HM TREASURY

Review of the Money Laundering Regulations 2007

A Call for Evidence
Part A

October 2009

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Terms and Acronyms

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

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

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1 Summary

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

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

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

This document is Part A of the Call for Evidence, for professionals familiar with the Regulations and their implementation. It asks questions to draw out evidence for all three principles in relation to the money laundering 'life cycle' from the Regulations to the customer experience on the ground:

- the **Regulations** themselves;
- the **Guidance** that flows from the Regulations;
- the **Supervision** framework;
- how regulations translate into **Industry Practice**;
- the **Customer Experience**; and
- the **Overall Perspective** stakeholders have on the Regulations, the Guidance, the Supervision framework and Industry Practice.

Customers are asked to respond to Part B, which focuses on the customer experience of the implementation of the Regulations. That said, customers are also welcome to respond to the more technical questions in Part A.

Throughout the document we refer to terms such as "effective", "proportionate" and "risk-based". These are explained in more detail in the next chapter and in Annex A.

Summary of Questions in Part A

Questions about the Regulations

1. To what extent is the scope of the Regulations and their application to business activity appropriately risk-based?
2. To what extent are the Customer Due Diligence (CDD) requirements set out in the Regulations a proportionate response to the threat from money laundering?
3. To what extent are Customer Due Diligence (CDD) requirements effective in the fight against money laundering?
4. To what extent do the record keeping and policy and procedural requirements upon Regulated Firms support their anti-money laundering efforts?
5. To what extent do the Regulations provide Supervisors with appropriate compliance monitoring and enforcement powers and penalties to deter non-compliance?
6. To what extent do the Regulations provide for a suitable system of registration and 'fit and proper' testing to be established and carried out on a risk basis?
7. Are the requirements of the money laundering Regulations compatible with and complementary to the requirements of a) other aspects of the UK's broader anti-money laundering regime /legislation and b) international standards/practices?
8. How well does HMT engage with you in developing the Regulations and are the requirements of the Regulations clearly communicated?

Questions about Guidance

9. To what extent does Guidance promote both an effective and proportionate approach to anti-money laundering?
10. How clear and consistent is Guidance including whether Guidance is consistent for those sectors where more than one supervisor exists and generally across sectors?
11. In what ways does Guidance assist with a risk-based implementation of Customer Due Diligence (CDD) measures within your sector?
12. In what ways does Guidance assist and support Regulated Firms' anti-money laundering policies and procedures?
13. How is Guidance made accessible and are there opportunities to engage in its formulation?

Questions about Supervision

14. To what extent does the supervisory framework support an effective, risk-based anti-money laundering regime and compliance with the Regulations?
15. In what ways do Supervisors communicate and engage with the firms they regulate to ensure a sound understanding of legal duties and responsibilities under the Regulations?
16. How do Supervisors ensure a consistent approach to compliance monitoring and enforcement is taken across the anti-money laundering regime?
17. To what extent is Supervisors' monitoring of compliance targeted, proportionate and risk based?

18 How effective and proportionate is the enforcement regime?

19. In what ways could the registration process for Regulated Firms be improved?

Questions about Industry Practice

20. Are there barriers to implementing risk-based policies in practice? If so, what are they?

21. During the process of customer due diligence (CDD), how are risks (in terms of likelihood and impact) taken into account to decide the type of due diligence that will be undertaken?
22. To what extent do the Regulations support or complement Regulated Firms' 'business as usual'?
23. Are "fit and proper" tests being conducted in an effective and proportionate manner?
24. How easy or difficult is it to comply with reporting and record keeping obligations?
25. What forms of communication and engagement take place with stakeholders, from government agencies through to customers?

Questions about the Customer Experience

26. How proportionate do you believe the Regulations appear once they reach the customer?
27. Are you able to provide customers with access to information and resources to check what information is needed from them and why?

Questions about the Regime

28 To what extent do the Regulations, the accompanying Guidance, the supervisory framework and industry practice (the Regime) provide an effective tool in the fight against money laundering?

29. To what extent are the Regulations, the accompanying Guidance, the supervisory framework and industry practice (the Regime) a proportionate response to the risk of money laundering in the UK?
30. Would you say that all relevant stakeholders are able to participate in the development of the Regime?

2 Introduction

The Review and Call for Evidence

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

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

Box 2.A: Three guiding principles

effectiveness – making maximum impact on the criminal and terrorist threat

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

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

More details on the three guiding principles is given in Annex A.

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

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

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

Box 2.B: Regulatory outcomes sought by the legislation

To provide a disincentive to crime by reducing its profitability;

To provide a disincentive to crime by reducing the pool of money available to finance future criminal activity;

To aid the detection and prosecution of crime;

To protect the integrity of the financial system and reputation of UK business; and

To avoid economic and competitive distortions.

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

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

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

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

Background and Context

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

The Money Laundering Regulations, together with the Proceeds of Crime Act (POCA) and the Terrorism Act (TACT) form the backbone of the UK's anti-money laundering policy regime[3]. The Government's strategy in this area can be found in "The Financial Challenge to Crime and Terrorism" (2007). Although distinct in their specific aims and scope, these acts are designed to

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

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

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

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

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

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

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

Submitting Evidence

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

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

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

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

We welcome any comments including suggested alternative routes of enquiry.

When submitting your response, please fill in the questionnaire provided in the next section to give some information about you. This information will be used to help us assess whether we have reached a wide enough audience and to better identify and assess particular areas of concern.

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

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

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

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

Timeline and Stakeholder Events

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

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

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

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

3 Tell us about yourself

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

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

1. Contact Details

1.1 Contact name

1.3 Organisation (if applicable)

1.2 Address (region as a minimum)

1.4 Email address (optional)

1.5 Telephone number (optional)

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

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

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

3. Supervisors. Please provide the following details:

3.1 Relevant persons and /or range of activities you supervise

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

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

4. Regulated Firms. Please provide the following details:

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

4.2 Your current supervisor for Money Laundering purposes

4.3 Your latest available turnover figure

£

4.4 Number of employees (Full Time Equivalent)

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

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

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

Credit institutions (e.g. banks)	☐	Trusts or company service providers	☐
Financial Institution	☐	Estate agents	☐
Auditors, external accountants, tax advisers, insolvency practitioners	☐	High value dealers (e.g. car dealership)	☐
Independent legal professionals	☐	Casinos	☐

5.3 Your latest available turnover figure

£

5.4 Number of employees (Full Time Equivalent)

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

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

Credit institutions (e.g. banks)	☐	Trusts or company service providers	☐
Financial Institution	☐	Estate agents	☐
Auditors, external accountants, tax advisers, insolvency practitioners	☐	High value dealers (e.g. car dealership)	☐
Independent legal professionals	☐	Casinos	☐

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

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

7.1 Your sector / areas of interest

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

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

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

4 Questions about the Regulations

The questions in this section seek to gather information on how effective and proportionate the Money Laundering Regulations (the Regulations) are as they are laid out in law, whether they provide a robust framework for tackling money laundering risks, whether they allow for appropriate enforcement and sanctions powers and whether they are compatible with other regulations and international standards. We also want to know if there is sufficient communication and engagement on the Regulations, both in disseminating information about the Regulations, and in collaborating with stakeholders when drawing up amendments to the Regulations.

The questions in this section concern the Regulations themselves. Later sections will address how the Regulations play out in practice. A summary of the Regulations is given in Annex D. We encourage specific examples that illustrate your points, including cases that highlight the costs and benefits of the Regulations or examples of best practice. Ideas for ways to improve the Regulations are also welcome.

Scope and the Risk-based approach

Determining the appropriate scope of application of the Regulations is the first step towards achieving the regulatory outcomes sought by the Regulations.

Question 1 seeks your views on the current scope of the Regulations. The scope of application should be wide enough to cover all areas of risk in order to be an effective tool in deterring, detecting and prosecuting money laundering activities. But coverage should avoid introducing economic and competitive distortions. Not all practices and activities carry the same risk. The Government sought to take these differences into account when defining the area of application of the Regulations.

1. To what extent is the scope of the Regulations and their application to business activity appropriately risk-based?

We are interested in your views and evidence about:

- Whether the definitions of persons and activities subject to the Regulations are sufficiently clear, meaningful and correct.
- Whether the scope is right; please tell us if there are additional high-risk persons/activities that should be subject to, or low-risk persons/activities that should be excluded from, parts of the Regulations.
- Whether the activities proscribed by the Regulations, such as dealing with Shell Banks or anonymous accounts, are appropriate and sufficient. Are there are other activities that should be proscribed or activities that could be excluded?
- Other ways of improving the application of the Regulations on a risk basis.

Customer Due Diligence (CDD) requirements

The Government believes that a risk-based approach to Customer Due Diligence (CDD) or Know Your Customer (KYC) procedures is preferable to a more prescriptive approach because it is more flexible (risks vary), more effective (firms are at the interface with risks) and more proportionate (common sense rather than a tick-box approach).

Part 2 of the Regulations details the obligations upon Regulated Firms in terms of Customer Due Diligence (CDD). We want to understand whether or not the CDD approach is proportionate (question 2) and whether CDD requirements provide an effective tool in the fight against money laundering (question 3).

2. To what extent are the Customer Due Diligence (CDD) requirements set out in the Regulations a proportionate response to the threat from money laundering?

We are interested in your views and evidence about:

- Whether the list of activities permitting Simplified Due Diligence (SDD) and requiring Enhanced Due Diligence (EDD) is appropriate.
- Whether the definition of Politically Exposed Person (PEP) and the EDD measures required to manage PEPs' risks is appropriate, and compatible with your risk-based procedures. What would be the advantages and disadvantages of extending the risk-based approach to domestic PEPs?

3. To what extent are Customer Due Diligence (CDD) requirements effective in the fight against money laundering?

We are interested in your views and evidence about:

- Whether risk-based CDD requirements assist with the deterrence and detection of money laundering activities and enable the reporting of suspicions of money laundering and terrorist financing. If so, how?
- What other benefits (to firms, government agencies, wider society) are derived from CDD requirements, for instance assistance with the tackling of other crimes, such as fraud.
- Whether the beneficial ownership, reliance and equivalence provisions deter financial crime and/or help minimise burdens.

Record Keeping and Policies and Procedures

We seek your views on the appropriateness of the requirements of Part 3 of the Regulations, which imposes obligations upon Regulated Firms in respect of record-keeping and policies and procedures.

4. To what extent do the record keeping and policy and procedural requirements upon Regulated Firms support their anti-money laundering efforts?

We are interested in your views and evidence about:

- Whether the 5-year time limit and reliance provisions concerning record keeping are appropriate.
- Whether the requirement that branches and subsidiaries in non-EEA states should have these undertakings extended to them is an effective and proportionate means of addressing money laundering risks for a group business.

Supervision, Enforcement and Registration

We want to gather information on how compliance monitoring and enforcement deters non-compliance and if the Regulations provide for a suitable system of registration. In particular this relates to Part 4 of the Regulations that deals with supervision and registration, and Part 5 that provides enforcement powers to certain supervisors.

As part of this, we want your views on the range and flexibility of penalties available under the Regulations to ensure they are appropriate and proportionate. This is particularly pertinent in light of the recently implemented Regulatory Enforcement and Sanctions (RES) Act 2008 (more details in Annex E) that allows, amongst other things, a Minister, by order, to give a regulator access to four new civil sanctions as an alternative to criminal prosecution: fixed monetary penalties, discretionary requirements, stop notices and enforcement undertakings. We are keen to gather views on the current range of powers available to Supervisors and what alternatives, if any, could be useful.

5. To what extent do the Regulations provide Supervisors with appropriate compliance monitoring and enforcement powers and penalties to deter non-compliance?

We are interested in your views and evidence about:

- Whether the duties of Supervisors in relation to compliance monitoring are clear and proportionate; if more or fewer duties are required and if so in what areas.
- Whether the range of powers to investigate and deal with non-compliance and breaches is sufficiently flexible to permit a proportionate response; if more, fewer or alternate powers are required and if so what types.
- Whether the civil penalties and criminal offences currently provided for are effective and proportionate as deterrents and sanctions for non-compliance.

6. To what extent do the Regulations provide for a suitable system of registration and 'fit and proper' testing to be established and carried out on a risk basis?

Compatibility

It is important to consider how the Money Laundering Regulations fit within the broader regime or other related areas of legislation in the UK and abroad, as laid out in the Introduction to this document, namely the Proceeds of Crime Act (POCA), Financial Action Task Force on Money Laundering (FATF)'s global standards, the EU 3rd Money Laundering Directive and related asset-freezing legislation.

7. Are the requirements of the money laundering Regulations compatible with and complementary to the requirements of a) other aspects of the UK's anti-money laundering regime / legislation and b) international standards and practices?

We are interested in your views and evidence about:

- Whether the risk-based Regulations interact logically and clearly with the criminal aspects of the broader anti-money laundering and counter terrorist financing regime established in POCA and TACT and their requirements.
- How compliance with the Regulations interacts with firms' compliance with asset-freezing legislation?
- Whether the requirements of the Regulations are an appropriate interpretation of the requirements of the EU's Third Money Laundering Directive and FATF standards in UK's context.
- Whether the requirements of the Regulations are comparable with anti-money laundering measures employed by other EU Member States in accordance with the Third Money Laundering Directive or other members of the Financial Action Task Force under the 40+9 standards.

Communication and Engagement

Ongoing dialogue between Government and stakeholders and between stakeholders is an important part of policymaking. The third guiding principle underpinning the UK's money laundering regime is Engagement; stakeholders in Government and the private sector working collaboratively in partnership.

Collaboration with stakeholders enables Government to develop effective solutions; identify the full range of affected parties; minimise the risk of unexpected consequences; and discover better implementation methods.

In question 8 we want to gather feedback on how HM Treasury engages with relevant stakeholders to develop a better understanding of the Regulations and canvass suggestions for improvement. We seek information on collaboration between stakeholders, for example between Supervisors and Regulated Firms, and Regulated firms and their customers, in later sections.

8. How well does HMT engage with you in developing the Regulations and are the requirements of the Regulations clearly communicated?

We are interested in your views and evidence about:

- Whether Supervisors and Regulated Firms in particular are engaged in developing the Regulations, within the constraints of the EU Directive and FATF requirements.
- Whether mechanisms are in place to enable all regime stakeholders to consider and input into potential alterations in the Regulations.
- Whether mechanisms are in place to enable discussion of the interpretation of the Regulations.
- Whether there is adequate access to information concerning the Regulations, especially material that supports a risk-based CDD, such as advisories on high-risk jurisdictions.

5 Questions about Guidance

Approved Guidance (Guidance) plays a central role in the Government's anti-money laundering and counter terrorist financing policy. Policy is constructed upon high-level and principles-based Regulations supported by Guidance, which is developed by industry or supervisory bodies and approved by HMT.

This approach provides greater detail and context for sector-specific implementation and promoting a risk-based approach in the necessarily different contexts in which such a wide range of Regulated Firms exists. In addition, Guidance can provide a reasonable legal defence for a Regulated firm if they are unwittingly subject to money laundering activity despite having adhered to the Guidance to the best of their ability.

In this section we want to hear your views on approved Guidance. Questions concerning other information provided by Supervisors and Regulated Firms' in-house guidance are captured later.

We welcome specific examples that illustrate your points, including cases that highlight the costs and benefits of Guidance or examples of best practice.

Role and Use of Guidance

For the industry-led approach to be effective, it is critical that Guidance promotes the risk-based approach and assists firms' anti-money laundering policies and procedures. The questions here seek to gather information on how successful Guidance is in this regard.

We are also interested to know about how Guidance assists Supervisors and Regulated Firms with taking a risk-based approach to anti-money laundering, and the role that Guidance plays in facilitating the interaction between the Regulations on the one hand and the broader anti-money laundering regime and international standards on the other hand.

9. **To what extent does Guidance promote both an effective and proportionate approach to anti-money laundering?**

We are interested in your views and evidence about:

- Whether the definitions of persons and activities subject to the Regulations given in Guidance are clear, meaningful and correct from a risk basis in the context of your sector; and whether the 'acting in the course of business' requirement for your sector is appropriately explained.
- Whether it is beneficial that Guidance is legally enforceable in the UK, and that compliance with its provisions can be used as a defence against prosecution for non-compliance with the Regulations.

- Whether Guidance assists understanding and supports risk-based implementation of the Regulations' requirements in your sector including undertaking of risk assessments.

10. How clear and consistent is Guidance including whether Guidance is consistent for those sectors where more than one supervisor exists and generally across sectors?

11. In what ways does Guidance assist with a risk-based implementation of Customer Due Diligence (CDD) measures within your sector?

We are interested in your views and evidence about:

- Whether the activities permitting Simplified Due Diligence (SDD) or requiring Enhanced Due Diligence (EDD) are appropriately explained to support your risk-based approach.
- Whether the definition of Politically Exposed Person (PEP) and the EDD measures required to manage PEPs' risks are appropriately set out.
- Whether available Guidance on beneficial ownership, reliance and equivalence supports an affective, risk-based approach in your sector.

12. In what ways does Guidance assist and support Regulated Firms' anti-money laundering policies and procedures?

We are interested in your views and evidence about:

- Whether sector-specific, tailor made Guidance assists firms to fulfil their requirements to create and maintain risk-sensitive policies and procedures.
- Whether Guidance is provided that enables firms to consider other aspects of their responsibilities under the Regulations (such as record keeping and training) on a risk basis.
- Whether Guidance encourages requirements over and above best practice to comply with the requirements of the regulation.
- How Guidance helps stakeholders to understand the UK's anti-money laundering regime as a whole, and the interaction of the Regulations with other requirements such as those contained in POCA and TACT.

Communication and Engagement

Guidance plays an important role in ensuring the Regulations are effective and proportionate; it is important that Guidance is accessible and engagement on content is promoted.

Question 13 specifically asks about the accessibility of Guidance and the level of consultation involved in its development. Further questions relating to Supervisor and Regulated Firm communication and engagement are given in later sections.

13. How is Guidance made accessible and are there opportunities to engage in its formulation?

We are interested in your views and evidence about:

- Whether you have adequate access to Guidance information in your sector and if Guidance is clear.
- Whether the production of Guidance in your sector involves consultation and discussion with all relevant stakeholders.

6 Questions about Supervision

This section seeks views on the supervision of compliance with the Regulations as undertaken by the 28 supervisory bodies (Supervisors) listed in Annex F. The questions will be most relevant to Supervisors and Regulated Firms, but other interested parties may also have experience of / be affected by the supervisory framework.

Supervision of the Regulations takes place in two main ways: (1) monitoring of and guidance on compliance with regulations; and (2) enforcement of the Regulations. Unless otherwise noted, questions in this section seek comment on both aspects of the supervisory framework.

The questions in this section seek to gather information on how successfully the supervisor structure supports an effective anti-money laundering regime, to what extent supervision promotes a risk-based approach to anti-money laundering, how successfully Supervisors communicate and engage with stakeholders and share information, and how appropriate enforcement powers are.

We welcome specific examples that illustrate your points, including cases that highlight the costs and benefits of Supervision or examples of best practice.

Supervisory Structure

The current supervisory arrangement is characterised by a degree of decentralisation to enable:

- Each different category of relevant person to be supervised, with some exceptions, by a supervisory body that has specialist knowledge of that particular type of person.
- Multiple professional bodies to be granted supervisory powers over the same category of person.

Table 4.A offers a simplified summary of the regulated trade sectors and supervisors and question 14 seeks feedback on the pros and cons of the structure, in theory and in practice.

Some Regulated Firms may, in principle, be subject to supervision by more than one Supervisor (estate agents that are also high value dealers for example). Supervisors make appropriate arrangements in those cases, generally based on the predominant business, to minimise administrative and supervisory burdens.

Such a supervisory framework offers the possibility to make use of specialist industry knowledge and existing relationships, but might create concerns over consistency of enforcement and coordination of supervision.

Table 4.A: Summary of regulated trade sectors and supervisors

Regulated trade sectors	Supervisors
Credit institutions	FSA or OFT
Financial institutions	FSA or HMRC for bureaux de change etc, DETI NI for Northern Ireland based Credit Unions
Auditors, external accountants, tax advisers, insolvency practitioners	Relevant professional bodies or HMRC or the Secretary of State for Business, Innovation and Skills
Legal professionals	Relevant professional bodies
Trust or company service providers	HMRC unless already supervised by the FSA or a relevant professional body
Estate agents	OFT
High value dealers	HMRC
Casinos	The Gambling Commission
A full list of Supervisors is given in Annex F	

14. To what extent does the supervisory framework support an effective, risk-based anti-money laundering regime and compliance with the Regulations?

We are interested in your views and evidence about:

- The benefits and challenges of a multi-supervisor structure, with Supervisors specific to different areas of business including the use of professional bodies or professional associations as Supervisors.
- Supervisors making use of disciplinary and enforcement powers including your awareness of powers being used, the effectiveness of the powers and how appropriate powers are for the office.
- To what extent Supervisors are mindful of the costs and benefits to Regulated Firms and offer ideas to minimise costs or maximise benefits.

Engagement, Guidance and Cooperation

As mentioned earlier, an ongoing dialogue between the different stakeholders and a collaborative approach by all stakeholders is essential in developing effective solutions; minimising the risk of unexpected consequences; and discovering better implementation methods.

Supervisors play an important role in communication. Through regular contact with Regulated Firms, Supervisors are well placed to disseminate information and act as a conduit for feedback on the regime. Through question 15 we want to gather information about how engagement with and by Supervisors supports an effective and proportionate regime. In question 16 we want to understand whether, given the multiplicity of Supervisors, a consistent approach to compliance monitoring and enforcement is taken across the anti-money laundering regime.

15. **In what ways do Supervisors communicate and engage with the firms they regulate to ensure a sound understanding of legal duties and responsibilities under the Regulations?**

We are interested in your views and evidence about:

- What communication means or advice and inquiry services are provided by Supervisors (e.g. awareness campaigns, seminars, written information, approved Guidance, and telephone help lines); and what additional or alternative type of engagement could be useful to improve support for, and outreach and education, to Regulated Firms.
- The extent to which Supervisors encourage feedback from firms they regulate and how are actions taken forward to help shape the anti-money laundering supervisory framework.
- How feedback is provided to Firms on outcomes resulting from the information they submit to Supervisors and Government.

16. **How do Supervisors ensure that a consistent approach to compliance monitoring and enforcement is taken across the anti-money laundering regime?**

Monitoring Compliance and Enforcement

Ensuring that Regulated Firms comply with the Regulations is the primary task of the Supervisors. A risk-based approach to compliance monitoring can enhance the effectiveness and proportionality of the anti-money laundering regime by enabling the concentration of resources in higher-risk areas whilst minimising disruptions to Regulated Firms by keeping interventions targeted and costs to a minimum. The approach to compliance monitoring also shapes stakeholders' views on a regulatory regime. Perceptions are important because negative perceptions can reduce respect for legislation and raise the likelihood of non-compliance.

It is also important that Supervisors have access to appropriate and proportionate sanctions to tackle non-compliance. We are keen to gather views on the current range of powers available to Supervisors and what alternatives, if any, could be useful.

Questions 17 and 18 gather evidence on the risk-based approached promoted by the Regulations to understand how this operates in practice, both in relation to compliance monitoring and enforcement.

17. To what extent is Supervisors' monitoring of compliance targeted, proportionate and risk based?

We are interested in your views and evidence about:

- How risk-based and proportionate Supervisors' methods are when approaching compliance monitoring.
- Whether Supervisors encourage requirements over and above best practice compliance with the requirements of the regulation.
- To what extent Supervisors make dedicated anti-money laundering visits or combine them with other data gathering activities.
- How much time firms spend with visits and / or collecting data specific to anti-money laundering that they might not spend otherwise.
- Processes for identifying and dealing with non-compliant firms.

18. How effective and proportionate is the enforcement regime?

We are interested in your views and evidence about:

- Whether supervisors set out the penalties and sanctions for non-compliance, and explain how they will apply these.
- Whether the range of powers permits a proportionate response.
- What additional or alternative powers would help in encouraging compliance and / or facilitating enforcement.
- The appeals processes and the degree to which they are used.
- How powers in the UK compare with other countries including consistency, risk reduction, deterrence and creating confidence in the UK marketplace.

Registration

Regulations 25 to 30 subject money service businesses, high value dealers and trust or company service providers that are not otherwise registered to a system of mandatory registration. Regulations 33 and 34 state that other approved persons will only be required to register if the supervisor decides to maintain a register. The intention behind this approach was to mandate that registers were required in the higher risk sectors and to leave the question of whether registers were appropriate in others sectors to the discretion of Supervisors.

Through question 19 we want to understand how registration is working in practice.

19. In what ways could registration processes for Regulated Firms be improved?

We are interested in your views and evidence about:

- Whether the registration system supports compliance with the Regulations, and whether the scope of the firms subject to registration is correct.
- What are the costs and benefits to Regulated Firms of a registration system and what difficulties with the process exist that may put impediments on a Regulated Firm to register?
- The length of the registration process and the ease with which the process is conducted.
- Measures that Supervisors take to assess and ensure that all relevant firms are registered.

7 Questions about Industry Practice

In this section we want to hear your views on Industry Practice - the application of the Regulations. This section has some overlaps with the earlier section on the Regulations but the questions here are focussed on the practical implications of the Regulations including how the Money Laundering Regulations 2007 (the Regulations) work in practice and industry's compliance with them.

The questions below gather information on the application of the risk-based approach in general and its application to Customer Due Diligence (CDD) as well as information on how much communication takes place between firms and other stakeholders. In this section in particular we seek evidence of the benefits and costs to Regulated Firms.

Some of the obligations set upon firms could arguably be seen as good commercial practice. For example, fit and proper tests and record keeping policies would be in place in many Regulated Firms even without a formal obligation. Some of these practices might even have a direct commercial application with tangible benefits to firms. We are keen to hear from you about these and other benefits.

However, the Regulations and Guidance might also be imposing costs on Regulated Firms over and above business-as-usual costs or could be interfering with other business procedures. We are particularly interested in the costs that Regulated Firms incur in providing the information required under the Regulations – the administrative burden on compliance with the Regulations e.g. policies and procedures, applications for authorisation, notification of activities and showing a supervisor around a site. Details on the Government methodology to calculate administrative burdens are given in Annex C. We kindly ask firms to follow this methodology when submitting evidence of the costs they incur as a result of the Regulations.

We welcome specific examples that illustrate your points, including cases that highlight the costs and benefits of the application in practice of the Regulations or examples of best practice.

Risk-based Approach

For a risk-based approach to anti-money laundering to work, firms need to develop appropriate policies and procedures to identify and assess their business's money laundering and terrorist financing risk.

Risk-based policies and procedures do not always lead, however, to proportionate outcomes at the customer interface. For example, firms might struggle to access the relevant data needed to feed into risk analysis models. Other factors such as the size of the organisation or the distribution of tasks and responsibilities within a firm could have an impact on the implementation of policies and procedures, for example the degree of discretion of tellers in high street banks.

Questions 20 and 21 seek views on the risk-based approach in general and its application to Customer Due Diligence (CDD) more specifically.

20. Are there barriers to implementing risk-based policies in practice? If so, what are they?

We are interested in your views and evidence about:

- To what extent the Regulations and/or Guidance are preventing the implementation of a risk-based approach by Regulated Firms.
- Whether Regulated Firms' policies and procedures are constrained by considerations they give to their impact (costs and benefits) on their customers.
- Whether Regulated Firms have the necessary skills, data and tools to conduct effective risk assessments.
- What difficulties Regulated Firms encounter with specific provisions such as equivalence and identification of Politically Exposed Persons (PEPs).
- Whether particular practical aspects lead to, encourage or facilitate prescriptive rules at the expense of case-by-case risk based practices.

21. During the process of customer due diligence (CDD), how are risks (in terms of likelihood and impact) taken into account to decide the type of due diligence that will be undertaken?

We are interested in your views and evidence about:

- Whether regulations about Simplified Due Diligence (SDD) / Enhanced Due Diligence (EDD) are utilised appropriately:
    - Do particular aspects of the Money Laundering Regulations and/or the written guidance influence the degree to which firms use the option for SDD / EDD? If so, what aspects and how?
    - Do commercial considerations, established industry practices or legislation other than the Money Laundering Regulations affect the way that Regulated Firms implement SDD / EDD? If so, what are the issues?
- Whether reliance on third party information is being used to simplify the customer due diligence process. If not, why not and are the reasons related to the Regulations or other considerations (commercial, other legislation)?
- How firms interpret in practice the requirement to ongoing monitoring of businesses in relation to CDD requirements.
- The effectiveness and proportionality of the process of establishing Beneficial Ownership.
- If you are a Regulated Firm, since the implementation of the Regulations,
    - What proportion of customers have you subjected to SDD?
    - What proportion of prospective clients has been turned away due to failure to fulfil CDD requirements?

- o What proportion of CDD checks have benefited from reliance provisions?
- o What proportion of requests for reliance made by you to another firm has been accepted?
- o What proportion of requests for reliance on you have you accepted?

Relationship with Business as Usual

Regulated firms can implement in different ways the obligations placed upon them by the Regulations. Ideally, the processes and procedures mandated by the Regulations could be integrated with other procedures firms have decided to implement.

As mentioned above, some of these obligations may already be being undertaken as good commercial practices. But some may be imposing costs over and above 'business as usual' costs or could be interfering with other business procedures.

22. To what extent do the Regulations support or complement 'business as usual'?

We are interested in your views and evidence about:

- How far anti-money laundering policies and procedures, including training, are integrated with other commercial and/or regulatory considerations.
- How closely Customer Due Diligence (CCD) requirements complement or overlap with existing 'business as usual' procedures; whether CDD requirements assist Regulated Firms in undertaking their risk assessments.
- To what extent the Regulations require actions over and above what Regulated Firms would otherwise do in the absence of the Regulations and how much cost this adds.
- Any examples of 'best' industry practice to minimise costs to Regulated Firms while maintaining appropriate level of detection and deterrence.
- To what extent the Regulations upholds the reputation of the UK business environment and assist Regulated Firms to avoid involvement with financial crime.

23. Are "fit and proper" tests being conducted in an effective and proportionate manner?

We are interested in your views and evidence about:

- The benefits you perceive for Regulated Firms from performing 'fit and proper' tests and if the 'fit and proper' background checks are broadly similar to those a firm would undertake as part of good commercial practice.
- The ease with which the process is conducted and the costs of undertaking the test including the time taken to put a candidate successfully through the test.

- To what extent Regulated Firms select individuals that must be subject to the test according to their functions.
- Whether Regulated Firms subject new employees to the "fit and proper" test irrespective of their past experience, or whether they are able to transfer an approval when an employee moves jobs.

24. How easy or difficult is it to comply with reporting and record keeping obligations?

Communication and Engagement

As mentioned earlier, ongoing dialogue between Government and stakeholders and between stakeholders themselves is an important part of policymaking.

Collaboration with stakeholders enables Government to develop effective solutions, identify the full range of affected parties, minimise the risk of unexpected consequences, and discover better implementation methods.

25. What forms of communication and engagement take place with stakeholders, from government agencies through to customers?

We are interested in your views and evidence about:

- The opportunities that exist for Regulated Firms to feedback their experiences of the Regulations to Supervisors and/or Government Agencies, and what action is taken on their feedback.
- The extent to which Regulated Firms are involved in policy and guidance development, either directly or through trade/industry bodies.
- Whether the benefits of the Regulations in terms of effectiveness and outcomes are communicated to stakeholders.

8 Questions about the Customer Experience

Although the Regulations put direct obligations on Regulated Firms, customers of these firms will be affected by the requirements of the Regulations. Prospective customers might be asked to validate their identity, to provide evidence over beneficial ownership or to disclose other personal or business information. The effect of these demands on customers can vary from giving confidence that safeguards are in place to giving rise to irritants and annoyances (e.g. form filling, need for correspondence, etc) to generating considerable costs (e.g. use of advisers to certify beneficial ownership).

The questions in this section seek to gather information on whether customers effectively experience risk-based outcomes, whether they are the recipients of proportionate demands from Regulated Firms and whether they have access to the information and resources to understand what is needed from them.

We welcome specific examples that illustrate your points, including cases that highlight the costs and benefits to customers or examples of best practice.

Proportionate Experience on the Ground

The UK's anti-money laundering regime is built on a risk-based approach. This often means that Regulations deliberately avoid prescriptive rules and that Regulated Firms are trusted to find, with the help of Guidance, the most appropriate manner to comply with their obligations that best fits their particular circumstances.

The corollary of this approach is that there exists different ways in which the requirements from the Regulations can be met by Regulated Firms following Guidance and advice from Supervisors. It is therefore possible that the customer experience might vary and not always be as proportionate as it could be. With question 26 we are keen to understand whether customers of Regulated Firms experience risk-based procedures.

26. How proportionate do you believe the Regulations appear once they reach the customer?

We are interested in your views and evidence about:

- The extent to which questions and requirements are specific to the customer's circumstances.
- How much flexibility is offered in relation to acceptable forms of identification; if more flexibility would be useful to customers and/or Regulated Firms.
- For customers in an ongoing business relationship, is the customer asked to provide repeat information and why?
- How the experiences of customers of Regulated Firms compare across different sectors, different countries and between different sized firms.

- Any suggestions you might have to improve customers' experience of procedures when dealing with Regulated Firms.

Information and Engagement

Engagement of customers including the provision of information plays an important role in gaining wider compliance with the anti-money laundering regime. It can also be a useful conduit for feedback on how the Regulations are working in practice, and a source of ideas for ways to simplify their application. Well-informed customers can also ensure the Regulations are applied in a proportionate way.

27. Are you able to provide customers with access to information and resources to check what information is needed from them and why?

9 Questions about the Regime

We would first like to hear from you about your overall assessment of the anti-money laundering regime, that is the Money Laundering Regulations 2007, the accompanying Guidance, the supervisory framework and industry practice in relation to the overarching objectives of the UK's anti-money laundering strategy and to the three underlying principles of the UK's anti-money laundering strategy:

- effectiveness – making maximum impact on the criminal and terrorist threat;
- proportionality – an approach that is "risk-based" so that the benefits of intervention outweigh its burdens; that action is targeted wherever possible on specific areas of risk and vulnerability; and
- engagement – so that all stakeholders in government and the private sector, at home and abroad, work collaboratively in partnership.

To that end, the three questions in this section ask you to consider the regime as a whole as well its role within the broader regime of domestic legislation and international standards.

Effectiveness, Proportionality and Engagement

28. To what extent do the Regulations, the accompanying Guidance, the supervisory framework and industry practice (the Regime) provide an effective tool in the fight against money laundering?

We are interested in your views and evidence about:

- The extent to which any or all aspects of the Regime facilitate the deterrence, detection and reporting of suspected money-laundering activities.
- How well the Regime complements other relevant legislation, providing support to aspects of the broader regime such as investigations or Suspicious Activity Reports (SARs).
- How the effectiveness of the Regime in the UK compares internationally.
- The extent to which the Regime protects the integrity of the financial system and reputation of UK business, and avoids economic and competitive distortions.
- How well the Regime identifies and responds to new and emerging risks.

29. **To what extent are the Regulations, the accompanying Guidance, the supervisory framework and industry practice (the Regime) a proportionate response to the risk of money laundering in the UK?**

We are interested in your views and evidence about:

- How appropriate the scope of the Regulations is in relation to the range of customers, business relationships and types of transaction that are regulated and their relative levels of risk.
- The ability for firms to concentrate their resources on higher risks and minimise them on lower ones and/or their ability to maximise benefits and minimise costs.
- How well the costs and benefits of the Regulations are understood.
- The role that Guidance plays in promoting a risk-based approach.
- Whether enforcement powers and their application are appropriate to levels of compliance and risk.
- How the proportionality of the Regime in the UK compares internationally.

30. **Would you say that all relevant stakeholders are able to participate in the development of the Regime?**

We are interested in your views and evidence about:

- How extensive and regular the communication is across the Regime and between all levels of the Regime and the opportunity is for Stakeholders subject to the Regulations to input into their development.
- Access to clear and consistent information and guidance on the need for the Regulations, their scope of application and how to apply them in an effective and proportionate way.
- Whether Stakeholders interacting with the Regime (but not subject to the Regulations directly) understand the anti-money laundering requirements; whether these requirements are properly communicated to them and whether they are able to input their views on them.
- Whether partnership with other countries is strengthening global standards and compliance in line with changing risks.

Other comments

The questions in this document have been prepared to assess the Money Laundering Regulations 2007 against the three principles of effectiveness, proportionality and engagement. We are interested in your comments on things that work well as well as how the effectiveness, proportionality and engagement of the Regulations, the accompanying Guidance and the supervisory framework can be improved.

Comments on any other issues relating to the Regulations not covered by our questions, as well as suggestions for alternative routes of enquiry, are welcomed.

10 References

Legislation

- The Money Laundering Regulations 2007 (SI 2007/2157)
- The Money Laundering (Amendment) Regulations 2007 (SI 20073299)
- The Third Money Laundering Directive (the Third Directive); Directive 2005/60/EC of the European Parliament and the Council on the prevention of the use of the financial system for the purposes of money laundering and terrorist financing
- The Proceeds of Crime Act 2002
- The Terrorism Act 2000
- The Terrorism (United Nations Measures) Order 2006 (SI 2006/2657)
- The Al-Qaida and Taliban (United Nations Measures) Order 2006 (SI 2006/2952)
- The Regulatory Enforcement and Sanctions Act 2008

Other documents

- "Anti-Money Laundering Strategy", HM Treasury, the Home Office and the Foreign and Commonwealth Office (October 2004)
- "The financial challenge to crime and terrorism", HM Treasury, the Home Office, the Serious Organised Crime Agency, and the Foreign and Commonwealth Office (February 2007)
- "FATF 40 Recommendations", FATF (October 2004)
- "FATF 9 Special Recommendations on Terrorist Financing", FATF (October 2004)
- "Reducing administrative burdens: effective inspection and enforcement", Sir Philip Hampton, HM Treasury (March 2005)
- "Regulatory Justice: Making Sanctions Effective", Professor Richard Macrory, the Better Regulation Executive (November 2006)

A

Effectiveness, proportionality and engagement

The Government's objectives

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

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

Three guiding principles

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

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

Effectiveness

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

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

Proportionality

The fight against crime and terrorism imposes costs on Government, business and taxpayers. It is essential, therefore, that the benefits of this effort should outweigh its burden; that action is targeted wherever possible on specific areas of risk and vulnerability; and the right balance is struck between the need to safeguard the security of the public and their privacy and liberty.

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

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

Proportionality therefore demands that:

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

Engagement

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

In the UK, this principle of engagement means that:

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

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

B Related legislation

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

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

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

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

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

Calculating administrative burdens and assessing benefits

Administrative burdens calculation

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

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

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

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

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

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

Box C.A: Calculating administrative burdens

Cost of a relevant activity = tariff x time

where:

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

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

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

Where:

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

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

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

Benefits of the Money Laundering Regulations

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

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

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

D Summary of the Money Laundering Regulations 2007

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

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

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

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

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

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

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

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

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

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

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

E Regulatory Enforcement and Sanctions Act 2008

Effective regulatory sanctions

The Government believes that regulators should have access to effective sanctions that are flexible and proportionate. These sanctions should be flexible enough to reflect the regulatory needs of legitimate businesses, as well as being able to ensure that where businesses have saved costs though non-compliance, they do not gain an unfair advantage over those that have complied with their regulatory obligations.

In 2006 the Macrory Review[1] looked at the existing regulatory sanctioning regime and its final report 'Regulatory Justice: Making Sanctions Effective' set out a blueprint for transforming the regime in the UK. The Review found that many regulatory sanctioning regimes were over reliant on criminal prosecution and lacking in flexibility. It made a number of recommendations aimed at ensuring that regulators have access to a flexible set of sanctioning tools that are consistent with the risk-based approach to enforcement outlined in the 200x Hampton Review[2], which reviewed the approach to regulation in the UK.

This led to the introduction of measures in Part 3 of the Regulatory Enforcement and Sanctions (RES) Act 2008 as an important element in implementing some of the key recommendations of the Macrory Review. The RES Act (2008) allows a Minister, by order, to give a regulator access to four new civil sanctions:

- Fixed monetary penalties (FMP) – under which a regulator can impose a monetary penalty of a fixed amount.
- Discretionary requirements – which enable a regulator to impose, by notice, one or more of the following:
    - A variable monetary penalty (VMP) determined by the regulator;
    - A requirement to take specified steps within a stated period to secure that an offence does not continue or happen again (compliance notice); and
    - A requirement to take specified steps within a stated period to secure that the position is restored, so far as possible, to what it would have been if no offence had been committed (restoration notice).
- Stop notices – which prevent a business from carrying on an activity described in the notice until it has taken steps to come back into compliance.
- Enforcement undertakings – which enable a business, which a regulator reasonably suspects of having committed an offence, to give an undertaking to a regulator to take one or more corrective actions set out in the undertaking.

[1] "Regulatory Justice: Making Sanctions Effective", Professor Richard Macrory, the Better Regulation Executive (November 2006)

[2] "Reducing administrative burdens: effective inspection and enforcement", Sir Philip Hampton, HM Treasury (March 2005)

The new powers are an alternative to criminal prosecution and it will be for the regulator to determine the appropriate response to a particular instance of regulatory non-compliance. These sanctions should be viewed in the context of the better regulation agenda more widely. They are not intended to replace more informal methods of enforcement, such as advice or warning letters and should only be used where it is necessary and proportionate to do so.

This text has been adapted from the "Regulatory Enforcement and Sanctions Act 2008. Guidance to the Act" available at www.berr.gov.uk/files/file47135.pdf

Implications for the Money Laundering Regulations 2007

It is not proposed here that access to these four new civil sanctions be given to Supervisors of the UK's anti-money laundering regime. Indeed a number of Supervisors are not formally regulators and therefore the provisions of the Act do not apply to them.

Rather, the purpose of raising this issue is to seek some debate with contributors to this Call for Evidence over the relative merits of alternative powers such as those available under the RES Act, and to understand what those powers might be used for, and in what ways they would be an improvement, if any, on the existing powers.

If it is decided that there could be merit in changing the range of powers available to some or all Supervisors a specific consultation on this issue will be required.

F List of supervisory authorities

Association of Accounting Technicians	General Council of the Bar of Northern Ireland
Association of Chartered Certified Accountants	Her Majesty's Revenue and Customs (HMRC)
Association of International Accountants	Insolvency Practitioners Association
Association of Taxation Technicians	Institute of Certified Bookkeepers
Chartered Institute of Management Accountants	Institute of Chartered Accountants in England and Wales
Chartered Institute of Public Finance and Accountancy	Institute of Chartered Accountants in Ireland
Chartered Institute of Taxation	Institute of Chartered Accountants in Scotland
Council for Licensed Conveyancers	Institute of Financial Accountants
Department for Enterprise, Trade and Industry (Northern Ireland)	International Association of Book-keepers
Faculty of Advocates	Law Society
Faculty Office of the Archbishop of Canterbury	Law Society of Northern Ireland
Financial Services Authority (FSA)	Law Society of Scotland
Gambling Commission	Office of Fair Trading (OFT)
General Council of the Bar	Secretary of State for Business, Innovation and Skills (Insolvency Service)

Key information about this call for evidence

Target audience:

Anyone with an interest in the anti-money-laundering regime, either through professional involvement or experience of being regulated or affected by it.

Part A is aimed at professionals familiar with the Regulations and their implementation including policy makers and commentators, Regulated Firms, supervisors and academics.

Part B is aimed at customers of Regulated Firms - business customers including SMEs and private individual customers.

Duration:

From 9 October 2009 to Friday 11 December 2009

Enquiries to:

Keith Davis, on +44 (0)20 7270 5358 or
mlr.review@hm-treasury.gsi.gov.uk

How to respond:

We are keen to gather views and any supporting evidence to assist the Money Laundering Regulations 2007. You do not have to answer all the questions. Concentrate on those in which you have the most interest. It would be helpful if you could describe your views, suggestions and experience when responding, rather than giving yes/no answers.

Although some ideas for change are presented here, our conclusions are not fixed. Feel free to challenge any suggestions with which you disagree and suggest alternative routes of enquiry.

Send emails to: mlr.review@hm-treasury.gsi.gov.uk

Or in writing to:
Review of the Money Laundering Regulations
Financial Crime Team, HM Treasury
1, Horse Guards Road
London, SW1A 2HQ

Individual contributions will not be acknowledged unless specifically requested.

The legal position regarding confidentiality of information provided is set out at the front of this document.

Your details:

When submitting your response, please fill in the questionnaire in Chapter 3 to provide some information about you. The questionnaire has been designed to help us assess whether we have reached a wide enough audience and to identify better and assess particular areas of concern.

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

Unless you state otherwise (and an automatic disclaimer generated by your IT system will not be taken as such), we will assume you are happy for us to publish your responses and share it with other Government officials.

Additional ways to feed in your views:

Events will be arranged at regional locations to discuss these issues. If you are interested in participating, please contact Keith Davis via the address or phone number above.

Next steps:

The Government intends to publish a summary of the responses received in this Call for Evidence early in 2010. Any areas for improvement in the Regulations will be subject to further dialogue and/or Consultation with stakeholders.

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

HM Treasury contacts

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

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

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