

The Third Money Laundering Directive: Regulatory Impact Assessment

On the 7th June the 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 Third EC Money Laundering Directive) reached political agreement. It is expected that it will be formally adopted later this year. The UK then has two years to implement the Directive once it has been formally adopted.

This Regulatory Impact Assessment, along with continuous discussions with the stakeholders, was used to inform the UK's negotiating position on the Third Money Laundering Directive and should be read alongside the text of the Directive (available on the Treasury website).

It should be noted that the document provides an estimate of the costs and benefits of the Third Money Laundering Directive only. A further impact assessment to inform our decisions on implementing the Directive (through updating domestic legislation) will be developed and produced over the implementation period.

This document is not being issued as a formal consultation as the Government expects to issue a consultation document on our approaches to implementation in the beginning of 2006 and to consult upon the draft new regulations in 2007. But, to inform implementation of the Directive we would be happy to receive any comments you have on this document. In particular regarding

- the description of the regulated sectors (numbers involved, types of firm etc)
- the description of the main impacts of the Directive
- the information and assumptions provided in the cost section
- the information and assumptions provided in the benefits section

Please send any comments you have to Dharminder Chattha at Dharminder.chattha@hm-treasury.x.gsi.gov.uk

Regulatory Impact Assessment

Contents

Section	Page
Title of Directive	2
(A) Purpose and Intended Effect of the measure	
€# The objectives of the Third Money Laundering Directive	2
€# The background to the Third Money Laundering Directive –including extent of money laundering and terrorist financing, principles and tools of the UK regime, negotiations and successes, summary of impacts	3
€# The rationale for intervention - including reasons for combating money laundering in general and the added benefits of the Third Money Laundering Directive	9
(B) Options	
€# Sets out three options going forward	11
(C) Costs and Benefits	
€# Who is affected by the Third Directive	12
€# The scope of the assessment of costs and benefits	15
€# The costs including, a summary of major costs, sector by sector analysis of costs, a description of the unintended consequences	16
€# The benefits including the benefits that will affect all of the regulated sector and benefits of specific articles	22
(D) Other issues	
€# Small firms impact test	24
€# Equity and fairness of the Third Directive	25
€# A competition assessment	25
€# Monitoring and review of the Third Directive	26
€# Implementation and delivery	27
€# Compensatory deregulation measures	29
€# Enforcement and Sanctions	29
€# Adjusting Values of the Third Directive	30
€# Consultation	30
Summary and recommendation	31
Summary of impacts by article of the Directive	Annex A
Costing table	Annex B
Summary of benefits by article of the Directive	Annex C
Short description of a risk based approach	Annex D
Implementation timetable	Annex E
Consultation information	Annex F

Title of the Directive

1. "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, including terrorist financing (the Third Money Laundering Directive)"

(A) Purpose and intended effect of the measure

2. This section sets out
 - (a) The objective of the Third Money Laundering Directive
 - (b) The background to the Third Money Laundering Directive
 - (c) The rationale for intervention - including reasons for combating money laundering in general and the added benefits of the Third Money Laundering Directive

Objective:

3. Keeping Europe's anti money laundering and counter terrorist financing measures up to date are critical to:

- €# Help stop criminals benefiting from their crime
- €# Help protect the integrity of our sectors regulated by anti money laundering and counter terrorist financing legislation
- €# Help promote a co-ordinated European response to an international problem

4. The main purpose of the Third Money Laundering Directive is to update European legislation in line with international recommendations (namely the internationally agreed Financial Action Task Force (FATF) recommendations) on anti money laundering and counter terrorist financing measures. By doing this the Directive takes account of new risks (e.g. including terrorist financing in the scope of the Directive) and vulnerable sectors (e.g. banning credit institutions from entering into a correspondent relationship with shell banks)

5. This measure will affect the United Kingdom of Great Britain and Northern Ireland, as well as Gibraltar, but not the other Overseas Territories or the Crown Dependencies. The aim is to achieve the above objectives through full member state implementation of the Directive within 2 years

6. It will impact on the regulated sectors to whom its provisions will apply. These are:

- (a) Credit Institutions and other financial institutions;
- (b) Auditors, external accountants and tax advisors;
- (c) Notaries and other independent legal professionals;
- (d) Trust and company service providers;

- (e) Estate agents;
 - (f) Money service businesses, including bureaux de change;
 - (g) Dealers and auctioneers in high-value goods, whenever payment is made in cash, and in an amount of €15,000 or more; and
 - (h) Casinos
7. All these sectors have been part of the regulated sector in the UK since the entry into force of the primary and secondary legislation, which implemented the Second Directive. The Money Laundering Regulations 2003 (the main legislation on anti money laundering measures) came into force on 1st March 2004.
8. In addition to the regulated sectors the Directive will also affect the supervisory bodies that have responsibility for ensuring the sectors' compliance with anti money laundering legislation. These bodies include the Financial Services Authority, the Gaming Board of Great Britain, the Law Society and Her Majesty's Revenue and Customs (HMRC). The Directive also requires a supervisory regime to be set up for Estate Agents and Trust and Company Service Providers; currently neither of these sectors are subject to supervision by a nominated authority for their compliance with anti money laundering controls.
9. The Directive will also affect law enforcement authorities such as HMRC law enforcement, the Police and the new Serious Organised Crime Authority (SOCA), which will include the National Criminal Intelligence Service (NCIS). The Directive covers their powers and duties.
10. Finally the Directive will indirectly affect some of the customers and businesses that deal with the regulated sector. However, all of the regulated firms already conduct identification and verification checks on their customers and the information provided by customers should not need to change as a result of the Directive.

Background:

11. The First Money Laundering Directive (1991) only imposed anti-money laundering obligations on the financial sector, and it defined money laundering largely in terms of drugs offences. The Second Money Laundering Directive (2001) extended the scope of the regulated sector to a number of new professions/activities (e.g. lawyers, accountants, estate agents, casinos), as well as the range of underlying crimes to which money laundering relates – the so-called “predicate offences”.
12. The Second Money Laundering Directive was based on the global standard in this area: the Forty Recommendations of the Financial Action Task Force on combating money laundering (FATF). In June 2003 these Forty Recommendations were amended to create a "comprehensive, consistent and strengthened" international framework for combating money laundering and terrorist financing. Key changes included more monitoring of high risk bank customers and transactions, extending anti-

money laundering measures to non-financial businesses and professions such as casinos, real estate agents, dealers of precious stones and metals, accountants, lawyers, notaries and trust and company service providers, and improving transparency requirements. The main aim of the Third Directive is to take account of this revised global standard.

13. The Third Directive reproduces much of the Second Directive but it is significantly more detailed and increases the scope of the regulated sector. Its main changes from the 2nd Directive are:

- a. It explicitly covers terrorist financing
- b. It introduces new definitions such as for Politically Exposed Persons, Beneficial Owner, and Business Relationship.
- c. It provides more detailed customer due diligence requirements, in particular by providing examples of when enhanced and simplified due diligence should be undertaken
- d. It enshrines all of the due diligence requirements with a risk based approach
- e. It specifically covers how institutions should deal with third parties
- f. It introduces the requirement for Money Service Businesses, trust and Company Service Providers and Casinos to be licensed or registered under a fit and proper test. For the UK this means licensing or registering Trust and Company Service Providers and including a fit and proper test for both them and Money Service Businesses.
- g. It introduces the requirement for the entire regulated sector to be monitored or supervised. For the UK this means Estate Agents and Trust and Company Service Providers need to be monitored or supervised.
- h. It introduces the comitology power for the Commission to work on implementing measures for certain articles

14. The following provisions remain unchanged

- a. The reporting requirements
- b. The requirement for training and appointing nominated officers
- c. The predicate offences underlying money laundering

15. The Second Money Laundering Directive was implemented in the UK via the Money Laundering Regulations 2003 and amendments to the Proceeds of Crime Act 2002. HM Treasury leads on the Money Laundering Regulations and the Home Office lead on the Proceeds of Crime Act. It is likely that both these will need to be amended in order to implement the Third Directive.

Extent of money laundering and terrorist financing:

16. Quantifying the amount of money laundered in the UK, or anywhere else, is a virtually impossible task. The range of activities, and the sophistication,

opportunity and scale of this crime means that the amount of money laundered in the UK is very hard to estimate. Global money laundering has been estimated by the International Monetary Fund as the equivalent of between 2 and 5 % of world output. Past government estimates have put the annual proceeds from crime in the UK between £19 billion and £48 billion with approximately £25 billion being laundered. However, other organisations have produced different figures, owing to many different variables in their sources, calculations and considerations. Terrorist acts can be committed with relatively small amounts of money; but effective financial reporting can identify terrorists and enable law enforcement to disrupt and choke off funds.

17. The NCIS 2004/5 Threat Assessmentⁱ is now published and identifies the most popular methods of money laundering and the sectors most at risk in the UK. These include

€# **Money Service Businesses (MSBs)**, these include money transfer agencies, cheque cashing associations and bureaux de change. Serious and organised criminals make frequent use of these businesses to convert and transfer cash.

€# **The use of professionals as specialist money launderers.** Criminals target professionals such as accountants and lawyers who have easy access to the financial sector and can integrate “dirty” money into the legitimate financial system.

€# **Laundering money through legitimate businesses**

18. Further assessment of trends in money laundering (typologies) can also be found on the FATF websiteⁱⁱ.

Principles and tools of the UK regime:

19. The Government’s aims for negotiating and implementing the Third Directive are in line with the three principles set out by the Money Laundering Strategy 2004ⁱⁱⁱ. These are

- a. Effectiveness: UK authorities will work to maintain an effective system of controls. In particular, by ensuring effective international standards and domestic controls are met through enhancing enforcement.
- b. Proportionality: UK authorities will continue to focus effort according to risk and to impose controls in a cost effective way. In particular, by improving the evidence base, ensuring risk-based controls and setting flexible high level principles (with the detail in industry led guidance) rather than prescriptive, detailed requirements

- c. Engagement: UK authorities will work to engage well with those affected by the system of anti-money laundering controls. In particular, by ensuring effective consultation on new proposals, effective communication on an ongoing basis and improved feedback to the regulated sector on how their actions have contributed to reducing crime.

20. The broader context of our approach over the Money Laundering Regulations and our negotiations on the Third Directive is the UK's strategic approach to the EU Financial Services Action Plan. This approach is set out in more detail in the HM Treasury document "After the EU Financial Services Action Plan: A strategic Approach"^{iv}. The principles are

- €# **Better implementation and enforcement of EU measures affecting the financial sector:** The UK has pushed the Commission to take measures on those Countries who have not yet implemented the Second Money Laundering Directive
- €# **Alternatives to EU legislation:** The UK has sought to keep this Directive as high level as possible with the detail left to Member States
- €# **Better regulation:** The UK made clear its disappointment that a full cost benefit analysis was not done for the Third Money Laundering Directive and has sought to compensate that through continuous consultation with the regulated sector to inform the UK's negotiating position.
- €# **Making the Lamfalussy arrangements work well:** Although the Third Directive is not a Lamfalussy Directive, the UK pushed for safeguards to the comitology process in line with the Lamfalussy arrangements.
- €# **Recognising the global nature of financial services:** The UK has pressed for key definitions and measures to be in line with the FATF recommendations on money laundering and terrorist financing.

21. The UK regime uses a mixture of high level duties set out in regulation, supported by more detailed industry led guidance. The role of guidance as set out by such institutions as the Joint Money Laundering Steering Group (for the financial services industry) and Law Society is the following:

- €# Outline the requirements of the UK money laundering legislation;
- €# Provide a practical interpretation of the Regulations;
- €# Provide an indication of good generic industry practice;
- €# Provide a base from which management can develop tailored policies and procedures that are appropriate to their business.

22. Following such guidance is not mandatory for firms but can be taken into account in court proceedings, if it has been approved by the Treasury, on whether an institution has complied with the money laundering regulations.

23. The effect of the guidance is that industry informed and specifically tailored information can be given to institutions on how to comply with the regulations and what is considered best practice. It often fills in the "how" to the regulations "what". The Third Money Laundering Directive is more

detailed than previous legislation and the UK's current regulations. Current UK guidance, however, will help to limit the impact of some of this as it already includes some of the detail that the Directive now covers. An example of this is the JMLSG guidance for financial services specifically refers to identifying and undertaking enhanced due diligence on Politically Exposed Persons. A new requirement in the Third Directive that the vast majority of financial services are already doing.

24. The UK will continue using guidance as a tool in implementing the Third Money Laundering Directive and the Government will work with industry on updating it appropriately.

Negotiations and Successes:

25. Throughout the negotiations on the Third Directive the UK's negotiating priorities have been the following

- €# Ensure that a risk based approach is enshrined in the Customer Due Diligence requirements
- €# Ensure that key new definitions are clear and workable
- €# Ensure that Comitology provisions are proportionate
- €# Ensure the supervision provisions are proportionate
- €# Ensure implementation time is sufficient
- €# Ensure our negotiation is informed by views from the regulated sector

26. Since the European Commission proposed the Third Money Laundering Directive in early 2004, Member States have been negotiating changes to the text. In negotiating this text the UK made a number of improvements to the Directive. These include:

- €# **All customer due diligence requirements are tempered by a risk based approach.** The first time this is mentioned in a European Directive. This risk-based approach has been incorporated in the internationally agreed FATF Forty Recommendations, and is particularly appropriate given the wide variety of sectors covered by the Directive. The Government has developed a productive partnership with industry whereby people are encouraged to use the risk-based approach to apply the rules in a way, which targets the risk specific to each sector. It has support from the public and industry, and has the important benefit of increasing vigilance on the part of staff in the regulated sectors;
- €# **There is a derogation on timing of verification of customer due diligence** so as to not interrupt the course of the establishment of the business relationship
- €# **The definition of beneficial owner is more clear** and we have inserted a new recital to clarify the position of bonds with regard to the duty to identify the beneficial owner

- ⌘ **There is no longer a proposed extension of the regulated sector to those providing services that accept cash of 15,000 Euros or more.**
This was a new proposal that was not part of the FATF Forty recommendations and would include a large new sector under Money Laundering Regulations without any prior consideration of the costs or benefits
- ⌘ **The Directive text on comitology now only allows the Commission to suggest “criteria”** (characteristics of high or low risk situations) rather than listing examples of high or low risk products or transactions. This is more in line with the risk based approach and allowing individual firms to judge the risks they face.
- ⌘ **A recital states that any new comitology provisions**
 - Should not modify essential elements of the Directive;
 - Should have high levels of transparency;
 - Should ensure competent authorities will be able to ensure compliance;
 - Weighs up the balance of costs and benefits;
 - Respects the risk based approach;
- ⌘ **Implementation is now likely to be 24 months** rather than the original 12 months proposed. Ensuring proper and effective implementation within a reasonable timetable.
- ⌘ **We have continually consulted across the entire regulated sector and law enforcement agencies**, through consultation documents, roundtable question and answer sessions, appearances at conferences and bilateral meetings.

Summary of Impacts of the Third Directive on the UK regime:

27. The main changes that will need to be made to the Money Laundering Regulations for implementation are the following
- a. Adding more detail to our regulations on the customer due diligence requirements. A lot of this is already in guidance but will need to be transcribed into regulations. This will include, for example, all of the regulated sector will need to perform on a risk sensitive basis enhanced due diligence for politically exposed persons.
 - b. Providing a fit and proper test as part of the licensing or registration for Trust and Company Service Providers and Money Service Businesses.
 - c. Licensing or registration of Trust and Company Service Providers
 - d. Providing a supervisory/monitoring regime for Estate Agents and Trust and Company Service Providers

Rationale for intervention- combating money laundering:

28. There are clear reasons for having effective, up to date money laundering and terrorist financing controls. These are:

- €# **To provide a disincentive to crime by reducing its profitability.** Robust systems of controls to detect, intercept and confiscate criminal funds make it harder for individuals or groups to profit from their crimes.
- €# **To provide a disincentive to crime by reducing the pool of money available to finance future criminal activity.** Robust systems of controls to detect, intercept and confiscate criminal funds make it harder for individuals or groups to fund their next crime.
- €# **To aid the detection and prosecution of crime.** The intelligence provided from money laundering and terrorist financing controls may provide leads, which can be crucial in disrupting terrorism, money laundering and linked offences, in convicting criminals or for identifying assets to assist civil recovery efforts.
- €# **To protect the integrity of the financial system and reputation of UK business.** The competitive position of UK business depends upon its reputation for integrity and honest dealing.
- €# **To avoid economic and competitive distortions.** Legitimate businesses are disadvantaged when competing against businesses controlled by criminals who may be willing to accept lower rates of return or even losses to maintain the appearance of being legitimate investments.

Rationale for Intervention - Third Directive:

29. The main objective of the Third Directive is to strengthen the existing regime in the light of experience on where money laundering and terrorist financing threats exist and how they can best be tackled (as covered in the updated FATF recommendations).

30. Without this Directive, European Legislation would not take account of new risks that have developed from criminal activity in new areas; nor new vulnerabilities that have been exposed by our increased understanding of how the source of funds is hidden for criminal purposes. A number of examples of this include

- a. This Directive prohibits credit institutions from entering into or continuing a correspondent banking relationship with a shell bank. Shell banks, which have no physical presence in any country, are usually unregulated and have frequently been used as vehicles for fraud, money laundering and terrorist financing.

- b. The Directive also introduces a new requirement to monitor Trust and Company service providers for their compliance with anti-money laundering legislation. The lack of monitoring or supervision of this sector has been something that the UK has been criticised for previously^v.
- c. By requiring the regulated sectors to identify non-domestic politically exposed persons the Directive minimises the risk of the regulated sectors failing to detect those clients who may have a higher exposure to the opportunity to launder money.
- d. By requiring people who effectively direct and/or own the Trust and Company Service Providers, or Money Service Business firms to be “fit and proper” people this helps prevent criminal from obtaining controlling interest in firms

31. In addition, the Directive requires the regulated sectors to implement provisions not only to target money laundering but also terrorist financing. Countering terrorist financing is a key UK Government policy. The key planks of an effective Anti Money Laundering Regime (know your customer, suspicious activity reports, record keeping, training, nominated officer) are just as critical in tackling terrorist financing. Although there are a number of instruments that have already been prepared to tackle this issue at EU level, including the EU’s Action Plan to Combat Terrorist Financing there has not been an instrument to give legal effect to other EU provisions to counter this problem. This would remain the case if the Third Directive were not extended to cover terrorist financing. This Directive will help maintain and encourage further a coordinated EU-wide approach to tackling terrorist financing.

32. Many of the requirements in the Third Directive, stem from agreed international FATF revised 40 Recommendations to combat money laundering and terrorist financing. These are the global standards for Anti Money Laundering /Counter Terrorist Financing prevention, and are used by the IMF and World Bank in their Financial Sector Assessment Programme (FSAP) of countries. Compliance with FATF recommendations is important to reassure other Governments, the international financial institutions and those who do business in and with the UK that we have clean markets. The last UK IMF FSAP complimented the UK on a good Anti Money Laundering/Counter Terrorist Financing regime^{vi}

33. It could be argued that member states can update their own legislation in their own time to respond to the new developments and comply with the FATF recommendations. The Directive, however, ensures that all EU countries will be in line with the global FATF standard for anti money laundering/counter terrorist financing controls, which the UK already largely meets. Without this the EU anti money laundering/counter terrorist financing defences would be less effective with criminals being able to take advantage of weaker regimes. Further the Third Directive helps to ensure a level playing field for firms across the EU in terms of the preventative measures that they need to put in place.

34. The Directive therefore transposes into a common legal framework within the EU, internationally agreed global standards to tackle money laundering and terrorist financing, which the UK is committed to implement anyway. As part of our global support for the fight against crime, European legislation in this area helps us continue to establish a co-ordinated European approach to tackling the international problem of Money Laundering and Terrorist Financing.

(B) Options

35. The power to propose legislation in this area lies with the European Commission. Once the Commission has made its proposal, Member States begin formal negotiations on the text. The UK has been an important voice in those negotiations, but is one Member State out of 25 in an area where qualified majority voting (QMV) applies: i.e. if a given number of Member States vote for one option, the minority will be overruled. Issues decided by QMV are also voted on by the European Parliament. This means that the Council (representatives of Member States) and Parliament act together in co-decision.

36. The UK's overall objective with regard to negotiation was to make sure the Directive was proportionate and high level enough to allow Member States flexibility over implementation, while being effective where there are genuine threats. As these overall objectives were met, the UK supported the "General Approach" of the Commission's proposal at the meeting of finance ministers (ECOFIN) on 7 December. While the UK supported the General Approach we also worked with the European Parliament to support further improvements to the Directive where possible. As a result of this the UK has managed to secure a number of successes in negotiations in the Council and the European Parliament. These are listed in para 26

37. As we assessed whether to sign up to political agreement it is helpful to consider 3 potential options:

- a. What if there was no Third Money Laundering Directive?– this is the do nothing option
- b. Do not support the political agreement that will be sought on the 7th June meeting of European Finance Ministers and push for further changes.
- c. Support the political agreement that will be sought on the 7th June meeting of European Finance Ministers

Option a

38. If the first option (option a) was available, it would not meet the policy objective of updating European Legislation in line with the internationally agreed FATF standards and therefore would not meet the policy objective

as set out in paragraph 3. Further as outlined in the rationale for intervention European legislation would not be in line with the latest evidence on risks and vulnerabilities. Member States could implement the standards on their own but there would also not be cross European standard of anti money laundering and terrorist financing legislation, leaving potential legislative loopholes for criminals to take advantage of, and not provide a level playing field for firms in Europe.

39. Further, the Government believes that there are many benefits in this Directive to the regulated sector, law enforcement and indirectly to the public as a whole (as outlined in paragraphs 94-99) and therefore supports it. In reality this option was unlikely to be available to the UK for the reasons outlined above in para 37.

Option b

40. The second option available to the UK is to not support the Directive when political agreement is sought and push for further changes. The Government would not support this option. We believe that our negotiating objectives have been met. There are areas of the text that the UK would have liked to improve further (e.g. have the safeguards placed on comitology in the text of the Directive itself rather than in a recital) but negotiations at this level will always need compromise and these are areas where we have reached a good compromise that still benefits the UK. To push for further improvements would potentially mean losing other improvements that the UK has worked hard to gain. Again at this stage if the UK was not to support the political agreement it is likely that it would be outvoted. This would therefore mean that we would be unlikely to gain any further improvements and would be seen to vote against a Directive that we now support and a Directive that supports the policy objective.

Option c

41. Because of the number of improvements to the Directive, the benefits to the UK's and European anti money laundering regime and the importance of emphasising the UK's commitment to tackling money laundering and terrorist financing, the UK recommends supporting the political agreement on the Third Directive as set out in the third option

(C) Costs and Benefits

42. This section sets out

- a. Sectors and groups affected by the Third Directive
- b. The scope of the assessment of costs and benefits
- c. The costs, including a summary and estimate of the main costs, article by article and sector by sector analysis of costs, a description of the unintended consequences
- d. The benefits, including an overview of all of the potential benefits to all sectors and an article by article analysis of benefits

Sectors and Groups Affected

43. Implementation of the Third Directive will mean that the 2003 Money Laundering Regulations will need to be updated. Amendments may also need to be made to the Proceeds of Crime Act. The Third Money Laundering Directive will directly affect the regulated sectors to whom its provisions will apply.
44. The regulated sector comprises the following institutions/professions:
- a. Credit institutions;
 - b. Other financial institutions;
 - c. Auditors, external accountants and tax advisors;
 - d. Notaries and other independent legal professionals;
 - e. Trust and company service providers;
 - f. Estate agents;
 - g. Money service businesses, including bureaux de change;
 - h. Dealers and auctioneers in high-value goods, whenever payment is made in cash, and in an amount of €15,000 or more; and
 - i. Casinos
45. The Directive also affects the duties of supervisory bodies and law enforcement agencies that come into contact with the regulated sector. In terms of benefits it affects the general public through its impact on crime and the proceeds of crime.
46. Below is a general overview of each of the regulated sectors, the UK's law enforcement and supervisory bodies in the UK.
47. **Financial institutions:** Subject to AML controls since the entry into force of the 1993 Money Laundering Regulations. The number of FSA-regulated firms regulated for Money Laundering rules is approx 9,700. These include building societies, exchanges, stockbrokers, wholesale markets, IFAs, pension funds, investment products. The financial services sector accounted for 5.3% of gross value added in 2003, with one million people employed in it in the UK^{vii}. London accounts for one fifth of the world's international banking
48. **Money Transmitters and Bureaux de Change:** Fall under the category of financial institutions, As of June 2005 there were 32,000 premises offering money transmission services in the UK (bureaux de change and money transmission agencies). With around 3000 principals (e.g. The Post Office) registered.
49. **High Value Dealers:** As of June 2005 there were 1050 registered high value dealers operating from approximately 1900 premises.
50. **Trust and Company Service Providers:** It is difficult to quantify the number of businesses in the UK providing trusts and company services as these include businesses from across other parts of the regulated sector

such as lawyers and accountants. The Directive defines trust and company service providers as any natural or legal person which by way of business provides any of the following services to third parties:(a) forming companies or other legal persons; (b) acting as or arranging for another person to act as a director or secretary of a company, a partner of a partnership, or a similar position in relation to other legal persons;¹(c) providing a registered office; business address, correspondence or administrative address and other related services for a company, a partnership or any other legal person or arrangement;(d) acting as or arranging for another person to act as a trustee of an express trust or a similar legal arrangement;(e)acting as or arranging for another person to act as a nominee shareholder for another person other than a company listed on a regulated market that is subject to disclosure requirements in conformity with Community legislation or subject to equivalent international standards.

51. An indication of the size of this sector in the UK can be derived from looking at membership figures for the Society of Trust and Estate Practitioners (STEP) in the UK. Within the UK, STEP has around **4,000** members. There are also around 200 company formation agents in the UK.
52. Actual trusts however include a wide range of products. For example a large proportion of the money markets (such as bonds) are held in trust. Charities and joint ownership of property are also held in trust. The UK believes however that it is not the intention of the Directive to significantly affect the workings of such markets and that there is flexibility to implement the Directive along the lines of the current UK regulations (which already include the activities of trust and company service providers).
53. **Estate Agents:** There are about **10,000** estate agent firms in the UK that belong to the National Association of Estate Agents. These range from large multinational, multidisciplinary organisations with billions of annual turnovers employing 1000s of staff to sole practitioners operating as sole traders whose annual turnover is in the thousands.
54. **Accountants:** There are approximately **65,000 firms** that operate in the UK in providing auditing, bookkeeping, tax consultancy and other accountancy services.
55. **Lawyers:** Latest information from The Law Society is that there are 97,245 solicitors with practising certificates. **There are 10,177 law firms**, which vary in nature and size considerably. Around 50% are sole practitioners, with 40% having 2-5 partners and the remaining 10% being made up of larger firms.
56. **Casinos: There are currently 134 casinos operating in Great Britain.** Under the present law, casinos can only be located in 53 'permitted areas'

¹ Draft recital: "Acting as a company director or secretary does not of itself make someone a trust and company service provider, the scope of the definition only covers those persons that act as a company director or secretary for a third party and by way of business."

that are set in legislation. Permitted areas were defined in the early 1970s, and were local authority areas, which at that time had populations above 125,000. The Gambling Act when implemented will change the nature of the sector, allowing regional casinos to be based in the UK. Further it will allow Internet casinos to be set up in the UK. Both of these new developments will automatically come under the scope of the Third Directive

57. Supervisory and law enforcement bodies: Bodies engaged in the regulation/monitoring of the sectors listed above and in the investigation and prosecution of money laundering offences will be affected by the Directive. These include: the Financial Services Authority, HM Revenue and Customs, the Gaming Board of Great Britain for supervisors. Self-regulating/supervising organisations, such as the Law Society and Institute of Chartered Accountants in England and Wales, will also be affected. In terms of law enforcement this includes the Crown Prosecution Service, the Serious Organised Crime Agency, the National Criminal Intelligence Service, HMRC law enforcement and police forces.

The scope of the Assessment:

58. The scope for identifying costs and benefits is wide and we have tried to cover several issues, in particular:

- a. Costs and benefits to each of the regulated sectors;
- b. Wider considerations such as the reduction in crime (both money laundering and the predicate offences), and the reduction in the financing of terrorism; and
- c. More general considerations of the overall social impact of implementing the Directive.

Introduction to Cost and Benefits:

59. This section identifies where the Directive will mean changes for firms in the regulated sector and outlines a broad estimate of the biggest costs to the sectors.

60. It should be noted that despite several attempts to gain quantitative figures on the costs and benefits to the regulated sector of the Directive in the UK we received a limited response from those we consulted. This is partly due to the difficulty in costing a Directive that allows flexibility on implementation; and also includes a risk based approach, which means that implementation (and related costs) depends on the risks assessed for individual customers and transactions. It has been particularly difficult to measure in quantitative terms the benefits of the Directive as this includes the benefit of reduced crime on the street. Our discussions however have given us a clear indication on what the main impacts will be and the likely changes that will need to be taken in firms.

61. This section therefore makes a number of assumptions, taken from our discussions with the regulated sector that help us to provide a broad estimate of the cost of the Directive. The Government intends to build on

this RIA when updating the UK's Money Laundering Regulations as part of the UK's implementation of the Directive. This will include firms' responses to this RIA and further consultation on each of the areas where we will need to take a decision over how best to implement.

Costs:

62. To set out our estimates of the potential costs of the Directive we have produced two tables. The first is a summary of impacts on each section of the regulated sector by each article of the Directive. This table does not include figures but outlines the impact on each sector. A written summary is also outlined below. The second table again goes through each article and estimates a broad range of costs for the impact of each article as a whole. From that it estimates a total cost of the Directive. Table one is contained in annex A and table two is contained in annex B

Summary of costs:

63. In summary the total cost of the Third Directive is between **£5 and £46m** per year depending on the extent to which firms already comply with guidance and already take a the risk based approach. The range of costs also takes into account the different models or monitoring/supervision that can be deployed when implementing the Directive. We do not have a cost of the second money laundering Directive but we estimated the cost of updating the Money Laundering Regulations to be around £100m per year at 2003 prices. Annex B sets out the mains costs and assumptions behind these figures.

64. The main impacts that the Third Directive will have are the following:

- a. The more detailed requirements on know your customer procedures, in particular the detail on enhanced due diligence.
- b. The requirement for Money Service Businesses (MSBs) to carry out a fit and proper test as part of their licensing or registration scheme
- c. The requirement for Trust and Company Service Providers to be licensed or registered and subject to fit and proper tests
- d. The requirement for Trusts and Company Service Providers and Estate Agents to be supervised.

65. The extra cost for each of the above will come from the following:

- a. Enhanced due diligence may incur additional training and work time as more time will need to be spent on due diligence measures for high risk customers;
- b. Staff may also have to be trained to ensure that they understand the requirements on them and familiarise themselves with new definitions and guidance.
- c. Government will need to spend time working out a new policy on what a fit and proper test will include. This then will be translated

into staff time for additional checks when licensing or registering MSBs and T&CSPs

- d. There will be set up and staff costs for a supervisory regime for Estate Agents and Trust and Company Service Providers. In particular in setting up the administrative structure and the staff to supervise compliance will also lead to costs.

66. In summary the main costs are

Impact	Estimated cost
Requirement to undertake enhanced due diligence on high risk situations for those in the sectors who do not already do so	Range from £2- £19m
The requirement to register or license Trust and Company Service Providers	Range from £252, 000 to £502, 000
The requirement for a fit and proper test for MSBs and Trust and Company Service Providers	Range from £57, 000 to £216, 000
The requirement to monitor Estate Agents and Trust and Company Service Providers	Range from £852, 000 to £20.6m
Compliance costs for Estate Agents and Trust and Company Service Providers	Range from £790, 000 to £4m

67. Of this £250,000 would fall to the public sector as opposed to the regulated sector. This cost is in terms of providing the policy and possibly publicity for setting up fit and proper tests for MSBs and T&CSPs.

68. The majority of costs are policy costs but there will also be administrative costs in terms of familiarisation costs (updating firm guidance etc). We have estimated these costs across the sectors to between £1 and £2m additional to the costs above. The Government is committed to minimising the administrative burdens upon business of understanding regulations and complying with them, including the costs of paperwork.

69. There may also be additional costs to the supervising authorities for updating their guidance and handbooks and having to monitor compliance for the additional requirements of the Third Directive and to law enforcement in again updating their systems to deal with the new legal framework. Further the Government will need publish statistics on the number of suspicious activity reports received and related follow up.

70. It should be noted that all customer due diligence procedures (know your customer) are subject to a risk-based approach. The Government's envisages that in the UK the customer due diligence requirements set out as high level objectives in the Directive will provide the legal framework,

with the greater detail being set out in the form of guidance, written by industry itself. To give an example, our Money Laundering Regulations 2003 state that for identity checks, an organisation must maintain identity procedures, and measures must be taken to produce satisfactory evidence of a person's identity. The detail of what is satisfactory and the procedures needed are defined in industry guidance. Industry guidance notes provide more detail about what counts as satisfactory evidence and what processes to adopt in different circumstances. If a procedure is subject to a risk-based approach, this will affect the cost of that procedure. Annex D sets out in more detail why a risk based approach is important, how the UK implements it, what problems there are in implementing a risk based approach, and how we intend to overcome them.

71. It should also be noted that the impact on individual regulated entities will depend on the profile of their customers and the products and services they provide and is likely to vary considerably between entities. However we have tried to summarise the impact on each sector of the Third Directive by each article.

Sector by sector analysis:

72. Overall each sector potentially could experience the following impacts:

Sector	Estimated Cost
Financial and credit Institutions	Minor additional costs over and above familiarisation costs (new definitions etc)
Legal sector	Range from £0 to 2.1m
Accountancy sector	Range from £0 to 13.5m
Trust and Company Service Providers	Range from £1 to 25m
Casinos	Range from £0 to £14, 000
Estate Agents	Range from £675, 000 to £1.8m
MSBs	Range from £24, 000 to £1.6m
High Value Dealers	Range from £0 to £75, 000

73. A fuller explanation of where these costs fall is given in annex B and in the paragraphs below

74. **Financial and credit institutions:** The impact of the Directive on this sector is likely to be minimal as many of the requirements in the Directive on financial and credit institutions are already in place in UK's anti-money laundering legislation (the Money Laundering Regulations 2003 and amendments to the proceeds of Crime Act 2002). There is more detail in the Directive on customer due diligence procedure and requirements for firms' subsidiaries to have equivalent standards to host firms in the Member State but this has already been included in the industry led guidance (produced by the Joint Money Laundering Steering Group) currently produced. Further, the customer due diligence requirements in

the Directive are tempered by a risk-based approach which means that the regulated sectors will be able to implement the provisions according to the level of risk that they associate with each client.

75. **Legal sector:** The more detailed customer due diligence requirements in the Third Directive, for example including specific provisions on enhanced due diligence may require additional costs to this sector. It is difficult to estimate the full extent of this additional cost as many firms already operate a risk based approach and therefore will not need to do any additional work for high risk clients. It is more likely that smaller firms may not operate on this basis and therefore will incur some costs.

76. In terms of legal professional privilege the Third Directive text remains the same as the second Directive except for the removal of specific exemption for Legal Professional Privilege with regard to tipping off. This is in line with the FATF requirement and the Government believes that taking the Directive as a whole, a fair balance has been struck. First, recital (33) makes explicit the supremacy of human rights legislation. Secondly, legal professional privilege, like many human rights, is not absolute. Thirdly, article 20(2) makes clear that an obligation to notify under article 25 need not arise where the specified professionals obtain the information in the course of ascertaining their client's legal position or defending or representing their client in relation to actual or putative legal proceedings, because of this the tipping off requirement rarely applies.

77. **Accountancy sector:** Like the legal sector additional costs may fall to the Accountancy sector through the additional detail in the customer due diligence requirements. It is difficult to estimate the full extent of this additional cost as many firms already operate a risk based approach and therefore will not need to do any additional work for high risk clients. It is more likely that smaller firms may not operate on this basis and therefore will incur some costs.

78. **Trust and Company service providers:** Like the legal and accountancy sector additional costs may fall to trust and company service providers through the additional detail in the customer due diligence requirements. Further, the Directive will require the registering or licensing of trust and company service providers and supervision or monitoring for their compliance with the anti-money laundering controls. This will require the implementation of a supervisory/monitoring regime and the appointment of a competent authority to supervise such businesses. While we have not yet considered in detail the models of implementation for a supervisory regime for trust and company service providers, there are a number of key elements that will need to be considered and consulted on. Including

- €# Whether we can utilise an existing regime or whether we will need to create a new supervising or monitoring body
- €# What the stated objective of the supervisory body will be
- €# What the standard of supervision will be. Again it should be noted that the Directive explicitly allows the supervisory approach to be on a risk sensitive basis.

79. To give some estimates of the types of cost involved we have looked at costs from other supervisory regimes and from other jurisdictions that already supervise trusts and company service providers. This is included in the table in annex C. The estimate provided is a large range because of the many factors that will affect how a supervisory regime could be devised for these firms. Although a wide range of costs are provided it is likely that the regime will be at the lighter touch end of supervision and therefore the lower cost. We will need to consult fully on the type of regime that would best suit the sector.
80. The Directive explicitly allows for these newly supervised sectors to be monitored or supervised on a risk sensitive basis. This is in line with recommendations of the Hampton review that a risk-based approach should be applied by all regulatory bodies in all aspects of their work, including when making data requests from businesses, when shortening forms, when applying penalty regimes and when applying systems of inspection and enforcement. This approach will affect the costs.
81. A further cost may fall to these institutions through increased compliance with the Money Laundering regulations. The experience of the introduction of a regulatory regime for financial institutions when the Financial Services Authority was formed and a registration regime for MSBs has been that the existence of a body that can enforce compliance with pre existing regulations increases the level of compliance and therefore increasing costs.
82. **Casino sector:** Like the legal and accountancy sector additional costs may fall from the new detail on enhanced customer due diligence requirements included in the Directive. Although the requirements in the Third Directive are very similar to the requirements outlined in the Second Directive, if the sector grows and changes due to the implementation of the Gambling Act then the existing and new regulations will affect this new part of the sector as well.
83. **Estate Agents:** Like the Accountancy and Legal sector additional costs may fall from the greater detail included on the enhanced customer due diligence requirements. The Directive also requires the monitoring or supervision of Estate Agents for their compliance with anti-money laundering controls. As Estate Agents in the UK are currently not subject to monitoring or supervision, a competent authority will have to be appointed to carry out this function. To provide an estimate for these costs we have taken the supervision of money service businesses as a good proxy for this sector. As for Trust and company service providers we will need to consider in detail how this should be implemented.
84. **Money Service Businesses:** Like the majority of other sectors Money Service Businesses may encounter additional costs from the greater detail provided in the Third Directive on Customer Due Diligence requirements. Further, HMRC will be required to apply a fit and proper test to their licensing and registration of money service businesses. What that could

include and an estimate of costs is included in the table at annex B. The Government is undertaking a MSB review which will also be looking at this issue.

85. **Social, including clients and general public:** The costs to clients and the general public should be very small as many of the requirements on customers to identify themselves to the regulated sectors are already in effect in the UK through the Money Laundering Regulations 2003.
86. **Regulators:** The Directive will affect existing regulators (e.g. the FSA, HMRC, Gaming Board of Great Britain), as they will need to ensure compliance with the new requirements. In implementing the Directive Government will have to nominate or create supervisory or monitoring authorities for Trust and company Service Providers and Estate Agents, this will entail the costs of establishing or selecting an existing authority and the “start up” costs of making the regulatory oversight of these bodies operational and effective. In terms of changes that will have to be made within existing regulatory authorities, HMRC will have to devise systems to put in place in order to decide whether a person is “fit and proper” to direct or be the beneficial owner of a money transmission business.
87. The requirement for adequate penalties to be applied for infringement of AML rules (see article 34-36) should not entail any additional costs to the regulatory authorities for financial institutions or MSBs (FSA and HMRC respectively) as they already comply with this.
88. **Law Enforcement:** In terms of the impact/costs to law enforcement, these should be minimal. The Directive specifically requires NCIS to provide feedback to industry on the reports they submit. NCIS is already doing this. The UK will also need to publish statistics on the reports received, the follow up to those reports, how many have been investigated, number of prosecutions and amounts of assets seized and frozen. In the longer term it may be that the establishment of regulatory oversight for Estate Agents and Trusts and Company Service Providers and the more detailed customer due diligence requirements would lead to more and better information for investigations which in turn may lead to greater costs for NCIS and law enforcement in order to take appropriate action.
89. **Environmental Impacts:** The proposal will not have any environmental impacts

Unintended Consequences – the “fear factor”:

90. It has been argued that an unintended consequence of the implementation of an anti-money laundering regulatory regime was what is now called the “fear factor”. This is where institutions over-implement and are unwilling to assess products as low risk because of the fear of sanctions for not complying with the regulations or guidance. There is potential for this fear

factor to be increased when what is currently in guidance is transposed up into legislation as part of the implementation of the Third Directive.

91. The FSA are currently addressing the “fear factor” in the firms they regulate. A letter from Philip Robinson (sector leader of financial crime at the FSA) to the chair of the Joint Money Laundering Steering Group sets out the approach the FSA will take to enforcement in order to address the “fear factor”. This letter is published on the FSA’s website^{viii}. The Government will continue to work with industry in implementing the Third Directive.

92. Further the Directive includes a section providing some examples of products, customers and transactions that are lower risk and therefore require simplified due diligence. The comitology process will also provide more criteria and guidance as to what could be considered lower risk. This should help to provide more certainty for firms that would like to deploy lower levels of due diligence for lower risk products and transactions.

Benefits:

Introduction to Benefits:

93. This section outlines (a) the principal benefits of the Third Directive as a whole (b) the specific benefits of each new provision/article in the Directive – be it in terms of savings to firms or wider benefits of introducing specific measures.

Principal benefits for all sectors

94. Implementation of the Directive will help to establish a coordinated EU-wide approach to tackling the global problem of money laundering and terrorist financing. It is expected that implementation will have the following general effects:

95. Benefits in combating Money Laundering and Terrorist Financing

⚡ Tighten restrictions on the ability to launder money/finance terrorism through closing loop holes and bringing a cross European Standard to measures to fight money laundering and terrorist financing (e. g through banning anonymous accounts).

⚡ Increase the disruption to money laundering and terrorist financing. For example by ensuring that the regulated sector works well with the law enforcement agencies in detecting and reporting suspicions of money laundering and terrorist financing (responding rapidly to requests from the FIU)

€# Supporting our stance on international standards: We can only insist that other Countries comply with international standards if we do.

96. **Benefits to the regulated sector.** Each of the above will have indirect benefits to the regulated sector through:

€# Increasing further the integrity of the sector and taking away the disadvantage businesses have when competing against companies that are run and/or controlled by criminals, who may be willing to accept lower rates of return or even losses to maintain the appearance of being legitimate investments.

€# Bringing a more consistent standard of money laundering preventative measures across the EU. As well as reducing the opportunities to use weaker money laundering systems in other countries to launder money

€# Improving the competitiveness between the UK regulated sector and the regulated sector in other countries, as there will be a pan EU standard.

97. **Benefits to Law Enforcement.** This Directive should also directly benefit law enforcement by

€# Helping to increase the quality of suspicious activity reports (through alerting firms to potentially high risk situations, requiring them to respond accordingly and ensuring that the FIU provides feedback) and therefore potentially the number of prosecutions for money laundering/terrorist financing

€# Helping to increase the number of convictions for money laundering/terrorist financing and asset seizures (through ensuring that the firms provide law enforcement with sufficient information promptly)

98. **Social, including clients and general public:** For every benefit above realised the Directive will help to continue and consolidate the fight against money laundering and terrorist financing, and therefore against crime generally and terrorism itself, to the material benefit of society as a whole.

Benefits of specific articles of the Directive

99. Table in annex C outlines the benefits falling to the regulated sector or wider from each of the Third Directive's provisions. In summary these benefits are the following:

€# Benefits to the UK in terms of competitiveness: There are a number of articles which will result in other Member States being brought into line with the UK's regulations accruing the benefits of a level playing field. For example increasing the scope of the Directive to Trusts, increasing the scope of the Directive to include terrorist financing, banning anonymous accounts, requiring banks to have equivalent standards in their subsidiaries

- €# Promoting the UK's risk based approach to customer due diligence and supervision in European legislation (articles 7, 8, 10, 11 and 33):
- €# Providing examples and legislative certainty over certain lower risk situations (article 10): This Directive gives clear examples of lower risk where reduced due diligence is acceptable.
- €# Targeting specific higher risk situations (article 11): The Directive give examples of known higher risk situations and instructs firms to take appropriate measures in response.
- €# Allowing a derogation of timing of verification of the customer or beneficial owner so as to not to disrupt the normal course of business (article 8).
- €# Allowing a derogation on timing of verification of the beneficial owner for life insurance businesses until payout (article 8)
- €# Allowing firms to rely on third parties to perform customer due diligence checks (articles 12-16). This may result in an actual saving of money as outlined in the costing table (annex c)
- €# Helping prevent unsuitable people from owning and/or directive Money Service Businesses and Trust and Company Service providers (article 32)
- €# Ensuring that all of the regulated sector is monitored for its compliance with the Directive and implementing Member State regulations (article 33)
- €# 24 months implementation time (article 41): The regulated sector can spread costs of set up for implementation over a longer period and there will be a longer period to feed in our experience of the 2003 ML regulations into our implementing of the Third Directive (reducing any cost through ineffective implementation)

(D) Other issues:

100. This section sets out

- a. Small Firms Impact Test
- b. Equity and fairness of the Third Directive
- c. A competition assessment
- d. Monitoring and review of the Third Directive
- e. Implementation and delivery of the Third Directive
- f. Compensatory deregulation measures
- g. Enforcement and Sanctions of the Third Directive
- h. Adjusting Values of the Third Directive
- i. Consultation

Small Firms Impact Test:

101. Part of our consultation was with the Small Business Service and they agree with our analysis. It is likely that parts of this Directive will impact more on small firms. For example it is assumed that the majority of larger firms are already compliant with the Directive's requirements on enhanced due diligence, the costs provided for this will mostly fall on smaller firms who are not already compliant. This is because larger firms have already

implemented parts of the Directive through adherence to best practice and guidance. Government will also need to make sure that smaller firms are able to take advantage of the Risk Based Approach that is throughout the Directive. Annex D looks at the risk based approach in more detail.

Equity and fairness:

102. The majority of the Directive's provisions apply to all sectors equally and the Directive treats no groups of people unequally. There are special provisions for different sectors (e.g. enhanced due diligence for correspondent banking for the financial services sector only), reflecting the differing nature and risks of these diverse businesses. As the estimates of costs show there are additional costs for Trust and Company Service Providers and Estate Agents who will need to be supervised or monitored under the Third Directive. This measure will bring them in line with all of the other sectors who are already supervised or monitored.

Competition:

103. The Directive will affect a large number of markets, but following completion of the **filter test questions** it is not thought that competition will be significantly affected.

104. The markets affected are as follows: -

- The financial Sector
- Lawyers
- Accountants
- Trust and Company service providers
- Casinos
- High Value Dealers
- Estate Agents

105. It is considered that in some of the markets a few firms may have more than a 10% market share.

106. However it is not thought that in any of the markets listed above any firm has more than a 20% market share.

107. It is possible that the largest three firms in a given market may together have a 50% share, although with the number of markets and firms involved this is not clear. We do not consider this however to be overly significant in considering if the Directive will affect the competition of any of the given markets.

108. The impact of the Directive will to some extent vary between regulated entities according to their business and customer profile. But the impact should be similar for entities providing similar services. And the impact in the UK should be similar to the impact in other comparable countries, since the Directive will apply throughout the EU and implements global anti-

money laundering standards. Moreover anti-money laundering controls are only one of the costs involved in taking on, and maintaining, a customer and in some respects involve costs, which the regulated business may well incur in any event.

109. We therefore do not believe that the costs of the additional regulation will have a material distorting effect on competition between entities, sectors or countries. Nor do we believe that the cost is likely to be such as to materially increase barriers to entry to a market or substantially affect any of the firms in the given markets listed above more than any other firm.
110. It is possible that the market structure may alter as a result of the Directive, we think this is unlikely but when such a large scale Directive is imposed on such a wide scope of markets, there is always a possibility that the number or size of some of the firms may alter.
111. Some of the markets covered by the Directive have some characteristics of rapid technological change, especially in the case of e-money firms.
112. The Directive should not affect or restrict the ability of firms to choose the price, quality, range or location of their products.
113. In conclusion it is thought that the Directive is unlikely to greatly affect competition in any of the markets it is imposed upon. Indeed it is thought that the Directive will aid competition between firms in the UK and other EU member states because it will bring other EU MS in line with many measures that the UK is already undertaking.

Monitoring and Review:

114. The UK will notify the EU Commission of its implementation of the Directive through a transposition note that the Treasury will send to the Directorate General for the Internal Market (DG-MARKT). The transposition note will set out how the UK has implemented the Directive, in particular highlighting the domestic legislation which implements the Directive and the date of its entry into force. DG-MARKT will keep a "scoreboard" of Member State's implementation of the Directive.
115. The Government is committed to carrying out post implementation review 2 years after all new regulations come into effect. This will need to be coordinated with the report that the EU Commission will draw up on implementation within two years from the Directive's entry into force. The Directive states that the Commission's review should be submitted to the EU Parliament and the Council.
116. In addition, the Financial Action Task Force and International Financial Institutions such as the IMF and World Bank will undoubtedly monitor the UK's compliance with many of the requirements in the Directive as part of

their evaluations and assessments of member's compliance with international anti-money laundering and counter terrorist financing standards.

Implementation and delivery:

117. Based on current negotiations Member States will have to implement the Directive within 24 months of it being published in the official European Journal. A current estimate of when the Directive will be published in the European Journal is at the end of 2005. This would mean implementation in the UK would need to take place by the end of 2007.

118. The UK's objective for implementation will be to implement the Directive in a proportionate, effective and engaged way. Annex E sets out the timetable. The main estimated milestones are:

- a. The Directive will be formally adopted in late 2005
- b. Conclusions from the comitology committee should be reached by mid 2006 at the very latest
- c. Publish a consultation on the key policy decisions and approaches for implementation by beginning 2006
- d. We will publish a formal consultation document on the updated regulations by mid-late 2006 (accompanied by an initial RIA).
- e. We will publish the updated regulations by mid 2007. This will be accompanied by a full regulatory impact assessment for any changes in the regulations
- f. All member States will need to implement the Third Directive by the end of 2007

119. The UK argued hard for a long implementation time and will make sure it uses the 24 months to consult as fully as possible with all parts of the regulated sector on the updated regulations and associated costs, benefits, and other consequences.

120. As outlined in the costs section the main areas where the Directive will have the biggest impact, and therefore will need policy consideration for implementation are the following:

- a. The more detailed requirements on know your customer procedures (including the detail on enhanced and simplified due diligence).
- b. The requirement for MSBs to carry out a fit and proper test as part of their licensing and registration scheme
- c. The requirement for Trust and Company Service Providers to be licensed or registered and subject to fit and proper tests
- d. The requirement for Trust and Company Service Providers and Estate Agents to be supervised.

121. When transposing the Directive into domestic legislation the Government will follow the aims as set out in the Pre Budget Report 2004^{ix}. Paragraph 3.40 of the PBR Report, second bullet states:

“The transposition of European Directives into UK law must avoid costly additions to the requirements for businesses, meet only the minimum standards and scope necessary to comply with the European legislation, and take advantage of derogations when less burdensome for business, except where there is a strong cost benefit rationale for doing otherwise, specifically approved by PRA. Transposition should mirror as closely as possible the original wording of the Directive except where there is a clear justification for doing otherwise, having regard to the impact on business and the workability and fit of the legislation in its domestic regime.”

122. Risks to implementation include the following:

Risk	Management of Risk
Legislative uncertainty provided by delay on comitology decisions or uninformed comitology decisions	<ul style="list-style-type: none"> ≠ Directive now specifically states that decisions on certain articles need to be made within 6 months of adoption ≠ Directive specifically states that all comitology decisions must be consulted upon and informed by cost, benefit assessment ≠ The UK will play an active part in these discussions. Consulting on its contributions and making sure that proper process as outlined by the Directive text is upheld
Enough time for proper consultation on implementation of Directive	<ul style="list-style-type: none"> ≠ Directive now has 24 months for implementation (as opposed to 12 months in Commission proposal) ≠ Informal and formal consultation will inform the regulatory impact assessment and the ultimate changes to regulations and associated guidance. The Government will continue to use many forms such as written, roundtable question and answer sessions, bilateral and specific workstreams including members of the Government and affected parts of the regulated sector for each policy decision.

Compensatory deregulation measures:

123. In line with the Better Regulation Taskforce recommendations and our proposals in Budget 2005 every RIA needs to explore regulatory simplification measures whenever new regulations are being considered.
124. The publication “The UK financial services sector: Rising to the challenges and opportunities of globalisation^x” comments on progress made on this for the financial service sector in general through the review of the Financial Services and Markets Act. The FSA is currently consulting on an overhaul of their rules on money laundering, with a view to these being streamlined and replaced with more high-level provision over the management of money laundering risks.
125. The Treasury is also supporting the proposed revision of the JMLSG guidance notes for financial services. These guidance notes will place more emphasis on a risk-based approach. The Treasury has chosen to use industry led guidance to fill out the detail of “how” firms can implement the legislation rather than including this in the legislation itself. It will continue to use this method in implementing the Third Directive.
126. Part of our deregulatory commitment in budget 2005 is to produce a simplification plan for all regulations and in implementing the Third Money Laundering Directive the Government will also consider further possible simplification and deregulatory measures.

Enforcement and Sanctions:

127. The Directive will be implemented and enforced in the UK via amendments to the Money Laundering Regulations 2003 and through a revision of regulated sectors own guidance on how to implement the Regulations. The Proceeds of Crime Act may also have to be amended.
128. With regards to the supervision and monitoring of the regulated sectors’ compliance with anti-money laundering legislation, the current draft of the Directive requires all of the regulated sectors to be monitored by competent authorities for their compliance. In the UK, casinos and money remitters are already subject to a registration regime and supervised by the Gaming Board for Great Britain and HMRC respectively. Credit and financial institutions are already regulated by the Financial Services Authority (FSA).
129. As for accountants and independent legal professionals, the Directive allows for supervision and monitoring of these sectors to be carried out by self-regulatory bodies. This will have no impact on the supervision of these sectors in the UK as accountants are already subject to supervision by the Institutes of Chartered Accountants in England and Wales, Scotland and Ireland, and Lawyers by the Law Society.

130. The Directive also requires those accepting payments in cash of more than 15,000 Euros to be monitored for their compliance with anti-money laundering controls. In the UK, those trading in goods accepting cash of more than 15,000 Euros are categorised as High Value Dealers and are already subject to supervision/monitoring by HMRC.

131. However, the Directive will require establishing a supervisory regime for trust and company service providers and Estate Agents as well as selecting/establishing a competent authority to monitor the compliance of these sectors.

132. The Directive asks that adequate criminal and administrative sanctions be provided for to deter non compliance and Supervisory bodies have the power to apply sanctions for non-compliance. The UK already has appropriate sanctions to comply with the Directive. The Money Laundering Regulations 2003^{xi} set these out.

Adjusting Values:

133. The Directive includes provisions for a comitology committee to be set up to discuss implementing measures for the Directive. One of its roles will be to adjust any figures relating to the regulations to take account of inflation.

Consultation:

134. As the Directive covers many diverse sectors co-ordination across Government and the public sector has taken place to form a UK view. Further we have continually consulted will all of the regulated sector through an informal written consultation (the summary of results of this consultation and the Government's position on the points raised is attached in annex F) , through regular roundtable question and answer sessions, bilateral meetings and presentations at conferences. This consultation has ensured that the UK has an informed and effective negotiating position in the Directive.

135. Some examples of how this consultation helped form and argue our position are

- €# Using examples provided by stakeholders of how much administrative burden different thresholds in the definition of beneficial owner would create. This helped result in the increase of the threshold from 10% to 25%
- €# Drafting and providing a recital to clarify the requirement to identify the beneficial owner with regard to the bond market
- €# Stating the importance of the risk based approach

€# Putting forward arguments why a longer implementation time would benefit the regulated sector.

136. We will also continue to consult with firms to inform our input into the comitology process.

137. Annex F also sets out the departments and agencies of government, other public and regulatory bodies, and members of the regulated sector that have been involved in our ongoing consultation.

138. As noted before, for a number of reasons there has been limited information provided by the regulated sectors on the costs that the proposed Directive may incur for them. We recognise that further information on potential costs will be necessary in order to inform policy decisions on the most effective implementation of the Directive in the UK. In taking this work forward we aim to target each of the regulated sectors through written questions, bilateral meetings and workstream groups on particular policy areas to understand better how each sector considers how the Directive will affect them. This will help us gather specific information on the fixed and variable costs of the Directive to each sector.

Summary and recommendation:

139. The main purpose of the Third Money Laundering Directive is to update European Legislation in line with the international recommendations on anti money laundering and counter terrorist financing measures. By doing this the Directive takes account of new risks and vulnerable sectors.

140. The RIA has set out where the Directive will require the regulated sector to do more to meet the standards of the new legislation and where it will have to do less as a consequence of the new legislation. The RIA has sought to place an overall estimate of the cost of the Directive and explain where the majority of those costs will fall. It has also described, in qualitative terms the benefits of the Directive.

141. The Government believes that the information we have on the cost and benefits, and the successes that the UK has made during its negotiations on the Directive supports the case to sign up to political agreement on the latest text of the Directive.

142. This RIA will now serve as a basis for our implementation of the Directive through updating the Money Laundering Regulations. Given the high level nature of the Directive the UK has flexibility over a number of policy options and we will produce a detailed RIA for our updating of the Money Laundering Regulations.

Contact Point:

Lucy French
Financial Systems and International Standards
HM Treasury
0207 270 5794

Annex A - summary of impacts by sector in a table

This annex provides a broad overview of what impacts fall from the Directive on each sector. The costs table in the next annex provides more detail on the extent of the impact and the reasons for any extra cost.

Article in MLD3	Details	Impact on financial Sector	Impact on MSBs	Impact on HVDs	Impact on Accountants	Impact on Lawyers	Impact on Estate Agents	Impact on Trust and Company Providers	Impact on Casinos
1	Extension of Directive to cover the provision/collection of funds to finance terrorism, as well as money laundering.	No impact							
2	Extending scope of the regulated sector	No impact							
3	Inclusion of several new definitions, including "beneficial ownership", "trust and company service providers", "politically exposed persons" and "business relationship".	No impact – already outlined in guidance	Limited impact in terms of familiarisation costs	Limited impact in terms of familiarisation costs	Limited impact in terms of familiarisation costs	Limited impact in terms of familiarisation costs	Limited impact in terms of familiarisation costs	Limited impact in terms of familiarisation costs	Limited impact in terms of familiarisation costs
5	New prohibition of	No impact	Does not	Does not	Does not	Does not	Does not	Does not	Does not

	accounts which are anonymous.	- already doing this	apply to this sector	apply to this sector	apply to this sector	apply to this sector	apply to this sector	apply to this sector	apply to this sector
6-9	More detailed customer diligence requirements (including obligation to identify the beneficial owner(s) of any company, trust or similar arrangement). These obligations are to be carried out on a "risk-sensitive basis".	No impact	-already should be doing this under the ML regulations and associated guidance						
10	Greater detail about the situations in which it is possible for the regulated sector to reduce due diligence requirements, where the risks are lower.	No impact or possible limited savings through clarity over what is lower risk							
11	More specific obligations to apply due diligence procedures in higher risk situations (including	No or limited impact given existing relevant	Will have it apply EDD to PEPs and other situations	Will have it apply EDD to PEPs and other situations	Will have it apply EDD to PEPs and other situations	Will have it apply EDD to PEPs and other situations	Will have it apply EDD to PEPs and other situations	Will have it apply EDD to PEPs and other situations	Will have it apply EDD to PEPs and other situations

	<p>non-face-to-face transactions and dealings with correspondent banks or prominent public figures). These requirements are from a number of FATF Recommendations setting out where to apply customer due diligence.</p>	<p>guidance Non face to face already covered by ML regs</p>	<p>they identify as high risk/suspicious.</p> <p>Non face to face already covered by ML regs</p>	<p>they identify as high risk/suspicious</p> <p>Non face to face already covered by ML regs</p>	<p>they identify as high risk/suspicious</p> <p>Non face to face already covered by ML regs</p>	<p>they identify as high risk/suspicious</p> <p>Non face to face already covered by ML regs</p>	<p>they identify as high risk/suspicious</p> <p>Non face to face already covered by ML regs</p>	<p>they identify as high risk/suspicious</p> <p>Non face to face already covered by ML regs</p>	<p>they identify as high risk/suspicious</p> <p>Non face to face already covered by ML regs</p>
<p>12-16</p>	<p>Greater detail about the scope for relying on customer due diligence procedures carried out by third parties. All institutions are allowed to reply on third parties to perform CDD</p>	<p>Potential savings through being able to make greater use of Third Parties</p>							

19-24	Existing obligation to report suspicious activity to the financial intelligence unit ("FIU" - in the UK this is NCIS, the National Criminal Intelligence Service) and refrain from proceeding with suspicious transactions until the FIU gives consent.	No impact							
25	Stricter prohibition on tipping off suspected money launderers, without general exemptions on lawyers. But allowing disclosure between relevant institutions from the same professional category to help prevent money laundering and terrorist financing.	No impact	No impact	No impact	No impact	No impact	Potential impact through now being prohibited "tipping off" in all cases except when preventing future money laundering	No impact	No impact

26	Existing obligation on the regulated sector to maintain records for five years.	No impact				g			
27	New obligation on credit and financial institutions to apply EU standards in branches/subsidiaries outside the EU.	No or limited impact. Only a small minority of firms have non-EU branches/subsidiaries, and general practice is to apply group-wide-AML standards	No impact	Does not apply to this sector	Does not apply to this sector	Does not apply to this sector	Does not apply to this sector	Does not apply to this sector	Does not apply to this sector

28	New obligation on credit and financial institutions to respond rapidly to requests from the FIU.	Limited impact as already required to do this								
29	Obligation on MSs to maintain statistics on number of SARs made to FIU, follow-up on these reports, number of cases investigated, number of persons prosecuted and convicted for ML/TF and the amounts of property frozen, seized or confiscated.	Better feedback to sector through publishing statistics on these								
30-31	Existing obligation on the regulated sector to establish internal control mechanisms and training for relevant employees.	No impact								
32	New obligation to set up licensing or registration systems for currency exchange offices/money	<table border="1"> <tr> <td data-bbox="1130 1352 1141 1516">No impact</td> <td data-bbox="1130 1188 1141 1352">Will need to establish and administer</td> <td data-bbox="1130 1024 1141 1188">No impact</td> <td data-bbox="1130 861 1141 1024">No impact</td> <td data-bbox="1130 697 1141 861">No impact</td> <td data-bbox="1130 533 1141 697">No impact</td> <td data-bbox="1130 369 1141 533">Will need to register firms and establish</td> <td data-bbox="1130 205 1141 369">No impact</td> </tr> </table>	No impact	Will need to establish and administer	No impact	No impact	No impact	No impact	Will need to register firms and establish	No impact
No impact	Will need to establish and administer	No impact	No impact	No impact	No impact	Will need to register firms and establish	No impact			

	transmitters trust/company service providers and casinos, with a 'fit and proper' test for people running such businesses.		er fit and proper test							and administer fit and proper test	
33	New obligation to monitor the regulated sector's compliance with the directive.	No impact already monitored	No impact already monitored	No impact already monitored	No impact already monitored	No impact already monitored	No impact already monitored	Will need to set up a supervisory regime	Will need to set up a supervisory regime	No impact already monitored	
34-36	New provision requiring adequate penalties for infringement of the rules.	No impact as already covered by regulations									

37-38	<p>New <u>comitology</u> provision: Commission given the power to clarify “technical aspects” of certain definitions and establish technical criteria on, inter alia, situations where reduced or enhanced due diligence are appropriate. This is a new power.</p>	Impact unknown as proposals not yet formed.
-------	--	---

Annex B

In identifying and calculating the potential costs of new requirements in the Directive we have only considered costs **over and above** the costs of implementing current anti-money laundering (AML) and counter terrorist financing (CTF) controls. We recognise that general AML controls and pursuit of best practice for AML do entail costs but we have not considered these if they are the consequence of implementing/enforcing current UK AML legislation in the form of the 2003 Money Laundering Regulations or we have evidence that the regulated sector already is undertaking such activities. In such cases we have indicated in the table below that there should be no **additional** costs.

Article in ML D3	Details	Impact in the UK	<u>Costs</u>	Min cost for all sectors	Max cost for all sectors
1	Extension of the Directive to cover the provision/collection of funds to finance terrorism, as well as money laundering.	No impact as there are already strict controls on terrorist financing through the Terrorism Act 2000, as amended.	£ 0 No additional cost	0	0
2	Extending scope of the regulated sector	No impact as all the sectors are already covered by the Money Laundering Regulations 2003, which came into force from March 2004.	£ 0 No additional cost	0	0
3	Inclusion of	Beneficial ownership: All of the	Cost of new definition on beneficial	0	0

<p>several new definitions, including "beneficial ownership", "trust and company service providers", "politically exposed persons" and "business relationship".</p>	<p>regulated sectors will be required to have systems in place to be able to identify and verify the identity of the beneficial owner on whose behalf a transaction or activity is being conducted. The UK's current Regulations already state that where an applicant for business "acts or appears to act for another person, reasonable measures must be taken for the purposes of establishing the identity of that person".</p> <p>Trust and Company Service Providers: The Third Directive extends AML controls to trust and company service providers and defines them. In the UK trust and company service providers are already part of the regulated sector under the 2003 Money Laundering Regulations.</p> <p>PEPs: All of the regulated sectors will have to have appropriate systems in place to determine whether a customer is a politically exposed person from</p>	<p>ownership: £ 0 Likely to be no additional costs as the 2003 Money Laundering Regulations, (already in force in the UK) state that where an applicant for business "acts or appears to act for another person, reasonable measures must be taken for the purposes of establishing the identity of that person". Further current Money Laundering Steering Group guidance specifically points to the identification of beneficial owners^{xii}</p> <p>Cost of new definition for Trust and Company Service Providers: £ 0 Should be no additional cost as this sector is already part of the regulated sector since the 2003 Money Laundering Regulations came into force.</p> <p>Cost of new definition on PEPs £0 The Directive requires "appropriate risk management procedures" to be in place to identify PEPs. This should be possible through</p>	<p>0</p> <p>0</p>
---	--	--	-------------------

		<p>another MS or third country and to carry out enhanced due diligence in relation to these customers. . Although there is no explicit mention of PEPs in the ML 2003 regulations all sectors already perform know your customer checks, which can be used to identify politically exposed persons. For financial services the JMLSG Guidance Notes for financial institutions already include advice on dealing with politically exposed person</p> <p>Business relationship: the regulated sectors are given an explanation of what is meant by “business relationship”. There is already a definition of business relationship in the 2003 Money Laundering Regulations but the Third Directive definition is slightly different. Additional guidance by member states may be needed to clarify what is meant by “an element of duration”</p> <p>Familiarisation costs</p>	<p>the existing know your customer checks that all of the regulated sector should have already</p> <p>Cost of new definition of business relationship: £ 0</p> <p>Should be no additional cost as the 2003 Money Laundering Regulations require the regulated sector to carry out identification procedures as soon as is reasonably practicable after contact is first made with the client if they agree to form a business relationship</p>	0	0
3	Inclusion of several new definitions,	Familiarisation costs	<p>Familiarisation Costs</p> <p>All new definitions may have familiarisation costs associated with them. These could be</p>	0	

	including “beneficial ownership”, “trust and company service providers”, “politically exposed persons” and “business relationship”.		through updating guidance and for firms to familiarise themselves with new definitions (e.g through updating their literature) It is difficult to estimate what these costs could be but it is likely to be a small cost across each firm and therefore amount up to about £1-2 million for the regulated sector as a whole	£1m	£2m
<u>5</u>	New prohibition of accounts which are anonymous..	No impact, under the 2003 Money Laundering Regulations, the regulated sectors already have to carry out customer due diligence measures to know their customers which means that the regulated sectors should all know who the account is held by/for.	£ 0 No additional cost	0	0
6-9	More detailed customer due diligence requirements These obligations are to be carried out on a “risk-sensitive basis”.	The regulated sectors will have more detailed rules over when and what customer due diligence is required but will nevertheless be able to carry out CDD measures on a risk-sensitive basis which is already the case under the UK’s current AML regime but set out in guidance rather than law. On the requirement to identify beneficial owners , the UK’s	£0 Should be no additional costs as the regulated sectors are already encouraged to apply a risk-based approach to customer due diligence.	0	0
			Cost of requirement to identify beneficial owners: £ 0		

		beneficial owners , the UK's 2003 Regulations already state that where an applicant for business "acts or appears to act for another person, reasonable measures must be taken for the purposes of establishing the identity of that person".	Under the UK's 2003 Money Laundering Regulations "where an applicant for business "acts or appears to act for another person" the regulated sectors have to take reasonable measures to establish the identity of that person. Guidance also elaborates on this	0	0
10	Greater detail about the situations in which it is possible for the regulated sector to reduce due diligence checks, where the risks are lower.	Minimal impact – the regulated sectors will have more clarification on the types of situations that may require less CDD but will nevertheless still be able to determine the extent of CDD measures on a risk based approach which is the case under the UK's current AML regime.	£ 0 No additional cost	0	0
11	More specific obligations to apply enhanced due diligence in higher risk situations (including non-face-to-face transactions and dealings with correspondent banks or	Some impact - the regulated sectors will have more clarification on the types of situations that may require enhanced CDD but will nevertheless still be able to determine the extent of CDD measures on a risk based approach which is the case under the UK's current AML regime.	Cost of having to carry out enhanced CDD when customer not physically present for ID purposes = £ 0 The 2003 Money Laundering Regulations, in force in the UK, already require the regulated sectors to take account of the greater potential for money laundering when the client is not physically present when being identified.	0	0
		The Money Laundering Regulations already require that	Cost of having to carry out enhanced CDD in other situations which represent a high risk		

	<p>banks or prominent public figures).</p>	<p>Regulations already require that regulated sectors to take account of the greater potential for ML when the client is not physically present.</p> <p>With respect to PEPs, all of the regulated sector will carry out enhanced due diligence if these customers are identified. The JMLSG Guidance Notes for financial institutions already include advice on dealing with PEPs. However, financial institutions may have to update/improve systems in place to carry out ID&V for PEPs. The rest of the regulated sectors may incur costs to establish systems to carry out ID&V on PEPs. (if they do not already exist). The costs could vary according to the nature and size of business but should be offset by the impact of this measure on detecting and deterring ML via PEPs.</p>	<p><u>of money laundering/terrorist financing .:</u></p> <p>It has proved difficult to get full estimates of what extra costs fall on the regulated sector through providing enhanced due diligence checks on higher risk customers. The financial sector already includes this in its guidance and therefore is likely to do this already.</p> <p>Other sectors also already , through taking a risk based approach, identify and perform enhanced due diligence on high risk situations including politically exposed persons.</p> <p>Therefore a minimum addition cost could be close to 0 for all sectors. Or £1-2m for familiarisation costs</p> <p>We cannot be, however, sure that 100% of each sector is already compliant with the duties of the Directive. From our discussions with sectors it is more likely that larger rather than smaller firms will be compliant.</p> <p>To estimate an upper limit we have assumed that 50% of most sectors will need to update their practices in line with the Directive.</p> <p>Given that a small percentage of customers (around 5-10%) will be in the higher risk</p>		
--	--	--	--	--	--

12-16	Greater detail about the scope for relying on customer due diligence procedures carried	There will be more clarification for the regulated sectors on the scope for relying on third parties to carry out CDD measures. This could lead to efficiency gains. Regulated sectors will need to	<p>category and it only those that enhanced due diligence needs to be performed on, it is estimated that enhanced due diligence would take on average 15-20 mins a week extra of staff time.</p> <p>Taking average hours rate for each sector from the Average survey of Hours and Earnings^{xiii} and multiplying this by 1.3 to reflect non labour wage costs. We can find out the cost for all sector for 15-20 mins extra work per week.</p> <p>For 50% of lawyers (5083 firms)= £2.12m For 50% of Accountants (32500 firms) = £13.55m For 50% of Casinos (75 casinos) = £14,000 For 50% of Estate Agents (5,000) = £830,950 For 50% of T&CSPs (2100) = £875,259 For 50% HVD (950) = £90,890 For 50% of MSBs (16,092) = £1.54m</p> <p>Total cost max range= £19m <u>Range of costs for EDD from £2m-19m</u></p>	£2m	£19
		The Directive now allows institutions to rely on third parties to perform customer due diligence checks rather than having to always do it themselves. This will result in a saving for some sectors who regularly use third parties who themselves perform customer due diligence			

	<p>out by third parties.</p>	<p>work out the practical implications e.g. for staff training on understanding the ID regime in other MSs. This should be capable of being done on a collective basis for the whole of the regulated sector.</p>	<p>checks on the same customer.</p> <p>This in essence is a removal of double due diligence on some accounts/customers.</p> <p>Given that this may only apply to a small percentage of customers, we have estimated this to save an average of 5 minutes a week for firms who are financial institutions, lawyers, accountants, HVDs, Trust and Company Service Providers and Estate Agents (sectors who are likely to use third parties).</p> <p>Taking average hours rate for each sector from the Average survey of Hours and Earnings^{xiv} and multiplying this by 1.3 to reflect non labour wage costs. We can find out the saving for the above sectors of 5 minutes a week.</p> <p>€# Saving for all financial services firms (9,700) = £933,140</p> <p>€# Savings for Law firms (10,177) = £979,027</p> <p>€# Savings for Accountant forms (65,000) = £6.25m</p> <p>€# Savings for HVDs (1900) = £72,884</p> <p>€# Savings for T&CSPs (4200) = £404,040</p> <p>€# Savings for Estate Agents (10,000) = 383,600</p>		
--	------------------------------	---	---	--	--

			<p>Total max savings = £9m.</p> <p>As these are estimates and firms may not take full advantage of these savings then there could be very little of no savings (min savings = £0). However, as this is something that the regulated sector has wanted then we would hope that this article would be taken advantage of.</p> <p>Range of savings 0- £9m</p>	0	£ 9m
19-24	Existing obligation to report suspicious activity to the financial intelligence unit ("FIU") and refrain from proceeding with suspicious transactions until the FIU gives consent.	No impact as this requirement is already in force under the 2003 Money Laundering Regulations – nominated officers must report suspicious activities to NCIS and refrain from proceeding with a suspicious transaction until NCIS gives consent.	<p>£ 0</p> <p>No additional cost</p>	0	0
25	Stricter prohibition on tipping off suspected money launderers. But allowing disclosure between relevant institutions from	Lawyers are not able to disclose to a client that information on that client has been transmitted to NCIS in the context of a ML/TF investigation but will nevertheless be able to dissuade the client from engaging in illegal activity.	<p>£ 0</p> <p>No additional cost although potential impact on law firm business through not being allowed to tip off in all cases except where they are preventing further money laundering</p>	0	0

	the same professional category	The UK believes that the concessions in the Directive for legal professional privilege are sufficient to continue its standing as a relationship that is crucial to the administration of justice and which is recognised as fundamental human right.			
26	Existing obligation on the regulated sector to maintain records for five years.	No impact as regulated sector are already required to keep records for 5 years under the Money Laundering Regulations 2003.	£ 0 No additional cost	0	0
27	New obligation on credit and financial institutions to apply EU standards in branches/subsidiaries outside the EU.	Minimal impact for UK credit and financial institutions. Only a small minority of firms have non-EU branches/subsidiaries , and general practice is to apply group wide standards.	£ 0 minimal or no additional cost	0	0
28	New obligation on credit and financial institutions to respond rapidly to requests from the FIU.	This will require credit and financial institutions to have systems in place (commensurate to the size and nature of the business) to be able to provide information to NCIS quickly, e.g. on whether they maintain business relationships with named persons. This should	£ 0 No additional cost	0	0

		<p>have minimal impact on financial and credit institutions, including money remitters, as these businesses, have, since the coming into force of the 1993 Money Laundering Regulations, been required to have AML systems in place.</p>			
29	<p>Obligation on MSs to maintain and publish statistics on number of SARs made to FIU, follow-up on these reports, number of cases investigated, number of persons prosecuted and convicted for ML/TF and the amounts of property frozen, seized or confiscated.</p>	<p>Minimal impact as NCIS already maintains statistics on the number of SARs it receives and the feedback given on these reports.</p> <p>Law Enforcement maintains statistics on the number of cases investigated. The Home Office maintains statistics on the number of persons prosecuted and convicted for ML/TF and the Assets Recovery Agency maintains statistics on the amounts of property frozen, seized or confiscated.</p>	<p>£ 0 This will entail minimal extra cost in itself as the UK is already largely abiding by this requirement. However we will need to publish a consolidated review of statistics.</p>	<p>0</p>	<p>0</p>
30-31	<p>Existing obligation on the regulated sector to establish internal control</p>	<p>No impact, this requirement already exists under the 2003 Money Laundering Regulations.</p>	<p>£ 0 No additional cost</p>	<p>0</p>	<p>0</p>

	mechanisms and training for relevant employees.				
32	New obligation to set up licensing or registration systems for currency exchange offices/money transmitters, trust/company service providers and casinos	Casinos and MSB are already licensed but the UK will need to set up licensing or registration for T&CSPs.	<p>Cost of setting up licensing or registration system for currency exchange offices/money transmitters and casinos: £0</p> <p>In the UK currency exchange offices and money transmitters are subject to a registration regime operated by Customs. Casinos are subject to a licensing regime applicants must apply to the Gaming Board for Great Britain for a certificate of consent to show that they are a fit and proper person to run the casino.</p> <p>Cost of setting up licensing or registration system for trust and company service providers</p> <p>We expect that the cost of setting up this system would be similar to the costs of establishing a registration and supervision system for Money Service Businesses and High Value Dealers in the UK.</p> <p>Based on an average registration fee of £60 per MSB/HVD outlet. With possible additional costs for any licensing or supervisory body in publicising the new registration/supervisory regime. We would expect publicity costs to be</p>	0	0

32 con td	New obligation to provide a 'fit and proper' test for people running currency exchange offices/money transmitters trust/company	UK will have to devise a system to check whether a person is fit and proper to run a money transmission business or a trust or company service provider.	<p>similar to the costs of publicising the registration/supervisory regime for HVDs which amounted to £250,000</p> <p>T&CSPs</p> <p>If we assume that there are around 4200 T&CSPs then the potential cost of a registration system for T&CSPs would be</p> <p>4200 x 60 = £252,000</p> <p>As stated it is assumed that this cost would be passed on to the sector through fees</p> <p>The cost of publicising the registration regime if we assume this is similar to the cost to Customs of publicising the regime for HVDs = £250,000 .</p> <p><u>Range of costs from £252,000 to £502,000</u></p>	£252,000	£502,000
-----------------	---	--	---	----------	----------

33	service providers and casinos.		<p>MSBs</p> <p>Based on around 3000 principals (the obligation is to register and have a fit and proper test for the principal firm (e.g The Post Office) not every premise)</p> <p>Range of cost from</p> <p>8 x 3000 and 30 x 3000 = <u>£24, 000 to £90, 000</u></p> <p>Further consideration will be given to this as part of the MSB review.</p> <p>T&CSPs</p> <p>-for trust and company service providers we expect that the costs will be similar to those for customs i.e. between £8- £30 per registration.</p> <p>For approximately 4200 T&CSPs in the UK the cost to the regulatory authority for T&CSPs to apply this fit and proper test would be between <u>£33,600 to £126,000</u></p> <p><u>Total cost for these two sectors is between £57,600 to £216,000</u></p>	£57,600	£216,000
33	New obligation to monitor the	Most of the regulated sectors are monitored for their compliance	Cost of establishing a monitoring and supervisory regime for		

	<p>regulated sector's compliance with the directive.</p>	<p>with AML controls in the UK. However, estate agents and trust and company service providers are not subject to a formal supervisory or monitoring regime. Implementing the Directive in the UK will require establishing a formal supervisory regime, including nomination of a regulatory authority for these two sectors.</p>	<p>(i) Estate Agents and (ii) Trust and Company service Providers.</p> <p>It is assumed that the costs of supervision will turn into fees for trust and company supervisors and estate agents</p> <p>The estimate of costs is based on information gained from a number of sources including the Jersey Financial Services Commission (JFSC) who already regulates and supervises T&CSPs in Jersey, from HMRC who supervise MSBs and from the Financial Services Authority in the UK who supervise financial services.</p> <p>T & CSP</p> <p>The costs of a supervisory regime depend on many factors (number of firms, whether a new body is appointed or an existing one used etc). It will also vary as the Directive allows supervision/monitoring to take place on a risk sensitive basis. To get a range of costs for trust and company service providers we have taken estimates from the HMRC light touch approach to provide an estimate for a light touch regime. To provide an estimate of a fuller regime (to provide a range of costs) we have taken information from Jersey Financial Service Commission and from the FSA for their resources used in supervision or trusts and</p>		
--	--	--	--	--	--

		<p>financial services respectively. We have also factored in to our costs the recommendations of the Hampton review which recommends favouring a light touch regime as possible.</p> <p>For 4,200 this range translates into a range of fees from</p> <p>Average of £60 per firm to and average of £4700 per firm.</p> <p>For T&CSPs this would lead to range of costs of £252,000 to £20m</p> <p>This is a large range to take into account the different models of regulations that are in existences in different jurisdictions for trusts. It is likely that the regime will be more towards the customs light touch regime and therefore towards to the lower estimates of the costs rather than the higher end.</p> <p><u>Estate Agents</u> Given the lack of obvious model to use, for estate agents we have assumed that cost would be similar to those costs for providing a supervisory regime for MSBs^{xvi}.</p> <p>With an average fee of £60 per firm</p>	<p>£252,000^{xvii}</p>	<p>£20m</p>
			<p>£600,</p>	<p>£600,</p>

33 contd	Compliance costs	<p>We have assumed 100% compliance of the regulated sector who already have supervisory regime to ensure their compliance with the current regulations and will ensure compliance with the Directive</p>	<p>This would cost £600, 000 for estate agents</p> <p>Compliance Costs: Article 33 of the Directive is intended to increase compliance with Member States Implementation for those sector that do not yet but will now need a supervisory regime</p> <p>Although both Estate Agents and T&CSP are already regulated in the UK and therefore should be 100% compliant. It could be possible that they are not fully compliant and a supervisory regime would help increase compliance.</p> <p>To estimate a range of compliance costs we have assumed that between 1-5% are not compliant with the current regulations^{xviii}.</p> <p>The RIA for the ML Regulations estimated compliance for estate agents at around £7.5m per year.</p> <p>Therefore range of cost for increased compliance in response to a supervisory regime for estate agents is</p> <p>£75, 000 to £375, 000</p> <p>T&CSP were estimated at having £17, 060</p>	00	00
----------	------------------	---	---	----	----

			compliance costs per medium size firm. £716, 520 - £3.59m total compliance costs of £791,520 to £3.97		£791,520	£3.97m
34-36	New provision requiring adequate penalties for infringement of the rules. Credit and financial institutions should be subject to appropriate administrative measures for non compliance with national legislation implementing the Directive	The 2003 Money Laundering Regulations state that if the regulated sector contravenes the identification procedures, record keeping procedures and internal reporting procedures then they are guilty of a criminal offence The UK already has a system for applying administrative measures to credit and financial institutions for infringement of the Money Laundering Regulations. The FSA operates this system for credit and financial institutions and customs operates this system for money service businesses and high value dealers.	£0 - No additional cost as infringement of the Money Laundering Regulations by the regulated sector constitutes a criminal offence and is punishable by a criminal sanctions £0 – No additional cost as the FSA and Customs already apply administrative measures to (i) credit and financial institutions and (ii) money service businesses and high value dealers respectively for non-compliance with the 2003 Money Laundering Regulations.		0	0
37-38	New <u>comitology</u> provision: Commission given the power to clarify	Clarifications may result in a need to adjust implementation and interpretation in Member States. The recital to this article	£0 This should not entail any cost and could even lead to savings as the regulated sectors will help inform the work of the Commission to		0	0

	<p>“technical aspects” of certain definitions and establish technical criteria on, inter alia, situations where reduced or enhanced due diligence are appropriate. This is a new power.</p>	<p>makes clear that the work of the Commission in this area will be subject to the advice of the Member States and to cost benefit analysis. This means that the UK government and the regulated sectors will be able to inform the decisions taken by the Commission in this area.</p>	<p>identify best practice procedures with regards to customer due diligence which in turn could lead to efficiency savings. However the work of the comitology group has not yet started so it is impossible to identify at this stage what potential savings it may incur.</p> <p>Further work will need to continue on the costs and or savings of these measures. The Directive states that the Commission do have to provide a cost benefit analysis on any of the new measures proposed.</p>		
Total cost				£5	£ 46m
Total savings				£0	£9m

Annex C – table of benefits by article of Third Directive

This table provides a summary of the benefits each article of the directive provides. This is intended to support the main RIA section on benefits.

Article in MLD3	Details	Benefits in terms of direct savings or additional benefits over and above current legislation
1	Extension of Directive to cover the provision/collection of funds to finance terrorism, as well as money laundering. This is from a FATF Recommendation.	<p>This Directive give legal effect to the range of European initiatives on countering the financing of terrorism, providing a further co-ordinated approach to tackling this.</p> <p>Benefits UK competitiveness in its regulations: UK already included funds to finance terrorism, this means that all EU countries will have to apply this standard as well.</p>
2	Extending scope of the regulated sector	Benefits UK Competitiveness: Brings EU members in line with UK's regulated sector
3	Inclusion of several new definitions, including "beneficial ownership", "trust and company service providers", "politically exposed persons" and "business relationship".	
5	New prohibition of accounts, which are anonymous.	Targets anonymous accounts, which through their lack of transparency are prime money laundering targets
6-9	More detailed customer due diligence requirements.	<p>Benefits UK competitiveness: Brings EU members in line with UK regulations</p> <p>Explicit acknowledgement of risk based approach to</p>

	These obligations are to be carried out on a “risk-sensitive basis”.	customer due diligence requirements: Promoting the UK’s approach to financial regulation in the EU Article 8 also include a specific derogation over the timing of verification of identity. This can happen during the course of establishing a business relationship rather than before it. This will benefit institutions by specific legislative allowance for the delay in verification when needed to not disrupt the course of business.
10	Greater detail about the situations in which it is possible for the regulated sector to reduce due diligence requirements, where the risks are lower.	Gives explicit examples in legislation of customers/institutions and products/transactions that are considered to be of lower risk. Providing clear signals that a lower level of due diligence is needed for these examples. Helps overcome the “fear factor”
11	More specific obligations to apply enhanced due diligence procedures in higher risk situations (including non-face-to-face transactions and dealings with correspondent banks or prominent public figures).	Alerts firms to what are considered higher risk situations. Ensuring these situations are targeted and treated as potentially higher risk and therefore strengthening preventative measures for higher risk customers or products
12-16	Greater detail about the scope for relying on customer due diligence procedures carried out by third parties. All institutions are allowed to rely on third parties to perform CDD	Estimated savings from the ability to reply on third parties for customer due diligence requirements. See table in annex c which estimates the potential value of such savings for the regulated sector
19-24	Existing obligation to report suspicious activity to the financial intelligence unit (“FIU” - in the UK this is NCIS, the National Criminal Intelligence Service) and refrain from proceeding with suspicious transactions	

	until the FIU gives consent.	
25	Stricter prohibition on tipping off suspected money launderers, without general exemptions on lawyers. But allowing disclosure between relevant institutions from the same professional category to help prevent money laundering and terrorist financing.	Ensures criminal sanctions are applied to all sectors should they deliberately subvert the regime by tipping off a subject of a disclosure
26	Existing obligation on the regulated sector to maintain records for five years.	
27	New obligation on credit and financial institutions to apply EU standards in branches/subsidiaries outside the EU.	Broadly in line with the UK firms current practice. A consistent approach to subsidiaries help close any potential loopholes and protect the integrity of all of our financial services.
28	New obligation on credit and financial institutions to respond rapidly to requests from the FIU.	Ensuring all Financial Intelligence Units have the power to gain prompt information from financial institutions. This already occurs in the UK
29	Obligation on MSs to maintain and publish statistics on number of SARs made to FIU, follow-up on these reports, number of cases investigated, number of persons prosecuted and convicted for ML/TF and the amounts of property frozen, seized or confiscated.	Will provide more information on the effectiveness of the regime, helping to inform the regulated sector of potential trends in money laundering and terrorist financing and in turn helping them improve the quality of their suspicious activity reports.
30-31	Existing obligation on the regulated sector to establish internal control mechanisms and training for relevant employees.	
32	New obligation to set up licensing or registration systems for currency exchange offices/money transmitters trust/company service providers and casinos, with a 'fit and proper' test for people running such businesses.	Helps prevent criminals from taking a controlling interest in firms

33	New obligation to monitor the regulated sector's compliance with the directive. This is from a FATF Recommendation.	Ensures compliance with regulations for estate agents and trust and company service providers. Ensuring that firms are compliant strengthens the preventative and detection system that the regulations seek to put in place
34-36	New provision requiring adequate penalties for infringement of the rules.	Ensuring that all Member States give full force and power to these regulations by associating them with appropriate sanctions. And therefore providing a deterrent against non compliance. Again this ensures that the preventative and detection aims of these regulations are met. Benefits in terms of competitiveness as the UK already does this.
37-38	New <u>comitology</u> provision: Commission given the power to clarify "technical aspects" of certain definitions and establish technical criteria on, inter alia, situations where reduced or enhanced due diligence are appropriate. This is a new power.	The Government believes that the comitology procedures could be a mechanism for promoting UK regulated sectors' experience on the types of situations which represent a high/low risk of money laundering and to better clarify certain definitions. One of our remaining objectives will therefore be to ensure that the comitology procedure is properly consulted upon.
41	Implementation time 24 months	Allows sufficient time for implementation to find most cost efficient way of implementing the Directive, learning from best practice and lessons from implementation of the Second Directive

A more detailed look at the Risk Based Approach

Why is a risk based approach so important?

The UK set as one of its negotiating priorities for the Third Directive the inclusion and preservation of a risk based approach to customer due diligence requirements. The risk based approach means that firms can alter their preventative measures in line with the type of customer, business relationship, product or transaction. This is inline with the Internationally Agreed FATF recommendations. The UK believes this is important because:

- €# There is a wide variety of sectors covered by the Directive with different associated risks
- €# It is in line with the UK regime – building on a partnership with industry where by people are encouraged to use the risk-based approach to apply the rules in a way which targets the risk specific to each sector. Allowing an intelligent rather than tick box approach to customer due diligence.
- €# It is not proportionate to treat a portfolio of low, medium and high risks alike. It would result in doing too much for some and too little for others.
- €# It is not effective to apply the same controls to each element in the portfolio. Higher risk situations must demand stronger controls than lower risk situations.

How do we apply the Risk Based Approach in the UK?

The drivers for a risk-based approach are effectiveness, efficiency and proportionality. It has long been recognised that different customers, activities, countries etc present different anti-money laundering risks. For example, the standard texts give exemptions for insurance products and for small transactions, but refer to added risk for non-face-to-face transactions. The guidance provides information on what customers and transactions have different risks and the appropriate responses and the firms translates that information into their own procedures. Industries and Government produce guidance on how to interpret the risk of a situation. A risk-based approach provides a rational basis for the allocation and prioritization of scarce resources and for differentiating the burdens imposed on regulated institutions and their customers.

Are there any potential problems/costs to the risk based approach?

- €# We know that industry supports the concept of a risk-based approach in principle.
- €# But the concept is relatively new and some firms are unsure how to apply it themselves and prefer a prescriptive approach in which firms are told or guided what to do, without having to exercise much judgment. Others say a risk-based approach can be attractive to senior management, but is difficult to apply to volume business distributed across thousands of branches or call centres.

- €# Smaller firms do not have the high tech products that can help in calculating risk.
- €# A risk-based approach depends on feedback from law enforcement to help regulated institutions identify where money laundering and terrorism risks lie in their particular business profile.

How do we intend to overcome such problems?

- €# The Joint Money Laundering Steering Group and other sector bodies issue guidance on the Money Laundering Regulations, including on how to apply customer due diligence requirements in the context of a risk based approach. This Guidance is currently being updated with the interpretation of a risk based approach being a key element.
- €# All guidance will need to be updated in line with our implementation of the 3rd Money Laundering Directive.
- €# We will also work with the Small Business Service (DTI) to try and ensure that small firms understand and take full advantage of the risk based approach.

Annex E implementation timetable

Based on current estimation the following are broad timings and milestones for implementation. Please note these timings are only estimations are therefore likely to change

Key milestones	Date
Political Agreement on the Third Money Laundering Directive reached	7 th June 2005
Identification of key implementation work streams	Now-September 2005
Informal consultation with stakeholders	Now- end 2006
Adoption of the Third Money Laundering Directive	October-November 2005
Directive published in the European Journal (two years for Member State implementation from this date)	November 2005
Publication of consultation paper on policy decisions and approaches	Beginning 2006
Publication of initial RIA for updating ML regulations for consultation	Beginning 2006
Comitology concludes on key Articles of Directive	Now - mid 2006
Publication of formal consultation document on draft ML regulations	Aprox October 2006
Publication of Full RIA for updating ML regulations	Aprox October 2006
Publication of new updated regulations and final RIA	Mid 2007
Updating of Industry Guidance	Mid 2006 –November2007
Deadline for implementation	November 2007

Annex F

Stakeholders consulted and summary of regulated sector consultation responses to the draft articles of the Directive, and the Government's position and latest changes to the text on these issues.

Consultation responses	Government's position and latest changes to text
<p>There was a general feeling that the directive was appropriate and necessary.</p>	<p># The Government is supporting the Directive</p>
<p>There was considerable dissatisfaction about the timing of the directive, so soon after the previous money laundering directive was implemented.</p>	<p># The Government was also disappointed that the timing of the directive was so soon after the implementation of the second. It believes however that there is still reason to support the directive because</p> <ul style="list-style-type: none"> # It is important to keep our legislation up to date and comply with FATF recommendations. # The Third Directive while responding to the FATF agenda is limited in its changes from the 2nd Directive # Where there are changes, it is our belief that these are improvements to existing legislation. The new Directive now targets some of the most vulnerable sectors and takes account of new risks. # It is a high level directive, leaving the detail of implementation to individual Member States and individual firms. The directive is in line with the Government's Anti-Money Laundering Strategy and in particular its three principles of effectiveness, proportionality and engagement. # Although the current legislation has had little time to bed down, Government has consulted thoroughly on the current regulations and would of course do so for our implementation for the Third Directive.

<p>It was widely felt that the directive should contain a general rider stating the need for a risk-based approach, to be applied to all areas of the directive. The directive refers to “credit and financial institutions”, whereas “legal and natural persons subject to the directive” would represent more of the people encompassed by the directive.</p>	<p>€# The UK supports the new implementation period of 24 months as we believe this will ensure timely and better quality legislation.</p> <p>€# The risk based approach is now applicable to all relevant parts of the directive (i.e all customer due diligence procedures)</p> <p>€# The relevant changes have been made in the text</p>
<p>Data Protection: There is no reference to any data protection issues in the directive and certain responses asked how all the aims of the directive could be achieved if the current Data Protection Act restrictions were kept in place.</p>	<p>€# We are not aware of any clash with the Data Protection Act.</p> <p>€# The Data Protection Act includes exemptions relating to personal data processed for the purpose of prevention and detection of crime – this overcomes the issue that rights of access to data in the data protection act could lead to tipping off under this directive</p> <p>€# It is also not a breach of the data protection act to disclose such data to NCIS as there is an exemption to the data protection act from non disclosure provisions where the disclosure is required by or under any enactment, rule of law by order of the court.</p>
<p>Definitions: A large amount of feedback was given on the definitions in the directive, especially the definitions of “money laundering”, “criminal activity”, and “business relationship”. Many suggested that these definitions were too vague and had too wide a scope, feeling that they</p>	<p>€# A negotiating priority has been to make key definitions clear and workable</p> <p>€# Comitology will also address a number of definitions</p>

<p>should be narrowed down and defined more clearly.</p>	
<p>Beneficial ownership: A definition that raised particular concern was “beneficial owner”. The main criticism was the 10% threshold, which the majority of feedback suggested was too low. A level of 20% was generally felt to be more appropriate. The question of how to go about identifying beneficial owners was also raised in a number of responses; it was felt this might require a large amount of resources which might not be available, or it might simply be impossible to establish who the real beneficial owners were (and if they were indeed the ones who made the key decisions).</p>	<p># The Threshold is now 25%</p> <p># We have secured improvements to the definition of Beneficial Owner</p> <p># Identifying the beneficial owner as set out in customer due diligence requirements are also subject to a risk based approach</p> <p># The UK also gained a recital clarifying the position of the Directive in terms of identifying and verifying the beneficial owners of bonds.</p>
<p>Personal liability of Money Laundering Reporting Officers: It was generally felt that this encouraged a high level of defensive reporting</p> <p>A clear definition of what is meant by “anonymous accounts” was requested, as certain account-holders’ identities have to be protected.</p> <p>Some responses argued that the</p>	<p># The Directive does not specifically mention the Money Laundering Reporting Officers</p> <p># In UK law – both the Proceeds of Crime Act 2002 and the Terrorism Act 2000, personal liability is attached to the nominated officer</p> <p># The article on banning anonymous accounts no longer includes fictitious names as it was recognised that there are legitimate reasons for holding accounts under fictitious names.</p> <p># The key point is that the individual would be identified and known by the bank</p> <p># This amount has not been raised but the comitology provisions allow the Commission to</p>

<p>exemption from verification for occasional transactions had been at €15,000 for many years, and in real terms was now too low.</p>	<p>update amounts in line with inflation</p>
<p><i>Tipping off:</i> There was a widespread feeling that this article should be revised, as a request for more information may be regarded as tipping the customer off.</p>	<p>€# We are not sure that this request for further information would be regarded as making a “disclosure”. For example, current Law Society Guidance states that preliminary enquiries made in order to determine whether a solicitor has a suspicion will not amount to tipping off unless you know or suspect that a report has been made or an enquiry is undergoing and you request further information in a way that discloses that fact. €# Further this is an important article as it involves identifying the very people that this directive is designed to catch.</p>
<p>On timing, a number of responses argued that certain industries should be able to postpone due diligence procedures to later in the business relationship.</p>	<p>€# The Directive now states that identification and verification procedures should be completed as soon as practicable where this is essential not to interrupt the normal conduct of business</p>
<p>Certain parts of the casino industry felt that the level of €1000 as a trigger for identification in casinos (under the threshold option in the Directive) was too low, and should be brought in line with a figure the current US figure (\$10,000) or of the high-value dealers under the directive (€15,000).</p>	<p>€# The UK Government does not agree that the threshold trigger should be \$ 10,000 as the international requirement is for Euros 3,000 €# The threshold is now Euros 2,000.</p>
<p>Some responses wanted it to be made clear exactly when simplified due</p>	<p>€# The UK is supportive of a non-exhaustive list to allow Member States to implement this on a risk sensitive basis.</p>

<p>diligence could be applied, in order to avoid loopholes in the directive.</p>	<p>## Comitology procedures, however, will provide technical criteria on when simplified due diligence can be applied to assist consistent implementation across member states.</p>
<p>Many respondents argued that it was wrong to classify all non-face-to-face transactions as high risk - subjecting them to mandatory enhanced customer due diligence procedures. They favoured a risk assessment instead.</p>	<p>## Enhanced Due Diligence requirements, including non face to face transaction are subject to a risk based approach</p> <p>## The Directive now allows identification to be established by electronic means for cases of non-face to face transactions</p>
<p>A number of responses mentioned the practical difficulty that there is no authoritative “official” database of politically exposed persons (PEPs). They queried at what stage or position a person becomes a PEP, and how such a person is to be defined. Some asked how far down a family tree one should go when considering “close family members”.</p>	<p>## Enhanced due diligence requirements, included identifying PEPs are subject to a risk based approach</p> <p>## The definition is sharpened to “immediate” family members</p> <p>## Comitology procedures, however, will provide technical criteria for assessing when enhanced due diligence can be applied to assist consistent implementation across member states. It will also look at clarifying the definition of politically exposed persons.</p> <p>## The Commission and Presidency have made it clear that what is needed to comply is not fool proof checks but appropriate procedures in place</p>
<p>Many argued that there was no reason why one authorised firm should not be able to rely on another authorised firm for an introduction to a customer. They felt that ultimate responsibility should not be on those who were relying on the introducer as this would</p>	<p>## The Government believes that it is fundamental that the person to whom the introduction is made retains ultimate responsibility for the Customer Due Diligence</p>

<p>undermine the entire point of introduced business.</p> <p>There was a widespread feeling that details of employees who make suspicious activity reports should be kept confidential, to avoid deterring them from making such reports.</p>	
<p>The ban on criminals running certain organisations was felt to be too sweeping and the general view was that if someone has a criminal conviction they should not automatically be excluded; rather each case should be considered using a risk-based approach on a case-by-case basis.</p>	<p># The Directive allows member states to take all appropriate measures to protect employees of the institutions or persons covered by this directive who report suspicions of money laundering or terrorist financing from being exposed to threats or hostile action.</p> <p># The UK has flexibility over what “all appropriate measures” are used and will consider this point on implementation, weighing the benefits of confidentiality against the need for the financial intelligence unit to have all necessary information.</p> <p># The latest draft of the directive now entitles competent authorities to refuse licensing or registration of the entities if they are not satisfied that the persons who effectively direct or will direct the business of such entities or the beneficial owners of such entities are fit and proper persons.</p> <p># The criteria for determining fit a proper persons should be established nationally, in conformity with national law. The only minimum is that the criteria should reflect the need to protect institutions and persons from being misused by their managers or beneficial owners for criminal purposes.</p>

Public sector members consulted with to form UK Government position:

- a. Association of Chief Police Officers
- b. Cabinet Office
- c. City of London Police
- d. Companies House
- e. Department of Trade and Industry (DTI)

- f. Department for Culture, Media and Sport (DCMS)
- g. Department for Constitutional Affairs (DCA)
- h. Department of Work and Pensions (DWP)
- i. Financial Services Authority (FSA)
- j. Foreign & Commonwealth Office
- k. HM Customs and Excise
- l. Home Office
- m. HMRC
- n. Gaming Board of Great Britain
- o. Metropolitan Police
- p. National Criminal Intelligence Service (NCIS)
- q. Serious Fraud Office (SFO)

An informal consultation document was sent out to the regulated sector for comment, 48 responses were received, Those who replied are listed below and separated by sector: -

Sector	Financial and credit institutions	Legal sector	Casino Sector	Accountancy sector	Others
Firms that responded to the informal consultation	<ul style="list-style-type: none"> €# Association of British Insurers (ABI) €# Association of Foreign Banks (AFB) €# Association of Friendly Societies 	<ul style="list-style-type: none"> €# City of London Law Society €# The Directorate of the Council for Licensed Conveyancers €# General Council of The Bar €# Law Society €# Notaries Society 	<ul style="list-style-type: none"> €# Ameristar Casinos Inc. €# British Casino Association €# Caesars Entertainment Inc. €# Casino Operators' Association of 	<ul style="list-style-type: none"> €# Association of Accounting Technicians (AAT) €# Association of Taxation Technicians (ATT) €# Chartered Institute of 	<ul style="list-style-type: none"> €# British Art Market Federation (BAMF) €# British Cheque Cashers Association (BCCA) €# Charities Aid Foundation

	<p>€# Association of Independent Financial Advisors (AIFA)</p> <p>€# Association of Private Client Investment Managers and Stockbrokers (APCIMS)</p> <p>€# British Bankers' Association (BBA)</p> <p>€# British Venture Capital Association (BVCA)</p> <p>€# Electronic Money Association (EMA)</p> <p>€# Finance and Leasing Association (FLA)</p> <p>€# Factors and Discounters Association (FDA)</p>		<p>Association of the UK Consolidated Press Holdings Limited</p> <p>€# Kerzner International Limited</p> <p>€# MGM Mirage Development Limited</p> <p>€# Sun International Group</p>	<p>Institute of Taxation (CIOT)</p> <p>€# Consultative Committee of Accountancy Bodies (CCAB)</p> <p>€# Institute of Chartered Accountants in England and Wales (ICAEW)</p> <p>€# London Society of Chartered Accountants Financial Planning Committee (LSCA)</p>	<p>Foundation Institute of Interim Management</p> <p>€# Institute of Directors</p> <p>€# Law Commission</p> <p>€# National Association of Estate Agents (NAEA)</p> <p>€# Retail Motor Industry Federation (RMIF)</p> <p>€# Royal Institute of Chartered Surveyors (RICS)</p> <p>€# Society of Trust and State Practitioners (STEP)</p> <p>€# Thinking About Crime Limited</p> <p>€# Transparency International</p>
--	---	--	---	---	--

	<p>€# Friends Provident Life and Pensions Limited</p> <p>€# Futures and Options Association (FOA)</p> <p>€# GMAC</p> <p>Commercial Finance plc</p> <p>€# Halifax</p> <p>€# Investment & Life Assurance Group (ILAG)</p> <p>€# Investment Management Association (IMA)</p> <p>€# Jersey Financial Services Commission (FSC)</p> <p>€# Jordans</p> <p>€# Lloyds TSB</p> <p>€# London Investment Banking Association</p>				
--	---	--	--	--	--

	(LIBA), Mobile Broadband Group (MBG) PayPal Vodafone					
--	---	--	--	--	--	--

-
- ⁱ http://www.ncis.co.uk/ukta/2004/UKTA_2004-05_2005-06.pdf
- ⁱⁱ http://www1.oecd.org/fatf/FATDocs_en.htm#Trends
- ⁱⁱⁱ <http://www.hm-treasury.gov.uk/media/D57/97/D579755E-BCDC-D4B3-19632628BD485787.pdf>
- ^{iv} HM Treasury , May 2004
- ^v The Transparency International Report on Trust and Company Service Providers “Corruption and Money Laundering in the UK: One problem two standards”. October 2004.
http://www.transparency.org.uk/Money_Laundering_PRP_003.pdf
- ^{vi} United Kingdom: Financial System Stability Assessment including Reports on the Observance of Standards and Codes on the following topics: Banking Supervision, Insurance Supervision, Securities Regulation, Payment Systems, Monetary and Financial Transparency, Securities Settlement Systems, and Anti-Money Laundering and Countering Terrorist Financing.
<http://www.imf.org/external/pubs/cat/longres.cfm?sk=16364.0>
- ^{vii} <http://www.hm-treasury.gov.uk/media/CFE/2A/ukfinancemarch05.pdf>
- ^{viii} http://www.fsa.gov.uk/pubs/other/money_laundering/jmslg.pdf
- ^{ix} HM Treasury , 2004
- ^x The UK financial service sector: Rising to the Challenges and opportunities of globalisation. HM Treasury, March 2005
- ^{xi} <http://www.opsi.gov.uk/si/si2003/20033075.htm>
- ^{xii} <http://www.jmlsg.org.uk/bba/jsp/polopoly.jsp;jsessionid=aag3IOTTdby6?d=362&a=3424> – in particular sections 4.31 and 4.163 refer to beneficial ownership.
- ^{xiii} <http://www.statistics.gov.uk/StatBase/Product.asp?vlnk=13101>
- ^{xiv} <http://www.statistics.gov.uk/StatBase/Product.asp?vlnk=13101>
- ^{xv} ¶ The figures shown are based on the estimate of the cost of undertaking a few basic checks through the systems already in place in Customs and operated by the National Control Unit (NCU) of Law Enforcement. The costs are based on checking one application by a limited company with two directors
- CRO Criminal record check - Identify if applicant has any criminal prosecution for money laundering or other offences.
 - Centaur (Customs Law enforcement data base) – Identify if applicant has been investigated by Customs in the past.
 - Companies House - Confirm identity and addresses of directors.
 - Dun and Bradstreet – Identify if company/individuals are in receivership /bankrupt.
 - Equifax- confirms identity and address of applicant.
- ^{xvi} We have only provided one figure for estate agents rather than a range as, unlike trust and company service providers it has been difficult to find different examples of supervisory regimes for the same sector to use as proxies
- ^{xvii} This cost is not counted in the overall total as the £252,000 for registration of trust and company service providers also includes the cost for light touch supervision
- ^{xviii} Taken from figures in the RIA to the ML 2003 regulation http://www.hm-treasury.gov.uk/media/4B7/B5/fullriamlr03_80.pdf