



# HM TREASURY

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Dear MLAC member

## **TREASURY APPROVAL OF INDUSTRY GUIDANCE**

I am writing to MLAC members concerning the following issues:

- (i) comments received about the JMLGS Guidance Notes December 2003 version,
- (ii) the process of approving guidance in general, and
- (iii) enclosing guidance from the Society of Scrivener Notaries for MLAC comments with a view to approval. I will be writing to you shortly concerning the next MLAC meeting on 2<sup>nd</sup> June 2004.

Thank you for those members of MLAC who responded to my letter dated 15<sup>th</sup> March asking for comments upon the JMLSG Guidance Notes and the process of approval. I am sorry for the delay in informing MLAC members of the outcome of this process; I had intended to reply earlier but was hoping for more responses.

We are conscious of the fact that we have received comments from only three organisations. This may be due to the fact that the JMLSG guidance has been around for a while, and comments may have been passed directly to the JMLSG during the public consultation phase. Also, the process map may have been perfectly acceptable to many. For future matters of approval, or general questions to MLAC, we would encourage committee members also to make nil returns.

A table is enclosed with this letter showing comments on the JMLSG Guidance Notes and I have summarised the comments on the process below.



## **JMLSG Guidance Notes December 2003 version**

The responses to the JMLSG Guidance Notes were quite detailed and will, we expect, require detailed responses. Such responses are going to be needed both from the JMLSG, and also from other stakeholders in liaison with the JMLSG. For this reason the comments have been transposed to a table at the end of this letter and a column dealing with suggested responsibility. It may be that other bodies will have comment in addition to those mentioned, in which case I would suggest addressing such comments directly to the JMLSG during the period in which it draws together its response to the questions raised.

## **MLAC Process Map**

### Responses

Generally the comments for the process map were favourable. Respondents thought that the previous system handled approval applications fairly successfully, and that there should be no need to change such a system so long as Treasury was responsive to comments made and that consistency was maintained.

The Law Society cautioned against using one set of guidance as a 'dominant' set of guidance, and trying to harmonise terminology or content between differing sectors. It thought that this might cause problems where there are such wide differences both within sectors and also across different sectors (such as large financial institutions and small sole practices conducting legal or accountancy work). The Society suggested that although the process map seemed a little slow, it was a sensible starting point. For shorter and more succinct guidance, it suggested, a shorter timescale could be used.

The Consultative Committee of Accountancy Bodies (CCAB) wished for the process to be used flexibly, as in the foreshortening proposed for the JMLSG GNs, whilst maintaining consistency of approach, so that similar circumstances would lead to similar shortening of the process.

The Law Society asked whether a voting system would be used to deal with the MLAC recommendations, and what would happen if guidance writers disagreed with the comments coming from MLAC.

Both the Law Society and CCAB emphasised that ultimately, responsibility for approving guidance rests with Treasury.

### HMT conclusion

As you are aware, the Treasury preference, expressed at the November MLAC meeting, was for a working party to examine the various guidance notes. However, MLAC disagreed with this suggestion, so we proposed reverting to the mechanism previously used, but on a more formal basis with the process map as a guide.

Our view is that, failing consensus, which would always be preferable, dissenting views would be submitted to the Minister for consideration along with the majority view. The same would hold for instances where guidance writers disagreed with MLAC members. And, of course, we agree that Treasury are ultimately responsible for approving or not approving guidance.

On the point of consistency and flexibility: we do not see that consistent means identical. For different sectors, or businesses within the same sector, different approaches will achieve the same objective without being identical, or inconsistent. This is all a part of the Government strategy of allowing industry to find the most flexible and efficient ways of complying with the requirements of the legislation. We have sought to avoid prescription. However, there might be instances where differing guidance is contradictory. This must be avoided.

## **Legal Issues**

### Responses

The CCAB were concerned that Treasury Guidance should cover guidance in its entirety, not seeking to draw distinctions between industry good practice - to be approved, and interpretation of the law - not to be approved. The CCAB suggested that approval of the JMLSG Guidance, and other guidance, should occur in whole, but perhaps with a carefully drafted statement of approval.

The Law Society agreed that Treasury could not usurp the courts role in interpreting the law, but felt that the criteria overstated this point. The Law Society questioned how guidance on the law could not be approved, whilst best practice could be.

### HMT conclusion

This is a very difficult issue, but we are inclined to agree that approval should be in whole, but with wording stating that such approval was not endorsing any particular interpretation of the law, this being a matter solely for the judiciary.

## **Criteria for approval**

### Responses

The JMLSG were content with the criteria as amended and attached to my letter of 15<sup>th</sup> March. The CCAB suggested that public consultation be considered an essential part of the process before approval can be given, although it questioned the cost and bureaucracy of making all responses publicly available or of completing a cost benefit analysis. The Law Society questioned whether a full public consultation with responses available to all was entirely necessary.

The CCAB questioned the requirement for terms of reference to include the function of providing guidance.

The CCAB questioned what is meant by guidance being available at minimal cost.

### HMT conclusion

On the issue of a full public consultation, making responses to such consultation publicly available, and completion of a cost/benefit analysis: we agree and would suggest that perhaps the criteria be considered a guide instead of requirement, to be considered by MLAC as a whole whilst considering approval. We would invite those submitting guidance for approval to cover such issues in the submission application letter.

On the matter of terms of reference: we should clarify for the CCAB that the terms of reference item included in the criteria is intended to show that the guidance writer is qualified to produce such guidance under the relevant parts of the Proceeds of Crime Act 2002 and Money Laundering regulations 2003 and not intended to be a requirement for terms of reference expressly allowing for the writing of guidance.

On the cost of providing copies of guidance: Treasury understanding is that 'minimal cost' would involve a near-cost recovery basis, rather than providing guidance at a substantial profit.

## **The Society of Scrivener Notaries Guidance**

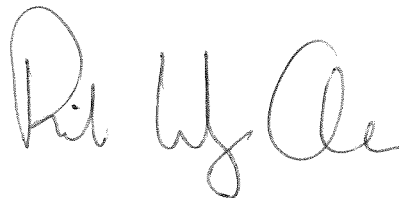
We have now received a request from the Society of Scrivener Notaries that MLAC be asked to comment upon the guidance notes provided to notaries. An electronic copy of this guidance, together with a letter setting out the basis of its consultation and constitutional standing, will also be sent electronically. In line with the process map, I would ask all MLAC members to provide comments to Paul Lloyd at [Paul.Lloyd@hm-treasury.gsi.gov.uk](mailto:Paul.Lloyd@hm-treasury.gsi.gov.uk) within four weeks, say, by **21 June 2004**. We would also appreciate any nil returns by this date.

### **Next steps**

Although we are using the JMLSG GNs as a pilot of the approval mechanism, we remain concerned that when more guidance is submitted to MLAC we may experience guidance fatigue and the quality of evaluation fall below that which is healthy to maintain the standards of guidance which industry and the courts require. We may therefore need to look at adjusting the process from time to time if it seems that the timetable is becoming too compressed.

On the whole, there was broad support for the JMLSG Guidance Notes, but with some detailed points still to follow up. I would therefore invite the JMLSG to respond, if possible to the points raised within three weeks of this letter, by 14 June. However, it may be that the JMLSG is ready to deal with such issues at the MLAC meeting scheduled for 2 June. I leave that for the JMLSG to decide, although we envisage holding a general discussion of guidance at this meeting in any case.

*Yours sincerely,*



**Phil Wynn Owen**  
**Director, Financial Services**  
**Chair of MLAC**