



HM TREASURY

Review of the Money Laundering Regulations 2007

A Call for Evidence Part B

October 2009



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Terms and Acronyms

Term / Acronym	Definition
Anti-money laundering regime	The Regulations and Guidance, processes and procedures that fall from the Regulations including the supervisory system and industry practice.
Beneficial ownership	Beneficial ownership refers to those individuals who ultimately own or control companies or other corporate vehicles.
Broader regime	The broader context within which the Money Laundering Regulations 2007 are based, including the Proceeds of Crime Act 2002, the Terrorism Act 2000 and international obligations.
CDD	Customer Due Diligence.
CDD Measures	Measures taken to identify and verify the identity of a customer, and identify any beneficial owner under the Regulations.
Equivalence	Under the simplified due diligence and reliance provisions trust can be placed in certain organisations in countries that operate in equivalent jurisdictions – these are jurisdictions that apply anti-money-laundering rules equivalent to those in the European Union under the Third Money Laundering Directive, and which the UK operates.
FATF	The Financial Action Task Force, the body that sets international anti money-laundering / counter terrorist financing standards.
Guidance	Where the capitalised form of 'Guidance' is used we are referring to HM Treasury approved guidance.
HMT	HM Treasury – the UK Government department responsible for the Money Laundering Regulations 2007.
Money Laundering	Processes by which the criminal origins of the proceeds of crime are concealed, and the proceeds of crime can be spent or invested in the legitimate economy.
PEPs	Politically Exposed Persons are individuals who occupy prominent public positions outside the UK (or their close family or associates).
the Regime / regime	The anti-money-laundering regime (refer above).
Regulated Firms	The businesses to which the Regulations apply directly.
the Regulations	Money Laundering Regulations 2007 (all regulations, not simply the changes that took effect in 2007).
Reliance	The Regulations allow regulated businesses to rely on the customer due diligence checks performed by some other businesses, where a range of conditions are met.
Supervisors	Anti-money laundering (AML) supervisors – the organisations charged with ensuring regulated firms comply with the Regulations.

Many terms are defined in more detail in the Regulations themselves. Refer to Annex D.

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Summary

This Call for Evidence seeks information to support a review of HM Treasury's Money Laundering Regulations 2007 (the Regulations). The review will consider the Regulations in relation to the three guiding principles of the UK's anti-money laundering strategy - **effectiveness, proportionality and engagement** - to assess where the Regulations are working well, and identify possible areas for improvement. As part of this it will explore the scope for simplifications and cost savings.

The Call for Evidence is divided into parts A and B, published separately:

- Part A is aimed at professionals familiar with the Regulations and their implementation including policy makers and commentators, Regulated Firms, Supervisors and academics. We ask that corporate responses reflect the views of both technical experts (e.g. money laundering reporting officers - MLROs) and those in client facing roles.
- Part B is aimed at customers of regulated firms including business customers and private individual customers.

This document is Part B of the Call for Evidence, for **customers of regulated firms**. It is a short, less technical set of questions that aims to draw out evidence of your experiences as customers to understand how the Regulations are being implemented on the ground.

The scope of the questions in Part B is relatively narrow, however, you are welcome to answer the more technical questions in Part A.

Details for how to submit your response are given in the next chapter. Both documents are available for download from the HM Treasury website:

http://www.hm-treasury.gov.uk/fin_crime_review.htm

Throughout the document we refer to terms such as "effective", "proportionate" and "risk-based". These are explained in more detail in the next chapter and in Annex A. In brief, when we refer to effectiveness we are concerned with how successful the Regulations, or more specifically the actions taken to implement them, are at making maximum impact on the criminal and terrorist threat associated with money laundering. The term proportionality means an approach that is "risk-based" so that the benefits of the intervention outweigh its burdens, and the action is targeted wherever possible on specific areas of risk and vulnerability. In other words, more time and money is spent where the risks are highest, or the level of effort accurately reflects the level of risk.

Summary of Questions in Part B

A summary of the questions asked in Part B of the Call for Evidence is given below. Questions 1 to 30 are in Part A. We start here with question 31.

31. How satisfactory is your experience in situations where you believe you have come into contact with the Regulations?
32. How easy is it to provide acceptable forms of identification to the businesses you deal with?
33. How often and in what contexts have you been asked to provide repeat information to businesses with which you have an ongoing relationship?
34. If you have had to provide information to establish beneficial ownership, how straightforward was that process?
35. How does your customer experience compare across different sectors, between different sized firms and internationally?
36. How easy do you find it to check what information is needed from you and is it clear to you why the information is needed?
37. Overall, based on what you understand about why the Regulations exist, and the kinds of procedures Regulated Firms have in place, do you feel that the burdens they impose on you are reasonable?

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Introduction

The Review and Call for Evidence

HM Treasury (HMT) is undertaking a post implementation review of the Money Laundering Regulations 2007 (the Regulations) which implemented the EU's Third Money Laundering Directive in the UK and replaced the 2003 legislation with a simplified, more risk-based approach.

The review will consider the Regulations in relation to the three guiding principles of **effectiveness, proportionality and engagement** that underpin the UK's anti-money laundering strategy as set out in *"The financial challenge to crime and terrorism"*¹.

Box 2.A: Three guiding principles

effectiveness – making maximum impact on the criminal and terrorist threat

proportionality – an approach that is "risk-based" so that the benefits of intervention outweigh its burdens; that action is targeted wherever possible on specific areas of risk and vulnerability

engagement – so that all stakeholders in government and the private sector, at home and abroad, work collaboratively in partnership

A detail on the three guiding principles is given in Annex A.

The aim of the review is to understand how effective and proportionate the Regulations and their implementation are as a whole, how effective and proportionate the 2007 changes have been and what further improvements could be made, if any, to achieve the desired outcomes in the most effective, proportionate and engaging way. The outcomes sought are given in Box 2.B.

All aspects of the Regulations will be covered by the review. This means the full scope of the Regulations, not simply the changes made in 2007, as well as aspects, such as the structure of supervision and the role of approved guidance, that are necessary for the implementation of the Regulations.

¹ Jointly published in 2007 by HM Treasury, Home Office, Serious and Organised Crime Agency and Foreign and Commonwealth Office.

Box 2.B: Regulatory outcomes sought by the legislation

- To provide a disincentive to crime by reducing its profitability;
- To provide a disincentive to crime by reducing the pool of money available to finance future criminal activity;
- To aid the detection and prosecution of crime;
- To protect the integrity of the financial system and reputation of UK business; and
- To avoid economic and competitive distortions.

A key part of the review is this Call for Evidence, which is being conducted with support from the Better Regulation Executive (BRE)². It is important that the review is founded on a strong evidence base, drawing on the experiences of a wide range of stakeholders.

The Call for Evidence seeks information on things that work well and areas that could be improved or that result from unintended consequences at all stages of the money laundering 'life cycle' or 'end to end' process. This means from the design of the Regulations themselves to their implementation in practice. As part of this, it will explore the costs and benefits of complying with the Regulations and their enforcement and consider the scope for further simplifications to minimise the policy and administrative burdens, in particular with regard to the supervisory framework. It will also consider whether the penalties regime including the current range of powers is appropriate and proportionate.

This Call for Evidence will be used to collect views and information from businesses, anti-money laundering (AML) Supervisors, policy makers, individuals and other interested parties to capture a full set of views. In parallel a number of focus groups and seminars will be held.

The review is concerned with the anti-money laundering regime, meaning the Regulations and approved Guidance, processes and procedures that fall from the Regulations including the supervisory system and industry practice. The review will not cover related legislation within the broader anti-money laundering regime such as the Proceeds of Crime Act 2002 or the Terrorism Act 2000. If feedback is received in relation to other legislation the team conducting this review will pass comments on to colleagues in the relevant Department or organisation.

Background and Context

The review takes place within the context of the UK's international obligations concerning money laundering and terrorist financing.

The Money Laundering Regulations, together with the Proceeds of Crime Act (POCA) and the Terrorism Act (TACT) form the backbone of the UK's anti-money laundering policy regime³. The Government's strategy in this area can be found in "The Financial Challenge to Crime and Terrorism" (2007). Although distinct in their specific aims and scope, these acts are designed to

² BRE leads the regulatory reform agenda across Government. It works with Government departments to improve the design of new regulations and how they are communicated; works with departments and regulators to simplify and modernise existing regulations; and works with regulators (including local authorities) and departments to change attitudes and approaches to regulation to become more risk-based. BRE works with departments to make sure regulation is transparent, accountable, proportionate, consistent and targeted

³ Although POCA and TACT are outside of the scope of the Review, it is worth considering them to set the Regulations in context. A short introduction to POCA and TACT can be found in Annex B.

complement each other and enhance the effectiveness and proportionality of the UK anti-money laundering regime.

The Money Laundering Regulations 2007 came into effect in December 2007 and implemented the EU's Third Money Laundering Directive in the UK. They replaced the well-established 2003 legislation, building on them to embed a risk-based approach to enable firms to increase the effectiveness and proportionality of their actions by concentrating resources where the risk is greatest and correspondingly minimising costs where risks are low – within a set framework of requirements. In particular a number of targeted new measures were introduced to tackle the risks of money laundering and comply with revised Financial Action Task Force on Money Laundering (FATF) international standards.

The FATF is an inter-governmental G7 body founded in 1989. Its purpose is to develop global standards to combat money laundering and terrorist financing. Its recommendations on money laundering / terrorist financing set the international standard for anti-money laundering measures and combating the financing of terrorism, to be implemented at the national level through legislation and other legally binding measures.

Part of the implementation of the FATF recommendations at EU level has been through a series of Money Laundering Directives. The EU replaced the 2nd Money Laundering Directive of 2001 with a new 3rd Money Laundering Directive (3MLD) in 2006.

The UK also has related asset-freezing legislation: Terrorism (United Nations Measures) Orders 2006 and 2009 and the Al-Qaida and the Taliban Order 2006. These Orders implement the requirements of United Nations Security Council Resolutions in the UK and are designed to support national and international counter-terrorism actions.

Submitting Evidence

The Call for Evidence is divided into parts A and B, published separately:

Part A is aimed at professionals familiar with the Regulations and their implementation including policy makers and commentators, Regulated Firms, Supervisors and academics. We ask that that corporate responses reflect the views of both technical experts (e.g. money laundering reporting officers - MLROs) and those in client facing roles.

Part B is aimed at customers of regulated firms including business customers and private individual customers.

This document is **Part B**. You do not have to respond to both documents, nor to all of the questions. Concentrate on the document that is most applicable to you and the questions in which you have most interest. It would be helpful if you could describe your views and experience and make suggestions for improvements when responding, rather than giving yes / no answers.

We are particularly interested in receiving evidence of actual impact of the Regulations, including the benefits and costs derived from the Regulations. We ask for any information or data that will help identify the benefits created and *additional* costs imposed by the Regulations. More detail on this is given in Annex C.

We welcome any comments including suggested alternative routes of enquiry.

When submitting your response, please fill in the questionnaire provided in the next section to give some information about you. This information will be used to help us assess whether we

have reached a wide enough audience and to better identify and assess particular areas of concern.

Representative groups may wish to give a summary of who they represent, and where relevant, how they consulted in reaching their conclusions.

Please send responses to this Call for Evidence and/or any questions you have to:

By email: mlr.review@hm-treasury.gsi.gov.uk

In writing: Review of the Money Laundering Regulations 2007
Financial Crime Team, HM Treasury
1, Horse Guards Road
London SW1A 2HW

Timeline and Stakeholder Events

This Call for Evidence will close on Friday 11 December 2009.

In addition to the Call for Evidence a number of events will be held in October and November during the Call period to gather evidence across the full range of stakeholder perspectives. These will be advertised through supervisor bodies and other industry associations and on the HM Treasury dedicated website: http://www.hm-treasury.gov.uk/fin_crime_review.htm

All responses to the Call for Evidence received will be published in early 2010 together with a summary of the evidence. A Government response to the evidence received will be published in Spring 2010.

To the extent that significant changes are proposed there will be a further consultative process during 2010.

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Tell us about yourself

We would be very grateful if you could give us some information about you to help us assess whether we have reached a wide enough audience. It will also better help us to identify and assess particular areas of concern. Contact details are mostly optional but will assist us to follow up specific issues if we need to.

This form can be completed using a separate download available on the HMT website: http://www.hm-treasury.gov.uk/fin_crime_review.htm

1. Contact Details

1.1 Contact name

1.3 Organisation (if applicable)

1.2 Address (region as a minimum)

1.4 Email address (optional)

1.5 Telephone number (optional)

2. In what capacity are you responding to this Call for Evidence?

Please tick the appropriate box and follow the instructions next to the box that best describes you. Third sector organisations responding as regulated entities or customers and sole practitioners should complete the regulated firm / non-regulated firm sections as appropriate.

Capacity	✓	Go to
2.1 Representing a Government department / law enforcement agency	<input type="checkbox"/>	-
2.2 Representing a Supervisor	<input type="checkbox"/>	Q 3
2.3 Representing a Regulated Firm	<input type="checkbox"/>	Q 4
2.4 Representing a non-regulated firm (customer firm)	<input type="checkbox"/>	Q 5
2.5 In a personal capacity as a private individual customer	<input type="checkbox"/>	Q 6
2.6 Other (Refer Question 7.)	<input type="checkbox"/>	Q 7

3. Supervisors. Please provide the following details:

3.1 Relevant persons and /or range of activities you supervise

3.2 Estimated number of firms you supervise (per type of relevant person if applicable)

3.3 Do you supervise these firms for other *non* anti-money laundering purposes? If so, what?

4. Regulated Firms. Please provide the following details:

4.1 Your sector and range of activities subject to anti-money laundering regulation

4.2 Your current supervisor for Money Laundering purposes

4.3 Your latest available turnover figure

£

4.4 Number of employees (Full Time Equivalent)

5. Non-Regulated Firms (Customers). Please provide the following details:

5.1 Your sector and range of activities affected by anti-money laundering regulation

5.2 Which of the following types of regulated firms have you had dealings with in the last two years? Please tick (✓) as many as applicable.

Credit institutions (e.g. banks)	<input type="checkbox"/>	Trusts or company service providers	<input type="checkbox"/>
Financial Institution	<input type="checkbox"/>	Estate agents	<input type="checkbox"/>
Auditors, external accountants, tax advisers, insolvency practitioners	<input type="checkbox"/>	High value dealers (e.g. car dealership)	<input type="checkbox"/>
Independent legal professionals	<input type="checkbox"/>	Casinos	<input type="checkbox"/>

5.3 Your latest available turnover figure

£

5.4 Number of employees (Full Time Equivalent)

6. Private Individual Customers. Please provide the following details:

6.1 Which of the following types of regulated firms have you had dealings with in the last two years? Please tick (✓) as many as applicable.

Credit institutions (e.g. banks)	<input type="checkbox"/>	Trusts or company service providers	<input type="checkbox"/>
Financial Institution	<input type="checkbox"/>	Estate agents	<input type="checkbox"/>
Auditors, external accountants, tax advisers, insolvency practitioners	<input type="checkbox"/>	High value dealers (e.g. car dealership)	<input type="checkbox"/>
Independent legal professionals	<input type="checkbox"/>	Casinos	<input type="checkbox"/>

6.2 Examples of the range of activities you engage in that may be affected by anti-money laundering regulations.

7. Other Groups – for example other professional bodies, non-governmental organisations, consumer groups, academics and professionals working with the Regulations but responding in a personal (non corporate) capacity.

7.1 Your sector / areas of interest

7.2 Persons and/or activities that your organisation represents that may be affected by anti-money laundering regulation (if applicable)

7.3 The number of firms / individuals you represent (if applicable)

Please return a completed form with your response to the Call for Evidence. Thank you

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Questions

Introduction

It is important that regulations are a proportionate response to the problem they seek to solve. By that we mean the costs of implementing the regulations are weighed up against the benefits to society and deemed to be a reasonable cost to pay for that benefit. It is also important that no aspect of a regulation or its implementation is so costly that it impacts adversely on different parts of society – businesses compared with citizens, business customers compared with private individual customers, large businesses compared with small businesses and so on.

As explained earlier, the Money Laundering Regulations (the Regulations) came into effect in December 2007 and implemented the EU's Third Money Laundering Directive in the UK. They replaced the well-established 2003 legislation, building on them to embed a risk-based approach to enable firms to increase the effectiveness and proportionality of their actions by concentrating resources where the risk is greatest and correspondingly minimising costs where risks are low. Our review of the Regulations will look at how this approach is faring in practice as well as other aspects of the Regulations and their implementation.

Although the Regulations only put direct obligations on Regulated Firms, customers of these firms will be affected by actions that result from the implementation of the Regulations. Customers in this context could be business customers (including small and medium-sized enterprises (SMEs)) or private individual customers. Annex D provides a summary of the Regulations.

Customers will experience the regulations in a number of ways. For example they may be asked to explain large or unusual transactions, or explain corporate structures and identify the beneficial owners of a trust. Prospective customers might be asked to validate their identity, or to disclose other personal or business information. The effect of these demands on customers can vary from giving rise to irritants and annoyances (form filling or the need for correspondence) to generating considerable costs (use of consultants to give advice).

The questions that follow seek to gather information on the experiences of you, the customer, so that we can gauge whether the implementation of the regulations is as was intended, and whether those experiences are a proportionate response to the threats of money laundering and terrorist financing. The questions concern a number of different areas in which you may come into contact with the Regulations. You may or may not have known you were doing so. Of course many procedures that Regulated Firms follow have more than one purpose. A bank, for example, will want to be sure you are who you say you are for more reasons than simply money laundering, not least to make sure it does not accidentally give your money to someone else.

We encourage specific examples that illustrate your points, including cases that highlight the costs and benefits to customers or examples of best practice. We also welcome suggestions for ways to make the Regulations or the ways they are implemented, more effective and proportionate, and for ways to improve engagement with customers.

Proportionate and Risk Based

In this section the questions we ask are aimed at helping us understand and learn from your experience of the Regulations when you interact with Regulated Firms.

The questions are generally themed around the terms proportionate and risk based. As discussed earlier, these terms relate to the relative costs and benefits of how the regulations are implemented and if the time and cost reflects the relative level of risk. More specifically for you as a customer this means: are the processes and procedures that Regulated Firms use, and that you experience, easy for you to understand, quick to go through, and adapted to reflect the relative level risk of a particular action or customer?

Issues that you may face in relation to proportionality and the risk-based approach will include the degree to which procedures appear to reflect risk, the flexibility of a Regulated Firm's approach and repeat requests for information.

Of course, sometimes there are good reasons for processes and procedures, and reasons why some procedures are very generic at the customer level. Moreover, different firms across different sectors will evaluate risks differently and there are limits to what information may be easily shared or quickly transferred. Nevertheless, there is a balance to be struck. Your evidence will help us understand where the balance currently sits, if there is scope to move it and the extent to which procedures and processes differ. Alongside problems or concerns you have, we ask you to provide us with examples of good practice that others can learn from.

31. How satisfactory is your experience in situations where you believe you have come into contact with the Regulations?

We are interested in your views and evidence about:

- What kinds of activities your experiences relate to; how frequently you undertake these activities; and if you are asked for the same kind of information or have to follow certain procedures each time you deal with the same Regulated Firm.
- The degree to which questions and requirements specific to *your* circumstances are taken into account compared with being asked general questions and requirements that accommodate a range of situations.
- Whether the reasons for a specific versus general approach are clear to you and if you think specific or general questions are best.
- Whether all customers, business relationships and types of transaction are appropriately regulated according to their particular level of risk.
- Whether you have had difficulty obtaining products or services where the Regulations were quoted as the reasons for denying you access.
- Whether the checks on your identity and any other questions you are asked (e.g. the origin of funds) are disproportionate given the size and nature of the transaction.
- Any suggestions you might have to improve the customer experience when dealing with Regulated Firms in the kinds of situations discussed above.

32. How easy is it to provide acceptable forms of identification to the businesses you deal with?

We are interested in your views and evidence about:

- Whether more flexibility about acceptable types of identification would be useful to customers and be considered an acceptable level of risk or whether you would prefer there to be clear and limited forms of identifications.
- Any suggestions you might have to improve customers' experience of the identification process.

33. How often and in what contexts have you been asked to provide repeat information to businesses with which you have an ongoing relationship?

We are interested in your views and evidence about:

- Whether you have been asked to provide repeat information for transactions of similar risk-levels when dealing with the same Regulated Firm at different points in time.
- Whether you have been asked to provide repeat information for transactions of similar risk-levels when dealing with a different firm, e.g. open new bank account at different bank.
- Whether you have been asked to provide repeat information when dealing with multiple regulated firms during a multi-staged but single overall transaction, e.g. house buying.

34. If you have had to provide information to establish beneficial ownership, how straightforward was that process?

We are interested in your views and evidence about:

- Whether you have needed to use external professional advice to provide the necessary information.
- Information about the costs you have incurred in order to provide information to establish beneficial ownership.
- What proportion of transactions you have undertaken since the implementation of the Regulations have necessitated the provision of information to establish beneficial ownership.

35. How does your customer experience compare across different sectors, between different sized firms and internationally?

We are interested in your views and evidence about:

- Any dealings you have had with Regulated Firms in different sectors and the degree to which the information requirements have been similar and consistent.
- Whether the scale of the Regulated Firm has any bearing on your customer experience in terms of money laundering requirements.

Whether you have identified best practices in certain sectors or firms (either in the UK or abroad) that you believe could be applied elsewhere in the regulated sector.

Engagement and Effectiveness

The UK faces serious threats from organised crime and terrorism. To be effective, the Regulations must impact on these threats. They do this by setting up rules and frameworks for Regulated Firms to follow, which in turn are experienced by customers like yourself. The information this Call for Evidence seeks to collect will help us understand how effective or otherwise the Regulations and their implementation are at impacting on these threats.

For the Regulations to be most effective, people affected by them need to understand them in order to adopt and accept them. To that end it is important the Regulated Firms, Government and others engage with Customers to make sure the context for the Regulations is understood, and to listen to Customer concerns and adapt the Regulations and/or their implementation where possible. We therefore also want to know how much engagement around the Regulations you have experienced.

36. How easy do you find it to check what information is needed from you and is it clear to you why the information is needed?

We are interested in your views and evidence about:

- What efforts Regulated Firms make towards engaging with and educating customers on the rationale for and benefits of checks.
- If the reasons for requests of information / identification are clearly explained to you as a customer and how easy it is for you to access information that explains exactly is required.
- How much you as a customer or consumer associations proactively engage with Supervisors and Regulated Firms to understand the rationale for procedures.
- Whether customers are formally able to offer feedback to Regulated Firms on the customer experience; and whether you have seen evidence of firms adjusting their processes in order to reduce burdens on or irritants for customers.

37. Overall, based on what you understand about why the Regulations exist, and the kinds of procedures Regulated Firms have in place, do you feel that the burdens they impose on you are reasonable?

Please tick the statement that best describes your response. There is space below to offer more general thoughts on the Regulations and their implementation.

No.	Statement	Tick (✓)
1.	I understand the reasons why a Regulated Firm places these sorts of demands on me but I believe the burden is proportionate .	
2.	I understand the reasons why a Regulated Firm places these sorts of demands on me but I believe the burden is not proportionate.	
3.	I do not understand the reasons why a Regulated Firm places these sorts of demands on me but neither do I find them burdensome.	
4.	I do not understand the reasons why a Regulated Firm places these sorts of demands on me and I find their demands burdensome.	

Other comments

The questions in this section focus on your experience as a customer of the Regulations. Any additional comments on any other issues relating to customer experiences of the Regulations not covered by our questions, as well as suggestions for alternative routes of enquiry, are welcome.

You may also wish to answer some or all of the more technical questions in Part A which you can locate on the HMT website http://www.hm-treasury.gov.uk/fin_crime_review.htm but please do not feel obliged to do so.

4

References

Legislation

- The Money Laundering Regulations 2007 (SI 2007/2157)
- The Money Laundering (Amendment) Regulations 2007 (SI 2007/3299)
- The Third Money Laundering Directive (the Third Directive); Directive 2005/60/EC of the European Parliament and the Council on the prevention of the use of the financial system for the purposes of money laundering and terrorist financing
- The Proceeds of Crime Act 2002
- The Terrorism Act 2000
- The Terrorism (United Nations Measures) Order 2006 (SI 2006/2657)
- The Al-Qaida and Taliban (United Nations Measures) Order 2006 (SI 2006/2952)
- The Regulatory Enforcement and Sanctions Act 2008

Other documents

- “Anti-Money Laundering Strategy”, HM Treasury, the Home Office and the Foreign and Commonwealth Office (October 2004)
- “The financial challenge to crime and terrorism”, HM Treasury, the Home Office, the Serious Organised Crime Agency, and the Foreign and Commonwealth Office (February 2007)
- “FATF 40 Recommendations”, FATF (October 2004)
- “FATF 9 Special Recommendations on Terrorist Financing”, FATF (October 2004)

A Effectiveness, proportionality and engagement

The Government's objectives

As stated in the "Financial challenge to crime and terrorism" (2007), the Government's overriding goal in its fight against money laundering and terrorist finance is to protect its citizens and reduce the harm caused by crime and terrorism. Whilst finance is the lifeblood of criminal and terrorist networks, it is also one of their greatest vulnerabilities. The Government's objectives are to use financial measures to:

- **deter** crime and terrorism in the first place – by increasing the risk and lowering the reward faced by perpetrators;
- **detect** the criminal or terrorist abuse of the financial system; and
- **disrupt** criminal and terrorist activity – to save lives and hold the guilty to account.

Three guiding principles

In order to deliver these objectives successfully, action in this area must be underpinned by three principles that were first set out in the "Anti-Money Laundering Strategy" (2004) and again in "Financial challenge to crime and terrorism" (2007):

- **effectiveness** – making maximum impact on the criminal and terrorist threat;
- **proportionality** – so that the benefits of intervention are justified and that they outweigh the costs; and
- **engagement** – so that all stakeholders in government and the private sector, at home and abroad, work collaboratively in partnership.

Effectiveness

Money laundering and terrorist finance measures should be implemented in a way that makes maximum impact on the underlying threat. This basic principle has important implications for how money laundering and terrorist finance measures are applied in practice. It means that:

- our understanding of the underlying threat should be increased continually and should direct action to mitigate it;
- institutional barriers cannot be allowed to stand in the way of an effective response to the threat; and
- systems should be designed to maximise their practical impact – and then assessed to ensure that they do.

Proportionality

The fight against crime and terrorism imposes costs on Government, business and taxpayers. It is essential, therefore, that the benefits of this effort should outweigh its burden; that action is

targeted wherever possible on specific areas of risk and vulnerability; and the right balance is struck between the need to safeguard the security of the public and their privacy and liberty.

A proportionate challenge to crime and terrorism is one that is unremittingly “risk-based”. Under this principle, all parties – law enforcement, Government departments, regulators and industry – focus their resources on the areas where the likelihood and impact of abuse is greatest.

Criminal and terrorist finance threats change constantly, and vary greatly across customers, jurisdictions, products, delivery channels, as well as over time. This means that a response to crime and terrorism needs to be as supple as the criminals and terrorists themselves. A perspective “tick-box” approach would miss its target and fail to deliver benefits that outweighed the costs of intervention.

Proportionality therefore demands that:

- industry and Government understand where risks of financial abuse are particularly high and have the flexibility to adapt their approach to their particular circumstances;
- the best possible balance is struck between the need to protect citizens’ privacy and fundamental rights on the one hand and to ensure their ongoing security on the other; and
- where administrative burdens fall to the public and to businesses in the public interest, these should be as low as possible.

Engagement

The Government’s 2004 Anti-Money Laundering Strategy document set out a commitment to collaborate closely with stakeholders, emphasising the need for a “closer partnership between all stakeholders ... as part of the process of continually improving the system for the benefit of all”.

In the UK, this principle of engagement means that:

- the Government must listen carefully to the views of those affected by the measures it introduces;
- feedback and information sharing between Government and the regulated sector should be increased;
- stakeholders should have clear roles, but must also work coherently together across departments and sectors; and
- engagement with international partners needs to be robust, advancing operational and policy goals alike.

This text has been adapted from the “The financial challenge to crime and terrorism” available at www.hm-treasury.gov.uk/d/financialchallenge_crime_280207.pdf

B

Related legislation

The Money Laundering Regulations 2007, together with the Proceeds of Crime Act 2002 (POCA) and the Terrorism Act 2000 (TACT) form the backbone of the UK's anti-money laundering policy regime. The Government's strategy in this area can be found in "The Financial Challenge to Crime and Terrorism" (2007).

This Call for Evidence and the associated review are focussed on the Money Laundering Regulations 2007 which is distinct in its specific aims and scope from POCA and TACT. However, all three acts are designed to complement each other and enhance the effectiveness and proportionality of the UK anti-money laundering regime. The text below gives further background on POCA and TACT.

POCA and TACT contain the principal legal provisions relating to money laundering and terrorist financing respectively. Importantly they, rather than the Money Laundering Regulations, provide the legal basis for Suspicious Activity Reports (SARs) and the Consent arrangements, in relation to criminal property and terrorist finance.

POCA defines the principal money laundering offences relating to "concealing, disguising, converting, transferring or removing criminal property", "entering or becoming concerned in an arrangement" involving criminal property, and "acquiring, using or possessing" criminal property. There are also POCA offences relating to failures to make disclosures under the SARs regime. The Consent regime provides legal safeguards for persons who make disclosures to and seek consent from SOCA to do what would otherwise be an offence under POCA.

TACT similarly creates a range of offences addressing, for example, fund-raising for terrorist purposes, the possession and use of terrorist property, being involved in funding arrangements, and money laundering involving terrorist property. There are comparable reporting offences (eg for failure to make a disclosure) and consent provisions to those under POCA. There are other offences under POCA and TACT, relating for example to "tipping off", and there are other terrorist financing offences in other legislation besides TACT.



Calculating administrative burdens and assessing benefits

Administrative Burdens Calculation

When estimating the additional cost that is imposed on Regulated Firms as a result of the Regulations, we are particularly interested in those administrative burdens that arise from a requirement of the regulation.

The main source of administrative burdens arises from the obligation in the Regulations to provide and typically submit information to the public sector and/or regulators. These obligations to provide information and data are termed information obligations.

An information obligation is a requirement on a regulated person or business to provide information to a public authority/regulator/supervisor, as well as a duty to facilitate the collection or preparation of information by others, e.g. by permitting and cooperating with an audit, visit or inspection. This includes regular requirements to read guidance and updated rules. It can also be information that businesses have to have available and forward/display upon request, such as risk assessments.

The Government methodology to calculate administrative burdens is to identify and cost the activities required to comply with an information obligation. It is important, however, to exclude those activities that businesses would undertake if they were not obliged to do so by the Regulations, so called 'business as usual'.

For example, completion of a form might require the following activities: recording information, retrieving information, checking the information and entering the information into a form. However, it is possible that Regulated Firms would record this information even if they were not asked to fill in a form. Recording the information (and the costs associated with this step) should therefore not be included when estimating the administrative burden of filling in a form.

Once the relevant activities necessary to comply with the information obligation have been identified and those activities that would be undertaken even if the Regulations were to be removed are excluded, the annual administrative burden from an information requirement can be calculated. Details of the calculation method are given in the box below.

Box C.A: Calculating administrative burdens

Cost of a relevant activity = tariff x time

where:

- **Tariff** - wage costs (plus overhead and non-wage costs) for activities done internally or hourly cost for external service providers
- **Time** – the amount of time required to complete the activity

The **administrative burden of an information requirement** is calculated as the sum of the costs of all relevant activities.

Annual administrative burden = frequency x administrative burden of the information requirement

Where:

- **Frequency** - number of times that a business delivers a data requirement per year.

It is important that any cost and/or benefit data you provide separates, in so far as possible, administrative costs that Regulated Firms would undergo in the absence of the Regulations (costs on a “business as usual” basis) from the additional costs / benefits imposed on firms by the Regulations. A useful tip to separate administrative burdens from other administrative costs that Regulated Firms would carry out in the absence of the Regulations is to compare and contrast what Regulated Firms used to do before and after the implementation of the Regulations.

We would kindly ask firms to follow this method when submitting evidence of the costs they incur as a result of the Regulations.

Benefits of the Money Laundering Regulations

The outcomes sought by the Money Laundering Regulations are as follows:

- To provide a disincentive to crime by reducing its profitability;
- To provide a disincentive to crime by reducing the pool of money available to finance future criminal activity;
- To aid the detection and prosecution of crime;
- To protect the integrity of the financial system and reputation of UK business; and
- To avoid economic and competitive distortions.

We appreciate the nature of some of these outcomes can be difficult to assess at an individual or even business level. Nevertheless, we welcome views on the degree to which the Regulations are helping to achieve these outcomes, as well as the benefits you or your firm experience. These could be directly, such as preventing you / your firm from being a victim of financial crime, or indirectly, such as improving the UK’s attractiveness as place to do business.

D

Summary of the Money Laundering Regulations 2007

The Money Laundering Regulations 2007 replace the Money Laundering Regulations 2003 with updated provisions, which implement in part the Third Money Laundering Directive of the European Parliament and of the Council on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing.

The Regulations provide for various steps to be taken by the financial services sector and other persons to detect and prevent money laundering and terrorist financing. Obligations are imposed on “relevant persons” (defined in regulation 3 and subject to the exclusions in regulation 4), who are credit and financial institutions, auditors, accountants, tax advisers and insolvency practitioners, independent legal professionals, trust or company service providers, estate agents, high value dealers and casinos.

Relevant persons are required, when undertaking certain activities in the course of business, to apply customer due diligence measures where they establish a business relationship, carry out an occasional transaction, suspect money laundering or terrorist finance or doubt the accuracy of customer identification information (regulation 7). Customer due diligence measures (defined in regulation 5) consist of identifying and verifying the identity of the customer and any beneficial owner (defined in regulation 6) of the customer, and obtaining information on the purpose and intended nature of the business relationship. Relevant persons also have to undertake ongoing monitoring of their business relationships (regulation 8).

Regulation 9 sets out the general rule on the timing of the verification of the customer’s identity and certain exceptions. Regulation 10 sets out when casinos must identify and verify their customers. Failure to apply such measures means that a person cannot establish or continue a business relationship with the customer concerned or undertake an occasional transaction (regulation 11). Regulation 12 provides an exception from the requirement to identify the beneficial owner for debt issues held in trust.

Relevant persons may apply simplified customer due diligence measures for the products, customers or transactions listed in regulation 13 and must apply enhanced measures in the four situations set out in regulation 14. Regulation 15 sets out the obligations on relevant persons in respect of their overseas branches and subsidiaries. Regulation 16 imposes obligations in respect of shell banks and anonymous accounts. Regulation 17 lists the persons on whom relevant persons can rely to perform customer due diligence measures. Regulation 18 provides for the Treasury to make directions where the Financial Action Task Force applies counter-measures to a non-EEA state.

Part 3 imposes obligations in respect of record-keeping (regulation 19), policies and procedures (regulation 20) and staff training (regulation 21).

Part 4 deals with supervision and registration. Regulation 23 allocates supervisory authorities for different relevant persons. Regulation 24 sets out the duties of supervisors. Money service businesses, high value dealers and trust or company service providers which are not otherwise registered are subject to a system of mandatory registration set out in regulations 25 to 30. Money service businesses and trust or company service providers must not be registered unless the business, its owners, its nominated officer and senior managers are fit and proper persons:

regulation 28. Other sectors will only be required to register if the supervisor decides to maintain a register (regulations 33 and 34). Regulation 35 enables supervisors to impose charges on persons they supervise.

Part 5 provides enforcement powers for certain supervisors, including powers to obtain information and enter and inspect premises (regulations 37 to 41). Civil penalties may be imposed by these supervisors under regulation 42 on persons who fail to comply with the requirements of Parts 2, 3 and 4. Provision is made for reviews of and appeals against such penalties (regulations 43 and 44). Relevant persons who fail to comply with the requirements of Parts 2, 3 and 4 will also be guilty of a criminal offence: regulations 45 to 47. Persons convicted of a criminal offence may not also be liable to a civil penalty.

Part 6 contains provision for the recovery of penalties and charges through the court (regulation 48), imposes an obligation on certain public authorities to report suspicions of money laundering or terrorist financing (regulation 49) and makes transitional provision (regulation 50). Regulation 51 makes minor and consequential amendments to primary and secondary legislation.

This text has been adapted from the Explanatory Note appended to the Money Laundering Regulations 2007.

Key information about this call for evidence

- Target audience:** Anyone with an interest in the anti-money-laundering regime, either through professional involvement or experience of being regulated or affected by it.
- Part A** is aimed at professionals familiar with the Regulations and their implementation including policy makers and commentators, Regulated Firms, Supervisors and academics.
- Part B** is aimed at customers of Regulated Firms - business customers including SMEs and private individual customers.
- Duration:** From Friday 9 October 2009 to Friday 11 December 2009
- Enquiries to:** Keith Davis, on +44 (0)20 7270 5358 or mlr.review@hm-treasury.gsi.gov.uk
- How to respond:** We are keen to gather views and any supporting evidence to assist the Money Laundering Regulations 2007. You do not have to answer all the questions. Concentrate on those in which you have the most interest. It would be helpful if you could describe your views, suggestions and experience when responding, rather than giving yes/no answers. Responses and any suggestions for alternative routes of enquiry should be sent to:
- Send emails to: mlr.review@hm-treasury.gsi.gov.uk
- Or in writing to: Review of the Money Laundering Regulations
Financial Crime Team, HM Treasury
1, Horse Guards Road
London, SW1A 2HQ
- Individual contributions will not be acknowledged unless specifically requested.
- The legal position regarding confidentiality of information provided is set out at the front of this document.
- Your details:** When submitting your response, please fill in the questionnaire in Chapter 3 to provide some information about you. The questionnaire will help us assess whether we have reached a wide enough audience and to identify better and assess particular areas of concern.
- Representative groups may, in addition, wish to give a summary of who they represent, and where relevant, how they consulted in reaching their conclusions.
- Unless you state otherwise (and an automatic disclaimer generated by your IT system will not be taken as such), we will assume you are happy for us to publish your responses and share it with other Government officials.
- Additional ways to feed in your views:** Events will be arranged at regional locations to discuss these issues. If you are interested in participating, please contact the Financial Crime Team via the email address or phone number above.
- Next steps:** The Government intends to publish a summary of the responses received in this Call for Evidence early in 2010. Any areas for improvement in the Regulations will be subject to further dialogue and/or Consultation with stakeholders.

Finally, thank you for taking the time to read this document and respond.

HM Treasury contacts

This document can be found in full on our website at:
hm-treasury.gov.uk

If you require this information in another language, format or have general enquiries about HM Treasury and its work, contact:

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