AML/CFT supervisory regime

4.7 As previously recognised, there are benefits to a range of supervisors for the UK's AML regime. It ensures the risks of diverse and innovative products are assessed by experts that understand their sectors and are effectively managed. It also enables

AML supervision to be integrated into wider oversight of business activities, reducing regulatory burdens and improving competitiveness.¹

4.8 However, there are challenges and potential vulnerabilities arising from such a diffuse model of supervision. Previous reforms have aimed to address concerns identified in the 2015 National Risk Assessment and subsequent 2018 FATF MER that the effectiveness of supervision is inconsistent. Different supervisors can take different approaches to measuring and managing risks amongst their supervised populations, to promoting transparency around their activities, to training their staff to be aware of emerging risks, and to enforcing the regulations. This creates an uneven playing field for business while also increasing the risk that criminals could exploit the UK's financial system.

4.9 The outcomes from a relatively devolved model of supervision is not solely a challenge being grappled with by the UK. Similar concerns have driven discussion within the European Union about discrepancies in supervision between, and within, member states and elicited proposals on the potential merits of a single EU level strategic AML supervisor, with a package of legislative proposals announced recently. This proposes a new body with some direct supervision powers in the financial sector, and a duty to drive consistency across the supervision of other sectors.

4.10 Our review will assess the progress that has been made in addressing concerns around the inconsistency of supervision and consider how the structure of supervision benefits the overarching objectives of the system. It will also consider the potential drawbacks of the regime, including remaining inconsistencies and potential gaps resulting from the structure: reaching a view on the effectiveness of our current system. A range of potential reforms will be considered as part of the review, and at this stage we'd like to seek views on a broad range of models.

4.11 We are already pursuing reform and improved consistency through OPBAS, the effectiveness of which is considered in more detail below. There is scope to consider whether its current remit and regulations are sufficient to support that work; or whether further or more directive powers would assist OPBAS in driving a consistent approach to supervision and enforcement. Expanding its remit to include coordination and consistency with the statutory supervisors (FCA, HMRC, Gambling Commission) would be a possible further reform. Another approach would be to seek some degree of consolidation of the supervisory regime, towards a model with fewer, very few, or even a single supervisor.

¹ Anti-money laundering supervisory regime: response to the consultation and further call for evidence: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/600340/Anti-Money-Laundering-Supervisory-Regime-response-call-for-further-information.pdf

(i) Structure of the supervisory regime

52. What are the strengths and weaknesses of the UK supervisory regime, in particular those offered by the structure of statutory and professional body supervisors?

53. Are there any sectors or business areas which are subject to lower standards of supervision for equivalent risk?

54. Which of the models highlighted, including maintaining the status quo, should the UK consider or discount?

55. What in your view would be the arguments for and against the consolidation of supervision into fewer supervisor bodies? What factors should be considered in analysing the optimum number of bodies?

Effectiveness of OPBAS

4.12 In addition to reviewing the regulatory provision of the MLRs, HM Treasury is obliged to review the OPBAS Regulations. As part of the broader review of the supervision regime, the final report will consider the progress made by OPBAS to date against its 2 key objectives of ensuring a consistently high standard of AML supervision by the PBSs and facilitating collaboration and information and intelligence sharing between PBSs, other supervisors, law enforcement and relevant 3rd parties. It will also consider the extent to which OPBAS's current remit remains appropriate, and if the regulatory provision of the OPBAS regulations remains appropriate for meeting its objectives.

4.13 OPBAS has to date published two reports setting out progress made since its creation in 2018². The first report identified that PBSs were delivering a variable quality of AML/CFT supervision, with OPBAS then taking follow up steps through its supervisory work to ensure that all PBSs put robust AML supervisory strategies in place, including sector risk assessments.

4.14 In its second report, OPBAS identified that both the accountancy and legal sectors had made strong improvements. However, as set out in its letter to parliament in support of the report publication, some PBSs were not progressing at the pace required. Where this was identified, OPBAS said it took swift action, including use of its powers of direction, where appropriate and proportionate to do so.

4.15 The review will consider the progress set out in OPBAS's reports (including its third report) to ensure consistent and effective AML/CFT supervision by the PBSs and will consider the approach taken by OPBAS to achieve these improvements. It will also consider the areas for continued improvement, and how OPBAS can continue to work with the PBS to deliver these.

4.16 OPBAS's objective to improve and increase information and intelligence sharing extends beyond the PBSs and includes the statutory supervisors, law

² <https://www.fca.org.uk/opbas>

enforcement agencies (including the National Economic Crime Centre (NECC) and the National Crime Agency (NCA)) and other relevant parts of government such as the Insolvency Service and Companies House. For example, in 2018 OPBAS, in conjunction with the NECC, developed sectoral intelligence sharing expert working groups (ISEWGs). These bring together the PBSs, the FCA, HMRC and law enforcement agencies to discuss and share strategic and tactical intelligence relating to the accountancy and legal sectors.

4.17 The review will assess the progress made by OPBAS in achieving this objective, and the outcomes that have resulted.

(ii) Effectiveness of OPBAS

56. What are the key factors that should be considered in assessing the extent to which OPBAS has met its objective of ensuring consistently high standards of AML supervision by the PBSs?

57. What are the key factors that should be considered in assessing the extent to which OPBAS has met its objective of facilitating collaboration and information and intelligence sharing?

OPBAS's remit

4.18 HM Treasury remains committed to promoting high standards of AML supervision in the legal and accountancy sectors, and OPBAS's work to support this is a key part of the Economic Crime Plan. As it makes progress against that objective, HM Treasury is obliged to consider the extent to which OPBAS's current remit remains appropriate.

4.19 The OPBAS Regulations also provide OPBAS with the powers of supervision and enforcement necessary to fulfil its current remit. HM Treasury is required to consider if these remain appropriate and proportionate, and whether any change is required, either to support OPBAS in continuing to meet its current objective or to reflect any change in its remit.

4.20 Though a key partner in policy and operational planning, OPBAS currently has no formal role regarding the statutory supervisors, even where a sector (such as accountancy) may be split between the PBS and statutory supervisors. Further empowering OPBAS or considering a remit that extends to ensuring consistency across rather PBS/statutory supervisor boundary, may support our efforts to improve the standards of AML supervision.

(iii) Remit of OPBAS

58. What if any further powers would assist OPBAS in meeting its objectives?
59. Would extending OPBAS's remit to include driving consistency across the boundary between PBSs and statutory supervisors (in addition to between PBSs) be proportionate or beneficial to the supervisory regime?

Supervisory gaps

4.21 Under our current system, the number of different supervisors operating in the UK regime risks businesses undertaking regulated activity without supervision. This is perhaps most likely in the legal sector, where independent legal professionals who undertake regulated activity but are not a member of one of the legal professional body supervisors do not have a default supervisor.

4.22 There is also a broader concern about persons undertaking regulated activity but deliberately operating without AML supervision. The body of work undertaken to identify and prevent such activity is referred to as policing the perimeter.

4.23 The review aims to identify where gaps in the supervision regime may occur and consider options to address those gaps.

4.24 It is equally important to address instances where persons conduct regulated services without supervision where there is a clear supervisor. For example, HMRC's "policing the perimeter" teams are involved in identifying businesses that are trading while unregistered and work to bring these businesses onto the register or prevent them from trading.

(iv) Supervisory gaps

60. Are you aware of specific types of businesses who may offer regulated services under the MLRs that do not have a designated supervisor?
61. Would the legal sector benefit from a 'default supervisor', in the same way HMRC acts as the default supervisor for the accountancy sector?
62. How should the government best ensure businesses cannot conduct regulated activity without supervision?

Chapter 5

Next Steps

5.1 The government welcomes your views in response to the questions posed. The government encourages stakeholders to provide as much evidence as possible to help inform the government's response to these questions. This will help ensure evidence-based policy decisions.

5.2 The government will be running a series of events during the consultation period where stakeholders will be given the opportunity to take part in interactive discussions about the proposals and issues in this consultation document.

5.3 Email responses should be sent to:

Anti-MoneyLaunderingBranch@hmtreasury.gov.uk

5.4 Questions or enquiries in relation to this consultation should also be sent to the above email address. Please include the words 'Call for evidence views' or 'Call for evidence enquiry' (as appropriate) in your email subject.

5.5 Due to the Covid-19 pandemic, we would request – where possible – responses are sent electronically. However, if needed, responses can be sent by post to:

AML/CFT Call for Evidence
Sanctions and Illicit Finance Team (2/27)
HM Treasury
1 Horse Guards Road
London
SW1A 2HQ
London

Timetable

5.6 The closing date for comments to be submitted is 14 October.

HM Treasury consultations – processing of personal data

5.7 This notice sets out how HM Treasury will use your personal data for the purposes of the call for evidence on the UK's AML/CFT regulatory and supervisory regime and explains your rights under the UK General Data Protection regulation (GDPR) and the Data Protection Act 2018 (DPA).

Your data (data subject categories)

5.8 The personal information relates to you as either a member of the public, parliamentarian, or representative of an organisation or company.

The data we collect (data categories)

5.9 Information may include your name, address, email address, job title, and employer, as well as your opinions. It is possible that you will volunteer additional identifying information about yourself or third parties.

Legal basis of processing

5.10 The processing is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in HM Treasury. For the purpose of this consultation the task is consulting on departmental policies or proposals or obtaining opinion data in order to develop effective government policies.

Special categories data

5.11 Any of the categories of special category data may be processed if such data is volunteered by the respondent.

Legal basis for processing special category data

5.12 Where special category data is volunteered by you (the data subject), the legal basis relied upon for processing it is: the processing is necessary for reasons of substantial public interest for the exercise of a function of the Crown, a Minister of the Crown, or a government department.

5.13 This function is consulting on departmental policies or proposals, or obtaining opinion data, to develop effective policies.

Purpose

5.14 The personal information is processed for the purpose of obtaining the opinions of members of the public and representatives of organisations and companies, about departmental policies, proposals, or generally to obtain public opinion data on an issue of public interest.

Who we share your responses with

5.15 Information provided in response to a consultation may be published or disclosed in accordance with the access to information regimes. These are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 2018 (DPA) and the Environmental Information regulations 2004 (EIR).

5.16 If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals with, amongst other things, obligations of confidence.

5.17 In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on HM Treasury.

5.18 Where someone submits special category personal data or personal data about third parties, we will endeavour to delete that data before publication takes place.

5.19 Where information about respondents is not published, it may be shared with officials within other public bodies involved in this consultation process to assist us in developing the policies to which it relates. Examples of these public bodies appear at: <https://www.gov.uk/government/organisations>.

5.20 As the personal information is stored on our IT infrastructure, it will be accessible to our IT contractor, NTT. NTT will only process this data for our purposes and in fulfilment with the contractual obligations they have with us.

How long we will hold your data (retention)

5.21 Personal information in responses to consultations will generally be published and therefore retained indefinitely as a historic record under the Public Records Act 1958.

5.22 Personal information in responses that is not published will be retained for three calendar years after the consultation has concluded.

Your rights

- You have the right to request information about how your personal data are processed and to request a copy of that personal data.
- You have the right to request that any inaccuracies in your personal data are rectified without delay.
- You have the right to request that your personal data are erased if there is no longer a justification for them to be processed.
- You have the right, in certain circumstances (for example, where accuracy is contested), to request that the processing of your personal data is restricted.
- You have the right to object to the processing of your personal data where it is processed for direct marketing purposes.
- You have the right to data portability, which allows your data to be copied or transferred from one IT environment to another.

How to submit a Data Subject Access Request (DSAR)

5.23 To request access to personal data that HM Treasury holds about you, contact:

HM Treasury Data Protection Unit
G11 Orange
1 Horse Guards Road
London
SW1A 2HQ
dsar@hmtreasury.gov.uk

Complaints

5.24 If you have any concerns about the use of your personal data, please contact us via this mailbox: privacy@hmtreasury.gov.uk.

5.25 If we are unable to address your concerns to your satisfaction, you can make a complaint to the Information Commissioner, the UK's independent regulator for data protection. The Information Commissioner can be contacted at:

Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF
0303 123 1113
casework@ico.org.uk

5.26 Any complaint to the Information Commissioner is without prejudice to your right to seek redress through the courts.

Contact details

5.27 The data controller for any personal data collected as part of this consultation is HM Treasury, the contact details for which are:

HM Treasury
1 Horse Guards Road
London
SW1A 2HQ
London
020 7270 5000
public.enquiries@hmtreasury.gov.uk

5.28 The contact details for HM Treasury's Data Protection Officer (DPO) are:

The Data Protection Officer
Corporate Governance and Risk Assurance Team
Area 2/15
1 Horse Guards Road
London
SW1A 2HQ
London
privacy@hmtreasury.gov.uk

Annex A

List of Questions

Recent improvements to the regulatory and supervisory regimes

1. What do you agree and disagree with in our approach to assessing effectiveness?
2. What particular areas, either in industry or supervision, should be focused on for this section?
3. Are the objectives set out above the correct ones for the MLRs?
4. Do you have any evidence of where the current MLRs have contributed or prevented the achievement of these objectives?

High-impact activity

5. What activity required by the MLRs should be considered high impact?
6. What examples can you share of how those high impact activities have contributed to the overarching objectives for the system?
7. Are there any high impact activities not currently required by the MLRs that should be?
8. What activity required by the MLRs should be considered low impact and why?

National Strategic Priorities

9. Would it improve effectiveness, by helping increase high impact, and reduce low impact, activity if the government published Strategic National Priorities AML/CTF priorities for the AML/CTF system?
10. What benefits would Strategic National Priorities offer above and beyond the existing National Risk Assessment of ML/TF?
11. What are the potential risks or downsides respondents see to publishing national priorities? How might firms and supervisors be required to respond to these priorities?

Extent of the regulated sector

12. What evidence should we consider as we evaluate whether the sectors or subsectors listed above should be considered for inclusion or exclusion from the regulated sector?
13. Are there any sectors or sub-sectors not listed above that should be considered for inclusion or exclusion from the regulated sector?
14. What are the key factors that should be considered when amending the scope of the regulated sector?

Enforcement

15. Are the current powers of enforcement provided by the MLRs sufficient? If not, why?
16. Is the current application of enforcement powers proportionate to the breaches they are used against? If not, why?

17. Is the current application of enforcement powers sufficiently dissuasive? If not, why?
18. Are the relatively low number of criminal prosecutions a challenge to an effective enforcement regime? What would the impact of more prosecutions be? What are the barriers to pursuing criminal prosecutions?

Barriers to the risk-based approach

19. What are the principal barriers to relevant persons in pursuing a risk-based approach?
20. What activity or reform could HMG undertake to better facilitate a risk-based approach? Would National Strategic Priorities (discussed above) support this?
21. Are there any elements of the MLRs that ought to be prescriptive?

Understanding of risk

22. Do relevant persons have an adequate understanding of ML/TF risk to pursue a risk-based approach? If not, why?
23. What are the primary barriers to understanding of ML/TF risk?
24. What are the most effective actions that the government can take to improve understanding of ML/TF risk?

Expectations of supervisors to the risk-based approach

25. How do supervisors allow for businesses to demonstrate their risk-based approach and take account of the discretion allowed by the MLRs in this regard?
26. Do you have examples of supervisory authorities not taking account of the discretion allowed to relevant persons in the MLRs?
27. What more could supervisors do to take a more effective risk-based approach to their supervisory work?
28. Would it improve effectiveness and outcomes for the government and / or supervisors to publish a definition of AML/CTF compliance programme effectiveness? What would the key elements of such a definition include? Specifically, should it include the provision of high value intelligence to law enforcement as an explicit goal?
29. What benefits would a definition of compliance programme effectiveness provide in terms of improved outcomes?

Application of enhanced due diligence, simplified due diligence and reliance

30. Are the requirements for applying enhanced due diligence appropriate and proportionate? If not, why?
31. Are the measures required for enhanced due diligence appropriate and sufficient to counter higher risk of ML/TF? If not, why?
32. Are the requirements for choosing to apply simplified due diligence appropriate and proportionate? If not, why?
33. Are relevant persons able to apply simplified due diligence where appropriate? If not, why? Can you provide examples?
34. Are the requirements for choosing to utilise reliance appropriate and proportionate? If not, why?

35. Are relevant persons able to utilise reliance where appropriate? If not, what are the principal barriers and what sort of activities or arrangements is this preventing? Can you provide examples?
36. Are there any changes to the MLRs which could mitigate derisking behaviours?

How the regulations affect the uptake of new technologies

37. As currently drafted, do you believe that the MLRs in any way inhibit the adoption of new technologies to tackle economic crime? If yes, what regulations do you think need amending and in what way?
38. Do you think the MLRs adequately make provision for the safe and effective use of digital identity technology? If not, what regulations need amending and in what way?
39. More broadly, and potentially beyond the MLRs, what action do you believe the government and industry should each be taking to widen the adoption of new technologies to tackle economic crime?

SARs reporting

40. Do you think the MLRs support efficient engagement by the regulated sector in the SARs regime, and effective reporting to law enforcement authorities? If no, why?
41. What impact would there be from enhancing the role of supervisors to bring the consideration of SARs and assessment of their quality within the supervisor regime?
42. If you have concerns about enhancing this role, what limitations and mitigations should be put in place?
43. What else could be done to improve the quality of SARs submitted by reporters?
44. Should the provision of high value intelligence to law enforcement be made an explicit objective of the regulatory regime and a requirement on firms that they are supervised against? If so, how might this be done in practice?
45. To what extent should supervisors effectively monitor their supervised populations on an on-going basis for meeting the requirements for continued participation in the profession?

Gatekeeping tests

46. Is it effective to have both Regulation 26 and Regulation 58 in place to support supervisors in their gatekeeper function, or would a single test support more effective gatekeeping?
47. Are the current requirements for information an effective basis from which to draw gatekeeper judgment, or should different or additional requirements, for all or some sectors, be considered?
48. Do the current obligations and powers, for supervisors, and the current set of penalties for non-compliance support an effective gatekeeping system? If no, why?

Guidance

49. In your view does the current guidance regime support relevant persons in meeting their obligations under the MLRs? If not, why?

50. What barriers are there to guidance being an effective tool for relevant persons?
51. What alternatives or ideas would you suggest to improve the guidance drafting and approval processes?

Structure of the supervisory regime

52. What are the strengths and weaknesses of the UK supervisory regime, in particular those offered by the structure of statutory and professional body supervisors?
53. Are there any sectors or business areas which are subject to lower standards of supervision for equivalent risk?
54. Which of the models highlighted, including maintaining the status quo, should the UK consider or discount?
55. What in your view would be the arguments for and against the consolidation of supervision into fewer supervisor bodies? What factors should be considered in analysing the optimum number of bodies?

Effectiveness of OPBAS

56. What are the key factors that should be considered in assessing the extent to which OPBAS has met its objective of ensuring consistently high standards of AML supervision by the PBSs?
57. What are the key factors that should be considered in assessing the extent to which OPBAS has met its objective of facilitating collaboration and information and intelligence sharing?

Remit of OPBAS

58. What if any further powers would assist OPBAS in meeting its objectives?
59. Would extending OPBAS's remit to include driving consistency across the boundary between PBSs and statutory supervisors (in addition to between PBSs) be proportionate or beneficial to the supervisory regime?

Supervisory gaps

60. Are you aware of specific types of businesses who may offer regulated services under the MLRs that do not have a designated supervisor?
61. Would the legal sector benefit from a 'default supervisor', in the same way HMRC acts as the default supervisor for the accountancy sector?
62. How should the government best ensure businesses cannot conduct regulated activity without supervision?

HM Treasury contacts

This document can be downloaded from www.gov.uk

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