Law Society of Scotland

Consultation Response

Anti-Money Laundering/Counter- Terrorist Financing (AML/CTF) Supervision Reform: Duties, Powers, and Accountability

December 2025

Introduction

The Law Society of Scotland is the professional body regulator for over 13,000 Scottish solicitors.

We work to deliver on the regulatory objectives set for us by legislation agreed by the Scottish Parliament. These include:

- supporting the constitutional principles of the rule of law and the interests of justice
- protecting and promoting the interests of consumers and the wider public interest
- promoting access to justice and an independent, strong and diverse legal profession

This response is submitted on behalf of the Regulatory Committee. The committee's core purpose is to ensure that Law Society's regulatory functions are exercised independently, properly, and with a view to achieving public confidence and protection.

As the AML supervisor for Scottish solicitors, we supervise around 800 firms in Scotland. We welcome the opportunity to respond to the HM Treasury consultation: *Anti-Money Laundering/Counter- Terrorist Financing (AML/CTF) Supervision Reform: Duties, Powers, and Accountability*[1].

We previously responded to the related HM Treasury consultation: *Reform of the Anti-Money Laundering and Counter Terrorism Financing Supervisory Regime*[2] in 2023, to which we refer below.

In preparing this response the committee has been kindly assisted by the Society's Anti Money Laundering Sub-committee and colleagues within the Society's AML compliance team.

General Comment

We strongly oppose the UK Government's decision to designate the Financial Conduct Authority (FCA) as the sole AML regulator for all professional services firms, including law firms.

This approach is costly, likely counterproductive, and neither justified nor proportionate. Scotland already has an effective, proportionate and risk-based AML supervisory framework that reflects the unique structure of our legal system. Replacing it with a centralised model will add expense and complexity for law firms without delivering any clear benefits. Ultimately, legal firms in Scotland will have two regulators and it is consumers of legal services who will pay the price for this proposed inefficient regulation.

As highlighted in our previous consultation response, in 2023, this proposal represents a backward step in tackling economic crime. It imposes a one-size-fits-all approach that increases bureaucracy, reduces efficiency, and undermines the tailored oversight that

[1] HM Treasury Consultation Anti-Money Laundering and Counter-Terrorist Financing Supervision Reform: Duties, Powers, and Accountability Consultation
[2] Reform of the Anti-Money Laundering and Counter Terrorism Financing Supervisory Regime – Law Society of Scotland Response Sept 2023

currently safeguards consumers and upholds high professional standards within Scotland's legal sector.

The Law Society of Scotland has a proven track record of regulating Scottish solicitor firms and ensuring compliance with anti-money laundering requirements. Our deep understanding of the sector's risks, challenges, and demographics is unmatched. We also have expert knowledge of Scots law and the Scottish legal system, with excellent links to the Scottish criminal justice sector. The UK Government has acknowledged our commitment to combating economic crime and raising standards.

We do not believe the FCA model can replicate the specialist knowledge required to maintain a proactive AML regime in Scotland—particularly if resources and expertise remain concentrated in London.

In relation to the current consultation: '*Anti-Money Laundering/Counter- Terrorist Financing (AML/CTF) Supervision Reform: Duties, Powers, and Accountability'*, we set out our responses to the consultation questions below.

Consultation Questions – Observations

In relation to the current consultation, Anti-Money Laundering/Counter- Terrorist Financing (AML/CTF) Supervision Reform: Duties, Powers, and Accountability, we set out our responses to the consultation questions below. As a general observation, we would note that there is an inherent conflict between the stated objective of the UK Government not to increase or create new burdens on regulated firms and a number of the proposals.

The proposals will lead to regulated firms dealing with multiple supervisors and increased costs. It is important to consider that many law firms in Scotland are sole traders or small partnerships, with many firms servicing remote communities. Any increase in costs and the supervisory burden will have negative repercussions for accessing legal advice in local communities. We request clarity about the additional costs and burdens for Scottish solicitors and for those burdens and costs to be detailed and accounted for in a full impact assessment.

A recurring theme emerges from the proposals that the separation of functions, coupled with uncertainty regarding the interaction between the FCA's proposed powers and Scottish legislation as well as our own existing powers, weakens the level of client protection afforded by our current holistic regulatory approach.

Consultation Questions

1. **Do you agree with our proposal to amend the MLRs to require the FCA to maintain registers of the professional services firms (legal, accountancy and TCSPs) it supervises? Are there any practical challenges or unintended consequences we should consider?**

   Register of Supervised Firms
   We recognise that, as the proposed new AML/CTF supervisor for the legal sector, the Financial Conduct Authority ("FCA") must establish and maintain a register of supervised firms who conduct work within the scope of the money laundering regulations.

   We oppose any register that discloses additional information, such as the specific services that bring a firm within scope. Firms in Scotland do not always advertise the full range of services they can provide, and many deliberately restrict certain services to existing clients. A public register listing all services would undermine this practice, risk firms withdrawing services, and directly conflict with the UK Government's stated objective of promoting growth.

   Registration Significance
   The creation and operation of such a register confers significant power on the FCA in relation to the Scottish solicitor profession. Failure to appear on the register would prevent a firm from delivering in-scope services, such as conveyancing, a core element of many solicitor practices.

   Individual vs Firm Registration
   The proposals restrict registration and deregistration to the firm level, omitting individual legal professionals. We are concerned that the absence of individual accountability undermines AML supervision, exposes firms to regulatory and reputational risk, and compromises client protection. We therefore call for a framework that addresses both firm level and individual accountability to ensure proportionate and effective oversight, provided that such framework does not conflict with our own legal obligations to maintain statutory registers.

   As noted below, the position with firm registration needs to take into consideration the law of partnership in Scotland whereby a firm is dissolved when a partner joins or leaves/retires. This is different from the law of partnership in England and Wales.

   Cost Implications
   Maintaining such a register will inevitably generate costs. We object in the strongest terms to passing these costs onto legal firms, whether through increased AML supervision fees or other charges. Firms must not be penalised financially for a register they did not request and whose benefits remain undefined.

   In addition, any cost implications for the Society itself during the transition period or thereafter under information sharing provisions should be met by the FCA as the recipient of the AML levy.

Streamlined Registration Process
The registration process should require only a single registration, even where a firm seeks recognition for multiple strands of its business (for example, as both a legal sector entity and a trust or company service provider ("TCSP")).

Dual registration with the FCA for different aspects of the same business would impose an inefficient and unnecessary administrative burden. Firms are already subject to registration and oversight by their primary regulator, and duplicative requirements would add complexity without delivering regulatory benefit.

If a register is created, the Regulations should expressly provide for a streamlined process that recognises the integrated nature of professional services firms and avoids duplication of obligations.

We submit the following:

- The Society, as statutory regulator of solicitors in Scotland, retains responsibility for admission, professional standards, and ongoing obligations after departure from the profession. Updated provisions in the Regulation of Legal Services (Scotland) Act 2025 reinforce this role. Proposals that confer powers conflicting with, confusing, or restricting our authority, and that of other professional regulators, should be avoided to preserve effective regulation.

- The proposed FCA register should operate in a clear and transparent manner.

- Entry and removal should rest on defined criteria, such as admission following successful completion of BOOMs/fit and proper processes, or removal following a formal finding of AML/CTF non-compliance.

- The register should operate efficiently and without delay but, as noted below, there is a need for a transition period and extensive communications with the profession to avoid criminalising Scottish solicitors who may be confused by a process that requires them to register with the FCA given they are used to being registered solely with the Society. Any interruption in registration would have serious consequences for firms whose business models depend on in-scope activities such as conveyancing.

- Legislation should prevent the FCA from imposing additional criteria for entry or removal beyond those expressly provided.

- The FCA should engage in ongoing communication with professional bodies regarding the operation of the register and consult in advance on any proposed changes to its scope.

- The interaction between FCA regulatory action (e.g. removal from the register) and professional disciplinary frameworks remains unclear. While we will not retain residual responsibility for AML compliance, failures identified by the FCA that result in removal from the register may also require to be investigated under existing disciplinary processes to ensure a joined-up approach to public protection. This inter-relationship between pure AML/CTF regulation and wider

regulation of Scottish solicitors means that regulation of the legal sector will be more complex and costly under two separate regulators.

- The register should be limited to confirming authority to undertake work within the scope of the Money Laundering Regulations ("MLRs").

2. Do you agree with our proposal to grant supervisors the explicit ability to cancel a business' registration when it no longer carries out regulated activities? How might these changes affect firms of different sizes or structures?

We do not support the proposal without further clarification on the circumstances in which registration may be cancelled, the evidential basis upon which the FCA would reach a deregistration decision, the way Scottish partnership law would be accommodated, and the impact on our responsibilities for admission of solicitors and the issuing, suspension and removal of practicing certificates.

Risk of Disruption to Legal Services
Many firms specialise exclusively in conveyancing, while others offer services both within and outside the scope of the Regulations. Smaller firms may undertake in-scope work only intermittently, which could create the misleading impression that registration is no longer required. To prevent disruption, firms should remain registered for AML/CTF purposes unless they explicitly request deregistration or deregistration follows a formal finding of non-compliance. The regulator must not impose barriers that prevent supervised firms from delivering lawful, properly (non-AML) regulated services to clients.

Complexity of Scottish Partnership Law
Legal practices in Scotland are frequently constituted as partnerships, which under Scots law differ fundamentally from partnerships in England and Wales. Each change in membership, including admission, departure, or death of a partner, dissolves the existing partnership and creates a new one. Under the proposals, every such change would trigger deregistration of the former partnership and registration of the new entity with the FCA.

This approach is impractical, imposes disproportionate administrative and financial burdens, and exposes firms and clients to risk and delay (for example the suggested period of 21 days to determine a registration application which would be necessitated on each occasion of a change in partnership, such as the sudden death of a partner). The registration framework must be structured to avoid disruption to Scottish partnerships and prevent unacceptable costs.

Implications of Premature Cancellation
The consequences of deregistration depend on its rationale. Where a firm voluntarily ceases in-scope work, the impact is minimal. However, FCA imposed deregistration during ongoing work could have severe effects:

- Client funds in solicitor client accounts could be frozen, leaving individuals and businesses unable to access their own money.
- Conveyancing transactions could fail to complete, exposing clients to financial loss across transaction chains and personal distress.

- Legal and support staff could face unemployment.

For larger multi-service firms, deregistration could render redundant all fee earners and staff engaged in in-scope work. Notice of deregistration would not guarantee orderly completion or transfer of ongoing matters, which often involve complex, long running transactions.

Clarity is sought as to how the FCA would expedite the completion of transactions and intromission of clients' funds caught by such deregistration to provide adequate public protection and public confidence in the deregistration process.

Where deregistered firms seek to resume regulated work, new applications would be required. For sole practitioners and smaller firms, the cost and delay could be prohibitive, restricting practice areas and undermining access to justice, particularly in rural communities.

Safeguards and Proportionality
It remains unclear how FCA driven deregistration, based on its assessment of regulated activity, can provide a fair and proportionate regulatory framework within the unique Scottish legal landscape.

Deregistration procedures must therefore incorporate robust safeguards, including transitional arrangements to allow for the orderly completion or transfer of ongoing work. Given the risks of unemployment, disruption to client transactions, and systemic harm, deregistration must be exercised with strict proportionality. In particular, the deregistration process should not conflict with our role under the Solicitors (Scotland) Act 1980, the Legal Services (Scotland) Act 2010 and the Regulation of Legal Services (Scotland) Act 2025, including the powers given to us to withdraw and reinstate practising certificates for individuals and, in due course, licenses or other approvals at firm level.

3. **Do you support the application of regulation 58 "fit and proper" tests to legal, accountancy, and trust & company service providers? Please explain your reasoning.**

As a matter of principle, we do not support applying Regulation 58 "fit and proper" tests to legal service providers.

Unjustified regulatory burden
Scottish solicitors are subject to stringent professional requirements to enter the profession and to maintain a practicing certificate. An additional "fit and proper" test will add additional cost and regulatory burden which is not justified and risks conflict and confusion between the two supervisory regimes.

Risk-Based Supervision
The 2025 National Risk Assessment ("NRA") continues to classify the money laundering risk associated with the legal sector as high. This designation does not mean that all firms present a uniformly high risk. The Treasury's proposal to impose a fit and proper test across the entire sector, based solely on the NRA's overall rating, is inconsistent with a genuinely risk-based approach designed to focus resources and regulatory requirements on areas of greatest risk.

Regulation 17(4) of the MLRs obliges professional body supervisors to develop and record risk profiles for each relevant person. Regulation 17(5) permits the use of clusters within supervised populations. These provisions are reinforced by the OPBAS Sourcebook, which requires supervisors to ensure that measures to mitigate money laundering are proportionate to the risks identified.

In compliance with these obligations, we have developed an annual certification process under which all practice units subject to supervision receive a specific risk rating. This rating directs subsequent supervisory activity, ensuring oversight is tailored to the actual risk presented.

We therefore reject any proposal to treat all firms as presenting an equivalent level of high risk or to apply Regulation 58 uniformly across the profession. A fit and proper test represents a significant regulatory step which, if adopted, must be applied proportionately and in accordance with a risk-based or clustered methodology.

Risk Determination
The proposal lacks clarity on how the FCA intends to obtain sufficient data to support fit and proper assessments. Information on compliance standards, professional competence, and firm specific risk profiles would need to be collected and maintained at scale. Without a robust dataset, applying Regulation 58 across the sector would be premature and procedurally unsound.

Response to Arrest
We disagree that Regulation 58 should be extended to require notification if a BOOM is arrested. At that stage, no substantive basis exists for confirming wrongdoing. Notification may be appropriate upon charge of an offence, but care must be taken to preserve the presumption of innocence until conviction.

FCA Supervisory Remit
Regulation 58(4)(c) empowers the FCA to determine whether a firm, or an individual BOOM, is fit and proper by assessing skills, experience, and probity. Any such determination in respect of legal professionals risks straying into matters of professional conduct, which fall outside the FCA's remit as an AML supervisor. This would duplicate or conflict with the jurisdiction of established professional regulators.

The proposed Fit and Proper Person model also diverges fundamentally from our existing conduct complaints-based regulatory system. This divergence risks confusion and imposes a more onerous regulatory burden on solicitors in Scotland compared to providers elsewhere in the UK. Such disproportionate regulation could adversely affect cost, growth, and fair competition.

Distinct Scottish Framework
The Scottish approach to regulation is distinct, reflecting the jurisdiction's unique legal framework and professional oversight mechanisms. We believe that the FCA must develop a sound and detailed understanding of the Scottish regulatory landscape and the variable nature of legal service provision before implementing supervisory changes. Only with such understanding can the FCA make fair and

proportionate adjustments to AML regulation that respect the integrity of Scots law and the wider regulation of Scottish solicitors, avoiding unintended negative consequences.

4. **What are your views on the proposed changes to regulation 58, including the requirement for BOOMs to pass the fit and proper test before acting, mandatory disclosure of relevant convictions, and the introduction of an enforcement power similar to those under regulation 26?**

We take the view that no substantive data or evidence has been presented to justify the proposed changes. In the absence of a clear evidential foundation, the rationale for reform remains unconvincing.

Adverse Impact on the Scottish Legal Profession
The practical implications of the proposals would impose additional regulatory burdens without demonstrable necessity or proportionate benefits, undermining the efficiency and sustainability of legal practice in Scotland. These adverse impacts would extend beyond practitioners, with wider consequences for access to justice and client protection. Many law firms in Scotland are sole traders or small firms which also conduct non-AML supervised services which are essential for the smooth operation of the justice system across Scotland, including in remote communities. These solicitors are already subject to stringent entry requirements, our own financial compliance inspection regime, and an independent complaints and disciplinary regime. Any additional regulatory burden risks their financial viability.

Fit and Proper Test and Regulation 26
As noted in response to Question 3, any approach must align with the requirements under Regulation 26 and the obligations applicable to TCSPs. HM Treasury has expressed concern that reliance solely on Regulation 26 may permit weaker controls. However, professional body supervisors have several years of experience in applying Regulation 26 effectively. Any further action must be guided by evidence, specifically historical data on the number of “bad actors” prevented from entering the sector through Regulation 26. The current proposal rests on assumptions about sectoral risk without reference to available data, creating a risk of unjustified cost and delay for the legal sector and its clients.

Adverse Practical Implications - Sale of Beneficial Ownership
Currently only solicitors qualified in Scots law may own a Scottish legal firm. This restriction significantly limits the market of potential purchasers. Any forced sale would disproportionately disadvantage owners, given the constrained pool of eligible buyers and the distressed state of the business in such circumstances. The reality is that a forced sale of a beneficial owner’s interest in a Scottish firm could lead to the closure of a firm that provides a number of services, including litigation services, to a local community.

We believe that these jurisdictional realities should be taken into account when designing supervisory and registration frameworks, to ensure that Scottish practice units are not placed at a competitive disadvantage compared to providers elsewhere in the United Kingdom.

5. **Should the FCA be granted any extra powers or responsibilities with regards to "policing the perimeter" beyond those currently in the MLRs?**

Subject to the further comments below, we support vesting the FCA with the necessary powers over businesses engaged in AML/CTF regulated activities. Effective holistic supervision and client protection, however, requires robust information sharing arrangements between the FCA and professional bodies. We also accept that extending supervisory authority to other professions, such as Patent Attorneys and Commercial Attorneys, may strengthen the AML regulatory framework.

Definition of "Policing the Perimeter"
The consultation defines "policing the perimeter" in vague and imprecise terms. Further work is required to clarify the intended scope, purpose, and practical application of the proposal. We believe that detailed clarification is essential to ensure proper understanding, particularly in relation to the Scottish legal sector. Ambiguity risks inconsistent application, disproportionate regulatory burdens, and uncertainty for firms and clients. We therefore urge HM Treasury and the FCA to provide a clear explanation of the meaning, scope, and operational implications of "policing the perimeter" before any commitment is made.

Existing Protections in Scotland
Significant protections already exist in Scotland to safeguard consumers and the legal system from those acting without the required certification and authorisation. Businesses conducting AML/CTF regulated activities without appropriate registration may overlap with those providing legal services in breach of the legislation outlined below. To ensure comprehensive public protection, the FCA should not conduct its "policing the perimeter" work in isolation from existing mechanisms. Effective information sharing arrangements must be established to ensure that suspected breaches are reported to us for investigation.

Section 31 makes it a criminal offence to practise as a solicitor without a valid practising certificate. We investigate alleged breaches and report relevant cases to the Crown Office and Procurator Fiscal Service.

Regulation of Legal Services (Scotland) Act 2025. Once fully in force, section 40 will make it an offence to pretend to be an authorised business and section 90 will make it an offence to use the title "lawyer" without meeting certain criteria. These provisions further strengthen consumer protection in Scotland.

Accordingly, sufficient protection already exists within Scotland against the risk of unauthorised persons purporting to carry out legal work. Any FCA perimeter policing activity should therefore be integrated with these established protections to avoid duplication, conflict, or gaps in enforcement.

6. **Do you foresee any issues or risks with the extension of regulations 17 and 46 to the FCA in carrying out its extended remit, particularly in relation to how these powers will interact with the FCA's proposed enforcement toolkit (as outlined in Chapter 6)?**

We agree in principle that any AML supervisor should be subject to the obligations contained in Regulation 17 and should exercise the responsibilities conferred under Regulation 46 of the 2017 MLRs. This agreement does not detract from our position that such an approach increases risks relating to the protection of legal professional privilege ("LPP"), regulatory overlap, and the absence of sector specific expertise.

LPP/Confidentiality of Client Communications under Scots law
LPP represents the most material concern. Existing professional body supervisors, such as the Law Society of Scotland, have long operated with an appreciation of the delicate balance between AML obligations and the preservation of LPP and client confidentiality when supervising law firms.

Legal practices frequently hold privileged material that may be acquired or reviewed by the FCA in circumstances tangential to an investigation, to the prejudice of clients who have sought advice in reliance on LPP. Further consideration of this aspect is therefore critical.

Any access of privileged information/client communications in the course of a supervisory inspection risks being contrary to the fundamental protection afforded by LPP. We seek clarification from HM Treasury on how the FCA will exercise supervisory powers while safeguarding LPP. Any supervisory framework must preserve the confidentiality of privileged communications, as erosion of this principle would undermine both the integrity of the legal profession and the rights of clients.

Dual Regulation and Regulatory Burden
Firms will remain subject to our regulatory oversight, including practice rules and standards of conduct, while also being supervised by the FCA for AML compliance. This dual framework risks unnecessary bureaucracy, conflicting obligations, and uncertainty as to which regulator holds enforcement responsibility in specific circumstances. We seek further information from HM Treasury on the steps to be taken to reduce this cost and burden for Scottish solicitors.

Absence of Sector Specific Expertise
The FCA lacks the detailed knowledge required to AML supervise the Scottish legal profession effectively. Differences in law and consequential nuances in areas such as Scottish conveyancing practice and the operation of client accounts demand specialist understanding. Risks faced by Scottish legal firms differ substantially from those encountered by other bodies traditionally supervised by the FCA.

For example, solicitors frequently manage risks arising from individual conveyancing transactions, which differ materially from risks associated with international bank transfers. We request that HM Treasury carefully considers how it will address this gap in sector expertise.

Where the FCA seeks to impose a single risk profile under Regulation 17(5), it must demonstrate sufficient understanding of the work, practice, and nature of the Scottish legal sector. Scots law operates distinctly from other jurisdictions, and any supervisory framework must reflect these differences to ensure proportionate and effective regulation.

There is also a need to reflect on the communications channels available to the FCA for the purpose of sharing relevant risk information with firms and Scottish solicitors. We have developed a number of communications channels with Scottish solicitors that will not be capable of being readily replicated by the FCA, including tailored information on the AML section of our website, a tailored annual Financial Crime conference, and email and written communications with Scottish solicitors. We consider it important that there is not a reduction in the frequency or specific nature of the AML communications to Scottish solicitors. We request further information from HM Treasury about its proposed communications channels for Scottish solicitors and that this issue is specifically reflected in any impact assessment.

7. **What are your views on introducing new supervisory powers to make directions and appoint a skilled person? If this power is introduced for the FCA, should it also be available to HMRC and the Gambling Commission?**

We agree that it is appropriate for the FCA to hold the power to issue directions, as outlined in paragraph 3.12. However, controls must ensure that directions remain proportionate and do not impede work falling outside the scope of the MLR Regulations.

Use of Skilled Person Reports
We do not agree with the commissioning of skilled person reports for the Scottish legal sector which mainly comprises small to medium size firms. Our understanding of the skilled person process is that the cost is met by the supervised firm, however we note the position on costs is not stated in the consultation.

The consultation mentions there were 12 such skilled person reports in 2024. We understand that the costs of such reports exceeded £1m per report (with a range of £1m to £3m). We ask that HM Treasury shares the details of the costs of the skilled person review process and specifically includes the costs in any impact assessment before introducing such a process as being applicable to Scottish solicitors.

We submit that the introduction of the skilled person review process would represent a significant cost and burden to the Scottish solicitor profession which runs contrary to the government's stated objectives.

It should also be noted that the skilled persons process is not known in the Scottish legal profession so while the power "is a well-established supervisor tool" (paragraph 3.9 of the consultation) for banks and other FCA authorised firms, we have reservations about the availability of the requisite expertise to carry out such reviews in the Scottish legal sector. This would likely lead to additional costs and there is a risk that firms conducting the reviews would apply financial services-focused approaches onto Scottish law firms with ineffective and costly results.

As noted in our response to questions 8 and 9, we have significant concerns about any powers undermining the fundamental protection of LPP/client confidentiality. We do not consider that skilled persons (which we understand to mainly be from external accountancy, consultancy and law firms) should be empowered to access such materials.

Should Such a Process Be Introduced?
The commissioning of external skilled person reports should be reserved for the most complex cases, and only when justification can be provided by the FCA as to why such a report is critical. The current proposal appears to envisage use of this power in circumstances short of serious intervention, which is inappropriate. In less serious cases, the FCA should rely on suitably skilled internal resources to conduct reviews and produce reports with recommendations. This approach would address emerging risks, promote compliance, and avoid disproportionate costs and unnecessary escalation to enforcement. By contrast, disproportionate reliance on external skilled persons risks imposing unnecessary financial and operational harm on firms.

Selection of Skilled Persons
We believe that skilled persons must demonstrate to the FCA that they meet established criteria on knowledge, skills, sector specific experience and qualifications necessary to deliver allocated projects. Skilled persons appointed to report on Scottish legal firms should be required to demonstrate deep knowledge of the Scottish legal system. Effective supervision requires familiarity with Scots law and the specific practices of the Scottish legal profession. Without this expertise, skilled persons risk misinterpreting legal processes, imposing disproportionate requirements, and undermining the integrity of supervision.

Costs of Skilled Person Reports
HM Treasury has not clarified who would bear the cost of appointing a skilled person.

We believe that costs should be attributed on the basis of the *"polluter pays"* principle. This approach ensures that the burden of regulatory expenditure falls upon those whose conduct gives rise to risk, rather than being distributed indiscriminately across the profession. Such a framework promotes fairness, incentivises compliance, and aligns with the wider objective of proportionate, risk-based regulation.

Without such safeguards, the imposition of additional costs on affected legal firms would be disproportionate and unjustified, contrary to HM Treasury's previous assurances that no new costs would be introduced for the legal sector.

8. Do you agree with our proposal to extend the information gathering and inspection powers in the MLRs to the new sectors within FCA supervision?

We agree information gathering powers will be needed but, as noted in our response to question 9, safeguards for the role of the legal sector in upholding the rule of law, the interests of justice, and LPP/client confidentiality are needed. We are particularly concerned about the operation of the information and inspection powers given the protection rightly afforded to LPP /confidentiality of communications between a solicitor and their client in regulation 72.
We request that a more detailed consultation is conducted on this topic given the fundamental but complex nature of LPP/client confidentiality with a working group established involving HM Treasury, the FCA, and the professional supervisors for the legal profession including the Society, the SRA, the Faculty of Advocates, and the Bar Council.

9. **Do you believe any changes are needed to the information-gathering and inspection powers in the MLRs beyond extending them to the FCA in supervising accountancy, legal and trust and company service providers for AML/CTF matters?**

   Yes, changes are needed given the role Scottish solicitors have in the justice system and due to the fundamental obligation to uphold client confidentiality. We suggest the following points are subject to detailed consideration by HM Treasury, ideally through a working group to involve all legal sector professional bodies:

   - It should be made clear that the powers relate only to AML regulated activities and not the work of a solicitor or firm in the non-AML regulated sector. This is an essential safeguard.

   - The information powers under regulation 66 are subject to regulation 72 which excludes privileged material from the scope of material that may be required, except that a lawyer may be required to provide the full name and address of their client. As all communications between a lawyer and client are prima facie confidential under Scots law and much of those communications are also privileged, there will be a need for careful consideration of whether further exclusions are needed to enable the FCA to require the production of and to authorise a Scottish solicitor to produce relevant risk assessment and customer due diligence documents, without undermining the fundamental protections of confidentiality of solicitor/client communications. Care will be needed to provide safeguards necessary to uphold the essential principles of client confidentiality in a legal context.

   - Regulation 68 and the entry of a law firm and inspection of premises without a warrant should be disapplied in relation to law firms. We respectfully submit that the FCA should only be allowed to enter and inspect premises under the authority of a warrant because of the fundamental protections afforded by LPP/client confidentiality under Scots law and therefore any forced entry to a law firm's premises should be supervised by a court.

     There should be effective safeguards on the use of any documents obtained using information or inspection powers against a legal firm where any such document or information is in respect of any legal service it provided to clients who are FCA regulated bodies, such as financial institutions. To do so would fundamentally undermine the protection afforded to the lawyer-client relationship and potentially be oppressive.

10. **Do you agree that responsibility for issuing AML/CTF guidance for the legal, accountancy and trust and company service provider sectors should be transferred to the FCA?**

    We recognise that any supervisor is expected to assume responsibility for issuing guidance to the sectors it regulates, in the same manner as existing professional body supervisors have done through the Legal Sector Supervisors. The Legal Sector Affinity Group ("LSAG"), comprising all legal sector AML/CTF supervisors, has drawn upon extensive sectoral knowledge and supervisory experience to

produce guidance that secured HM Treasury approval and has been welcomed as beneficial by the profession.

This level of expertise will not be available to the FCA under the proposals, as the existing supervisory knowledge structures will no longer exist. As a result, the FCA may lack the capacity, knowledge, experience, data, and intelligence necessary to provide the tailored guidance historically relied upon by the profession.

Until the FCA demonstrates how the sector-specific knowledge embedded in LSAG will be replicated, we do not agree that responsibility for issuing AML/CTF guidance to the legal sector should transfer to the FCA. While we do not at present support such a transfer, it acknowledges that, in the absence of a professional body supervisor community, no feasible alternative exists.

We emphasise that any process for developing AML/CTF guidance for the legal sector should involve extensive and genuine engagement with the profession and, where appropriate, be tailored to ensure consistency with applicable rules and processes in Scotland, including Scots law.

It is necessary that the FCA provides clear, detailed, and relevant sector-specific advice. The provision of such advice is central to effective regulation, ensuring that each sector understands its obligations.

In drafting guidance, the FCA must actively recognise jurisdictional operational differences, address the complexities those divergences create, and accept that guidance cannot be imposed uniformly across the UK in all circumstances.

Illustrative Examples

Beneficial Owners, Officers and Managers (BOOMs)

- Rehabilitation periods and disclosure laws governing spent convictions vary between jurisdictions.

- Disclosure certification evidencing criminal history (or the absence thereof) is sourced differently across the UK: in England, firms obtain a Disclosure and Barring Service (DBS) check, whereas in Scotland, one of three types of Disclosure Scotland checks is required.

Customer Due Diligence on Conveyancing Clients

- Scottish property law and conveyancing processes are fundamentally different for the conveyancing in the other UK jurisdictions. For example, Scottish solicitors must complete customer due diligence before concluding the missives, which often occurs significantly in advance of completion of a sale/purchase.

- Legal professionals in Scotland operate under significantly shorter timescales, with an average of 13 weeks from listing to completion, compared to 23 weeks in England.

These examples are not exhaustive but indicative of broader complexities. They represent only the surface of a wider set of divergences that must be addressed to ensure guidance is both accurate and practicable across jurisdictions.

11. Do you agree that the MLRs should be amended to transfer responsibility for approving AML/CTF guidance to the relevant public sector supervisor, with HM Treasury retaining a 'right of veto' but not having responsibility for approving entire guidance documents?

We refer to our response to question 10. While acknowledging that removal of the HM Treasury approval stage may, in principle, expedite the publication process, we require further information and clarification before determining whether it supports this approach.

By way of context, the government's 2017 report *Cutting Red Tape: Review of the UK's Anti-Money Laundering and Counter Financing of Terrorism Regime* analysed FCA guidance and included, inter alia, the following observations:

- *"The FCA's best practice, taken in conjunction with the JMLSG guidance, is simply confusing."* (comment from a high street bank), and

- *"Several firms questioned why the JMLSG guidance did not appear to have been edited or scrutinised using better regulation / good guidance principles."*

Whilst the Treasury's right of veto would remain, such a right could only be exercised post publication. Publication followed by withdrawal of guidance would generate uncertainty, foster confusion, and risk the dissemination of misinformation.

Against this background, we seek clarity from HM Treasury as to what developments have occurred since 2017 that now justify removing the approval mechanism and conferring full editorial discretion upon the FCA.

In addition, we consider that ideally there should be a statutory duty imposed on the FCA to consult with us and other professional bodies concerning the content of any new guidance. However, once AML regulation of Scottish solicitors is passed to the FCA, we will lose relevant expertise and funding, making it challenging to engage in the development of such guidance.

12. Do you agree to the extension of requirements under regulation 47 to the FCA in relation to accountancy, legal and trust and company service providers?

We agree with the proposed extension of the requirements under Regulation 47 to the FCA insofar as they pertain to legal services providers.

However, we respectfully remind HM Treasury of the necessity for guidance that is granular and specifically tailored to the legal sector, so as to reflect and accommodate the distinctive legal framework and broader individualities attributable to Scotland.

13. Do you see any issues with the FCA's information sharing duties and powers in regulations 46, 50 and 52 applying to the professional services firms it supervises for AML/CTF purposes?

We agree that the FCA's information sharing duties (for example, with the NCA and other regulatory bodies) should apply equally to its role as AML/CTF supervisor of professional services firms.

Confidential information obtained from professional services firms must be subject to rigorous assessment before disclosure, ensuring that any sharing is necessary and proportionate under the Money Laundering Regulations. LPP /client confidentiality must be preserved at all times and privileged communications, and information should not be shared by the FCA with other regulators or law enforcement bodies and should be expressly protected from disclosure to other third parties.

We believe that enhanced information sharing arrangements with professional bodies are essential to ensure that transferring AML/CTF supervisory responsibility to the FCA does not inadvertently weaken other public protections currently delivered by those bodies.

By way of example, in addition to its AML/CTF supervisory functions, we administer a comprehensive programme to secure solicitor compliance with the accounts' rules, thereby safeguarding client monies.

Under the present framework:

- A money laundering compliance inspection may identify risk indicators relating to client funds and compliance with our accounts' rules. Currently, these indicators are communicated to our staff responsible for carrying out accounts rules inspections.

- Conversely, accounts rules inspections, through measures such as reviewing bank statements and transaction files, may reveal AML/CTF risks. These are communicated to our AML team to inform its risk assessment and prioritisation.

This integrated approach to financial risk management maximises client protection. Without effective information sharing between the FCA and professional bodies such as the Law Society of Scotland, the overall level of client protection will be diminished.

It remains unclear whether the regulations, as currently drafted, would facilitate the type of information sharing described above. We believe that a formal mechanism is required to:

- Enable professional bodies to provide information and intelligence on AML/CTF risks identified through non-AML/CTF regulatory activity, and

- Ensure reciprocal provision of risk information by the FCA to professional bodies, thereby supporting their non-AML/CTF regulatory functions.

14. Do you agree that the MLRs should be amended to require the NCA to share SARs with the FCA and other public sector supervisors, where these have been submitted by or relate to firms within their supervisory population?

While it is accepted that there will be intelligence available from Suspicious Activity Reports ("SARs"), we question the necessity of granting the FCA direct access to submitted SARs. The National Crime Agency ("NCA") and law enforcement agencies are already established as the competent authorities to conduct investigations and disseminate intelligence to supervisors through predetermined channels. Under the existing regime more of this could be done.

If quantifiable evidence demonstrates that supervision improves when the FCA and other public body supervisors obtain direct access to the SARs portal, we do not oppose such access. We maintain, however, that any access must remain subject to stringent, independently verified controls to preserve reporter confidence in the system's confidentiality and to minimise the risk of breaches.

The current framework restricts access to confidential and often privileged information, thereby mitigating the risk of tipping off. We recognise that the NCA treats SAR confidentiality with the utmost seriousness. Nevertheless, SAR reporters within the professional services sector may perceive expanded access as heightening the risk of confidentiality breaches, with potentially serious consequences for those reporters.

Accordingly, before SAR information is made available to the FCA or other public sector supervisors, the NCA must confirm that the risks associated with wider access have been, or will be, adequately managed. We presume that the NCA would need to obtain full assurance that public sector supervisors maintain robust systems to safeguard SAR confidentiality and that supervisory staff are subject to appropriate vetting procedures.

To maintain confidence in the integrity of the system, we believe an amendment to the MLRs should be considered. Such an amendment should impose a duty upon the NCA to satisfy itself on an ongoing basis that any supervisor granted access to SARs continues to meet all systems and vetting requirements.

Furthermore, we believe there is a risk that public sector supervisors may seek to utilise SAR information across their wider remit without adequate control to govern such sharing. We therefore believe that the basis of FCA access to SARs must be formalised to ensure confidentiality and to delineate acceptable uses of such information. This would generally mean access should be confined to the FCA's AML/CTF supervisory functions unless formalised governance processes have been established and followed to enable such sharing on specific circumstances.

15. Do you agree that these existing whistleblowing protections are sufficient and appropriate?

We agree that the existing whistleblowing protections are sufficient and appropriate.

However, the text in this section relates exclusively to whistleblowing by individuals who are willing to disclose their identity and provide contact details. We believe the

FCA must make explicit provision confirming that it will also accept intelligence from anonymous sources. Such provision would ensure that individuals unwilling to disclose their identity can nonetheless contribute valuable information to support the FCA in discharging its supervisory responsibilities.

16. Do you foresee any issues with our proposal for the FCA to exercise the same enforcement powers already exercised by it in relation to the financial services firms for professional services firms too?

Extension of FCA Enforcement Powers – impact on a solicitor's client
Whilst acknowledging that the FCA is vested with a statutory objective to secure an appropriate degree of protection for UK consumers, we are concerned that client protection has not been considered within the proposal to extend FCA enforcement powers to legal firms.

At no stage within the consultation documentation is there reference to safeguards designed to protect legitimate clients of legal firms who may be adversely affected by the exercise of such powers. The absence of safeguards gives rise to significant risks, including lawful transactions being delayed or not completed causing a solicitor's client to be in breach of their contracts (resulting in financial penalties and court action), and lawfully held sums in client accounts being frozen.

Decision Notices
To preserve client confidentiality, Decision Notices should not contain any details of a solicitor's client. We suggest this should be expressly provided for in an amendment to Regulation 86.

Prohibitions under Regulation 78
Regulation 78 confers authority upon supervisors to prohibit senior managers knowingly involved in AML/CTF violations from acting on AML/CTF in-scope work. We accept that such prohibitions may be necessary and proportionate in certain circumstances. However, there are no proposals on how the FCA would inform the professional body supervisor, who may need to take additional regulatory or disciplinary action in the public interest.

The prevalence of sole practitioner firms in Scotland heightens concern. In a conveyancing practice, a prohibition imposed on a sole manager would prevent the practitioner from undertaking most, if not all, of the firm's workload. It would also preclude the manager from administering client funds held in the firm's client account, thereby freezing legitimate transactions and risking disruption to conveyancing completions. Without a mechanism to secure or transfer client funds, clients may even be rendered temporarily homeless until transactions are concluded.

The FCA does not possess statutory authority to assume control of client accounts. In Scotland, suspension of solicitors and intervention in client accounts is controlled by the Solicitors (Scotland) Act 1980 and undertaken by designated teams within the Law Society of Scotland, ensuring a joined-up response that minimises adverse impacts. Replicating this coordinated response would require legal advice to ascertain whether existing statutory powers can be used in the proposed new AML supervisory regime or whether further amendment to the Solicitors (Scotland) Act

1980 would be required, with possibly significant cost implications. It is imperative that the FCA ensures timely and effective communication with us in advance of any prohibition, enabling appropriate steps, where available, to secure client funds and mitigate client impact. However, it is unclear if we can intervene to secure client funds in such situations where no regulatory action has been taken by us. Any action taken by the us in this regard may incur additional costs and clarity on how this would be financed would be welcomed. These concerns apply equally where prohibitions are imposed upon all directors or partners of larger firms.

Without addressing the concerns raised above, at best, extension of FCA enforcement powers may lead to more costly and slower regulatory responses by the Society. At worst, public protection may be significantly weakened.

Civil Penalties
The FCA's approach to civil penalties is materially different from the penalty regime currently applicable to Scottish solicitors. This may result in significantly larger penalties that are currently imposed on Scottish solicitors which will serve to increase costs and the regulatory burden. Clear and detailed communications to Scottish solicitors about how the civil penalty regime will operate, the level/value of penalties that may be imposed, and a transition period are requested.

Jurisdictional Distinctions
The FCA is not empowered to institute criminal proceedings in Scotland, where the exclusive right to prosecute is retained by the Crown Office and Procurator Fiscal Service. Any criminal referral will require adherence to Scottish rules of evidence and procedure.

Movement of Individuals Between Firms
We note with concern that the consultation makes no reference to circumstances in which an individual departs from one firm and subsequently joins another. Where concerns have been noted regarding an individual's conduct at their initial firm, it is unclear what safeguards exist to protect the second firm, particularly where no breaches of AML rules have occurred within that new firm. The absence of guidance raises questions as to how risks associated with individual behaviour are to be managed across firms.

17. Are there any additional enforcement powers that you feel the FCA should be equipped with to ensure non-compliance is disincentivised effectively?

We believe that, where the FCA is concerned about the conduct of a regulated Scottish solicitor, they should raise a relevant complaint with the Scottish Legal Complaints Commission.

While the FCA intends to discharge its AML/CTF supervisory responsibilities through the application of enforcement powers, it is essential that such matters are also considered through the established disciplinary processes of the professional bodies. This approach preserves the integrity of those processes and ensures that client protections remain robust.

18. Do you think any amendments to regulations 81 and 82 would help the FCA issue minor fines for more routine instances of non-compliance such as failure to register?

We believe Regulation 81 could be enhanced with:

- Additional clarification as to what constitutes a minor infraction or a “low-level fine”; and what the maximum fine would be for such an infraction which would be similar to the civil penalty regime adopted by HMRC;

- Another relevant circumstance should be whether any matters have been referred to or are being dealt with by a professional body because there is need to guard against duplicative penalties and layered enforcement; and

- A duty on the FCA to consult with a relevant professional body before imposing a penalty on a person who is subject to separate professional supervision. This would be similar to the existing duty on the FCA to consult with the Prudential Regulation Authority (PRA) with respect to PRA authorised persons.

19. Do you have any issues with our intention that decisions made by the FCA in relation to their AML/CTF supervision of professional services firms be appealable to public tribunals, in line with the existing system?

Independent Appeals Body
We support the establishment of an independent appeals body to ensure fairness, transparency, and consistency in the review of enforcement decisions.
In light of the fact that the Upper Tribunal exercises jurisdiction in England and Wales, while the Upper Tribunal for Scotland exercises jurisdiction in Scotland, we seek clarification from HM Treasury on the practical implications of the proposed appeals process.

By way of example, we request guidance on the procedural framework applicable where a legal firm is registered in Scotland but maintains offices in England, and the FCA imposes sanctions arising from conduct identified within one of the English offices. In such cross jurisdictional cases, it is unclear whether the appeal would properly fall within the jurisdiction of the Upper Tribunal in England and Wales, the Upper Tribunal for Scotland, or whether a coordinated mechanism would be required to ensure consistency of treatment.

We believe that clarity on this matter is essential to avoid uncertainty, duplication, or inconsistency in the appeals process and to safeguard the rights of firms operating across multiple UK jurisdictions.

Timescales for Appeals
We request confirmation from HM Treasury regarding the timescales applicable to the appeals process. Sanctions imposed upon legal firms can have severe and immediate implications, not only for the firms themselves but also for their clients, whose interests may be directly and negatively affected. Delays in resolving appeals may disrupt ongoing transactions, restrict access to client funds, and cause

wider adverse consequences for individuals and businesses reliant upon the timely completion of legal services.

Accordingly, we believe that clarity on the expected duration of the appeals process is essential to enable firms and clients to plan appropriately, mitigate risks, and safeguard legitimate interests pending the outcome of any appeal. We therefore urge HM Treasury to provide detailed guidance on the procedural timetable, including indicative timescales for the lodging, consideration, and determination of appeals, together with any expedited processes available in cases where client interests are at immediate risk.

20. Do you have any comments regarding the FCA charging fees, under regulation 102, noting the possible proposed amendments?

Cost Recovery Framework
We agree in principle that the FCA should be entitled to recover costs "reasonably incurred" in the discharge of its functions under the Regulations. We believe that where costs are incurred in relation to breaches by individual firms that the basis for recovery should follow a "polluter pays" principle.

However, we are concerned that Scottish solicitors and other regulated professionals will face significantly increased costs for AML supervision which is contrary to the Government's stated objectives.

Additionally we suggest fees on professional firms and individuals will significantly increase. We request the fee impact is worked through in more detail before the new regime is legislated for, and we call for a detailed and fully costed impact assessment. The data exists for this to be done.

We note that the cost charging regime will be subject to a further consultation which is welcomed. Clarification is required on the meaning of the phrase "for any incidental purpose." The scope of this expression is ambiguous and should be defined to ensure that cost recovery remains proportionate and predictable. If "incidental purpose" is intended to encompass measures such as the appointment of a skilled person or the undertaking of fit and proper person tests/BOOMs approval, we refer to our response to Question 7 and reiterates its opposition to imposing such costs upon legal firms. The burden of these incidental purpose costs should not fall on the legal sector.

We accept that the FCA must have the ability to gather the information necessary to calculate fees. To deviate from the established supervisory fee levels and impose higher charges would be inconsistent with HM Treasury's stated position that supervisory changes will not result in additional financial burdens for legal firms in Scotland and may supress growth in the Scottish legal sector.

Accordingly, we urge the FCA to adopt a fee structure that preserves parity with the current supervisory fee levels and ensures that legal firms are not subject to disproportionate or unforeseen financial obligations.

The consultation already proposes that the FCA and professional bodies must share information, requiring professional bodies to retain the skills and capacity to

collect, assess, and manage this data. Given the information and skills that will need to be retained to facilitate such overlap between AML and professional supervision and the necessary cooperation, we may incur additional costs post the end of AML supervisory responsibilities

Legislative Alignment
The Solicitors (Scotland) Act 1980 establishes the framework for fees relating to AML supervision. To ensure clarity in the regulatory framework, repeal of these provisions will be required. We believe that a Scottish legislative amendment is therefore necessary to align the statutory position with the proposed transfer of supervisory responsibility.

21. Are there any specific powers or transitional arrangements that you believe would help the FCA, current supervisors, or HM Treasury support a smooth and low-burden transition for firms already supervised under the MLRs?

We are willing to work collaboratively with the FCA and Companies House to facilitate the transition process. We will comply with data requests insofar as they do not present a legal conflict, for example providing data on live complaint processes.

Given that the FCA will assume responsibility for anti-money laundering supervision and possesses the requisite knowledge of its systems and processes, we consider it essential that the FCA propose specific powers or transactional arrangements once it is in a position to do so. These proposals can then be reviewed and considered by us to ensure that they are workable and proportionate in practice.

We believe that careful consideration must be given from the outset to the division of responsibilities between AML supervision and wiser regulatory supervision of Scottish solicitors retained by us. Clear delineation of these functions is critical to avoid duplication, regulatory overlap, or gaps in oversight.

We believe that a coherent framework needs to be established to ensure that AML supervision and other regulatory supervision retained by the Society interact effectively, thereby safeguarding both regulatory integrity and client protection.

We welcome and agree with the proposal that firms already supervised by professional body regulators should not need to complete a re-registration process and we note that future consideration will be given to how to streamline the registration process with it being noted, at paragraph 9.8 that “The exact details of how this will operate in practice will be for the FCA to determine in conjunctions with existing professional bodies…”.

We reiterate our concern about the application of fit and proper checks to Scottish solicitors.

We submit that consideration of these matters should not be postponed and then later addressed through operational measures but should be addressed through legislation at the outset (see reasoning in answer to 22 below).

22. Do you agree that a requirement should be placed on the FCA and existing professional bodies and regulators to create an information-sharing regime that minimises burdens on firms?

We are committed to reducing unnecessary burdens faced by legal firms in Scotland and agree with the objective that the AML transition should not increase these.
However, the information provided is insufficient to enable us to support the proposed legislative requirement regarding an information sharing regime.

At this stage, we do not agree that a single registration gateway managed by one body and capable of satisfying the needs of both organisations is feasible, for the following reasons:

- Approximately 52% of Scottish solicitor practices declare that they undertake no work within the scope of the MLRs. This group is largely comprised of firms devoted to court work. Access to membership registration records and information on firms/incorporated practices held by the Society would not enable the FCA to identify which members and firms should be registered for AML/CTF supervision.

- We currently confirm which firms operate within the scope of the MLRs at the point of registration. This process will cease once supervisory responsibilities transfer to the FCA.

- From that point, we will have no reason to request AML/CTF identifier information.

- The proposal that a single registration gateway be managed by “an appropriate body” is unclear. Any third-party involvement would require careful consideration from a data protection perspective. Given that approximately 52% of Scottish solicitor practices operate outside the scope of the MLRs, the proposal does not appear to meet the FCA’s data requirements as AML/CTF supervisor.

It is a fundamental function of a professional body to register its membership in a manner that supports both the membership and the body itself. This is recognised in the Solicitors (Scotland) Act 1980, which provides that “the Council shall continue to be the registrar of solicitors.” Our obligation in relation to maintaining a statutory member register will be further enhanced under the regulation of Legal Services (Scotland) Act 2025 once it is in force. Any legislative change impacting the register of Scottish solicitors may therefore require separate Scottish legislation and ought not to impair the regulatory efficiency of the Society.

Once such legislative change takes place, we will lose the ability to charge a separate AML fee, as we will no longer conduct AML supervision or implement OPBAS recommendations. However, AML related costs will continue to arise for us under these proposals. We believe that we should not be liable for costs associated with the collection of data required solely for the FCA’s purposes as AML/CTF supervisor, or for the onward provision of data collected by us but required by the FCA. Should a legislative requirement be imposed on professional bodies to work with the FCA to agree an information-sharing regime, the legislation should also

require that the FCA will put in place arrangements to reimburse us and other professional bodies for the costs arising from the FCA's supervisory regime.

23. Are there other legislative measures that would prevent additional regulatory burdens arising?

At the point when responsibility for anti-money laundering supervision transfers to the FCA, we will no longer have a role in reviewing amendments to the Regulations and associated guidance from the perspective of a regulator with a deep knowledge of Scottish law and legal practice.

In such circumstances, there is a material risk that future amendments or guidance may conflict with Scots law or diverge from established processes in Scotland, which differ in important respects from those in England and Wales.

To mitigate this risk, we believe that the Regulations should expressly require the FCA to engage with the relevant professional bodies to review proposed amendments and guidance.

Such a requirement would ensure that potential issues of contention are identified at an early stage, thereby safeguarding consistency with Scots law, preserving the integrity of the Scottish legal framework, and avoiding unnecessary disruption to firms and clients operating within Scotland.

24. Are there any additional powers that would support OPBAS to provide effective oversight of the PBSs during the transition? If so, please provide an overview.

We do not agree that any additional powers are necessary to enable the Office for Professional Body Anti-Money Laundering Supervision (OPBAS) to provide effective oversight during the transition period.

The consultation document does not present a substantive case to justify conferring further powers upon OPBAS. In the absence of such justification, we believe that the existing framework is sufficient to ensure appropriate oversight.

We believe that professional bodies should not be criticised by OPBAS or face additional cost arising from the uncertainty created by the government's decision to alter the supervisory landscape. Such uncertainty risks adversely affecting staff retention and recruitment within the AML supervisory staff during the transition period, thereby compounding the challenges of regulatory change.

Our Anti-Money Laundering Sub-committee, which comprises unremunerated lay and solicitor members, is also likely to face retention and recruitment pressures resulting from uncertainty, increased workload during the transition and its role becoming obsolete in the medium term. Proposals to strengthen OPBAS' power to issue directions or to extend its enforcement powers to include a fining power would be disproportionate, unfair and counterproductive in these circumstances.

25. Are there any wider legislative changes that may be necessary to support the effective implementation of this policy, including alignment with existing statutory frameworks governing professional services?

We note that the Legal Services Act 2007, together with the regulatory objectives set out therein, applies exclusively to England and Wales. It is therefore incorrect to assert that "any future supervisory activity involving legal professionals must be consistent with the framework set out" in that Act insofar as Scotland is concerned.

We have previously advised HM Treasury that critical amendments to the Solicitors (Scotland) Act 1980 will be required to ensure consistency with the proposed supervisory framework. These amendments must include removal of our ability to make rules regarding AML/CTF compliance and to charge an AML fee.

In addition, a review of the Regulation of Legal Services (Scotland) Act 2025 will be necessary to assess its compatibility with the new arrangements and to identify any areas of potential conflict or duplication.

We believe that these legislative adjustments are essential to safeguard the coherence of the Scottish regulatory framework, preserve the integrity of Scots law, and ensure that supervisory changes are implemented in a manner that is both legally sound and operationally effective.

We would add that the Regulation of Legal Services (Scotland) Act 2025 was only passed in May 2025, after a decade consultation and debate. It is not yet in force. The 2025 Act sets out a root and branch reform of the regulation of legal services in Scotland. It amends existing legislation, such as the Solicitors (Scotland) Act 1980, and introduces new powers and duties. Re-opening the debate and legislation in Scotland relating to the regulation of legal services to accommodate the transfer of AML supervision to the FCA could delay the implementation of other long-awaited reform to the regulation of legal services in Scotland which are designed to help consumers and the legal sector.

26. Should any changes be made to the economic crime objective introduced for legal regulators by the Economic Crime and Corporate Transparency Act?

We have no comment to make on whether any related change is necessary to the economic crime objective under Economic Crime and Corporate Transparency Act 2023 because that does not apply to the Society.

We observe that Section 208 of the Economic Crime and Corporate Transparency Act 2023 which amended section 53 of the Solicitors (Scotland) Act 1980 (powers of tribunal) may require amendment.

27. Do you have any issues with our intention to apply the FCA's existing accountability mechanisms in carrying out its additional supervisory duties?

We have no objection to the application of the FCA's existing accountability mechanisms insofar as it concerns England and Wales. However, we believe that these mechanisms, while appropriate in principle, should be supplemented to reflect the distinct constitutional and regulatory framework in Scotland.

In particular, with respect to regulated activities carried out in Scotland, and especially in relation to the regulation of solicitors, there must be accountability to the Scottish Parliament. The Scottish Parliament is the body to which accountability for all legal regulatory matters in Scotland properly lies.

We therefore urge that any supervisory framework expressly recognise the jurisdictional distinction and incorporate mechanisms ensuring that the FCA's accountability extends to the Scottish Parliament in respect of legal regulatory activities undertaken in Scotland.

28. What measures do you think should be taken to ensure a proportionate overall approach to supervision, including prioritising growth?

Proportionate, Risk-Based Regulation and Growth
We are of the view that proportionate, risk-based, and efficient regulation can promote growth by:

- Providing clarity to regulated people and businesses.
- Enhancing consumer confidence.
- Establishing a level playing field for all market participants, thereby enabling effective and equal competition.
- Creating a framework that identifies and addresses those who seek to undercut compliant businesses by disregarding regulatory standards and undermining consumer confidence.
- Avoiding duplication of regulation and unnecessary bureaucracy.

As outlined throughout this response, we consider that several proposals in the consultation are inconsistent with these principles and will not contribute to growth.

Risk-Based Approach
Opportunities exist for a more comprehensive risk-based approach that avoids a "one size fits all" model of fit and proper testing. Treating all legal firms as if they represent the same AML/CTF risk is inappropriate and disproportionate. We urge re-consideration of the application of fit and proper testing to Scottish solicitors given the admission requirements they are already subject to.

Access to Justice and Client Protection
We have highlighted examples where proposals risk undermining access to justice, particularly for smaller firms in rural areas, and where transaction disruption may occur. In addition, levels of client protection appear likely to be reduced through the creation of a less holistic regulatory framework for solicitors.

Fees and Administrative Burden
We remain concerned that increased fees and administrative burdens will negatively impact growth and the viability of smaller firms. Processes such as registration and deregistration may discourage smaller, non-urban firms from continuing to provide regulated activities. This outcome would reduce access to legal advice in underserved communities, disproportionately harming consumers and the wider public interest.

Scottish Legal Sector
The Scottish legal sector contributes over £1.5 billion to the economy. For the Scottish legal sector to remain effective, sustainable, and capable of contributing continued economic benefits to the United Kingdom, the regulatory burden imposed upon practitioners must be the least restrictive necessary to achieve effective regulation. The sector is already subject to robust but proportionate regulation. Care must therefore be taken to ensure that transition to, and supervision by, the FCA does not impose a more onerous framework than is strictly required.

Conclusion
Disproportionate regulatory burdens would impair the provision of legal services, damage the reputation of the UK's regulatory regime, and stunt growth in the sector rather than foster it. We conclude that a properly articulated, proportionate approach to AML regulation, one that recognises the differing jurisdictions and legal systems across the United Kingdom, is essential to preserving a healthy democracy and ensuring the effective functioning of the legal professions.

For further information, please contact:

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