



Law Society
of Scotland

Consultation Response

HM Treasury consultation: Amendments to the
Money Laundering, Terrorist Financing and Transfer
of Funds (Information on the Payer) Regulations
2017 Statutory Instrument 2022

October 2021



Introduction

The Law Society of Scotland is the professional body for over 12,000 Scottish solicitors. With our overarching objective of leading legal excellence, we strive to excel and to be a world-class professional body, understanding and serving the needs of our members and the public. We set and uphold standards to ensure the provision of excellent legal services and ensure the public can have confidence in Scotland's solicitor profession.

We have a statutory duty to work in the public interest, a duty which we are strongly committed to achieving through our work to promote a strong, varied and effective solicitor profession working in the interests of the public and protecting and promoting the rule of law. We seek to influence the creation of a fairer and more just society through our active engagement with the Scottish and United Kingdom Governments, Parliaments, wider stakeholders and our membership.

This response is submitted on behalf of the Regulatory Committee of the Law Society of Scotland. The Regulatory Committee (the committee) is a committee of the Council of the Law Society but exercises the Law Society's regulatory functions independently of the Council, as set out in Section 3F of the Solicitors (Scotland) Act 1980. The committee's core purpose is to ensure that the regulatory functions are exercised independently, properly, and with a view to achieving public confidence and protection.

The committee welcomes the opportunity to consider and respond to the HM Treasury consultation: *Amendments to the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 Statutory Instrument 2022*¹. In preparing this response the committee has been kindly assisted by members of the Society's Anti Money Laundering sub-committee, Banking, Insolvency and Company Law sub-committee, the Society's Crypto Assets Working Group, and colleagues within the Society's AML compliance team.

The committee's response to the consultation and related questions is set out below. In considering and responding to these, we have focused on those we are able, and it is appropriate for us, to answer.

¹ See:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1004603/210720_SI_Consultation_Document_final.pdf

Specific Comments

SARs

13. In your view, is access by AML/CTF supervisors to the content of the SARs of their supervised population necessary for the performance of their supervisory functions? If so, which functions and why?

Response: We believe it is important for AML/CTF supervisors to access the content of the SARs submitted by their supervised populations. Further clarity regarding our legal permissions to request this information directly from our supervised populations would be helpful in this regard and must be subject to strong safeguards regarding the transmission, storage, use and deletion of such data. HMT may wish to consider consequential amendment of the DPA 2018 and other relevant legislation.

A clear legal permission to access contents of SARs may be useful to identify risks, threats and issues affecting the supervised population, and as such would be of assistance in fulfilling our duty to:

- produce a Regulation 17 sectoral risk assessment,
- deploy a risk-based approach to supervision under Regulation 46 2a & b, 4b,
- produce and provide requisite information/guidance under Regulation 47 (1) & (2),
- our collection of information under Regulation 51 (1) and
- improve our awareness of and ability to respond to specific threats.

In line with the joint Legal Affinity Steering Group response, and our individual response to the Call for Evidence regarding the overarching regulatory regime, we believe that any legal compulsion on supervisors to review SAR submissions should be postponed pending the completion of the SAR IT system transformation and accompanying and overarching SAR regime changes.

14. In your view, is Regulation 66 sufficient to allow supervisors to access the contents of SARs to the extent they find useful for the performance of their functions?

Response: In our view, it is not. Given the sensitivity, importance, issues of confidentiality, and potentially time critical nature of a SAR it is appropriate for the relevant legislation to specifically permit disclosure of a SAR and to regulate its subsequent access, use, retention, control, storage, and deletion. The alternative, as currently drafted, appears to try to place SAR under the umbrella of 'specified information'. Without unequivocal comfort it is suggested that there may be an unwillingness to ask for a SAR on the part of the supervisor, and an unwillingness to answer on the part of the supervised.

15. In your view, would allowing AML/CTF supervisors access to the content of SARs help support their supervisory functions? If so, which functions and why?

Response: A clear legal permission to access contents of SARs may be useful to identify risks, threats and issues affecting the supervised population, and as such would be of assistance in fulfilling our duty to:

- produce a Regulation 17 sectoral risk assessment,
- deploy a risk-based approach to supervision under Regulation 46 2a & b, 4b,
- produce and provide requisite information/guidance under Regulation 47 (1) & (2),
- our collection of information under Regulation 51 (1) and
- improve our awareness of and ability to respond to specific threats.

16. Do you agree with the proposed approach of introducing an explicit legal requirement in the MLRs to allow supervisors to access and view the content of the SARs submitted by their supervised population where it supports the performance of their supervisory functions under the MLRs?

Response: Yes, we agree that this proposed approach would be very useful.

17. In your view, what impacts would the proposed change present for both supervisors and their supervised populations, in terms of costs and wider impacts? Please provide evidence where possible.

Response: There may be some cost associated with providing the means to/ensuring the secure transmission, storage, and deletion of such sensitive data. However, it would be envisaged that such secure transmission and storage platforms are already being used by supervisors for the collection of other sensitive information from their supervised populations. Additionally, policies and procedures would need to be put in place within supervisory bodies (and self-regulatory organisations) to ensure access and use of such information is strictly controlled.

18. Are there any concerns you have regarding AML/CTF supervisors accessing and viewing the content of their supervised populations SARs? If so, what mitigations can be put in place to address these? Please

Response: As we have highlighted in response to question 17 (above) policies and procedures would need put in place within supervisory bodies (and self-regulatory organisations) to ensure access and use of such information is strictly controlled, along with the creation of transmission, storage and retention policies controlling this information.

If AML supervisors have access to SARs, then an expectation may develop that such supervisors should play an increased roll in law enforcement, or at least more closely link the supervisor and law enforcement. A clear distinction must be maintained between the upholding of professional standards and breaches of the criminal law.

Reporting of Discrepancies

41. Do you agree that the obligation to report discrepancies in beneficial ownership should be ongoing, so that there is a duty to report any discrepancy of which the relevant person becomes aware, or should reasonably have become aware of? Please provide views and reasons for your answer.

Response: Yes, we agree. The obligation to report discrepancies on an ongoing basis would allow for more accurate, reliable, and up to date information being available regarding beneficial ownership of entities on the register, making it harder for criminals to hide or obscure ownership of assets, in turn aiding the UK's fight against economic crime.

42. Do you consider there to be any unintended consequences of making this change? Please explain your reasons.

Response: It will be important to ensure Companies House and related agencies have the resources allocated to cope with an increased amount of information being submitted, in order to cleanse, analyse and utilise the data effectively. It will be equally as important to set clear parameters, guidance, and examples regarding what should and shouldn't be reported, along with the timeframes in which reporting should be undertaken. Furthermore, there may be examples in industry where the beneficial ownership of entities fluctuates on a continual basis due to business requirements or the underlying purpose of that entity (for example, in funds management). This would make it extremely difficult for the register to be kept up to date on a real time basis.

43. Do you have any other suggestions for how such discrepancies can otherwise be identified and resolved?

Response: Companies House themselves could be empowered and resourced to proactively review and seek updates to beneficial ownership, from reporters. Companies House could utilise a risk-based approach and suitable technology to focus efficiently on the areas of greatest risk.

44. In your view, given this change would affect all relevant persons under the MLRs, what impact would this change have, both in terms of costs and benefits to businesses and wider impacts?

Response: There would be a cost to relevant persons in terms of time and resource to develop procedures to ensure such discrepancies were reported, and the actual time spent updating the register on an ongoing basis. This cost would likely be passed on to consumers.

Disclosure and Sharing

45. Would it be appropriate to add BEIS to the list of relevant authorities for the purposes of Regulation 52?

Response: Yes, given BEIS responsibility for the Companies House Register it would be appropriate to add BEIS to the list of relevant authorities for the purposes of Regulation 52.

46. Are there any other authorities which would benefit from the information sharing gateway provided by Regulation? Please explain your reasons.

Response: We do not believe so.

47. In your view, should the Regulation 52 gateway be expanded to allow for reciprocal protected sharing from other relevant authorities to supervisors, where it supports their functions under the MLRs?

Response: Yes. This may greatly enhance reciprocal sharing of targeted intelligence, and in turn enhance supervisory capabilities, particularly in terms of implementing a risk-based approach to supervision.

48. In your view, what (if any) impact would the expansion of Regulation 52 have on relevant persons, both in terms of costs and wider impacts? Please provide evidence where possible.

Response: It is not envisaged that there would be material impacts on relevant persons, other than a potential increase in supervisory enquiry/scrutiny.

49. In your view, what (if any) impact would the expansion of Regulation 52 have on supervisors, both in terms of the costs and wider impacts of widening their supervisory powers? Please provide evidence where possible.

Response: There is a potential impact on supervisors in terms of cost, time, and resource, in order to react/follow-up on/investigate potential information shared by LEAs and others through the Regulation 52 gateway. There may also be an impact in terms of time, resource, costs involved in acting upon Regulation 52 enquiries from other authorities

However, by improving the flow of intelligence and information, this development could enhance the efficiency of risk-based supervision delivered by supervisors by enabling a further improved timely risk-based focus of supervisory resource on the areas of greatest risk.

50. Is the sharing power under regulation 52A (6) currently used and for what purpose? Is it felt to be helpful or necessary for the purpose of fulfilling functions under the MLRs or otherwise and why?

Response: The sharing power relates to and operates in conjunction with both FSMA 2000, and any Regulations HM Treasury wish to make under that Act (s349). It is of comfort to note the definition of public functions contained in that Act, which will include those PBSs established by legislation. However, it is suggested that the authority and means by which information may be shared for the purposes of AML should be contained in the AML Regulations themselves. This would unify all relevant provisions in a single set of Regulations.

Transfers of cryptoassets

56. Do you agree with the overarching approach of tailoring the provisions of the FTR to the cryptoasset sector?

Response: Yes, we agree.

58. Do you agree that a grace period to allow for the implementation of technological solutions is necessary and, if so, how long should it be for?

Response: This would seem a sensible approach. We suggest that it may be appropriate for consideration to be given to a phased approach, i.e., new transactions and customers could receive the benefit of a short grace period, whereas existing customers with wallets given a longer period.

Use of provisions from the FTR

59. Do you agree that the above requirements, which replicate the relevant provisions of the FTR, are appropriate for the cryptoasset sector?

Response: Yes, we agree.

Provisions specific to cryptoasset firms

60. Do you agree that GBP 1,000 is the appropriate amount and denomination of the de minimis threshold?

Response: Yes, we agree.

61. Do you agree that transfers from the same originator to the same beneficiary that appear to be linked, including where comprised of both cryptoasset and fiat currency transfers, made from the same cryptoasset service provider should be included in the GBP 1,000 threshold?

Response: Yes, we agree.

62. Do you agree that where a beneficiary's VASP receives a transfer from an unhosted wallet, it should obtain the required originator information, which it need not verify, from its own customer?

Response: Yes, we agree.

63. Are there any other requirements, or areas where the requirements should differ from those in the FTR, that you believe would be helpful to the implementation of the travel rule?

Response: We have nothing to suggest.

For further information, please contact

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