Implementing the Third Money Laundering Directive:
Draft Money Laundering Regulations 2007

January 2007
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CONTENTS

Executive Summary 3

Chapter 1 Introduction to the draft Regulations 5

Chapter 2 Accompanying narrative to draft Regulations 9

Chapter 3 Draft Money Laundering Regulations 2007 25

Annex A Summary of responses to the July 2006 consultation 61

Annex B Updated Regulatory Impact Assessment 77
EXECUTIVE SUMMARY


In July 2006 the Government published “Implementing the Third Money Laundering Directive: A consultation document”. This document outlined the changes to domestic legislation introduced by the Third Money Laundering Directive and consulted on options for implementation where the UK has flexibility.

Following the results of that consultation, the Government is now publishing draft Money Laundering Regulations 2007 for consultation. These Regulations will repeal and replace the Money Laundering Regulations 2003.

This document includes an accompanying narrative for the draft Money Laundering Regulations 2007 that summarises the proposals and questions in the previous consultation, the responses and the resulting policy. For each policy discussed there is a cross reference to the relevant regulation. This document also includes a table summary of responses to the previous consultation document and an updated Regulatory Impact Assessment (RIA).

The Government has included some specific consultation questions that it would welcome answers to as well as general comments on the draft Regulations themselves. Chapter 1 sets out how to reply to this consultation document. Chapter 2 is the narrative to the draft Regulations, Chapter 3 sets out the draft Regulations, Annex A is a summary of consultation responses and Annex B is the updated Regulatory Impact Assessment.
INTRODUCTION TO THE DRAFT REGULATIONS

BACKGROUND AND GOALS OF THE DOCUMENT

1.1 In July 2006 HM Treasury published “Implementing the Third Money Laundering Directive: A consultation document”. This document outlined the changes to domestic legislation introduced by the Third Money Laundering Directive and consulted on options for implementation where the UK has flexibility.

1.2 Following the responses to that document the Government is now publishing for consultation draft Money Laundering Regulations, the UK legislation that will implement the Third Money Laundering Directive. Also included is a summary of consultation responses and an updated Regulatory Impact Assessment. This consultation document aims to:

- outline the Government’s proposed policies, following the previous consultation; and

1.3 The Third Money Laundering Directive introduces a significant number of changes to our existing Regulations. The Government therefore proposes repealing the current Regulations and replacing them with the attached draft Regulations. While there are a few specific consultation questions on the draft Regulations, the Government would also welcome consultation responses on the following questions:

- are the draft Regulations easy to follow?
- are you clear of your requirements under them?
- do you believe they adequately reflect the Government’s policy intention?

1.4 As part of implementation the Government is also working with supervisors and industry bodies on producing and updating industry or supervisory guidance.

HOW TO RESPOND

1.5 This consultation will run until 2nd April 2007. Please ensure that your response reaches us by the closing date. Please send responses to:

MLD3 Consultation
Rm 4/15
1 Horse guards Rd
London
SW1A 2HQ

Or email them to:
MLD3consultation@hm-treasury.x.gsi.gov.uk
**DISCLOSURE OF CONSULTATION RESPONSES**

1.6 When responding please state if you are responding as an individual or representing the views of an organisation. In accordance with the code of practice on open government, comments will be made publicly available unless respondents specifically request otherwise. In the case of electronic responses, general confidentiality disclaimers that often appear at the bottom of e-mails will be disregarded for the purpose of publishing responses unless an explicit request for confidentiality is made in the body of the response. If you wish part, but not all, of your response to remain confidential please supply two versions – one for publication on the website with the confidential information deleted and another confidential version for the HMT consultation team.

**IMPLEMENTATION DEADLINE**

1.7 Member States have until 15th December 2007 to implement the Directive. This means updating domestic legislation and ensuring that the regulated sector is required to be compliant by this date.

1.8 Final regulations will be laid before Parliament by mid 2007, allowing firms a period in which to update their practices in line with the new legislation before 15th December 2007.

**COMPENSATORY SIMPLIFICATION PROPOSALS**

1.9 Following the consultation responses the Government proposes further simplification measures, in line with Government wide commitment to demonstrate regulatory simplification alongside the introduction of new regulations. The updated RIA includes these proposals.

The Government would welcome any proposals for further measures that could be undertaken to be included in your response to this consultation.

**Devolved administrations**

1.10 The previous consultation document asked whether there was any different legislation in Scotland, Wales or Northern Ireland that would affect the draft Regulations. Respondents asked that the Regulations take into account different legislation in the devolved administration to ensure consistency. The Government has worked to ensure that this is the case, for example by ensuring that the supervisory arrangements cover the devolved administrations as well.
LINK BETWEEN THIS DOCUMENT AND OTHER DOCUMENTS

Anti Money Laundering and Counter Terrorist Financing - Strategy Document

1.11 The Government will publish an Anti Money Laundering and Counter Terrorist Financing strategy document early this year.

Money Service Business Review


Payments (Wire Transfers) Regulation

1.13 The Payments (Wire Transfers) Regulation came into force on the 1st January 2007. The UK has asked the EU Commission to confirm whether there is any direct effect on our implementation of the Third Money Laundering Directive.

REPORTING OBLIGATIONS AND REQUIREMENTS ON GOVERNMENT AND ITS AGENCIES

1.14 The previous consultation document included chapters on Reporting Obligations and Requirements on Government and its agencies. The responses to consultation issues raised are summarised in the summary of consultation responses. As none of the proposals related directly to the drafting of the Money Laundering Regulations 2007 the work of Government and SOCA on these issues is not covered in this document but will be taken forward by the Home Office and SOCA and in the Government’s anti-money laundering and counter terrorist financing strategy document.
Defining the scope of the sectors covered by the Directive

2.1 The previous consultation document considered how best to draft the scope of the sectors covered by the Regulations. It proposed listing the categories of persons as set out in the Directive.

2.2 The consultation responses were broadly in favour of this approach, except on the definition of accountants or tax advisers. It was argued that there is no widely accepted definition of an accountant or tax adviser and therefore it is essential to refer to the activities of accountants and tax advisers to ensure that all firms and individuals undertaking accountancy work or tax advice are covered by the Regulations, whether or not they belong to a professional body or call themselves an accountant or tax adviser. The Government accepts these arguments and has therefore included a definition of accountant and tax adviser that refers to the activities, see Regulation 2(1).

2.3 A number of respondents also asked which activities fall within the term accountant and tax adviser. The definition included in the Regulations is high level. While the Government does not wish to include any further level of detail in the Regulations, for the purposes of supervision the nominated supervisor will need a working list of activities that can be considered as accounting activities. The table below outlines the activities which the Government believes are included and excluded from the definition.

<table>
<thead>
<tr>
<th>Activities included within the definition of accountant or tax adviser:</th>
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</thead>
<tbody>
<tr>
<td>Chartered accountant;</td>
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<tr>
<td>Professional bookkeeping services to a third party;</td>
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<tr>
<td>Certified accountant;</td>
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<tr>
<td>Taxation adviser;</td>
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<tr>
<td>VAT consultant;</td>
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<tr>
<td>Management Accountant;</td>
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<tr>
<td>Accounting Technician;</td>
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<tr>
<td>Chartered tax adviser;</td>
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<tr>
<td>Law firm offering full business services;</td>
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<tr>
<td>Payroll agent; and</td>
</tr>
<tr>
<td>Repayment agent.</td>
</tr>
</tbody>
</table>

The Government would welcome your comments on the list of activities included and excluded.
2.5 Activities excluded from the definition of an accountant or tax adviser:

- Internal bookkeeper;
- Accounting software training;
- Property service administration; and
- Relative, friend, voluntary service that offers accountancy/ or tax advice.

External accountants and independent legal professionals

2.6 The previous consultation document proposed drafting the Regulations in line with the Financial Action Task Force (FATF) definition in its glossary which refers to sole partners, or employed professionals within professional firms, but excludes internal professionals that are employees of other types of businesses and professionals working for public authorities.

2.7 The majority of consultation responses agreed with this approach and the Government has drafted the Regulations accordingly, see the definitions of “independent legal professionals” and “external accountants” in Regulation 2(1), 3(c) and 3(d). The Government will keep these definitions under review to ensure that they accurately capture the intention and are not inconsistent with terminology used in the Legal Services Bill.

2.8 Regulation 2 defines “auditor” in relation to the Companies Act 1989. The Government will consider whether this definition needs to change in light of the Companies Act 2006.

Financial institutions

2.9 The previous consultation document proposed adopting the FATF definition of a financial institution, as one that carries out an activity or operation on behalf of a customer, excluding persons who are dealing for their own account and not providing a service to a customer. The Government would not consider a firm to be acting on behalf of a customer if it is a member of a wider group of companies, and is trading for own account with, or executing orders for, another group member. The majority of consultation responses agreed within this approach and the Government has drafted the Regulations accordingly, see Regulation 2(6)(a)(ii).

2.10 The consultation responses also raised two further issues on financial institutions.

2.11 First a number of respondents asked for the Government to confirm that Annex I of the Banking Consolidation Directive includes the activity of factoring. The Government can confirm this. The Money Laundering Regulations 2007 will use the latest Directive on taking up business with credit institutions (2006/48/EC) as the list of annex I financial institutions. This includes a specific reference to factoring. This list is included in Schedule 1 to the draft Regulations.
2.12 Second a number of respondents called for the Government to clarify the scope of the term “financial leasing” and argued that it should capture finance leasing but not operating leasing activity. Finance leases finance the purchase of assets by the lessee where all the risks and rewards of ownership are transferred from the lessor to the lessee. By contrast, in an operating lease the asset is hired out to a lessee for a period that is substantially shorter than its useful economic life and ownership of the leased asset remains with the lessor. The Government cannot change the terms in the Directive and therefore the Regulations will use the term financial leasing. The Government can confirm, however, that financial leasing as it is used in the Directive means the same as finance leasing.

2.13 The Government has also considered the reference to investment firms in the Directive’s definition of a financial institution. This refers to article 4(1) of the Markets in Financial Instruments Directive (MFID). The Government has transposed this reference but can confirm its belief that Regulation applies only to investment firms that MFID applies to, and so does not apply to those firms that are specifically exempted from MFID.

2.14 The Government will continue to work with supervisors and firms on the scope of the terms used in Annex I to the Banking Consolidation Directive. In particular it will continue further work on terms such as lending, money broking and safe custody services.

Financial Activity on an occasional and limited basis

2.15 The previous consultation document proposed taking advantage of the derogation, defined by the European criteria, from the scope of the Regulations of financial activity on an occasional and limited basis. There was broad support for this option and the Regulations include this derogation as well as the criteria, see Regulation 2(7) and paragraph 1 of Schedule 2.

2.16 Firms will be able to apply to their supervisor for consideration against the criteria in Schedule 2 and potentially be removed from the scope of the activity. Unless this application is made it is assumed that they will remain in the scope of the Directive.

2.17 The Commission’s criteria for derogating financial activity on an occasional and limited basis, included numerical thresholds for the majority of the criteria. Following the responses to the previous consultation document we have adopted these thresholds and they are included in Schedule 2 to the Regulations. The criteria did not include a threshold, however, for total turnover of business, the only presumption that it should be sufficiently small. The UK proposes putting a maximum limit in line with the VAT definition of a small business. This is currently £61,000 (or 91,500 euro). The reference to the threshold is included in paragraph 1 of Schedule 2.

What activities do you think fall within the terms mentioned in para 2.14? When listing these, if you do not think an activity should be included, please include your reasons.

Do you agree with the proposed threshold for total turnover criterion for the financial activity on an occasional and limited basis derogation?
Additional changes to the scope of the sectors subject to the Regulations

2.18 In the previous consultation document the Government proposed not extending the scope of the Regulations beyond those activities listed in the Directive and in international recommendations at this stage. While the majority of responses agreed some suggested extending the Regulations to letting agents. The Government is not persuaded that there is an overwhelming case to extend the scope of the regulated sector beyond that listed in the Directive. However, the Government is working with the Financial Action Task Force on property in general, including letting agents. It will review its position once this project has concluded.

New definitions

2.19 The previous consultation document proposed transposing all of the terms used in the Third Money Laundering Directive into the Regulations unchanged. This received broad support and the Regulations are drafted on this basis, see Regulation 2.

2.20 Some consultation responses were concerned that the definition of business relationship included in the Directive, extends the requirements to all business relationships over and above those with a customer (for example a business relationship with a supplier). This is not the intention of the Directive. Also, some responses queried what would be the position where the customer approaches the firm believing that the business relationship would have an element of duration but the same view was not held by the firm. To clarify the position in this situation, the Regulations specify that the expectation that the relationship will have an element of duration must be held by the relevant person, not the customer. Regulation 2(1) includes the new definition of “business relationship”.

The Government would welcome your comments on this proposal to refine the definition of a business relationship.

Customer Due Diligence requirements

What the Customer Due Diligence measures are and when they apply

2.21 The previous consultation document described the Directive’s requirements for customer due diligence and when it should apply. It stated that these will need to be transposed directly into the Regulations. These measures are now included in Regulations 4 and 5.

2.22 The consultation document also proposed including a specific Regulation requiring a risk-based approach to be undertaken for customer due diligence measures, and requiring firms to be able to demonstrate to their supervisor that the measures they undertake are in line with the risks. These measures are now included in Regulation 5(2).
Beneficial Ownership

2.23 A number of consultation responses from legal professionals expressed concern about the impact of the requirement in the Directive to identify and take risk-based and adequate measures to verify the identity of the beneficial owner. Representations were made that the Regulations should explicitly state what measures were needed and when they should apply.

2.24 The previous consultation document set out in detail the Directive’s requirements and the definition of beneficial ownership. The Government considers that it is unhelpful to provide in the draft Regulations different expectations for each possible situation. The Government expects supervisors or industry to develop guidance on what measures can and should be undertaken to meet the requirements imposed to ascertain the beneficial owner. The Government will work closely with these bodies to ensure that the requirements and any subsequent guidance are as helpful as possible.

2.25 As described in the previous consultation document the trustees of bond (and other debt) issues will be exempted from the need to identify and verify beneficial ownership. This is explicitly allowed in the preamble to the Directive. The consultation responses strongly supported the proposal to include this provision in the Regulations. It is therefore included in Regulation 5(4) and (5).

Timing and non-compliance

2.26 The previous consultation document stated that the Government will transpose the Directive’s requirements on the timing of customer due diligence and the requirements on the firm when customer due diligence cannot be completed. It proposed including the three examples of when identification and verification of the customer before the establishment of the business relationship is not required. The consultation responses strongly supported this proposal which is therefore included in Regulations 6 and 7.

Prohibitions

2.27 The Third Directive explicitly prohibits credit and financial firms from keeping anonymous pass books and accounts. It also prohibits credit and financial institutions from entering into or continuing a correspondent relationship with a shell bank. Institutions must take adequate measures to ensure that they are not in a correspondent banking relationship with a bank that allows its accounts to be used by shell banks. These new requirements and others relating to shell banks are set out in Regulation 11.

Customer Due Diligence requirements for casinos

2.28 The previous consultation document asked whether identification should take place on entry to a casino, when a customer reaches a threshold of €2,000 of chips exchanged or gambled, or whether the option should be left open. The question was asked in the context of changes to the wider regulatory landscape for casinos that are being brought about by the Gambling Act 2005. The consultation revealed a range of views which the Government has balanced carefully, alongside the requirements of the Directive and the international standards which underpin it.
2.29 The Government is of the view that casinos should identify their customers when they reach a threshold of €2,000 of chips exchanged or gambled. A threshold approach is recommended as international best practice by the Financial Action Task Force, which suggests a level of €3,000. The Third Money Laundering Directive provides for a stricter application of this standard, involving a threshold of €2,000, and it is this approach that the Government is taking. In the view of law enforcement, money laundering in casinos below the sum of €2,000 is not a material risk provided proper checks are in place to ensure that this threshold is not exceeded without appropriate due diligence through the consecutive exchange of smaller amounts. Casinos should also be able to link customer due diligence information for a particular customer to the transactions that the customer conducts in the casino.

2.30 Those casinos that are able to demonstrate to the regulator that they have the systems in place for tracking and identifying higher risk individuals and for ensuring that criminals are not able to circumvent the threshold by gradually exchanging or gambling chips should therefore follow a threshold approach. The Government has rejected the blanket application of a threshold system for all casinos, as some may not have the systems in place to deliver it effectively. For those that do not, the default position should continue to be that casinos identify their customers on entry. This will enable those casinos that presently operate a membership system to continue with their current practice of identifying, and verifying the identity of, customers at the point of application for membership. However, the Government encourages all casinos to develop the systems necessary for tracking and identifying higher-risk individuals in line with the threshold approach.

2.31 Regulation 8 sets out the identification requirements on casinos. It is the Government’s view that the threshold should apply per casino business day, rather than per visit or per calendar day, in order to prevent criminals from attempting to circumvent ID checks by leaving and re-entering the premises over the course of a day. As set out above, if it transpires that there are systemic problems with the operation of a threshold approach, then checks on entry will be required.

2.32 Regulation 8(2) specifies that ‘gambling chips’ covers electronic chips. The Government is of the view that this means that touch bet roulette terminals and certain slot machines, particularly those that involve obtaining a ticket to cash in or out are included in the threshold system of identification, and that therefore casinos must identify customers using these machines either on entry or when they reach the threshold.

2.33 The previous consultation also asked whether any separate regulations or guidance were required for Internet casinos. There were few responses to this question. One response expressed the view that extra due diligence measures should be required given the non face-to-face nature of Internet. The Government is of the view that the enhanced due diligence requirements in the Directive, which require extra steps to be taken if the customer is not physically present, adequately address this issue. There was also appetite for additional guidance for Internet casinos, which will be taken forward.
Simplified and Enhanced Due Diligence

Simplified Due Diligence

2.34 The previous consultation document proposed taking advantage of all of the derogations for simplified due diligence listed in the Third Money Laundering Directive. There was strong support for this proposal and therefore the Government has included them in the Regulations at Regulation 9.

2.35 The Directive’s provisions on simplified due diligence removed the requirement for identification, verification and ongoing monitoring for listed low risk products and transactions. However, the implementing measures to the Directive\(^1\) state that ongoing monitoring of the business is necessary even in situations attracting simplified due diligence to enable firms to be able to spot and report suspicious activities. To make the Regulations consistent with the Directive’s intention, it is therefore proposed that the derogation for simplified due diligence removes the need for identification and verification but maintains the requirement for ongoing monitoring, see Regulation 9(1).

2.36 A number of respondents requested that simplified due diligence for pension products to be extended to:

- pension products where contributions are made solely by the employer; and
- pension products which can be assigned to a third party.

2.37 The Government agrees with the representations that occupational pensions where solely the employer makes contributions have comparable low risk status to pensions where contributions are made by way of deduction from wages and that the intention of the Directive was to include this as well. This has been confirmed by the European Commission and is reflected in Regulation 9(7)(c). However, the Government does not agree that simplified due diligence should be extended to pension products which can be assigned to a third party as this automatically increases the risk factor. As such the normal requirements for customer due diligence should apply to this product.

Criteria for Simplified Due Diligence

2.38 The previous consultation listed the criteria for simplified due diligence agreed by the EU Committee on the Prevention of Money Laundering and Terrorist Financing and by the European Parliament. If a firm under the Regulations believes that a customer or product meets the criteria listed then it does not have to undertake identification and verification of the customer or the beneficial owner. It will, however, need to gather sufficient information to ensure that the criteria are met, and be able to satisfy the supervisor, if requested, that it is acting in accordance with the criteria listed.

2.39 The consultation responses strongly supported the inclusion of these criteria. The types of products that were thought most likely to meet these criteria were certain insurance products and leasing products. This criteria is included in paragraph 3 of Schedule 2 to the Regulations.

2.40 Member States are also permitted to apply simplified due diligence to products “whose characteristics are determined by their relevant domestic public authorities for purposes of general interest, benefit from specific advantages from the State in the form of direct grants or tax rebates, and whose use is subject to control by those authorities, provided that the benefits of the product are only realisable in the long term and that the threshold ….is sufficiently low. Where appropriate, this threshold may be set as a maximum annual amount.” The Government previously proposed that the Child Trust Fund would meet this derogation criterion. Respondents supported this proposal and therefore Regulation 9(9) includes this as a product that can benefit from simplified due diligence.

Are there any other products that you believe meet the conditions of the derogation to the implementing measures outlined in paragraph 2.38 above?

Enhanced Due Diligence

2.41 The previous consultation document outlined the situations in which the Third Money Laundering Directive requires enhanced due diligence and stated that the Regulations should transpose the requirements directly. These requirements are now included in Regulation 10.

Politically Exposed Persons

2.42 Responses to the previous consultation document raised concerns over how best firms should identify politically exposed persons (PEPs) and the liability that results from not doing so correctly. A large majority of consultation responses requested that the Government produce a list of politically exposed persons and that the Regulations offer a precise definition of a “foreign PEP”.

2.43 The Government has considered the arguments very carefully and has decided against publishing a list of politically exposed persons. It considered that the expanded definition set out by EU Committee on the Prevention of Money Laundering and Terrorist Financing provides further guidance to aid firms in identifying PEPs and has included this definition in Schedule 2 to the Regulations. However, the Government will also work with law enforcement with a view to providing more information to firms on the categories and location of PEPs that are likely to use the regulated sector.

2.44 The Government has also considered the definition of a foreign PEP used in the Third Directive and in the FATF Recommendations. While the Directive refers to the country of residence, the FATF definition refers to the location of the prominent public function only. The Government, in consultation with the European Commission, will consider which definition better captures the risk but for the purposes of the draft Regulations has inserted both. This is included in Regulation 10 (7).

Other provisions in the Directive that relate to higher risk

2.45 The Directive includes two further articles that relate to the need for firms to pay attention to higher risk situations. These are transposed into Regulations 11(5) and 14(1)(b)
Cross over between Enhanced and Simplified Due Diligence

2.46 The previous consultation document suggested that if both enhanced and simplified due diligence may appear appropriate, then enhanced due diligence should be required but the level of extra measures may be varied. The Government proposes that the Regulations should not be explicit on this point but that industry guidance should provide advice on specific cases.

Reliance on third parties

2.47 The previous consultation document proposed a staged approach to implementing the reliance provisions of the Directive, under which only those sectors that are currently subject to established systems of supervision for money laundering should be relied upon at the point that the Directive comes into force. Firms in other sectors that meet the Directive’s criteria for reliance should not be relied upon until established regulatory regimes are up and running, and there is widespread evidence of compliance.

2.48 The majority of respondents supported this approach. Therefore, in relation to the UK, credit and financial institutions currently authorised and supervised by the FSA for anti-money laundering compliance, and legal and accountancy professionals that are members of a professional body that currently regulates them will both be able to be relied upon when the Directive comes into force. Casinos, money service businesses, trust and company service providers, legal and accountancy professionals that are members of professional bodies that are taking on the role of supervision, and consumer credit firms will be able to be relied upon once supervisory arrangements are well established and there is widespread evidence of compliance.

2.49 Some were of the view that responsibility for customer due diligence should not remain with the firm relying on a third party. However, the Directive is clear on this, and it is an important safeguard to secure the effectiveness of customer identification measures.

2.50 Regulation 12 outlines the reliance provisions.

Equivalence and subsidiaries in third countries

Equivalence

2.51 The previous consultation document asked whether the Regulations should include a requirement that firms must only treat those countries as equivalent that are listed by the Government.

2.52 The majority of responses preferred that the provision remain high level and the Regulations do not therefore include specific reference to any equivalence list. The Government is continuing to discuss the matter of third country equivalence with the European Commission and other Member States given the power of the European Commission to develop a list of countries that cannot be treated as equivalent. The Government will confirm what information will be available on equivalent third countries before the Money Laundering Regulations 2007 are agreed.
Subsidiaries in third countries

2.53 The previous consultation document noted that the Directive introduces a new requirement on credit and financial institutions to ensure that their subsidiaries and branches in third countries apply customer due diligence and record keeping measures equivalent to the requirements of the Directive. This requirement is listed in Regulation 14(2).

Record keeping, internal procedures and training

Record keeping

2.54 The previous consultation document asked whether the Regulations should provide for a hierarchy of options for record keeping, with a preference for copies over references, or leave it to firms to choose whether to take references or copies as allowed by the Directive.

2.55 The majority of responses favoured allowing firms to make an open choice, although a significant minority including law enforcement agencies was content with the Regulations stating a preference for copies to be taken unless this was not practical.

2.56 In line with better regulation principles the Government has decided to allow an open choice of references of the evidence obtained or copies. It will, however, keep this matter under review. Regulation 13 sets out the new requirement.

Internal procedures and training requirements

2.57 The previous consultation document noted that internal provisions and training requirements would remain in line with those set out in the Money Laundering Regulations 2003. The provisions are included in Regulations 14, 15 and 16.

2.58 The Third Directive also requires credit and financial institutions to have systems in place to enable them to respond fully to enquiries from the Financial Intelligence Unit (FIU), or other authorities as to whether they have maintained during the previous five years a business relationship with a specified individual or firm. Regulation 14(5) refers.

Monitoring and supervision

Sector by sector analysis: who should supervise those sectors not presently monitored for money laundering purposes?

2.59 The previous consultation document also proposed supervisors for each of the sectors not presently monitored for money laundering purposes.
2.60 For annex I financial institutions it was proposed that those firms that are licensable by the Office of Fair Trading (OFT) under the Consumer Credit Act 1974 (but not also regulated by the Financial Services Authority (FSA)) should be monitored by the OFT with support from Local Authority Trading Standards Service. The remaining annex I financial institutions would then be monitored by the FSA. HMRC would remain the supervisor for Money Service Businesses. While the majority of respondents supported this option some expressed concern that certain sub sectors (such as invoice financing) would be monitored by two supervisors. The Government is still minded that a model which includes the least number of supervisors for each firm is the best proposal. It therefore confirms that supervision for Annex I financial institutions will take place in line with the proposals in the previous consultation document.

2.61 For estate agents it was proposed that OFT with the support of Local Authority Trading Standards Service take on the supervision of the sector for compliance with the Regulations. There was strong support for this proposal.

2.62 For independent legal professionals it was proposed that certain professional bodies undertake supervision for these persons. Consultation responses agreed with this approach but noted that a small number of notaries were not supervised by the professional bodies listed in the previous consultation document. The Government is in discussions with organisations over whether they can take on supervision of the notaries profession.

2.63 For external accountants, tax advisers and auditors it was proposed that certain professional bodies undertake supervision. In addition to the list given in the consultation document a number of other bodies have expressed an interest in taking on supervision for their members. The Directive allows self-regulatory bodies to take on this role as long as they can meet the Directive’s supervision requirements. Consistent with this the Chartered Institute of Taxation, the Association of Taxation Technicians and the Association of Accounting Technicians will supervise their members for the purposes of compliance with the Money Laundering Regulations. These bodies already have or are establishing formal assurance process towards their members for compliance with the Regulations.

2.64 The responses to the consultation document proposed that insolvency practitioners would also need to be supervised for their compliance with the Money Laundering Regulations. While, the majority of these are already supervised by the listed professional associations, around 90 insolvency practitioners are directly licensed by the Secretary of State for the Department of Trade and Industry and monitored by the Insolvency Service. The Department of Enterprise Trade and Investment in Northern Ireland undertakes this role in Northern Ireland. These bodies will therefore take on responsibility for supervision of these 90 practitioners.

2.65 The Government is in continuing discussion with other accounting, tax advice and insolvency practitioners professional bodies as to whether they too can take on supervision of their members.
2.66 There are a number of firms or individuals that may belong to more than one of the listed professional bodies. It is the Government’s aim that firms and individuals are only subject to one supervisor for the purposes of ensuring compliance with the Regulations. The Government has therefore included in the Regulations a power for supervisory authorities to agree that one or other of them should act as supervisory authority. If no such agreement is reached, the supervisory authorities for a relevant person must cooperate in the performance of their duties. These provisions are included in Regulation 17 (2), (3) and (4).

2.67 The previous consultation document proposed that HMRC take on supervision of accountants and tax advisers that were not members of the listed bodies. A number of consultation responses expressed concern that HMRC would use this role to investigate tax offences rather than compliance with the Money Laundering Regulations. The Government is not persuaded by this argument. The powers given to HMRC for supervisory purposes will be restricted to bona fide Money Laundering Regulations assurance and enforcement work, and there are strong safeguards against any misuse or abuse of these powers. Equally, however, HMRC is under an obligation to act upon any evidence of potential criminality. If a money laundering assurance officer were to chance upon evidence of possible illegal activity, then the evidence would be reviewed and if appropriate passed on to the relevant authority. This is in line with other inspection and supervisory regimes. The Regulations therefore provide that HMRC should be the supervisor for this sector.

2.68 The previous consultation document proposed that HMRC take on the role of supervision of trust and company service providers that are not already regulated by the listed professional bodies or the FSA. While there was some support for this proposal a number of consultation responses again expressed concern that HMRC would use this role to investigate tax offences. For the reasons given above the Government is not persuaded by these concerns. A number of other responses favored Companies House taking on this role, the Government does not agree with these proposals as Companies House, as a register of companies does not have contact with the entire sector and has no experience in nor powers of supervision.

2.69 Regulation 17 and Schedule 3 sets out the list of supervisory authorities. Regulation 18 sets out the high level obligations on those authorities.

Monitoring policy for FSA, OFT and HMRC under the Regulations

2.70 The previous consultation document consulted on the broad parameters of a model of monitoring for compliance with the Money Laundering Regulations. It was proposed that the model should be in line with the Hampton Review recommendations on inspection and that it should include:

- the power to require annual returns/statements of compliance;
- the power to conduct on-site assurance visits on the basis of risk; and
- the power to undertake enforcement action such as issuing of penalties where there is non-compliance.

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2 The following paragraphs explicitly refer to the powers of the FSA, OFT (in conjunction with Local Authority Trading Standards Service) and HMRC for the following sectors: money service businesses, annex I financial institutions, consumer credit financial institutions, accountants or tax advisers not belonging to a listed professional body, estate agents and trust and company service providers.
2.71 Consultation responses revealed strong support for the proposed model of monitoring and the draft Regulations therefore incorporate these powers. Rather than being explicit over the power to require annual returns it is proposed that the draft Regulations give two general powers, firstly as part of registration it gives supervisors the powers to require specified information that would inform the registration application (Regulation 21). This could include statements of compliance or information to inform risk based supervision. Further we have included another power for supervisors, including Local Authority Trading Standards Service to require such information as is specified by the supervisor (Regulation 30). The Government believes that this allows supervisors the flexibility to decide how best to obtain information for the purposes of supervision under the Regulations. The power in Regulation 30 will require a written notice to the firms and no persons shall be required to provide information or produce documents which they could refuse to disclose on the ground of legal professional privilege.

2.72 The Regulations also give supervisors powers to establish a register of firms so that they know who is subject to supervision and are able to levy a fee. In line with better regulation principles, if a register of firms already exists it is then expected that supervisors will aim to use those existing registers.

2.73 If firms or individuals refuse to register (where required to do so) and be subject to supervision the Government believes that sanctions should apply. It is therefore proposed that it be a civil and criminal offence not to register with the supervisors. It is also proposed that for, estate agents, refusal to register and pay a fee would be considered a breach under Article 3(1)(d) of the Estate Agents Act.

2.74 As well as a power to conduct assurance visits (contained in Regulation 32) it proposed that the Regulations give HMRC, OFT, Local Authority Trading Standards Service and FSA the power to require persons connected with the firm (but not third parties) to attend interviews to answer questions (Regulation 31). This is a useful enforcement tool if there is concern over non-compliance. Again this power is limited so that persons do not have to answer questions that they could refuse to answer on the ground of legal professional privilege and statements made will not be able to be used against that person in criminal proceedings (except perjury).

2.75 The Directive also requires supervisors to have the power to impose effective proportionate and dissuasive sanctions for non-compliance with the Regulations. Currently HMRC have the power to fine high-value dealers and money service businesses up to £5000 for non-compliance with the Regulations. The Money Service Business Review recommended that this amount should be raised to an unlimited fine to ensure that HMRC could provide dissuasive sanctions. It is proposed that HMRC, OFT and FSA all have the power to set unlimited fines for non-compliance with the Regulations. While fines must remain proportionate, this measure ensures that more dissuasive penalties are available in cases of serious non-compliance or firms with higher turnover.

2.76 The Regulations outline the registration powers (Regulation 19-21, 23 -28), the power to require information (Regulation 30), the powers to conduct onsite monitoring (Regulation 32), a power of entry with a warrant, associated powers to deal with failure to comply with requirements to produce information and the powers to impose penalties (Regulation 36-39) with associated review and appeal procedures.
Fit and Proper test

Who will the fit and proper test apply to?

2.77 As set out in the previous consultation document, the Directive stipulates that a fit and proper test be applied to those who effectively run, or are beneficial owner, of a money service business or a trust and company service provider. The Regulations (Regulation 22) will apply the fit and proper test to the following persons:

- the applicant for registration;
- persons who direct the business (usually its directors or partners);
- any person who would be considered a beneficial owner of the business; or
- the nominated officer (or Money Laundering Reporting Officer) if not already one of the above two categories.

2.78 Regulation 22 covers the fit and proper provision

2.79 Trust and company service providers or money service business firms that are already subject to regulation by the FSA will be exempted from the fit and proper test as those running the businesses and the nominated officer/Money Laundering Reporting Officer’s will have been subject to an approved persons and controllers regime. The same applies to trust and company service providers that are also members of the listed professional bodies and have already been subject to a fit and proper test under the rules of membership.

Money Service Businesses

2.80 The Money Laundering Regulations 2003 refer to a Money Service Operator as the person that has to register with HMRC. The draft Regulations 2007 remove this term. This is because it is felt that the definition of a Money Service Business, which uses the term “an undertaking” instead of previous activities-based definition of “money service business” used in the 2003 Regulations captures the business that is required to registered in whatever legal form it takes. Regulation 2(1) includes the new definition.

Trust and Company Service Providers

2.81 The bullets below outline which activities, in the Government’s view do and do not fall within the definition of a trust and company service provider. While these activities will not be specifically listed in the Regulations it will be a list that the supervisors will be working towards.

Do you agree with the list of activities that are and are not caught within the definition of a trust and company service provider?

Do you agree that HMRC, OFT and Local Authority Trading Standards Service, and the FSA should have these powers?
2.82 **Activities included** in the definition:

- Legal Professionals providing TCSP services by way of business to a third party;
- Accountants providing TCSP services by way of business to a third party;
- Company formation agents;
- Personal service companies of interims who take on an assignment;
- Professional trustees who are remunerated as such;
- Firms who provide registered offices and business addresses to trusts or companies; and
- Companies providing professional services as trustees for profit.

2.83 **Activities excluded** from the definition:

- Members of the public who form companies or set up private trusts not offered to the public;
- A person carrying on a business or profession the sole or main purpose of which is not trust company business, when carrying out a service defined as a TCSP;
- A person who is carrying out TCSP activity, but is not separately remunerated and does not separately hold himself or herself out as providing this business as it is carried out as an incident of the person’s business or profession;
- Employment agencies that recruits bona fide long term employees;
- Corporate trustees who are not holding out of trustee;
- Charity trustees (non professional);
- Non-professional executor and administrator of an estate of a deceased person;
- Connected company;
- A branch or representative office of an overseas company; and
- The Post Office.

**Measures to be included in the fit and proper test**

2.84 The previous consultation document outlined a proposed test for ensuring the fitness and propriety of money service businesses and trust and company service providers. The consultation document proposed a set of negative criteria rather than a more holistic list. Views were divided over this approach; while some of the responses favoured this model, others preferred a more holistic test. Generally, speaking, those who favoured a more holistic test did so because it allows the supervisor to take into account other intelligence that came to the supervisor that did not fall within the listed criteria. There were also specific comments on the types of criminal offences referred to.
2.85 The Government continues to favour a more limited test but is persuaded of the need to ensure that wider intelligence can be taken into account in determining fitness and propriety. It therefore proposes that the test should also include a ‘catch all’ specifically related to the risk of money laundering or terrorist financing to include other intelligence, such as information on equivalent criminal offences for persons convicted abroad. Regulation 22 includes the test for those persons that will be supervised by HMRC.

Do you agree with the measures included in the fit and proper test, including the ‘catch all’ in Regulation 22 (2)(f)? Should any other criteria be included?

Penalties and Status of Industry Guidance

2.86 The previous consultation document noted that the sanctions and penalties for the criminal offence of breaching the Regulations will remain unchanged. This is confirmed in Regulation 41. In addition, the ability of firms or individuals can follow Treasury approved industry guidance as a defence to certain offences is replicated in the new Regulations. This is specifically included in Regulation 36(3) and 41(2).

2.87 The Regulations provide for appeals to various tribunals against the decisions of supervisors. The Secretary of State is named in the Regulations as the person who will hear appeals by estate agents against decisions of the OFT. This reflects the current position. The Tribunals, Courts and Enforcement Bill creates a new, simplified statutory framework for tribunals. Changes to the appeal mechanism for estate agents are included in that Bill. The Consumer Credit Act 2006 provided for the creation of a new Consumer Credit Appeals Tribunal to replace the current appeal mechanism to the Secretary of State against decisions of the OFT in relation to its consumer credit licensing duties. The new tribunal is to be established in April 2008. The appeal provisions are in Regulation 38.

2.88 The Regulations propose appeals to various tribunals against the decisions of supervision. The Government considers that the VAT and Duties Tribunal and the Financial Services Markets Tribunal are likely to be the best placed bodies to hear appeals from decisions of HMRC and FSA respectively. The Tribunals, Courts and Enforcement Bill creates two new tribunals and a new, simplified statutory framework for tribunals. Changes to the appeal mechanism for estate agents are included in that Bill. The Consumer Credit Act 2006 provided for the creation of a new Consumer Credit Appeals Tribunal to replace the current appeal mechanism to the Secretary of State against decisions of the OFT in relation to its consumer credit licensing duties. The new tribunal is to be established in April 2008. The Government proposes that these are the most appropriate tribunals to hear appeals from decisions of the OFT and is considering who should fulfil this function until these new tribunals are established.
The Money Laundering Regulations 2007

Made - - - - 2007
Laid before Parliament 2007
Coming into force in accordance with regulation 1(2)

The Treasury are a government department designated (a) for the purposes of section 2(2) of the European Communities Act 1972 (b) in relation to measures relating to preventing the use of the financial system for the purpose of money laundering;

The Treasury, in exercise of the powers conferred on them by section 2(2) of the European Communities Act 1972 and by sections 168(4)(b), 402(1)(b), 417(1) (c) and 428(3) of the Financial Services and Markets Act 2000 (d), make the following Regulations:

PART 1
GENERAL

Citation, commencement etc.
1.—(1) These Regulations may be cited as the Money Laundering Regulations 2007.
(2) These Regulations come into force—
(a) for the purposes of regulation 20(b) and (c), on 1st June 2008;
(b) for all other purposes, on 15th December 2007.
(3) These Regulations are prescribed for the purposes of sections 168(4)(b) and 402(1)(b) of the 2000 Act.
(4) The Money Laundering Regulations 2003 (e) are revoked.
Interpretation

2.—(1) In these Regulations—

“the 2000 Act” means the Financial Services and Markets Act 2000;

“accountant” means any person who by way of business provides accountancy services;

“Annex I Financial Institution” has the meaning given by paragraph (9);

“authorised person” has the meaning given by section 31(2) of the 2000 Act;

“auditor” means any person eligible for appointment as a company auditor under section 25 of the Companies Act 1989(a) or article 28 of the Companies (Northern Ireland) Order 1990(b) who by way of business provides audit services;

“the Authority” means the Financial Services Authority;

“the banking consolidation directive” means directive 2006/48/EC of the European Parliament and of the Council of 14th June 2006 relating to the taking up and pursuit of the business of credit institutions(c);

“beneficial owner” has the meaning given by paragraphs (2) to (4);

“business relationship” means a business, professional or commercial relationship between a relevant person and a customer, which is expected by the relevant person when contact is first made between them to have an element of duration;

“cash” means notes, coins or travellers’ cheques in any currency;

“casino” has the meaning given by section 7(1) of the Gambling Act 2005(d);

“the Commissioners” means the Commissioners for Her Majesty’s Revenue and Customs;

“Consumer Credit Financial Institution” means an undertaking which falls within regulation 2(6)(a) and which is licensable under the Consumer Credit Act 1974(e) but excludes authorised persons;

“credit institution” has the meaning given by paragraph (5);

“customer due diligence measures” has the meaning given by regulation 4;

“the electronic money directive” means directive 2000/46/EC of the European Parliament and of the Council of 18th September 2000 on the taking up, pursuit and prudential supervision of the business of electronic money institutions(f);

“DETI” means the Department of Enterprise, Trade and Investment in Northern Ireland;

“estate agent” means a person undertaking estate agency work within the meaning given by section 1 of the Estate Agents Act 1979(g) but excludes persons employed by another person undertaking such work;

“external accountants” excludes accountants employed by—

(a) public authorities; or

(b) undertakings which do not by way of business provide accountancy services to third parties;

“financial institution” has the meaning given by paragraph (6);

“first implementing measures directive” means Commission directive 2006/70/EC of 1st August 2006 laying down implementing measures for the money laundering directive(h);

(a) 1989 c. 40.
(b) 1990 No. 593 (N.I. 5).
(d) 2005 c. 19.
(e) 1974 c. 39.
(g) 1979 c.38. Section 1 was amended by the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c.73), Schedule 1, Pt 1, para 40, the Planning (Consequential Provisions) Act 1990 (c.11), Schedule 2, para. 42, the Planning (Consequential Provisions) (Scotland) Act 1997 (c.11), Schedule 2, para. 28 and by S.I. 2001/1283.
“high value dealers” has the meaning given by regulation 3(1)(g);
“independent legal professionals” excludes legal professionals employed by—
(a) public authorities; or
(b) undertakings which do not by way of business provide legal services to third parties;
“insolvency practitioner” means a person appointed to act as an insolvency practitioner within
the meaning of section 388 of the Insolvency Act 1986(a) or article 3 of the Insolvency
(Northern Ireland) Order 1989(b);
“the life assurance consolidation directive” means directive 2002/83/EC of the European
Parliament and of the Council of 5th November 2002 concerning life assurance(c);
“the markets in financial instruments directive” means directive 2004/39/EC of the European
Parliament and of the Council of 12th April 2004(d) on markets in financial instruments;
“money laundering” means an act which falls within section 340(11) of the Proceeds of Crime
Act 2002(e) or an offence under section 18 of the Terrorism Act 2000(f);
“the money laundering directive” means directive 2005/60/EC of the European Parliament and
of the Council of 26th October 2005(g) on the prevention of the use of the financial system for
the purpose of money laundering, and terrorist financing;
“money laundering regulations” refers to the Money Laundering Regulations 1993(h), the
Money Laundering Regulations 2001(i) and the Money Laundering Regulations 2003;
“money service business” means an undertaking which by way of business operates a currency
exchange office, transmits money (or any representations of monetary value) by any means or
cares cheques which are made payable to customers;
“nominated officer” means a person who is nominated to receive disclosures under Part 7 of
the Proceeds of Crime Act 2002;
“occasional transaction” means a transaction (carried out other than as part of a business
relationship) amounting to 15,000 euro or more, whether the transaction is carried out in a
single operation or several operations which appear to be linked;
“officer”—
(a) in relation to the Authority, means an officer of the Authority and includes a member of
the Authority’s staff or an agent of the Authority;
(b) in relation to the Commissioners, means an officer of Revenue and Customs;
(c) in relation to the OFT, means a duly authorised officer of the OFT;
“OFT” means the Office of Fair Trading;
“recorded information” includes information recorded in any form and any document of any
nature whatsoever;
“regulated activity” has the meaning given by section 22 of the 2000 Act;
“relevant person” means a person to whom, in accordance with regulation 3, these Regulations
apply;
“supervisory authority” (except in regulations 30 and 34) means the supervisory authority
specified by regulation 17;

(a) 1986 c. 45; s388 was amended by the Insolvency Act 2000, s41(1), (2)(a), (2)(b), 2(c); the Bankruptcy (Scotland) Act 1993,
(b) 1989 No. 2405 (NI 19); article 3 was amended by the Insolvency (Northern Ireland) Order 2002 No. 3152 (N.I. 6) article 6,
(e) 2002 c.29.
(f) 2000 c.11.
(h) S.I. 1993/1933, which were revoked by S.I. 2003/3075.
(i) S.I. 2001/3641, which were revoked by S.I. 2003/3075.
“tax adviser” means any person who by way of business provides advice about the tax affairs of another person;

“terrorist financing” means the provision or collection of funds, by any means, directly or indirectly, with the intention that they should be used or in the knowledge that they are to be used, in full or in part, in order to carry out any of the offences within the meaning of Articles 1 to 4 of Council Framework Decision 2002/475/JHA of 13 June 2002 on combating terrorism(a);

“trust or company service provider” has the meaning given by paragraph (8).

(2) Subject to paragraphs (3) and (4), “beneficial owner” means the individual who ultimately owns or controls the customer or on whose behalf a transaction or activity is being conducted.

(3) In the case of a body corporate, the beneficial owner includes any individual who—

(a) ultimately owns or controls (whether through direct or indirect ownership or control, including through bearer share holdings) more than 25% of the shares or voting rights in the body other than a company listed on a regulated market which is subject to disclosure requirements consistent with Community legislation or equivalent international standards; or

(b) otherwise exercises control over the management of the body.

(4) In the case of a legal entity or a legal arrangement (such as a trust) which administers and distributes funds, the beneficial owner includes—

(a) where the beneficiaries have been determined, an individual who is the beneficiary of at least 25% of the property of the entity or arrangement;

(b) where the beneficiaries have not yet been determined, the class of persons in whose main interest the entity or arrangement is set up or operates;

(c) an individual who controls at least 25% of the property of the entity or arrangement.

(5) Subject to paragraph (7), “credit institution” means a credit institution as defined in the first sub-paragraph of Article 4(1) of the banking consolidation directive, including branches (within the meaning of Article 4(3) of that directive) in an EEA State of a credit institution whose head office is situated in any EEA or non-EEA State.

(6) Subject to paragraph (7), “financial institution” means—

(a) an undertaking which carries out one or more of the operations listed in points 2 to 12 and 14 of Annex 1 to the banking consolidation directive (the text of which is set out in Schedule 1 to these Regulations) other than—

(i) a credit institution; and

(ii) an undertaking whose only listed operation is trading for own account in one or more of the products listed in point 7 of Annex 1 to the banking consolidation directive where the undertaking does not have a customer and, for this purpose, “customer” means a third party which is not a member of same group as the undertaking;

(b) a money service business;

(c) an insurance company duly authorised in accordance with the life assurance consolidation directive, in so far as it carries out activities covered by that directive;

(d) an investment firm as defined in point 1 of Article 4(1) of the markets in financial instruments directive;

(e) a collective investment undertaking marketing its units or shares;

(f) an insurance intermediary as defined in Article 2(5) of directive 2002/92/EC of the European Parliament and of the Council of 9th December 2002(b) on insurance

(b) OJ L 9, 15.1.2003, p. 3.
mediation, with the exception of intermediaries as mentioned in Article 2(7) of that
directive, when they act in respect of life insurance and other investment-related services;

(g) a branch located in an EEA State of any of the persons mentioned in sub-paragraphs (a)
to (f) whose head office is situated in any EEA or non-EEA State.

(7) A credit or financial institution does not fall within paragraph (5) or (6) if it engages in
financial activity on an occasional or very limited basis as set out in paragraph 1 of Schedule 2 to
these Regulations.

(8) “Trust or company service provider” means any person who by way of business provides
any of the following services to third parties—

(a) forming companies or other legal persons;
(b) acting, or arranging for another person to act—
   (i) as a director or secretary of a company;
   (ii) as a partner of a partnership; or
   (iii) in a similar position in relation to other legal persons;
(c) providing a registered office, business address, correspondence or administrative address
or other related services for a company, partnership or any other legal person or
arrangement;
(d) acting, or arranging for another person to act, as—
   (i) a trustee of an express trust or similar legal arrangement; or
   (ii) a nominee shareholder for another person other than a company listed on a regulated
market which is subject to disclosure requirements consistent with Community
legislation or equivalent international standards.

(9) “Annex I Financial Institution” means an undertaking which falls within regulation 2(6)(a)
other than—

(a) a Consumer Credit Financial Institution;
(b) a money service business; and
(c) an authorised person.

(10) In these Regulations, references to amounts in euro include references to equivalent
amounts in another currency.

(11) Unless otherwise defined, expressions used in these Regulations and the money laundering
directive have the same meaning as in the money laundering directive and expressions used in
these Regulations and in the first implementing measures directive have the same meaning as in
the first implementing measures directive.

Application of the Regulations

3.—(1) Subject to paragraphs (2) and (3), these Regulations apply to the following persons
acting in the course of business carried on by them in the United Kingdom—

(a) credit institutions;
(b) financial institutions;
(c) auditors, external accountants, insolvency practitioners and tax advisers;
(d) notaries and other independent legal professionals when they participate (whether by
acting for or on behalf of their client) or assist in the planning or execution of financial or
property transactions concerning—
   (i) the buying and selling of real property or business entities;
   (ii) the managing of client money, securities or other assets;
   (iii) the opening or management of bank, savings or securities accounts;
(iv) the organisation of contributions necessary for the creation, operation or management of companies; or
(v) the creation, operation or management of trusts, companies or similar structures;
(e) trust or company service providers;
(f) estate agents;
(g) persons who trade in goods when they receive, in respect of any transaction, a payment or payments in cash of at least 15,000 euros in total, whether the transaction is executed in a single operation or in several operations which appear to be linked (referred to in these Regulations as “high value dealers”);
(h) casinos.

(2) These Regulations do not apply to persons who fall within paragraph (1) solely as a result of their undertaking one or more of the following activities—
(a) the issue of withdrawable share capital within the limit set by section 6 of the Industrial and Provident Societies Act 1965(a) by a society registered under that Act;
(b) the acceptance of deposits from the public within the limit set by section 7(3) of that Act by such a society;
(c) the issue of withdrawable share capital within the limit set by section 6 of the Industrial and Provident Societies Act (Northern Ireland) 1969(b) by a society registered under that Act;
(d) the acceptance of deposits from the public within the limit set by section 7(3) of that Act by such a society;
(e) any activity in respect of which an exemption order under section 38 of the 2000 Act has effect if it is carried on by a person who is for the time being specified in the order or falls within a class of persons so specified;
(f) any activity (other than one falling within sub-paragraph (f)) in respect of which a person was an exempted person for the purposes of section 45 of the Financial Services Act 1986(c) immediately before its repeal;
(g) the regulated activities of arranging or advising on a regulated mortgage contract, a regulated home reversion plan or a regulated home purchase plan;
(h) the regulated activities of dealing in investments as agent, arranging deals in investments or advising on investments, in so far as the investment consists of rights under, or any right to or interest in, a contract of insurance which is not a qualifying contract of insurance.

(3) These Regulations do not apply to—
(a) the Bank of England;
(b) the Official Solicitor to the Supreme Court when acting as trustee in his official capacity.

(4) Paragraph (2)(g) and (h) must be read with—
(a) section 22 of the 2000 Act;
(b) any relevant order under that section; and
(c) Schedule 2 to the 2000 Act.

(a) 1965 c. 12.
(b) 1969 c. 24 (N.I.)
PART 2

CUSTOMER DUE DILIGENCE

Meaning of customer due diligence measures

4.—(1) “Customer due diligence measures” means—
(a) identifying the customer and verifying the customer’s identity on the basis of documents, data or information obtained from a reliable and independent source;
(b) identifying, where applicable, the beneficial owner and taking risk-based and adequate measures to verify his identity so that the relevant person is satisfied that he knows who the beneficial owner is, including, in the case of a legal person (such as a trust or similar arrangement) measures to understand the ownership and control structure of the customer;
(c) obtaining information on the purpose and intended nature of the business relationship;
(d) conducting ongoing monitoring of the business relationship.

(2) “Ongoing monitoring” of a business relationship for the purposes of paragraph (1) includes—
(a) scrutiny of transactions undertaken throughout the course of the relationship (including, where necessary, the source of funds) to ensure that the transactions are consistent with the relevant person’s knowledge of the customer, his business and risk profile; and
(b) ensuring that the documents, data or information held by the relevant person are kept up to date.

Application of customer due diligence measures

5.—(1) Subject to regulations 6, 8, 9, 10, 11(4) and 12, a relevant person must apply customer due diligence measures when—
(a) establishing a business relationship;
(b) carrying out an occasional transaction;
(c) there is a suspicion of money laundering or terrorist financing;
(d) there are doubts about the veracity or adequacy of documents, data or information previously obtained for the purpose of customer identification.

(2) Relevant persons must apply customer due diligence measures at appropriate times to existing customers on a risk-sensitive basis.

(3) A relevant person must—
(a) determine the extent of customer due diligence measures on a risk-sensitive basis depending on the type of customer, business relationship, product or transaction;
(b) be able to demonstrate to his supervisory authority that the extent of customer due diligence measures is appropriate in view of the risks of money laundering and terrorist financing.

(4) A relevant person who is appointed by the issuer of instruments or securities specified in paragraph (5) as trustee of an issue of such instruments or securities is not required to apply the customer due diligence measure referred to in regulation 4(1)(b) in respect of the holders of such instruments or securities.

(5) The instruments and securities are—
(a) instruments which fall within article 77 of Financial Services and Markets Act 2000 (Regulated Activities) Order 2001(a); and
(b) securities which fall within article 78 of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001.

Timing of customer due diligence measures

6.—(1) Subject to paragraphs (2) to (4), the verification of the identity of the customer and, where applicable, the beneficial owner must take place before the establishment of a business relationship or the carrying out of an occasional transaction.

(2) Subject to paragraphs (3) and (4), such verification may be completed during the establishment of a business relationship if—

(a) this is necessary not to interrupt the normal conduct of business; and

(b) there is little risk of money laundering or terrorist financing occurring;

provided that the verification is completed as soon as practicable after the initial contact.

(3) The verification of the identity of the beneficiary under a life insurance policy may take place after the business relationship has been established provided that it takes place at or before the time of payout or at or before the time the beneficiary exercises a right vested under the policy.

(4) The verification of the identity of a bank account holder may take place after the bank account has been opened provided that there are adequate safeguards in place to ensure that—

(a) the account is not closed; and

(b) transactions are not carried out by or on behalf of the account holder (including any payment from the account to the account holder),

before verification has been completed.

Non-compliance with customer due diligence measures

7.—(1) Where a relevant person is unable to comply with regulation 5 or 6 in relation to a customer, he—

(a) may not carry out a transaction with or for the customer through a bank account;

(b) may not establish a business relationship or carry out an occasional transaction with the customer;

(c) must terminate any existing business relationship with the customer;

(d) must consider making a report to the Serious Organised Crime Agency.

(2) Paragraph (1) does not apply where notaries, other independent legal professionals, auditors, external accountants or tax advisers are in the course of ascertaining the legal position for their client or performing their task of defending or representing that client in, or concerning, legal proceedings, including advice on instituting or avoiding proceedings.

Casinos

8.—(1) A casino must identify its customers and verify their identity either—

(a) on entry; or

(b) where the Gambling Commission is satisfied that the casino has appropriate procedures in place to monitor the value of gambling chips purchased or exchanged by customers, if customers purchase or exchange gambling chips with a total value of 2,000 euro or more.

(2) “Gambling chips” in paragraph (1) includes electronic chips.
Simplified due diligence

9.—(1) A relevant person is not required to apply the customer due diligence measures referred to in regulation 4(1)(a), (b) or (c) in the circumstances mentioned in regulation 5(1)(a), (b) or (d) or 6(1) where he has reasonable grounds for believing that the customer, product or transaction related to such product, falls within any of the following paragraphs.

(2) The customer is—

(a) a credit or financial institution which is subject to the requirements of the money laundering directive;

(b) a credit or financial institution which—

(i) is situated in a non-EEA State which imposes requirements equivalent to those laid down in the money laundering directive; and

(ii) is supervised for compliance with those requirements.

(3) The customer is a listed company—

(a) whose securities are admitted to trading on a regulated market (within the meaning of the markets in financial instruments directive) in an EEA State; or

(b) which is situated in a non-EEA State which imposes disclosure requirements consistent with Community legislation.

(4) The customer is a beneficial owner of a pooled account held by a notary or other independent legal professional, provided that—

(a) where the account is held in a non-EEA State—

(i) that State imposes requirements to combat money laundering or terrorist financing which are consistent with international standards; and

(ii) the holder of the account is supervised for compliance with those requirements; and

(b) information on the identity of the beneficial owner is available, on request, to the institution which acts as a depository institution for the pooled account.

(5) The customer is a public authority in the United Kingdom.

(6) The customer is a public authority which fulfils all the criteria set out in paragraph 2 of Schedule 2 to these Regulations.

(7) The product is—

(a) a life insurance policy where the annual premium is no more than 1,000 euro or where a single premium of no more than 2,500 euro is paid;

(b) an insurance policy for a pension scheme if there is no surrender clause and the policy cannot be used as collateral;

(c) a pension, superannuation or similar scheme which provides retirement benefits to employees, where contributions are made by an employer or by way of deduction from an employee’s wages and the scheme rules do not permit the assignment of a member’s interest under the scheme; or

(d) electronic money, within the meaning of Article 1(3)(b) of the electronic money directive, where—

(i) if the device cannot be recharged, the maximum amount stored in the device is no more than 150 euro; or

(ii) if the device can be recharged, a limit of 2,500 euro is imposed on the total amount transacted in a calendar year, except when an amount of 1,000 euro or more is redeemed in that same calendar year by the bearer (within the meaning of Article 3 of the electronic money directive).

(8) The product or transaction related to such product fulfils all the criteria set out in paragraph 3 of Schedule 2 to these Regulations.
The product is a child trust fund within the meaning given by section 1(2) of the Child Trust Funds Act 2004(a).

Enhanced customer due diligence

10.—(1) A relevant person must apply on a risk-sensitive basis enhanced customer due diligence measures—

(a) in accordance with paragraphs (2) to (4);

(b) in any other situation which by its nature can present a higher risk of money laundering or terrorist financing.

(2) Where the customer has not been physically present for identification purposes, a relevant person must take specific and adequate measures to compensate for the higher risk, for example by applying one or more of the following measures—

(a) ensuring that the customer’s identity is established by additional documents, data or information;

(b) supplementary measures to verify or certify the documents supplied, or requiring confirmatory certification by a credit or financial institution which is subject to the money laundering directive;

(c) ensuring that the first payment of the operations is carried out through an account opened in the customer’s name with a credit institution.

(3) In respect of a correspondent banking relationship with a respondent institution (“the respondent”) from a non-EEA State, a credit institution (“the correspondent”) must—

(a) gather sufficient information about the respondent to understand fully the nature of its business;

(b) determine from publicly-available information the reputation of the respondent and the quality of its supervision;

(c) assess the respondent’s anti-money laundering and anti-terrorist financing controls;

(d) obtain approval from senior management before establishing a new correspondent banking relationship;

(e) document the respective responsibilities of the respondent and correspondent;

(f) be satisfied that, in respect of those of the respondent’s customers who have direct access to accounts of the correspondent, the respondent—

(i) has verified the identity of, and performs ongoing due diligence on, such customers; and

(ii) is able upon request to provide relevant customer due diligence data to the correspondent.

(4) In respect of a business relationship or occasional transaction with a politically exposed person, a relevant person must—

(a) have appropriate risk-based procedures to determine whether the customer is a politically exposed person;

(b) have senior management approval for establishing a business relationship with such a person;

(c) take adequate measures to establish the source of wealth and source of funds which are involved in the business relationship or occasional transaction;

(d) conduct enhanced ongoing monitoring of the business relationship.

(5) In paragraph (4), “a politically exposed person” means a person to whom both paragraphs (6) and (7) apply.
(6) This paragraph applies to a person who is—
   (a) an individual who is or has, at any time in the preceding year, been entrusted with prominent public functions, including a person who falls in any of the categories listed in paragraph 4(1)(a) of Schedule 2;
   (b) an immediate family member of a person referred to in sub-paragraph (a), including a person who falls in any of the categories listed in paragraph 4(1)(d) of Schedule 2; or
   (c) a known close associate of a person referred to in sub-paragraph (a), including a person who falls in either of the categories listed in paragraph 4(1)(e) of Schedule 2.

(7) This paragraph applies to a person who—
   (a) is resident outside the United Kingdom;
   (b) is or has, at any time in the preceding year, been entrusted with a prominent public function by—
      (i) a state other than the United Kingdom;
      (ii) the Community; or
      (iii) an international body; or
   (c) is an immediate family member or a known close associate of a person referred to in sub-paragraph (b).

(8) A relevant person must, for the purpose of deciding whether a person is a known close associate of a person referred to in paragraph (6)(a) or (7)(b), have regard to any information which is in his possession or is publicly known.

Shell banks, anonymous accounts etc.

11.—(1) A credit institution must not enter into, or continue, a correspondent banking relationship with a shell bank.

   (2) A credit institution must take appropriate measures to ensure that it does not enter into, or continue, a corresponding banking relationship with a bank which is known to permit its accounts to be used by a shell bank.

   (3) A credit or financial institution carrying on business in the United Kingdom must not set up an anonymous account or an anonymous passbook for any new or existing customer.

   (4) As soon as possible after 15th December 2007 all credit and financial institutions carrying on business in the United Kingdom must apply customer due diligence measures to all existing anonymous accounts and passbooks and in any event before such accounts or passbooks are used in any way.

   (5) All relevant persons must pay special attention to any money laundering or terrorist financing threat that may arise from products or transactions that might favour anonymity and take measures, if needed, to prevent their use for money laundering or terrorist financing purposes.

   (6) A “shell bank” means a credit institution, or an institution engaged in equivalent activities, incorporated in a jurisdiction in which it has no physical presence involving meaningful decision-making and management, and which is unaffiliated with a regulated financial group.

Reliance on third parties

12.—(1) A relevant person may rely on a third party to apply any or all of the customer due diligence measures referred to in regulation 4(1)(a), (b) and (c) provided that, notwithstanding the relevant person’s reliance on a third party, the relevant person remains liable for any failure to comply with a requirement of these Regulations.

   (2) For the purposes of this regulation, “third party” means—
      (a) a credit or financial institution which is an authorised person; or
      (b) a relevant person who is—
(i) an auditor, external accountant, insolvency practitioner or tax adviser; or
(ii) a notary or other independent legal professional,
who is regulated by one of the bodies listed in paragraphs 1 to 11 of Schedule 3;
(c) a person who carries on business in another EEA State who is—
   (i) a credit or financial institution, an auditor, external accountant, insolvency
       practitioner, tax adviser, notary or other independent legal professional;
   (ii) subject to mandatory professional registration recognised by law; and
   (iii) supervised for compliance with the requirements laid down in the money laundering
       directive in accordance with section 2 of Chapter V of that directive;
(d) a person who carries on business in a non-EEA State who is—
   (i) a credit or financial institution, an auditor, external accountant, insolvency
       practitioner, tax adviser, notary or other independent legal professional;
   (ii) subject to mandatory professional registration recognised by law;
   (iii) subject to requirements equivalent to those laid down in the money laundering
       directive; and
   (iv) supervised for compliance with those requirements in a manner equivalent to section
       2 of Chapter V of the money laundering directive.
(3) A person referred to in paragraph (2)(a) or (b) who acts as a third party must, if requested by
   the person relying on him—
      (a) make immediately available to the person who is relying on him any information about
          the customer which the third party obtained when applying customer due diligence
          measures; and
      (b) immediately forward to the person who is relying on him relevant copies of any
          identification and verification data and other relevant documents on the identity of the
          customer or beneficial owner which the third party obtained when applying those
          measures.
(4) A relevant person who relies on a third party situated outside the United Kingdom to apply
   customer due diligence measures must take steps to ensure that the third party will, if requested by
   him—
      (a) make immediately available to him any information about the customer which the third
          party obtains when applying customer due diligence measures; and
      (b) immediately forward to him relevant copies of any identification and verification data and
          other relevant documents on the identity of the customer or beneficial owner which the
          third party obtains when performing those measures.
(5) Nothing in this regulation prevents a relevant person from applying customer due diligence
   measures by means of an outsourcing service provider or agent.
(6) In this regulation, “financial institution” excludes money service businesses.

PART 3
RECORD-KEEPING, SYSTEMS, TRAINING ETC.

Record-keeping
13.—(1) A relevant person must keep the records specified in paragraph (2) for at least the
period specified in paragraph (3).
(2) The records are—
      (a) a copy of, or the references to, the evidence of the customer’s identity obtained pursuant
          to regulation 5, 8, 10, 11(4) or 12;
(b) the supporting evidence and records (consisting of the original documents or copies admissible in court proceedings) in respect of the business relationships and occasional transactions which are the subject of customer due diligence.

(3) The period is five years beginning on the date on which the business relationship ends, or, in the case of an occasional transaction, five years beginning on the date on which the transaction is completed.

**Systems**

14.—(1) A relevant person must—

(a) establish adequate and appropriate policies and procedures relating to—

(i) customer due diligence;

(ii) reporting;

(iii) record-keeping;

(iv) internal control;

(v) risk assessment and management;

(vi) compliance management; and

(vii) communication;

in order to forestall and prevent operations related to money laundering or terrorist financing;

and

(b) pay special attention to any activity which he regards as particularly likely, by its nature, to be related to money laundering or terrorist financing and, in particular, complex or unusually large transactions and all unusual patterns of transactions which have no apparent economic or visible lawful purpose.

(2) A credit or financial institution must communicate the policies and procedures mentioned in paragraph (1)(a) to its branches and majority-owned subsidiaries which are located outside the United Kingdom.

(3) A credit or financial institution must require its branches and majority-owned subsidiaries which are situated in a non-EEA State to apply, to the extent permitted by the law of that State, measures at least equivalent to those set out in these Regulations with regard to customer due diligence and record-keeping.

(4) Where the law of a non-EEA State does not permit the application of such equivalent measures, the credit or financial institution must—

(a) inform its supervisory authority accordingly; and

(b) take additional measures to handle effectively the risk of money laundering or terrorist financing.

(5) A credit or financial institution must have systems in place enabling it to respond fully and rapidly to enquiries from financial investigators accredited under section 3 of the Proceeds of Crime Act 2002, officers of Revenue and Customs or constables as to—

(a) whether it maintains, or has maintained during the previous five years, a business relationship with any person; and

(b) the nature of that relationship.

**Internal reporting procedures**

15.—(1) A relevant person must maintain internal reporting procedures which require that—
(a) a person in his organisation is nominated to receive disclosures under Part 7 of the Proceeds of Crime Act 2002(a); and

(b) anyone in his organisation to whom information or other matter comes in the course of business as a result of which he knows or suspects or has reasonable grounds for knowing or suspecting that a person is engaged in money laundering must comply with Part 7.

(2) Paragraph (1) does not apply where the relevant person is an individual who neither employs nor acts in association with any other person.

Training etc.

16. A relevant person must take appropriate measures so that all relevant employees of his are—

(a) made aware of the law relating to money laundering and terrorist finance; and

(b) regularly given training in how to recognise and deal with transactions which may be related to money laundering or terrorist financing.

PART 4

SUPERVISION AND REGISTRATION

Supervisory authorities

17.—(1) Subject to paragraph (2), the following bodies are supervisory authorities—

(a) the Authority is the supervisory authority for—
   (i) credit and financial institutions which are authorised persons;
   (ii) trust or company service providers which are authorised persons;
   (iii) Annex I Financial Institutions;

(b) the OFT is the supervisory authority for—
   (i) Consumer Credit Financial Institutions;
   (ii) estate agents;

(c) each of the professional bodies listed in Schedule 3 is the supervisory authority in relation to its regulated members;

(d) the Commissioners are the supervisory authority for—
   (i) high value dealers;
   (ii) money service businesses which are not supervised by the Authority;
   (iii) trust or company service providers which are not supervised by the Authority or one of the bodies listed in Schedule 3;
   (iv) auditors, external accountants and tax advisers who are not supervised by one of the bodies listed in Schedule 3;
   (v) insolvency practitioners who are not supervised by the Secretary of State, DETI or one of the bodies listed in Schedule 3;

(e) the Gambling Commission of Great Britain is the supervisory authority for casinos;

(f) DETI is the supervisory authority for—
   (i) credit unions in Northern Ireland;

(a) 2002 c.29.
(ii) insolvency practitioners authorised under article 351 of the Insolvency (Northern Ireland) Order 1989;

(g) the Secretary of State is the supervisory authority for insolvency practitioners authorised under section 393 of the Insolvency Act 1986.

(2) Where under paragraph (1) there is more than one supervisory authority for a relevant person, the supervisory authorities may agree that one of them will act as the supervisory authority for that person.

(3) Where an agreement has been made under paragraph (2), the authority which has agreed to act as the supervisory authority must notify in writing the relevant person.

(4) Where no agreement has been made under paragraph (2), the supervisory authorities for a relevant person must cooperate in the performance of their duties.

Duties of supervisory authorities

18.—(1) A supervisory authority must effectively monitor the relevant persons for whom it is the supervisory authority and take the necessary measures to ensure their compliance with the requirements of these Regulations.

(2) A supervisory authority which in the course of carrying out any of its functions under these Regulations knows or suspects that a person has or is engaged in money laundering or terrorist financing must promptly inform the Serious Organised Crime Agency.

(3) A disclosure made under paragraph (2) is not to be taken to breach any restriction, however imposed, on the disclosure of information.

(4) The functions of the Authority under these Regulations shall be treated for the purposes of Parts 1, 2 and 4 of Schedule 1 to the 2000 Act as functions conferred on the Authority under that Act.

Registration of high value dealers, money service businesses and trust or company service providers

Duty to maintain registers

19.—(1) The Commissioners must maintain registers of—

(a) high value dealers;
(b) money service businesses for which they are the supervisory authority; and
(c) trust or company service providers for which they are the supervisory authority.

(2) The Commissioners may keep the registers in any form they think fit.

(3) The Commissioners may publish or make available for public inspection all or part of a register maintained under this regulation.

Requirement to be registered

20. A person in respect of whom the Commissioners are required to maintain a register under regulation 19 must not act as a—

(a) high value dealer;
(b) money service business; or
(c) trust or company service provider,

unless he is included on the register.
Applications for registration in a register maintained under regulation 19

21.—(1) An applicant for registration in a register maintained under regulation 19 must make an application in such manner and provide such information as the Commissioners may specify.

(2) The information which the Commissioners may specify includes—

(a) his name and (if different) the name of the business;
(b) the nature of the business;
(c) the name of the nominated officer (if any);
(d) in relation to a money service business or trust or company service provider—
   (i) the name of any person who effectively directs or will direct the business and any beneficial owner of the business; and
   (ii) information needed by the Commissioners to decide whether they must refuse the application pursuant to regulation 22.

(3) At any time after receiving an application and before determining it, the Commissioners may require the applicant to provide, within 21 days beginning with the date of being requested to do so, such further information as they reasonably consider necessary to enable them to determine the application.

(4) If at any time after the applicant has provided the Commissioners with any information under paragraph (1) or (2)—

(a) there is a change affecting any matter contained in that information; or

(b) it becomes apparent to that person that the information contains an inaccuracy,

he must provide the Commissioners with details of the change or, as the case may be, a correction of the inaccuracy within 30 days beginning with the date of the occurrence of the change (or the discovery of the inaccuracy) or within such later time as may be agreed with the Commissioners.

(5) The obligation in paragraph (4) applies also to changes affecting any matter contained in any supplementary information provided pursuant to that paragraph.

(6) Any information to be provided to the Commissioners under this regulation must be in such form or verified in such manner as they may specify.

Fit and proper test

22.—(1) The Commissioners must refuse to register an applicant as a money service business or trust or company service provider if they are satisfied that any of the circumstances in paragraph (2) apply in respect of—

(a) the applicant;
(b) a person who effectively directs or will direct the business;
(c) a beneficial owner of the business; or
(d) any nominated officer of the applicant.

(2) For the purposes of paragraph (1), the circumstances are where a person—

(a) has been convicted of—
   (i) an offence under the Terrorism Act 2000(a);
   (ii) an offence under Part 7 of the Proceeds of Crime Act 2002;
   (iii) an offence listed in Schedule 2, 4 or 5 to the Proceeds of Crime Act 2002; or
   (iv) an offence involving fraud;

(a) 2000 c. 11.
(b) has been adjudged bankrupt or in respect of whom sequestration of his estate has been awarded and (in either case) he has not been discharged;
(c) is subject to a disqualification order under the Company Directors Disqualification Act 1986(a);
(d) is or has been subject to a confiscation order or recovery order under the Proceeds of Crime Act 2002;
(e) has consistently failed to comply with the requirements of the money laundering regulations; or
(f) is otherwise not a fit and proper person with regard to the risk of money laundering or terrorist financing.

Determination of application under regulation 21

23.—(1) Subject to regulation 22, the Commissioners may refuse to register an applicant for registration in a register maintained under regulation 19 only if—
(a) any requirement of regulation 21 has not been complied with;
(b) it appears to the Commissioners that any information provided pursuant to regulation 21 is false or misleading in a material particular; or
(c) the applicant has failed to pay a charge imposed under regulation 29.

(2) The Commissioners must, by the end of the period of 45 days beginning with the date on which they receive the application or, where applicable, the date on which they receive any further information required under regulation 21(3), give notice in writing to the applicant of—
(a) their decision to register the applicant; or
(b) the following matters—
   (i) their decision not to register the applicant;
   (ii) the reasons for their decision;
   (iii) the right to require a review under regulation 37; and
   (iv) the right to appeal under regulation 38.

(3) The Commissioners must, as soon as practicable after reaching a decision to register a person, include him on the relevant register.

Cancellation of registration in a register maintained under regulation 19

24.—(1) The Commissioners must cancel a person’s registration in a register maintained under regulation 19(1)(b) or (c) if, at any time after registration, they are satisfied that any of the circumstances in paragraph (2) of regulation 22 applies in respect of any of the persons mentioned in paragraph (1)(a), (b), (c) or (d) of that regulation.

(2) The Commissioners may cancel a person’s registration in a register maintained under regulation 19 if, at any time after registration, it appears to them that they would have had grounds to refuse registration under regulation 23(1).

(3) Where the Commissioners decide to cancel a person’s registration they must immediately inform him in writing of—
(a) their decision and the date from which the cancellation takes effect;
(b) the reasons for their decision;
(c) the right to require a review under regulation 37; and
(d) the right to appeal under regulation 38.

(a) 1986 c. 46.
Requirement on authorised person to inform the Authority

25.—(1) Subject to paragraph (2), an authorised person must, before acting as a money service business or a trust or company service provider or within 28 days of so doing, inform the Authority that he intends or has begun to act as such.

(2) An authorised person who, immediately before 15th December 2007, was acting as a money service business or a trust or company service provider must before 15th January 2008 inform the Authority that he is or has been acting as such.

(3) Where an authorised person ceases to act as a money service business or a trust or company service provider, he must immediately inform the Authority.

(4) Any requirement imposed by this regulation is to be treated as if it were a requirement imposed by or under the 2000 Act.

(5) Any information to be provided to the Authority under this regulation must be in such form or verified in such manner as it may specify.

Registration of Annex I Financial Institutions, Estate Agents etc.

Power to maintain registers

26.—(1) A supervisory authority may, in order to fulfil its duties under regulation 18 and, if it decides to do so, to levy a charge under regulation 29, maintain a register under paragraph (2), (3) or (4).

(2) The Authority may maintain a register of Annex I Financial Institutions.

(3) The OFT may maintain registers of—
   (a) Consumer Credit Financial Institutions; and
   (b) estate agents.

(4) The Commissioners may maintain registers of—
   (a) auditors;
   (b) external accountants;
   (c) insolvency practitioners; and
   (d) tax advisers,
   who are not supervised by the Secretary of State, DETI or any of the bodies listed in Schedule 3.

(5) A supervisory authority may keep a register under this regulation in any form it thinks fit.

(6) A supervisory authority may publish or make available to public inspection all or part of a register maintained under this regulation.

Requirement to be registered

27.—Where a supervisory authority decides to maintain a register under regulation 26 in respect of any description of persons and establishes a register for that purpose, any such person may not carry on the business or profession in question for a period of more than six months (excluding any period before the register was established in which he carried on the business or profession) unless he is included on the register.

Applications for registration in a register maintained under regulation 26

28. Regulations 21, 23 and 24(2) and (3) apply to registration in a register maintained under regulation 26 as they apply to registration in a register maintained under regulation 19 and, for this purpose—
(a) the words “Subject to regulation 22” in regulation 23(1) are to be omitted; and
(b) references to the Commissioners are to be treated as references to the Authority, the OFT or the Commissioners, as the case may be.

Financial Provisions

Costs of supervision

29.—(1) A supervisory authority may impose charges—
   (a) on applicants for registration;
   (b) on relevant persons supervised by that authority.

   (2) Charges levied under paragraph (1) must not exceed such amount as the supervisory authority considers will enable it to meet any expenses reasonably incurred by it in carrying out its functions under these Regulations or for any incidental purpose.

   (3) Without prejudice to the generality of paragraph (2), a charge may be levied in respect of each of the premises at which a person carries on (or proposes to carry on) business.

   (4) The Authority must apply amounts paid to it by way of penalties imposed under regulation 36 towards expenses incurred in carrying out its functions under these Regulations or for any incidental purpose.

   (5) In paragraph (2), “expenses” in relation to the OFT includes expenses incurred by local weights and measures authorities pursuant to regulations 35 and 42.

PART 5

ENFORCEMENT

Powers of the Authority, the Commissioners and the OFT

Power to require information generally

30.— (1) A supervisory authority or an officer acting for that authority may, by notice in writing to a relevant person or to a person connected with a relevant person, require the relevant person or the connected person, as the case may be—
   (a) to provide such information as may be specified in the notice; or
   (b) to produce such recorded information as may be so specified.

   (2) The notice must set out the reasons why the supervisory authority or officer requires the information to be provided or produced.

   (3) The information must be provided or produced—
   (a) before the end of such reasonable period as may be specified in the notice; and
   (b) at such place as may be so specified.

   (4) For the purposes of paragraph (1), a person is connected with a relevant person if he is, or has at any time been, in relation to the relevant person, a person listed in Schedule 4 to these Regulations.

   (5) A requirement may only be imposed on a person under paragraph (1) if the provision or production of the information in question is reasonably required in connection with the exercise by the supervisory authority of its functions under these Regulations.

   (6) In relation to information recorded otherwise than in legible form, the power to require production of it includes a power to require the production of a copy of it in legible form or in a form from which it can readily be produced in visible and legible form.
(7) The production of a document in pursuance of paragraph (1) does not affect any lien which a person has on the document.

(8) A person may not be required under this regulation to provide or produce information which he would be entitled to refuse to provide or produce on grounds of legal professional privilege in proceedings in the High Court, except that a lawyer may be required to provide the name and address of his client.

(9) In the application of this regulation to Scotland, the reference in paragraph (7) to—

(a) proceedings in the High Court is to be read as a reference to legal proceedings generally; and

(b) an entitlement on grounds of legal professional privilege is to be read as a reference to an entitlement on the grounds of confidentiality of communications.

(10) In this regulation and regulation 34, “supervisory authority” means the Authority, the Commissioners or the OFT.

Attendance of relevant persons and connected persons

31.—(1) An officer may by notice in writing to a relevant person or to a person connected with a relevant person require the relevant person or the connected person, as the case may be—

(a) to attend before the officer at a time and place specified in the notice and answer questions; or

(b) otherwise to provide such information as the officer may require.

(2) For the purposes of paragraph (1), a person is connected with a relevant person if he is, or has at any time been, in relation to the relevant person, a person listed in Schedule 4 to these Regulations.

(3) A requirement may be imposed under paragraph (1) only if the answer to the question or provision of information is reasonably required in connection with the exercise by the Authority, the Commissioners or the OFT of their functions under these Regulations.

(4) A person may not be required under this regulation to answer questions or provide information which he would be entitled to refuse to answer or provide on grounds of legal professional privilege in proceedings in the High Court, except that a lawyer may be required to provide the name and address of his client.

(5) Subject to paragraphs (6) and (7), a statement made by a person in compliance with a requirement imposed on him under paragraph (1) is admissible in evidence in any proceedings, so long as it also complies with any requirements governing the admissibility of evidence in the circumstances in question.

(6) In criminal proceedings in which that person is charged with an offence to which this paragraph applies—

(a) no evidence relating to the statement may be adduced, and

(b) no question relating to it may be asked,

by or on behalf of the prosecution unless evidence relating to it is adduced, or a question relating to it is asked, in the proceedings by or on behalf of that person.

(7) Paragraph (6) applies to any offence other than one under—

(a) section 5 of the Perjury Act 1911(a);

(b) section 44(2) of the Criminal Law (Consolidation)(Scotland) Act 1995(b); or

(c) Article 10 of the Perjury (Northern Ireland) Order 1979(c).

(a) 1911 c. 6.
(b) 1995 c.39.
(c) S.I. 1979/1714 (N.I. 19).
(8) In the application of this regulation to Scotland, the reference in paragraph (3) to—
(a) proceedings in the High Court is to be read as a reference to legal proceedings generally; and
(b) an entitlement on grounds of legal professional privilege is to be read as a reference to an entitlement on the grounds of confidentiality of communications.

Entry, inspection without a warrant etc.

32.—(1) Where an officer has reasonable cause to believe that any premises are being used by a relevant person in connection with his business or professional activities, he may on producing evidence of his authority at any reasonable time—
(a) enter the premises;
(b) inspect the premises;
(c) observe the carrying on of business or professional activities by the relevant person;
(d) inspect any recorded information found on the premises;
(e) require any person on the premises to provide an explanation of any recorded information or to state where it may be found;
(f) in the case of a money service business or a high value dealer, inspect any cash found on the premises.

(2) An officer may take copies of, or make extracts from, any recorded information found under paragraph (1).

(3) An officer may exercise powers under this regulation only if the information sought to be obtained as a result is reasonably required in connection with the exercise by the Authority, the Commissioners or the OFT of their functions under these Regulations.

Entry to premises under warrant

33.—(1) A justice may issue a warrant under this paragraph if satisfied on information on oath given by an officer that there are reasonable grounds for believing that the first, second or third set of conditions is satisfied.

(2) The first set of conditions is—
(a) that there is on the premises specified in the warrant recorded information in relation to which a requirement could be imposed under regulation 30(1); and
(b) that if such a requirement were to be imposed—
(i) it would not be complied with; or
(ii) the recorded information to which it related would be removed, tampered with or destroyed.

(3) The second set of conditions is—
(a) that a person on whom a requirement has been imposed under regulation 30(1) has failed (wholly or in part) to comply with it; and
(b) that there is on the premises specified in the warrant recorded information which has been required to be produced.

(4) The third set of conditions is—
(a) that an officer has been obstructed in the exercise of a power under regulation 32; and
(b) that there is on the premises specified in the warrant recorded information or cash which could be inspected under regulation 32(1)(d) or (f).

(5) A justice may issue a warrant under this paragraph if satisfied on information on oath given by an officer that there are reasonable grounds for suspecting that—
(a) an offence under these Regulations has been, is being or is about to be committed by a relevant person; and

(b) there is on the premises specified in the warrant recorded information relevant to whether that offence has been, or is being or is about to be committed.

(6) A warrant issued under this regulation shall authorise an officer—

(a) to enter the premises specified in the warrant;

(b) to search the premises and take possession of any recorded information or anything appearing to be recorded information specified in the warrant or to take, in relation to any such recorded information, any other steps which may appear to be necessary for preserving it or preventing interference with it;

(c) to take copies of, or extracts from any recorded information specified in the warrant;

(d) to require any person on the premises to provide an explanation of any recorded information appearing to be of the kind specified in the warrant or to state where it may be found;

(e) to use such force as may reasonably be necessary.

(7) An officer entering premises under this regulation may take such persons and equipment with him as he thinks necessary.

(8) Recorded information of which possession is taken under this regulation may be retained—

(a) for a period of three months; or

(b) if within that period proceedings to which the recorded information is relevant are commenced against any person for any criminal offence, until the conclusion of those proceedings.

(9) Where a warrant is issued by a justice under paragraph (1) or (5) on the basis of information given by an officer of the Authority, for “officer” in paragraphs (6) and (7) substitute “constable”.

(10) In paragraphs (1), (5) and (9), “justice” means—

(a) in relation to England and Wales, a justice of the peace;

(b) in relation to Scotland, a justice within the meaning of section 307 of the Criminal Procedure (Scotland) Act 1995(a);

(c) in relation to Northern Ireland, a lay magistrate.

(11) In the application of this regulation to Scotland, the references in paragraphs (1) and (5) to information on oath are to be read as references to evidence on oath.

Failure to comply with information requirement

34.—(1) If, on an application made by a supervisory authority or an officer acting for that authority, it appears to the court that a person (the “information defaulter”) has failed to do something that he was required to do under regulation 30(1) or 31(1), the court may make an order under this regulation.

(2) An order under this regulation may require the information defaulter—

(a) to do the thing that he failed to do within such period as may be specified in the order;

(b) otherwise to take such steps to remedy the consequences of the failure as may be so specified.

(3) If the court is satisfied that the information defaulter has failed without reasonable excuse to comply with an order under this regulation, it may deal with him (and in the case of a body corporate, any director or officer) as if he were in contempt of court.

(a) 1995 c. 46.
(4) If the information defaulter is a body corporate, a partnership or an unincorporated body of persons which is not a partnership, the order may require any officer of the body corporate, partnership or body, who is (wholly or partly) responsible for the failure to meet such costs of the application as are specified in the order.

(5) In this regulation, court means—

(a) in England and Wales and Northern Ireland, the High Court or the county court;
(b) in Scotland, the Court of Session or the sheriff.

Officers of local weight and measures authorities

35.—(1) A duly authorised officer of a local weights and measures authority may exercise the powers of an officer of the OFT under regulations 30 to 34 under arrangements made between the local weights and measures authority of which he is an officer and the OFT.

(2) Anything done or omitted to be done by, or in relation to, an officer of a local weights and measures authority in the exercise of such powers shall be treated for all purposes as having been done or omitted to be done by, or in relation to, an officer of the OFT.

(3) Paragraph (2) does not apply for the purposes of any criminal proceedings brought against the officer, the authority of which he is an officer or the OFT, in respect of anything done or omitted to be done by the officer.

(4) An officer of a local weights and measures authority shall not disclose to any person other than the authority or the OFT information obtained by him in the exercise of such powers unless—

(a) he has the approval of the OFT to do so; or
(b) he is under a duty to make the disclosure.

Civil penalties, review and appeals

Power to impose civil penalties

36.—(1) The Authority, the Commissioners and the OFT may impose a penalty of such amount as they consider appropriate on a relevant person who fails to comply with any requirement in regulations 5 to 16, 20, 21, 25, 27, 29 or 44 and, for this purpose, “appropriate” means effective, proportionate and dissuasive.

(2) The Authority, the Commissioners and the OFT must not impose a penalty on a person under paragraph (1) where there are reasonable grounds for the m to be satisfied that the person took all reasonable steps to ensure that the requirement would be complied with.

(3) In deciding whether a person has failed to comply with any requirement of these Regulations, the supervisory authority must consider whether he followed any relevant guidance which was at the time—

(a) issued by a supervisory authority or any other appropriate body;
(b) approved by the Treasury; and
(c) published in a manner approved by the Treasury as suitable in their opinion to bring the guidance to the attention of persons likely to be affected by it.

(4) An appropriate body is any body which regulates or is representative of any trade, profession, business or employment carried on by the alleged offender.

(5) Where a supervisory authority decides to impose a penalty under this regulation, it must immediately inform the person, in writing, of—

(a) its decision to impose the penalty and its amount;
(b) its reasons for imposing the penalty;
(c) the right to a review under regulation 37; and
(d) the right to appeal under regulation 38.
(6) A penalty imposed under this regulation is payable to the supervisory authority which imposes it.

**Review procedure**

37.—(1) This regulation applies to decisions of supervisory authorities made under—
(a) regulation 23, to refuse to register an applicant;
(b) regulation 24, to cancel the registration of a registered person; and
(c) regulation 36, to impose a penalty.
(2) Any person who is the subject of a decision mentioned in paragraph (1) may by notice in writing to the supervisory authority require it to review that decision.
(3) The supervisory authority need not review any decision unless the notice requiring the review is given before the end of the period of 45 days beginning with the date on which the authority first gave written notification of the decision to the person requiring the review.
(4) Where the supervisory authority is required under this regulation to review any decision it must either—
(a) confirm the decision; or
(b) withdraw or vary the decision and take such further steps (if any) in consequence of the withdrawal or variation as it considers appropriate.
(5) Where the supervisory authority does not, within 45 days beginning with the date on which the review was required by a person, give notice to that person of its determination of the review, it is to be taken for the purposes of these Regulations to have confirmed the decision.

**Appeals**

38.—(1) A person may appeal from a decision by the supervisory authority on a review under regulation 37.
(2) An appeal from a decision by—
(a) the Authority is to the [Financial Services and Markets Tribunal];
(b) the Commissioners is to a [VAT and Duties Tribunal];
(c) the OFT in relation to a Consumer Credit Financial Institution or an estate agent is [to be determined].
(3) The body hearing the appeal under paragraph (2) has the power to—
(a) quash or vary any decision of the supervisory authority, including the power to reduce any penalty to such amount (including nil) as they think proper; and
(b) substitute their own decision for any decision quashed on appeal.

**Recovery of charges and penalties through the court**

39. Any charge or penalty which is owed to a supervisory authority under regulation 29 or 36—
(a) if the person from whom it is recoverable resides in England and Wales or Northern Ireland, may be recovered as a civil debt; and
(b) if that person resides in Scotland, may be enforced in the same manner as an extract registered decree arbitral bearing a warrant for execution issued by the sheriff court of any sheriffdom in Scotland.
Estate Agents

40. The Estate Agents Act 1979(a) applies in relation to an estate agent who fails to comply with regulation 27 as it applies in relation to a person who has engaged in a practice such as is mentioned in section 3(1)(d) of that Act in the course of estate agency work (within the meaning of that Act).

Criminal offences

41.—(1) A person who fails to comply with any requirement in regulations 7, 8, 10 to 16, 20 or 27 is guilty of an offence and liable—
   (a) on summary conviction, to a fine not exceeding the statutory maximum;
   (b) on conviction on indictment, to imprisonment for a term not exceeding two years, to a fine or to both.

(2) In deciding whether a person has committed an offence under these Regulations, the court must consider whether he followed any relevant guidance which was at the time—
   (a) issued by a supervisory authority or any other appropriate body;
   (b) approved by the Treasury; and
   (c) published in a manner approved by the Treasury as suitable in their opinion to bring the guidance to the attention of persons likely to be affected by it.

(3) An appropriate body is any body which regulates or is representative of any trade, profession, business or employment carried on by the alleged offender.

(4) In proceedings against any person for an offence under these Regulations, it is a defence for that person to show that he took all reasonable steps and exercised all due diligence to avoid committing the offence.

(5) Where a person is convicted of an offence under this regulation, he shall not also be liable to a penalty under regulation 36.

Prosecution of offences by the Commissioners, OFT and local weights and measures authorities

42.—(1) Proceedings for an offence under these Regulations may be instituted by—
   (a) the Commissioners;
   (b) the OFT;
   (c) a local weights and measures authority;
   (d) DETI; or
   (e) the Director of Public Prosecutions.

(2) Such proceedings may be instituted only against a relevant person or, where such a person is a body corporate, a partnership or an unincorporated association, against any person who is liable to be proceeded against under regulation 43.

(3) Where a local weights and measures authority in England or Wales proposes to institute proceedings for an offence under these Regulations it must give the OFT notice of the intended proceedings, together with a summary of the facts on which the charges are to be founded.

(4) A local weights and measures authority must, whenever the OFT requires, report in such form and with such particulars as OFT requires on the exercise of its functions under these Regulations.

(a) 1979 c. 38
(5) Where the Commissioners investigate, or propose to investigate, any matter with a view to determining—

(a) whether there are grounds for believing that an offence under these Regulations has been committed by any person; or

(b) whether such a person should be prosecuted for such an offence;

that matter is to be treated as an assigned matter within the meaning of the Customs and Excise Management Act 1979(a).

(6) In exercising their power to institute proceedings for an offence under these Regulations, the Commissioners, the OFT, local weights and measures authorities and DETI must comply with any conditions or restrictions imposed in writing by the Treasury.

(7) Conditions or restrictions may be imposed under paragraph (6) in relation to—

(a) proceedings generally; or

(b) such proceedings, or categories of proceedings, as the Treasury may direct.

Offences by bodies corporate etc.

43.—(1) If an offence under these Regulations committed by a body corporate is shown—

(a) to have been committed with the consent or the connivance of an officer; or

(b) to be attributable to any neglect on his part,

the officer as well as the body corporate is guilty of an offence and liable to be proceeded against and punished accordingly.

(2) If an offence under these Regulations committed by a partnership is shown—

(a) to have been committed with the consent or the connivance of a partner; or

(b) to be attributable to any neglect on his part,

the partner as well as the partnership is guilty of an offence and liable to be proceeded against and punished accordingly.

(3) If an offence under these Regulations committed by an unincorporated association (other than a partnership) is shown—

(a) to have been committed with the consent or the connivance of an officer of the association or a member of its governing body; or

(b) to be attributable to any neglect on the part of such an officer or member,

that officer or member as well as the association is guilty of an offence and liable to be proceeded against and punished accordingly.

(4) If the affairs of a body corporate are managed by its members, paragraph (1) applies in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body.

(5) In this regulation—

(a) “partner” includes a person purporting to act as a partner; and

(b) “officer”, in relation to a body corporate, means a director, manager, secretary, chief executive, member of the committee of management, or a person purporting to act in such a capacity.
PART 6

MISCELLANEOUS

Transitional provisions

44.—(1) A high value dealer or a money service business registered under regulation 10 of the Money Laundering Regulations 2003 immediately before 15th December 2007 is to be treated for the purposes of these Regulations as if he were included on or after that date in a register maintained under, respectively, sub-paragraph (a) or (b) of regulation 19.

(2) A person who is to be treated by virtue of paragraph (1) as included in a register maintained under regulation 19 is to cease to be so treated—

(a) on 1st February 2008, if he fails to apply in accordance with regulation 21 by that date for registration in a register maintained under regulation 19;

(b) on the date, whichever is the later, on which—

(i) he is included in a register maintained under regulation 19 following a decision of the Commissioners under regulation 23 or 37 or the determination of an appeal under regulation 38;

(ii) the Commissioners give him notice under regulation 23(2) of their decision not to register him or, on a review under regulation 37, confirm that decision or are to be taken in accordance with regulation 37(5) to have confirmed that decision; or

(iii) where there is an appeal under regulation 38, the body hearing the appeal decides that he should not be included in the register maintained under regulation 19.

Directions where FATF applies counter-measures

45.—(1) The Treasury may direct any relevant person—

(a) not to enter into a business relationship;

(b) not to carry out any occasional transaction; or

(c) not to proceed any further with a business relationship or occasional transaction;

in relation to a person who is based or incorporated in a non-EEA State to which the Financial Action Task Force has decided to apply counter-measures.

(2) A person who fails to comply with a Treasury direction is to be treated as having contravened regulation 7.

Minor and consequential amendments

46. The provisions in Schedule 5 have effect subject to the amendments there specified, being minor amendments and amendments consequential on the provisions of these Regulations.

Signatory text

Name

Two of the Lords Commissioners of
Her Majesty’s Treasury
SCHEDULE 1

Operations listed in points 2 to 12 and 14 of Annex 1 to the Banking Consolidation Directive

2. Lending, including: consumer credit, mortgage credit, factoring, with or without recourse, financing of commercial transactions (including forfeiting).
3. Financial leasing.
4. Money transmission services.
5. Issuing and administering means of payment (e.g. credit cards, travellers’ cheques and bankers’ drafts).
7. Trading for own account or for account of customers in:
   (a) money market instruments (cheques, bills certificates of deposit, etc.);
   (b) foreign exchange;
   (c) financial futures and options;
   (d) exchange and interest-rate instruments; or
   (e) transferable securities.
8. Participation in securities issues and the provision of services related to such issues.
9. Advice to undertakings on capital structure, industrial strategy and related questions and advice as well as services relating to mergers and the purchase of undertakings.
10. Money broking.
11. Portfolio management and advice.
12. Safekeeping and administration of securities.
14. Safe custody services.

SCHEDULE 2

Financial activity, simplified due diligence and politically exposed persons

Financial activity on an occasional or very limited basis

1. For the purposes of regulation 2(7), a credit or financial institution is to be considered as engaging in financial activity on an occasional or very limited basis if it fulfils all of the following criteria—
(a) the institution’s total turnover in respect of the financial activity does not exceed the amount prescribed in paragraph 1(1)(a) of Schedule 1 to the Value Added Tax Act 1994(a);

(b) the financial activity is limited in respect of transactions exceeding 1,000 euro to one per customer, whether the transaction is carried out in a single operation, or a series of operations which appear to be linked;

(c) the financial activity does not exceed 5% of the institution’s total turnover;

(d) the financial activity is ancillary and directly related to the institution’s main activity;

(e) the institution’s main activity is not that of a person falling within regulation 3(1)(a) to (f) or (h); and

(f) the financial activity is provided only to customers of the main activity and is not offered to the public.

Simplified due diligence

2. For the purposes of regulation 9(6), the criteria to be fulfilled are as follows—

(a) the customer has been entrusted with public functions pursuant to the Treaty on the European Union(b), the Treaties on the European Communities or Community secondary legislation;

(b) the customer’s identity is publicly available, transparent and certain;

(c) the activities of the customer and its accounting practices are transparent;

(d) either the customer is accountable to a Community institution or to the authorities of an EEA State, or otherwise appropriate check and balance procedures exist ensuring control of the customer’s activity.

3. For the purposes of regulation 9(8), the criteria to be fulfilled are as follows—

(a) the product has a written contractual base;

(b) any related transactions are carried out through an account of the customer with a credit institution which is subject to the money laundering directive or a credit institution situated in a non-EEA State which imposes requirements equivalent to those laid down in that directive;

(c) the product or related transaction is not anonymous and its nature is such that it allows for the timely application of customer due diligence measures where there is a suspicion of money laundering or terrorist financing;

(d) the product is within the following maximum threshold—

   (i) in the case of insurance policies or savings products of a similar nature, the annual premium is no more than 1,000 euro or there is a single premium of no more than 2,500 euro;

   (ii) in the case of products which are related to the financing of physical assets where the legal and beneficial title of the assets is not transferred to the customer until the termination of the contractual relationship (whether the transaction is carried out in a single operation or in several operations which appear to be linked), the annual payments do not exceed 15,000 euro;

   (iii) in all other cases, the maximum threshold is 15,000 euro.

(a) 1994 c.23.

(b) Official Journal C 325, 24/12/2002, p. 5.
(e) the benefits of the product or related transaction cannot be realised for the benefit of third parties, except in the case of death, disablement, survival to a predetermined advanced age, or similar events;

(f) in the case of products or related transactions allowing for the investment of funds in financial assets or claims, including insurance or other kinds of contingent claims—

(i) the benefits of the product or related transaction are only realisable in the long term;

(ii) the product or related transaction cannot be used as collateral; and

(iii) during the contractual relationship, no accelerated payments are made, surrender clauses used or early termination takes place.

Politically exposed persons

4.—(1) For the purposes of regulation 10(6)—

(a) individuals who are or have been entrusted with prominent public functions include the following—

(i) heads of state, heads of government, ministers and deputy or assistant ministers;

(ii) members of parliaments;

(iii) members of supreme courts, of constitutional courts or of other high-level judicial bodies whose decisions are not generally subject to further appeal, except in exceptional circumstances;

(iv) members of courts of auditors or of the boards of central banks;

(v) ambassadors, chargés d'affaires and high-ranking officers in the armed forces; and

(vi) members of the administrative, management or supervisory bodies of State-owned enterprises;

(b) the categories set out in sub-paragraphs (i) to (vi) of paragraph (a) do not include middle-ranking or more junior officials;

(c) the categories set out in sub-paragraphs (i) to (v) of paragraph (a) include, where applicable, positions at Community and international level;

(d) immediate family members include the following—

(i) a spouse;

(ii) a partner;

(iii) children and their spouses or partners; and

(iv) parents;

(e) persons known to be close associates include the following—

(i) any individual who is known to have joint beneficial ownership of a legal entity or legal arrangement, or any other close business relations, with a person referred to in regulation 10(6)(a); and

(ii) any individual who has sole beneficial ownership of a legal entity or legal arrangement which is known to have been set up for the benefit of a person referred to in regulation 10(6)(a).

(2) In paragraph (1)(d), “partner” means a person who is considered by his national law as equivalent to a spouse.
SCHEDULE 3

Regulations 12(2)(b), 17(1)(c), and 26(4)

Professional Bodies

1. Association of Chartered Certified Accountants
2. Bar Council of England and Wales
3. Bar Council for Northern Ireland
4. Council of Licensed Conveyancers
5. Faculty of Advocacy (Scotland)
6. Institute of Chartered Accountants of England and Wales
7. Institute of Chartered Accountants in Ireland
8. Institute of Chartered Accountants in Scotland
9. Law Society of England and Wales
10. Law Society of Scotland
11. Law Society for Northern Ireland
12. Association of Accounting Technicians
13. Association of Taxation Technicians
14. Chartered Institute of Taxation

SCHEDULE 4

Regulation 30(4) and 31(2)

Connected persons

Corporate bodies

1. If the relevant person is a body corporate ("BC"'), a person who is or has been—
   (a) an officer or manager of BC or of a parent undertaking of BC;
   (b) an employee of BC;
   (c) an agent of BC or of a parent undertaking of BC.

Partnerships

2. If the relevant person is a partnership, a person who is or has been a member, manager, employee or agent of the partnership.
3. If the relevant person is an unincorporated association of persons which is not a partnership, a person who is or has been an officer, manager, employee or agent of the association.

Individuals

4. If the relevant person is an individual, a person who is or has been an employee or agent of that individual.

SCHEDULE 5

Minor and consequential amendments

Part 1

Primary Legislation

Value Added Tax Act 1994 (c. 23)

1. In section 83 of the Value Added Tax Act 1994(a) (appeals), in paragraph (zz), for “the Commissioners on a review under regulation 21 of the Money Laundering Regulations 2003”, substitute “a supervisory authority on a review under regulation 37 of the Money Laundering Regulations 2007”.

Northern Ireland Act 1998 (c. 47)

2. In paragraph 25 of Schedule 3 to the Northern Ireland Act 1998(b) (reserved matters), for “2003” substitute “2007”.

Part 2

Secondary Legislation

The Cross-Border Credit Transfers Regulations 1999

3. In regulation 12(2) of the Cross-Border Credit Transfers Regulations 1999(c), for “2003” substitute “2007”.

The Terrorism Act 2000 (Crown Servants and Regulators) Regulations 2001

4. In regulation 2 of the Terrorism Act 2000 (Crown Servants and Regulators) Regulations 2001(d), for “has the meaning given by regulation 2(2) of the Money Laundering Regulations 2003” substitute “means an activity carried on in the course of business by any of the persons listed in regulation 3(1)(a) to (h) of the Money Laundering Regulations 2007”.

(a) 1994 c. 23; section 83(zz) was inserted by S.I. 2001/3541 and amended by S.I. 2003/3075.
(b) 1998 c. 47; paragraph 25 of Schedule 3 was amended by S.I. 2003/3075.
(c) S.I. 1999/1876, amended by S.I. 2003/3075.
5. In regulation 114(3)(b) of the Representation of the People (England and Wales) Regulations 2001(a), for “2003” substitute “2007”.

The Representation of the People (Scotland) Regulations 2001

6. In regulation 113(3)(b) of the Representation of the People (Scotland) Regulations 2001(b), for “2003” substitute “2007”.

The Financial Services and Markets Act 2000 (Regulated Activities) Order 2001


The Proceeds of Crime Act 2002 (Failure to Disclose Money Laundering: Specified Training) Order 2003


The Public Contracts (Scotland) Regulations 2006

9. In regulation 23(1)(f) of the Public Contracts (Scotland) Regulations 2006(e), for “2003” substitute “2007”.

The Utilities Contracts (Scotland) Regulations 2006

10. In regulation 26(1)(f) of the Utilities Contracts (Scotland) Regulations 2006(f), for “2003” substitute “2007”.

The Public Contracts Regulations 2006

11. In regulation 23(1)(e) of the Public Contracts Regulations 2006(g), for “2003” substitute “2007”.

The Utilities Contracts Regulations 2006


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(c) S.I. 2001/544, amended by S.I. 2005/1518.
(e) S.S.I. 2006/1.
(f) S.S.I. 2006/2.
(g) S.I. 2006/5.
(h) S.I. 2006/6.
A.1 HM Treasury issued a consultation document in July 2006 on implementing the Third Money Laundering Directive, which was adopted under the UK’s presidency of the EU.

A.2 The consultation document set out how the Government proposed implementing the Directive in an effective, proportionate, risk-based and engaged manner. It discussed the Government’s approach to implementing each of the Directive’s main articles. These are:

- The scope of sectors subject to the Regulations and new definitions included in the Directive
- The new Customer Due Diligence requirements in the Directive, including new measures for situations of higher and lower risk
- The opportunity to rely on a third party for Customer Due Diligence
- The new measures on equivalence of third countries
- The reporting obligations of the Directive
- The record keeping, training and internal procedures requirements of the Directive
- The new requirements on the Government and its agencies
- The new requirements for all sectors covered by the Regulations to be monitored for their compliance and for certain sectors to be subject to a fit and proper test as a condition of registration
- Penalties for non-compliance with the Regulations

A.3 The consultation period closed on 20 October 2006.

A.4 Responses were received from:

- 7Side limited
- A&S Leisure Group Ltd
- Association of Accounting Technicians
- Association of British Insurers
- Association of Chartered Certified Accountants
- Association of Company Registration Agents
- Aviva PLC
- Bank Of England
• Baptist Union of Great Britain
• Britannia building society
• British Bankers’ Association
• British Casinos Association
• British Vehicle Rental and Leasing Association
• Building Societies Association
• Business Tax Centre limited
• Call Credit
• Casino Operators Association
• Central England Trading Standards Authorities
• Charities Aid Foundation
• Chartered Institute of Management Accountants
• Chartered Institute of Public Finance and Accountancy
• Chartered Institute of Taxation and Association of Accounting Technicians
• Church Of England
• Church Of Scotland
• City of London Law Society
• Companies House
• Council for Licensed Conveyancers
• Electronic Money Association
• Ernst and Young
• Factors and Discounters Association
• Federation of Small Businesses
• Federation of Tax Advisers
• Finance and Leasing Association
• Financial Markets Law International
• Friends Provident
• Futures and Options Association
• Gambling Commission
• GMAC commercial Finance PLC
• Harrah Entertainment
• HBOS plc
• Ian Reynolds, Beechcroft LLP
• ICPA
• Institute of Chartered Accountants in England & Wales
• Institute of Credit Management
• Institute of Indirect Taxation
• Institute of Interim Management
• International Financial Data Services
• Investment Management Association
• John Carlisle of Shirtcliffe & Co. Solicitors
• Jonathon Vowles, Chartered Accountant
• Jordans limited
• Kerzner International UK Gaming Division
• KPMG
• Legal and General
• Local Authorities Coordinators of Regulatory Services
• London Investment Banking Association
• London Law Agency
• Lovells
• MGM Mirage
• National Association of Estate Agents
• Northumberland County Council
• Notaries Society
• PartyGaming
• Paul Garbett Certified Chartered Accountants
• Portman Building Society
• Professional Contractors Group
• Rank Group Gaming Division
• Recruitment and Employment Confederation
• Remote Gambling Association and Association of British Bookmakers
• Retail Motor Industry Federation
• RM Online Limited
• Royal Institute of Chartered Surveyors

A SUMMARY OF RESPONSES TO THE JULY 2006 CONSULTATION

- Serious Organised Crime Agency
- Slaughter and May
- Society of Trust and Estate Practitioners
- Taylor Woodrow
- The Association of Corporate Trustees
- The Law Society
- Thinking about Crime Limited
- Thomas Snell & Passmore
- Trading Standards Institute
- Transparency International
- Travelex group
- Zurich financial services

A.5 A number of other organisations responded but requested that we keep their response confidential. They are therefore not listed above.
Summary of consultation responses

A.6 The following table summarises the responses to each of the consultation questions:

<table>
<thead>
<tr>
<th>Consultation question</th>
<th>Summary of responses</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Background and goals of the consultation</strong></td>
<td></td>
</tr>
<tr>
<td>Comments on the Implementation timeline</td>
<td>A couple of responses suggested that the implementation period from mid 2007-December 2007 was too short and that small business would find it demanding to accommodate the changes.</td>
</tr>
<tr>
<td>The consultation welcomed any proposals for further simplification measures that could be undertaken.</td>
<td>A response suggested that UK legislation could be simplified by aligning the focus of the SARS regime more closely with the directive’s focus on serious crime and not low-level crime.</td>
</tr>
<tr>
<td><strong>Scope and definitions</strong></td>
<td></td>
</tr>
</tbody>
</table>
| The consultation asked whether the Government should define the regulated businesses as a list of categories or whether the Government should keep the current activity approach. | Results of the responses were split between the two different approaches. For those that preferred the activity approach (mainly accountants and accounting trade bodies) there were a few concerns. These generally were:  
  - That people can avoid being caught by the Regulations by calling themselves something different (i.e. “management consultant” rather than “accountant”)  
  - There is a lack of clarity over when you would fall within the definition  
  - The Financial Services and Markets Act is based on activities so the Money Laundering Regulations should be consistent  
  - The risk is concentrated on the activity rather than the professional category.  
<p>| The consultation asked whether respondents agreed with the Government’s approach of clarifying which firms falls within the definition by excluding certain categories where there are clear grounds for doing so! | All respondents agreed with the approach. |
| The Governments proposed taking advantage of the derogation on financial activity on an occasional and limited basis of the Directive | A large majority of respondents agreed with this. |
| The consultation asked whether the Regulations should use the proposed thresholds for the derogation? | The majority agreed with applying the thresholds, the few concerns were that firstly this would be difficult to control and secondly, terrorist financing could still occur in small amounts. |</p>
<table>
<thead>
<tr>
<th>The Government proposed not extending the scope of the regulated sector</th>
<th>Although the majority of responses agreed, a small number of responses felt that the scope should be extended to include letting agents. There was also one response that suggested bookmakers be caught by the Regulations.</th>
</tr>
</thead>
<tbody>
<tr>
<td>General comments on chapter</td>
<td>The chapter brought a number of general comments:</td>
</tr>
<tr>
<td></td>
<td>• A definition of Financial Leasing is required and there is a need for confirmation that operating leasing is not included.</td>
</tr>
<tr>
<td></td>
<td>• Factoring should be explicitly included in annex I financial institutions.</td>
</tr>
<tr>
<td></td>
<td>• The Regulations should confirm that the firm has ultimate say over when the business relationship starts.</td>
</tr>
<tr>
<td></td>
<td>• There is uncertainty over whether firms that undertake Internet estate agency activity and buy and sell houses directly should fall within the definition of estate agents used in the Regulations.</td>
</tr>
<tr>
<td>Customer Due Diligence</td>
<td>This brought a few concerns amongst respondents. These were that:</td>
</tr>
<tr>
<td>The consultation did not ask any specific questions but proposed to transpose the Directive obligations into the Regulations.</td>
<td>• Fund managers would have difficulty complying, as they cannot prevent movement of the investment until verification has taken place. The Directive states that verification must occur during the establishment of the business relationship.</td>
</tr>
<tr>
<td></td>
<td>• Estate agents only carry out business on behalf of the customer every seven years or so. This would mean ongoing monitoring would be limited.</td>
</tr>
<tr>
<td>Other comments on definitions used in the Customer Due Diligence chapter</td>
<td>Some respondents wished to ensure that the definition of a business relationship did not cover anything connected to professional activities e.g. suppliers.</td>
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<td>Beneficial Ownership</td>
<td>The majority of respondents were supportive, however a couple felt that this should be in line with the risk-based approach and that the exclusion should be contained in industry guidance. A couple of respondent thought that the exclusion should go wider to cover other commercial trusts.</td>
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<td>The consultation proposed including a specific exclusion for situations of trust that arise in the bond market.</td>
<td>The one response received on this proposal approved of it.</td>
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<td>The consultation document proposed taking advantage of the derogation on timing of beneficial ownership for life assurance</td>
<td>A couple of respondents suggested some difficulties with the idea of identifying beneficial owners. The first was that at times firms would only be able to identify class of persons rather than the beneficial owner. Secondly respondents were concerned how a beneficial owner of a pension scheme would be identified.</td>
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<tr>
<td>Difficulties in identifying the beneficial owner.</td>
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**Definition of beneficial ownership**

The definition of a beneficial owner brought a couple of comments. Respondents believed that the definition should include controllers and not just the beneficiary. Others called for specific clarifications of when the definition should apply.

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**The consultation questioned whether the Regulations should state that identification should take place:**

- On entry to the casino; or
- When the person is gambling over a threshold.

The consultation also asked whether the option should be left open as provided for in the Directive.

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**Comments relating to Internet casinos**

There were many responses from the gambling industry. However, the majority of respondents preferred to leave the option open on the grounds that:

- This would be in accordance to the risk-based approach;
- Only some casinos have the systems in place to effectively administer the threshold approach.

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**Simplified Due Diligence**

The consultation asked whether respondents agreed that a category for simplified due diligence is necessary and useful or whether they wish all customers and products undergo some form of customer due diligence but on a risk-based approach?

The vast majority of responses agreed that a category for simplified due diligence is necessary and useful.

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**The consultation asked whether there were any of the examples listed in the Directive that should not be included in the updated Regulations?**

Approximately three quarters of the responses on this question agreed that all examples listed in the Directive should be included in the Regulations. One-quarter of responses questioned the inclusion of one or more of the examples in the Directive. The concerns were that:

- Those customers who are beneficial owners of pooled accounts held by notaries and other legal professions do not always represent low-risk.
- Domestic Public Authorities are not always of low risk.
- The e-money annual rechargeable seems high.
The consultation asked for examples of customer, products or transactions that respondents believed meet the Commissions Criteria?

Responses indicated that the following products and transactions could meet the Commissions criteria:
- ISAs or follow on ISA accounts particularly ISA transfers.
- Low value savings
- Life assurance products
- Term assurances
- Annuities Business
- Pension products
- Insurance Premium Funding
- Child Trust Funds
- Hire purchase and leasing transactions
- Businesses regulated in the UK by FSA and HMRC and also members of professional bodies.
- EU public authorities

There were also a number of responses that made requests for additional products and transactions to benefit from Simplified Due Diligence.

**Enhanced Due Diligence**

The consultation asked whether there was any further information from the Government, law enforcement or supervisors that could be provided to ensure that firms adopt an effective and proportionate approach to identifying Politically Exposed Persons?

The majority of respondents called for the Government to produce a definitive list of Politically Exposed Persons (PEPs). There were concerns that currently there were only two list providers and therefore no cost effective solutions.

**Definition of PEP**

A number of responses were received in regards to the definition of a PEP. These were:
- Whether the definition catches customers who are state owned companies, as they would therefore have PEPs on the board.
- That the Regulations should confirm that the definition does not include domestic PEPs
Other responses on PEPs

Other comments by respondents on a variety of issues were made:

- A couple of responses called for greater guidance on how firms could fulfil their obligations on PEPs
- A number of respondents requested for the preamble of the comitology measures to be included in the Regulations.

Situations whereby there may be a crossover between Simplified Due Diligence and Enhanced Due Diligence

A couple of respondents questioned whether with low risk products such as general insurance, where simplified due diligence would be exercised, there may be a need to be a little more cautious to know that customers are not PEPs.

Reliance

The consultation asked whether respondents agreed with the Government’s proposed approach to implementing the reliance provisions of the Directive?

The majority of respondents supported the proposals, particularly financial and legal/accountancy organisations.

Responses raised questions as to how reliance provisions would be implemented in practice.

Some had the view that responsibility for Customer Due Diligence should not remain with the firm relying on a third party. Other responses believed that consumer credit institutions should be able to be relied upon.

A small number of concerns were put forward by respondents:

- Whether membership of a professional body is sufficient for firms to be relied upon.
- Other countries should implement Article 15 of the Directive appropriately to ensure that UK firms can be relied upon. Currently UK firms face difficulties when overseas firms have stricter or different Customer Due Diligence requirements.

Consent

The consultation asked if circumstances had where the regulated sector have concluded that refraining from carrying out a transaction is “likely to frustrate efforts to pursue the beneficiaries of a suspected money laundering or terrorist financing operation?” Whether the current law gave sufficient coverage?

Whether respondents thought that the UK needs to take further action to give effect to Article 24.2? If so, what measures should be taken?

There were around 20 respondents.

5 respondents thought there was no need to take further action to implement Article 24.2.

3 respondents considered that further guidance on this issue was necessary

- The majority of the remaining respondents linked this issue to the current consent regime making the following points:
  - consent is a complex area
  - consent provisions are difficult to comply with
  - whole area of consent needs considering
  - a welcome recognition that the consent issue was being reviewed following the Lander Report on the SAR regime.
## Protection of employees

The consultation asked whether the UK needs to take further action to ensure effective implementation of Article 27?

There were around 20 respondents:

There was a virtually unanimous view that the protection of staff was of paramount importance.

Half welcomed the HO guidance on this matter and some also welcomed the subsequent action taken by SOCA to ensure compliance with the guidance.

The other half considered that the further research, guidance or action needed to be taken to ensure effective protection of employees. Further action included:

- full implementation of the Lander recommendations in this respect.
- a statutory code of practice
- a statutory obligation on authorities which receive SARs to safeguard confidentiality

## Tipping off

The consultation asked whether respondents thought that Article 28 requires amendment to section 333(3) or section 342(4) of the Proceeds of Crime Act (POCA) 2002 (defences for professional legal advisers for tipping off offences).

Generally respondents supported the view expressed in the consultation document that no further amendments to the POCA 2002 are needed to give effect to the 28(1) of the Directive.

The majority of respondents explicitly expressed that no amendment is required to give effect to Article 28(1).

Others made the following comments:

- The defence in Article 28(6) should be referenced more explicitly. 1 Respondent proposed this be made explicit by amendment to POCA, whilst 1 Respondent felt it would be helpful to have Treasury approved guidance reference the specific provisions of Article 28(6).
- that Article 28(5) should be expressly incorporated into UK legislation, thus permitting disclosure of SARS between law firms based within the EU or in equivalent Third Countries.
- There was a need for more guidance or clarification on how to avoid committing the tipping off or prejudicing investigation offences, particularly in relation to consent issues.
**Record keeping**

The consultation asked for comments on whether the Regulations should either offer an open choice of whether copies or references should be kept as records, or explicitly require that when documentation is taken, copies should be kept unless it is not practicable to do so in which case the references of the evidence required will be sufficient.

<table>
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<th>There was a split in preference between the two options. A significant minority of respondents from the regulated sector plus two supervisors and two law enforcement agencies opted for the approach to explicitly require that when documentation is taken, copies should be kept unless it is not practicable to do so. The reasons put forward were that:</th>
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<tr>
<td>• It will be of greater benefit to law enforcement in the event of an investigation</td>
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<td>• Firms were already retaining copies of documentation as it suits their own internal risk management purposes</td>
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<td>• The costs of keeping copies is not prohibitive</td>
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<td>• It removes the chance of human error when inputting or recording the data.</td>
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<tr>
<td>The majority of respondents from the regulated sector elected for the option to keep the choice open as to whether copies or references should be retained as records. The reasons were that:</td>
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<tr>
<td>• Firms will save money on not having to store copies of identification documents.</td>
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<tr>
<td>• It is easier to keep references of documentation rather than copies.</td>
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<tr>
<td>• An open choice will also allow firms to retain evidence of reference, such as passport and driving license numbers, only for low risk products and customers, which will in many cases result in far more proportionate costs.</td>
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<tr>
<td>• Retaining copies requires large volumes of documents to be stored, but only a small number of investigations are triggered by the large number of SARs submitted.</td>
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### Requirements of Government and its agencies

The Third Money Laundering Directive places requirements on the Government; in particular Member States are required to publish statistics on effectiveness of the regime and provide feedback on SARs to the reporting sectors. The Lander Review includes recommendations on how to meet these requirements. The consultation reminded consultees of the review’s recommendations.

A response suggested that high-level FATF typologies have proved of very limited use to most organisations in combating money laundering as they are usually too general and lag well behind events. The reporting sector is more interested in well-researched and timely operational typologies, derived from analysis of recent SARs or specific information derived from other sources. There was also a suggestion that typologies produced in MLRO operations intelligence cells could be fed back to Government and its agencies for comment.

There was a general consensus that feedback should address qualitative as well as quantitative information.

A number of responses welcomed or congratulated the efforts currently being undertaken to improve the feedback to the regulated sector, but stressed that this must continue and develop to meet the requirements of the Directive.

### Monitoring and Supervision

The consultation asked whether respondents agreed with the suggested model of supervision?

The Consultation document proposed that the model of supervision be risk based, in line with the Hampton principles including the:

- power to compel information
- power to conduct onsite inspections
- power to impose penalties
- adequate resources to effectively monitor

The majority of respondents agreed with the proposed model of supervision.

The very few concerns with the suggested model were that the proposals were too light touch compared to supervision of financial services.
The consultation asked whether respondents agreed with the Government's proposals as to who should take on monitoring of Annex I financial institutions?

The consultation document proposed that those firms licensed under the consumer credit act by OFT should be supervised by OFT, Money Service Businesses should continue to be supervised by HMRC and all others financial institutions should be supervised by FSA.

All respondents agreed that the FSA should continue to regulate the financial institutions that they already do. A broad majority of respondents agreed that the OFT should supervise those firms that are licensed by the OFT.

A number of respondents called for a single regulator for supervision of financial institutions expressing concerns with potential inequalities in regulation with different regulators for different sectors.

Other comments issued concern that any proposal should not lead to duplication of supervision.

The consultation asked whether respondents agreed that the OFT with support from Local Authority Trading Standards be the most appropriate body to take on supervision of estate agents for money laundering purposes?

The majority of responses agreed with the proposal.

The consultation asked whether respondents agreed that the listed legal professional bodies should monitor their members for compliance with the Regulations?

The consultation lists the bodies below:
- The Law Society of England and Wales
- The Law Society of Scotland
- The Law Society of Northern Ireland
- The Council of Licensed Conveyancers
- The Bar Council of England and Wales
- The Faculty of Advocacy
- The Bar Council of Northern Ireland

All respondents agreed with the proposal that the listed legal professional bodies should monitor legal professionals for compliance with the Regulations. These included responses from legal professionals.

A couple of respondents were concerned of the conflict of interest that would arise with a fee raising body taking on the supervision role for its members.
The consultation asked whether respondents agreed with the proposals to list the below bodies as those that will monitor external accountants, tax advisers and auditors?

The consultation lists the bodies below:

- The Institute of Chartered Accountants in England and Wales
- The Institute of Chartered Accountants in Scotland
- The Institute of Chartered Accountants in Ireland
- The Association of Chartered Certified Accountants
- The Institute of Actuaries

The majority of respondents agreed with the list of bodies stated to monitor external accountants, tax advisers and auditors. However, many respondents also believed that other designated professional bodies should be added to the list enabling them to supervise their own members for Money Laundering purposes.

The consultation asked whether respondents agreed that HMRC should take on monitoring of those external accountants, tax advisers and auditors that are not members of a designated professional body?

Respondents had mixed views on this question. Some respondents including one accountancy body agreed with the proposal. However a number of accountancy bodies felt that HMRC were not the appropriate body to supervise external accountants, tax advisers and auditors that are not members of professional bodies. The reasons given were that:

- HMRC’s main objective is to monitor and enforce tax compliance rather than Anti-Money Laundering compliance.
- This would result in a conflict of interest between tax enforcement and anti-money laundering. Respondents were concerned that HMRC may use Anti-Money Laundering compliance powers as a cover for tax enforcement investigations.
- Different departments within HMRC should not be able to share data.
TITLE OF PROPOSAL

B.1 The Money Laundering Regulations 2007, implementing the Directive on the Prevention of Money Laundering and Terrorist Financing (2005/60/EC). This instrument will be called the “Regulations” for the rest of this RIA.

B.2 This RIA updates the partial RIA published in July 2006.

PURPOSE AND INTENDED EFFECT

Objectives

B.3 This proposal updates UK legislation in line with the newly adopted Third Money Laundering Directive. It ensures that UK legislation is in line with European legislation and international best practice for preventing money laundering and terrorist financing that the UK has the most appropriate and proportionate measures to deter, detect and disrupt money laundering and the financing of terrorism.

B.4 The proposal will impact on the following persons to whom its provisions will apply. These are:

- Credit institutions and other financial institutions;
- Auditors, external accountants and tax advisers;
- Notaries and other independent legal professionals when performing certain activities;
- Trust and company service providers;
- Estate agents;
- Money service businesses, including bureaux de change;
- Dealers and auctioneers in high-value goods, whenever payment is made in cash, and in an amount of €15,000 or more; and
- Casinos

B.5 All these sectors have been under the UK Money Laundering Regulations since the entry into force of the primary and secondary legislation which implemented the Second Money Laundering Directive. The Money Laundering Regulations 2003 (Statutory Instrument 2003 No. 3075 - the secondary legislation that implements the preventative requirements of the Second Money Laundering Directive) came into force on 1st March 2004.
In addition to the above sectors the draft Regulations will also impact upon existing supervisory bodies and new supervisory bodies responsible for ensuring compliance with anti-money laundering legislation. These bodies are:

- The Financial Services Authority;
- The Gambling Commission;
- Her Majesty’s Revenue and Customs (HMRC);
- The Office of Fair Trading in partnership with Local Authority Trading Standards Services;
- Department of Trade, Enterprise and Investment in Northern Ireland; and
- The Insolvency Service.

The following professional bodies:

- The Law Society;
- The Law Society of Scotland;
- The Law Society of Northern Ireland;
- The Institute of Chartered Accountants in England and Wales;
- The Institute of Chartered Accountants of Scotland;
- The Institute of Chartered Accountants in Ireland;
- The Association of Chartered Certified Accountants;
- The Institute of Actuaries;
- The Council for Licensed Conveyancers;
- The Bar Council of England and Wales;
- The Faculty of Advocacy;
- The Bar Council for Northern Ireland;
- Association of Accounting Technicians;
- Association of Taxation Technicians; and
- Chartered Institute of Taxation;

There are further professional bodies that may take on a role, with which we are still in discussion with.

The draft Regulations will also affect law enforcement authorities such as HMRC for law enforcement, the Police and the Serious Organised Crime Agency (SOCA). The Directive covers their powers and duties for the purposes of preventing money laundering and terrorist financing.

Finally, the draft Regulations will indirectly affect some of the individuals and businesses that are customers of firms in the regulated sector.
B.10 The deadline for implementing the Third Money Laundering Directive is 15 December 2007. The draft Regulations will affect the United Kingdom of Great Britain and Northern Ireland but not Gibraltar or the other Overseas Territories and the Crown Dependencies.

BACKGROUND

Current situation, the extent of money laundering and terrorist financing

B.11 The range of activities, and the sophistication, opportunity and scale of financial 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. It is also estimated that the total quantified organised crime market in the UK is worth about £15 billion per year\(^1\). 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 their funds.

B.12 All serious acquisitive crime is likely to involve money laundering. The other side of every money laundering offence is an act of criminality— for example, drug trafficking; handling stolen goods from domestic & commercial burglary and vehicle crime; trading stolen mobiles and credit cards from street robberies; excise fraud; human trafficking; trading illegal firearms; trading counterfeit goods; and theft from the public purse through false claims and corruption.

B.13 The SOCA 2005/6 Threat Assessment\(^2\) is now published and identifies the most popular methods of money laundering and the sectors most at risk in the UK. Further assessment of trends in money laundering (typologies) can also be found on the Financial Action Task Force (FATF) website\(^3\).

Current Regulations

B.14 The following forms the current legislative framework:

- Money Laundering Regulations 2003: These set out the scope of the regulated sector and the preventative measures that they must take. It also sets out the powers of the supervisor for money service businesses and high value dealers;
- The Proceeds of Crime Act 2002— as amended by the Serious Organised Crime and Police Act 2005: This sets out the principal money laundering offences and reporting obligations; and
- The Terrorism Act 2000 in relation to terrorism financing.

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\(^1\) Home Office
\(^3\) [http://www1.oecd.org/fatf/FATDocs_en.htm#Trends](http://www1.oecd.org/fatf/FATDocs_en.htm#Trends)
B.15 Government anti money laundering and counter terrorist financing policy is to keep Regulations at a high level with support from industry led guidance and any guidance issued by supervisory bodies. If the guidance is Treasury approved then a firm can use the fact that it followed the guidance as a defence against a money laundering prosecution. The Government approved the Joint Money Laundering Steering Group (JMLSG) guidance for the financial services sector in February 2006.

Who handles the policy and how effective has it been?

B.16 HM Treasury leads on the Money Laundering Regulations with Home Office leading on the Proceeds of Crime Act and the Terrorism Act. Indications as to how effective the policy has been so far include:

- Around 200,000 suspicious activity reports (SARs) made in 2006;
- Approx £165m of assets were recovered in 2005;
- A single SAR led directly to harm reduction, when an account was restrained and the holder arrested following enquiries which revealed that the account holder had defrauded a vulnerable person of approximately £50,000;
- A single SAR assisted officers to restrain significant sums from an overseas jurisdiction destined for property purchases in the UK, which were the proceeds of a complex fraud. One person was charged and several others arrested on suspicion of committing money laundering offences;
- A cash seizure opportunity as a result of a SAR, led to the law enforcement authorities identifying a cannabis factory and further money laundering offences. Several persons arrested; and
- As a result of investigations USD$20 million was restrained in a UK bank account on behalf of overseas authorities, who were conducting a bribery/corruption investigation into the affairs of a company linked to the UK. The funds represented bribe payments in relation to a USD$540 million contract.

Impacts of the Proposed Measures

B.17 The partial RIA summarised that the Third Money Laundering Directive will mean:

Customer Due Diligence Requirements

- More detailed customer due diligence requirements including in specific situations of high and low risk. While much of this is already in guidance it will now need to be set out in Regulations.

Requirements on the public sector

- Requirements to publish statistics on effectiveness and to feed back to the sectors covered by the Regulations on the threats and vulnerabilities of money laundering and terrorist financing and on the Suspicious Activity Reports (SARS) made.
Monitoring of compliance

- The establishment of a fit and proper test as part of the licensing or registration for trust and company service providers and money service businesses.
- Providing a monitoring regime for the all sectors under the Regulations not currently monitored for their compliance with the Regulations.

B.18 The responses to the consultation confirmed that these were the areas of most impact. The cost and benefits section of the partial RIA outlined the main parts of the Third Money Laundering Directive where the UK has flexibility over implementation. This revised RIA now:

- provides an updated estimate of the number of firms affected, following consultation responses and further research;
- confirms policy choices made and the costs and benefits of those;
- includes administrative as well as policy costs;
- includes new simplification proposals;

Rationale for Government intervention

B.19 Effective, money laundering and terrorist financing controls are important 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;

- **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;

- **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 criminal assets that can be recovered;

- **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; and

- **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 - The Third Money Laundering Directive

B.20 The Third Directive strengthens the existing regime in line with the global Financial Action Task Force (FATF) standard for anti money laundering/counter terrorist financing controls. 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 also helps to ensure a level playing field for firms across the EU.

Rationale for intervention – The Money Laundering Regulations 2007

B.21 The Government considers that compliance with best practice anti money laundering and counter terrorist financing measures is important to reassure other Governments, the international financial institutions and those who do business in and with the UK that the UK has clean markets.

B.22 A further reason to implement the Directive is to avoid infraction proceedings by the Commission or be listed non-compliant with the FATF recommendations. Once a Directive is adopted, each Member State must take such action as is required to: a) give effect in national law to the rights and obligations created by the Directive; and b) ensure that the Directive is implemented in a transparent manner. Failure to implement the Directive properly runs the risk of the UK being infraction and fined by the Commission and assessed as non compliant with the global standard set by the Financial Action Task Force. This is the ‘do nothing’ option. The threat of infraction proceedings is important as the Commission has become increasingly active in recent years in its use of infraction powers, indeed the Commission has started infraction proceedings against France and Greece for not implementing the Second Money Laundering Directive.

Consultation

B.23 The Government has taken account of over 90 responses to its original consultation document, held specific working groups, spoken to a large number of firms and representative associations bilaterally and consulted at a number of conferences.

B.24 This updated RIA will consider options on:

- Financial Activity on an Occasional and Limited Basis;
- Casinos;
- Simplified Due Diligence;
- Third Parties/reliance;
- Record Keeping;

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4 The UK is currently being assessed for its compliance with FATF recommendations.

5 For example, in 2003 the Court fined Spain €624 150 per year per percentage point that they fell below the Directive requirements for compliant bathing waters. At the time of the judgment, they were 20% non-compliant, so the annual fine was £12 483 000. This will decrease as Spain improves its standards.
• Monitoring of estate agents, accountants, non FSMA financial institutions; and

• Monitoring and fit and proper tests for trust and company service providers and money service businesses.

B.25 The Government thanks those that responded to the consultation document and the partial RIA. When formally responding to this updated RIA we are seeking comments on the analysis of costs and benefits, likely risks and unintended consequences of the proposed options, as well as supporting evidence wherever possible. If you feel there are alternative options, or indeed alternative combinations of existing options, please suggest these. The feedback to this updated RIA will provide valuable information, which will feed into the final RIA following this consultation.

B.26 The draft Regulations and this RIA should be read together.

SECTORS AFFECTED BY THE THIRD MONEY LAUNDERING DIRECTIVE

B.27 Ongoing consultation yields the following estimate of the size of the affected:

• Credit and financial institutions regulated by the FSA for money laundering purposes: approximately 10,000 firms;

• Consumer Credit financial institutions: an estimate of 20,000-70,000 is being used;

• Other Annex I financial institutions: an estimate of 1000 is being used;

• Money service businesses (classified as a financial institution): there are currently approximately 3500 firms;

• Independent legal professionals, including lawyers barristers and notaries: there are approximately 10,000 firms and chambers;

• External accountants: an estimated 25,000 firms belonging to recognised professional supervisory bodies and 40,000 that do not belong to such bodies;

• Trust and Company Service Providers: there is no existing estimate for such firms, with many professionals being counted as accountants and lawyers. An estimate of 5000 firms is being used;

• Estate Agents: there are approximately 10,000 firms;

• High Value Dealers: there are approximately 1100 firms; and

• Casinos. There are currently 140 Casinos. By the end of 2007 this could potentially increase to 250 and it is this higher estimate of around 250 that is being used.
**Financial Activity on an Occasional and Limited Basis: Implementation Options**

**B.28** The consultation document proposed removing legal or natural persons who engage in financial activity on an occasional and limited basis from the definition of a financial institution, where there is little risk of money laundering or terrorist financing. They can only be removed if they apply to the supervisor for consideration against the criteria included in Schedule 2 of the Regulations. This would effectively mean a reduction in scope of those subject to the requirements of the Regulations.

**Sectors affected**

**B.29** The firms that are potentially affected by this option are those that offer financial services (such as bureaux de change) as an ancillary service to their main activity and that meet the Commission’s criteria of low risk of money laundering and terrorist financing. The Government estimates that this could be up to 2000 firms.

**Options**

**B.30** There are two options for implementing the Directive:

**B.31** The **do nothing** option would be to not take up this derogation, continuing the current situation that firms that provide a financial activity on an occasional and limited basis are included in the scope of the regulated sector and therefore need to undertake the requirements of the Regulations (know your customer, record keeping and reporting of suspicious activity reports).

**B.32** The other option is to **take advantage of the derogation** in the Directive and clarified by Schedule 2 of the Regulations. Firms that meet the criteria would not be subject to the requirements of the Regulations.

**Discussion and risks**

**B.33** Implementing this Article of the Directive will mean that some firms may be excluded from the Regulations if they meet the criteria. There is a risk that this could leave a loophole for criminals to take advantage of. This risk is very limited, however, as the activities that meet the Commission’s strict criteria would, by their nature be unattractive vehicles to money launderers and terrorist financiers.

**B.34** To not take this opportunity, however, would not meet the overall objective to prevent money laundering and terrorist financing in a proportionate and targeted manner. Industry and law enforcement could concentrate their efforts on those activities remaining under the Regulations. On balance it seems sensible to try and reduce burdens on businesses where it is demonstrated that by the nature of the activity there is a minimal risk of money laundering and terrorist financing.

**Costs and benefits of the do nothing option**

**B.35** The costs of the do nothing option would be equal to the costs of meeting the Third Money Laundering Directive’s requirements that are applicable to these firms, including the ongoing costs that they already incur of meeting the current Regulations.
**The costs and benefits of taking advantage of the derogation**

**B.36** The benefits of this option are the benefits of the money laundering regime in general, including the general benefits of the added measures of the Third Money Laundering Directive. These include preventative customer due diligence measures that deter criminals from using such services, information that can be provided to SOCA and law enforcement if there is suspicion. As the activities that could take advantage of this derogation are by their nature very low risk, the benefits are reduced.

**B.37** The costs of this approach are the potential reduction in preventative measures and information (through record keeping etc) that can help law enforcement in the prevention of money laundering and terrorist financing. Removing a sector from the scope of the money laundering regime in legislation can potentially alert money launderers to areas where fewer checks take place and potentially create a loophole. The criteria, however, only allows firms to be removed from the Regulations if by nature their business is difficult to be used by money launderers and therefore severely unlikely to be taken advantage of. Further, POCA also requires all firms (whether they fall within the Regulations or not) to report suspicious activity if they have a nominated officer.

**B.38** There is also a small administrative cost to firms if they want to apply for this derogation and an indirect cost to the supervisor who will need to assess whether the firm meets the criteria and can take advantage of the derogation. However, this “policing the perimeter” should less costly than full monitoring of the firms if they could not take advantage of the derogation.

**B.39** The main monetary benefits of this approach are the potential savings to firms through not needing to comply with the Regulations (including the additional requirements of the Third Money Laundering Directive). The Government has estimated that this could lead to a total saving of up to £600,000.

**Small firms impacts test**

**B.40** Taking advantage of this derogation could benefit both small and larger firms. The Commission’s criteria for taking advantage of the derogation includes a maximum proportion of business that the financial activity can be. This could potentially advantage larger firms (who by definition would have the financial activity as a smaller proportion of their business) but the other cumulative criteria, however should negate this.

**Competition Assessment**

**B.41** The markets affected could potentially include firms with bureaux de change activity, or with safety custody services. It is unlikely that any of the firms affected have a greater than 10% market share of the activity. And it is unlikely that the savings of the deregulatory option would affect some firms more than others.

**B.42** Taking advantage of the derogation could have a positive competition effect in that those firms which previously had been deterred from setting up the ancillary financial activity, face less disincentive to adding such activity that meets the criteria for the derogation.
B.43 If the derogation was not taken advantage of there is a small chance that prospective firms may choose to locate in other countries that have taken advantage of it.

**Consultation results and conclusion**

B.44 The vast majority of responses supported the proposal to take advantage of the derogation. The Government therefore has included this derogation in *Schedule 2* to the Regulations.

**CUSTOMER DUE DILIGENCE REQUIREMENTS ON CASINOS**

B.45 The previous consultation document consulted on whether the Regulations should:

- require casinos to identify customers on entry;
- require casinos to identify customers when they gamble over threshold over 2000 Euros; or
- leave the option open as to which of the above two options a casino can take.

**Sectors Affected**

B.46 This measure applies only to the casino sector, which is estimated to be 250 premises.

**Options**

B.47 Option 1 is keeping the requirement to identify customers on entry to the casino. As this is the current situation, this is the do nothing option. Option 2 is to change the identification requirement to when customers gamble over 2000 Euros. Option 3 allows both options.

**Discussion and risks**

B.48 The risks of option 2 and 3 are that law enforcement will not have access to all data on customers entering the casino area. However, international best practice as established by the Financial Action Task Force favours a threshold approach on the grounds that casinos should be able to link customer due diligence information for a particular customer to the transactions that the customer conducts in the casino. Moreover, in the view of law enforcement, money laundering in casinos below the sum of €2,000 is not an extensive problem.

**Costs and benefits of option 1**

B.49 If the size of the casino sector did not change then the costs of option 1 would be minimal. The changing shape of the casinos sector, however, means that costs of option 1 could increase dramatically if the new casinos were required to identify all customers. The benefits of option 1 would be that all customers were identified.
Costs and benefits of option 2

B.50 There is no reliable data available on what percentage of the 12 million plus people who visited British casinos in 2004-05 either gambled or exchanged chips worth 2,000 Euros. However, it is safe to assume that a significant proportion of these visitors did not come near to reaching anything like this limit. Establishing the identity only of those customers that breach this limit will impose less of a cost burden than establishing the identity of all customers on entry. Moreover, identification of only those who gamble a significant amount of money also allows casinos to target more effectively their higher risk customers and link identification information more easily with specific transactions.

B.51 The indirect costs are that the casinos would not hold information on all customers, only those that gamble over 2000 Euros.

The costs and benefits of option 3

B.52 These are largely similar to the costs and benefits of option 2. However, firms who already operate identification on entry and lack the systems to adopt a threshold approach will be able to continue their current practice.

Small firms impact

B.53 A number of casinos are small businesses, including 14 single casino operators. The Government will continue to work with the industry to develop detailed costings for the different options.

Competition assessment

B.54 The sector affected by these measures is small. The costs of requiring identification on entry would be higher for larger casinos than for smaller casinos. However, the impact is unlikely to affect either the size of the sector or the number of firms in the sector.

Consultation results and conclusion

B.55 The consultation revealed a range of views which the Government has balanced carefully, alongside the requirements of the Directive and the international standards which underpin it.

B.56 The Government is of the view that casinos should identify their customers when they reach a threshold of €2,000 of chips exchanged or gambled. A threshold approach is recommended as international best practice by the Financial Action Task Force, which suggests a level of €3,000. The Third Money Laundering Directive provides for a stricter application of this standard, involving a threshold of €2,000, and it is this approach that the Government is taking. In the view of law enforcement, money laundering in casinos below the sum of €2,000 is not a material risk provided proper checks are in place to ensure that this threshold is not exceeded without appropriate due diligence through the consecutive exchange of smaller amounts. Casinos should also be able to link customer due diligence information for a particular customer to the transactions that the customer conducts in the casino.
B.57 Those casinos that are able to demonstrate to the regulator that they have the systems in place for tracking and identifying higher risk individuals and for ensuring that criminals are not able to circumvent the threshold by gradually exchanging or gambling chips should therefore follow a threshold approach. The Government has rejected the blanket application of a threshold system for all casinos, as some may not have the systems in place to deliver it effectively. For those that do not, the default position should continue to be that casinos identify their customers on entry. This will enable those casinos that presently operate a membership system to continue with their current practice of identifying, and verifying the identity of, customers at the point of application for membership. However, the Government encourages all casinos to develop the systems necessary for tracking and identifying higher-risk individuals in line with the threshold approach.

B.58 Regulation 8 sets out the identification requirements on casinos. It is the Government’s view that the threshold should apply per casino business day, rather than per visit or per calendar day, in order to prevent criminals from attempting to circumvent ID checks by leaving and re-entering the premises over the course a day. If it transpires that there are systemic problems with operating on a threshold basis, then checks on entry will be required.

B.59 Regulation 8(2) specifies that ‘gambling chips’ covers electronic chips. The Government is of the view that this means that touch bet roulette terminals and certain slot machines, particularly those that involve obtaining a ticket to cash in or out are included in the threshold system of identification, and that therefore casinos must identify customers using these machines either on entry or when they reach the threshold.

**Simplified Customer Due Diligence Requirements**

B.60 The Third Directive allows Member States the option of not performing certain customer due diligence requirements for certain low risk customers and products. Some of these derogations already exist in the current Regulations but some are new. In particular, the Government has the option not to require full customer due diligence measures to be performed:

- where the customer is a **listed company** trading securities on a **regulated market** in a Member State or situated in a **third country** with disclosure requirements consistent with community legislation.

- where the customer is a **beneficial owner of pooled accounts held by notaries and other legal professionals** from Member States or from **third countries** with equivalent money laundering standards and the information on the beneficial owner is available, on request, to the institutions that act as a depository institution for pooled accounts.

- where the customer is a **domestic public authority**.

- where the product/transaction is e-money as defined, where (a) if the devise cannot be recharged then the maximum amount stored is Euro 150 and (b) if the devise can be recharged, the maximum limit is Euro 2500 on the total transacted in a calendar year, except when an Euro 1000 is redeemed in that same calendar year by the bearer as referred to in The e-Money Directive.
the draft Regulations also include other criteria that firms can apply simplified due diligence. These are included in Schedule 2 to the Regulations.

Sectors affected

B.61 In principle all sectors covered by the Regulations can take advantage of the derogations but in practice not all sectors do significant business with such customers or have such products. Credit and financial institutions such as those regulated by the FSA and a small proportion of non FSA regulated financial activities could benefit from all derogations, small emoney issuers can benefit from the emoney derogation and lawyers and accountants could take advantage of some of the derogations as they may have customer that are listed companies of domestic public authorities, or meet some of the Commission’s criteria. For the purposes of this regulatory impact assessment it is estimated that around 30,000 firms who would be likely to take advantage of the derogations has been used.

Options

B.62 Option 1 is to only take advantage only of those derogations in the Money Laundering Regulations 2003. This would mean full, rather than simplified, customer due diligence for the above list of customers and products. This would be the do nothing option.

B.63 Option 2 is to take advantage of all of the derogations provided including those that are in the criteria provided by the Commission. That is to state in the Regulations that the customers and products above should not be subject to full customer due diligence requirements.

B.64 Option 3 could be to only take advantage of some of the derogations, based on information that some customers or products were not sufficiently low risk as to benefit from the derogation.

Discussion and risks

B.65 The policy intention is to give firms specific examples of low risk situations that they can apply reduced due diligence to. There is the risk in taking advantage of these derogations that criminals may use products that qualify for reduced due diligence, although by their nature these products are low risk because they are not attractive vehicles for money laundering or terrorist financing. In addition firms will still be obliged to conduct full customer due diligence if there is a suspicion and report that suspicion. Moreover, to take advantage of the simplified due diligence derogations would help firms to target their resources away from products or customers that are unattractive to money launderers.

Cost and Benefits of option 1

B.66 The direct cost of this option is minimal as it is the status quo. All sectors will need to apply full customer due diligence in a risk based manner to all customers and products expect those that are already derogated from identification and verification in the current Regulations.
The opportunity costs compared with taking advantage of derogation are that firms will need to spend more money on low risk activities and consequently not on other preventative measures.

The benefit is that all customers and products must undergo some form of customer due diligence which ensures that measures to prevent money laundering and terrorist financing are undertaken even in low risk situations.

Costs and Benefits of option 2

The direct costs of implementing this measure will be the time taken to read and understand whether the derogations apply.

There are direct quantifiable savings of taking advantage of such derogations. As described above it is estimated that around 30,000 firms would be able take advantage of this derogation, each saving up to 4 hours a year. The total savings would be up to £100 per firm depending on labour costs, around £3m in total.

Costs and benefits of option 3

If there was reason to believe that some of the products or customers listed in the Directive, or that meet the comitology criteria are not sufficiently low risk that they should be granted simplified due diligence, the Government may restrict the list. The costs and benefits would fall between those listed in option 1 and 2 depending on how many products or customers are to be listed.

Small firms impact test

Given the nature of the products and customers listed as low risk, the derogation is likely to benefit larger firms rather than smaller firms. This is because larger firms are more likely to have customers that are regulated businesses or specialised low risk products.

Competition assessment

In the sectors no one firm has market share greater than a 10% share. It is therefore unlikely the derogation will have any significant competition affects.

To not take advantage of the derogation could, however, have a negative competition effect in that firms may choose to be based in an EU country where the derogation exits. Existing UK multinational firms may also be disadvantaged when competing against EU firms with lower customer due diligence costs for the same customers and products.

Consultation responses and conclusion

The vast majority of the consultation responses supported the proposal to take advantage of all derogations. The Government therefore proposes to do so and this is included in Regulation 9.
**Reliance on a Third Party**

**B.76** The current Money Laundering Regulations only allow reliance between firms for one off transactions with a firm introduced by a third party (who must be a financial institution) and who has provided a written assurance that the identification and verification has been undertaken. The Third Money Laundering Directive allows more sectors to be relied upon as long as they meet the following conditions:

**B.77** They are subject to the requirements of the Directive, or firms/persons in an equivalent third country and:

- are subject to professional mandatory professional registration recognised by law: and
- apply customer due diligence and record keeping requirements in line with this Directive and their compliance is supervised.

**B.78** The Government has considered what is meant by mandatory professional registration and believes it at least includes those that are subject to a fit and proper test and therefore includes the following sectors:

- Credit and Financial Institutions licensed/authorised and supervised by the FSA or OFT
- Certain legal and accountancy professionals that are members of a listed professional body
- Money Service Businesses
- Trust and Company Service Providers
- Casinos

**Sectors affected**

**B.79** All of the sectors under the Regulations can rely on any of the sectors listed above to carry out the customer due diligence requirements. In practice certain credit and financial institutions, lawyers, accountants, estate agents, high value dealers, money service businesses and trust and company service providers would be best placed to take advantage of such derogations.

**Options**

**B.80** Option 1 is to not take advantage of the reliance provisions. All sectors would need to undertake full customer due diligence in all situations (except in a one off transaction between firms authorised and supervised by the FSA). This is the do nothing option.

**B.81** Option2 is to take advantage of the reliance options. All sectors would be exempted from customer due diligence if a customer has been introduced to them by a firm that meets the conditions above and they choose to rely on that third party. However, the final responsibility for customer due diligence remains with the firm that ultimately accepts the customer.
B.82 Option 3 is to allow reliance on FSA authorised firms, and certain accountant and lawyers under professional bodies, but not money service businesses, Casinos and trust and company service providers until the new supervision regime (including a fit and proper test) is effectively running and there is evidence of compliance.

Costs and benefits of option 1

B.83 The direct costs of option 1 are minimal as it means continuing the status quo. The opportunity cost, however is the time and money spent on customer due diligence requirements that could be better spent on other preventative measures.

B.84 The benefit of this option is a reduced risk of firms relying on other firms which are not fulfilling its customer due diligence obligations.

Costs and benefits of option 2

B.85 There are minimal direct costs of taking up the reliance provision, apart from reading and understanding the terms on which these provisions can be taken advantage of. There is a risk that the firm relied upon has not undertaken sufficient due diligence. This risk would be greater for firms relying on trust and company service providers, money service businesses, consumer credit financial institutions, certain accountants and tax advisers belonging to professional bodies and casinos as these firms will be subject to a relatively new supervisory and fit and proper regime. It should be noted, however, that the firm that is ultimately accepting the customer must weigh up this risk of relying on another firm based on the information it has on the firm. The Third Money Laundering Directive also requires that the third party must produce, on request of the firm receiving a customer, the customer due diligence information.

B.86 The previous regulatory impact assessment estimated that firms can expect savings ranging from £40-100 per year depending on the labour cost, adding up to a total savings of up to £25m⁶. Using new figures for sectors involved this estimate has been changed to a total of between £11 and 17million.

Cost and benefits of option 3

B.87 The costs and risks of option 3 are similar to those of option 2. There is a reduced risk, however that the firm being relied upon has not undertaken customer due diligence as only those firms that are subject to an established and effective supervisory regime (which includes a fit and proper test) may be relied upon. The benefits under option 2 will be reduced in terms of direct savings as initially firms cannot rely on trust and company service providers, casinos, consumer credit financial institutions, certain accountants or money service businesses either in the UK or abroad. Once these firms are judged to be able to be relied upon however, the full benefits of option 2 can be accrued.

Small firms impact test

B.88 The sectors affected comprise of firms of all sizes, including small firms,

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⁶ The quantification is using the same methodology as in the RIA for the Third Money Laundering Directive. This estimated that 5 minute per week could be saved for each firm. This figure is multiplied by the new labour market costings and the new estimates of number of firms for each sector.
**Competition Assessment**

**B.89** The sector that can take advantage of the reliance provisions is potentially large, without one firm having a market share of 10% or greater.

**B.90** The only potential competition effects would arise in the wider market place if the UK chose not to take advantage of the same reliance provisions (as in option 1 or option 3) but other EU countries did (therefore having lower costs/savings for customer due diligence).

**Consultation Responses and conclusion**

**B.91** The majority of respondents supported this approach. Therefore, in relation to the UK, credit and financial institutions currently authorised and supervised by the FSA for anti-money laundering compliance, and legal and accountancy professionals that are members of a professional body that currently regulates them will both be able to be relied upon when the Directive comes into force. Casinos, money service businesses, trust and company service providers, legal and accountancy professionals that are members of professional bodies that are taking on the role of supervision, and consumer credit firms will be able to be relied upon once supervisory arrangements are well established and there is widespread evidence of compliance. Regulation 12 outlines the reliance provisions.

**Record Keeping**

**B.92** The Third Directive allows either copies or references of identity (such as passport numbers) to be kept as records. The consultation document asked whether firms should be allowed to choose whether to keep copies or references of evidence as records, or whether, in line with current guidance and law enforcement views, copies should be kept whenever practicable.

**Sectors affected**

**B.93** All sectors under the Money Laundering Regulations will be subject to the record keeping requirements.

**Options**

**B.94** Option 1 is to require firms to keep copies of identity but allow them to keep references of identity if copies are not practicable.

**B.95** Option 2 is to allow firms to keep either copies or references of identity.

**Costs and benefits of option 1**

**B.96** The direct costs of option 1 are minimal as many firms are operating this system under the current Regulations. The opportunity cost however is the time and money spent (compared with option 2) on keeping copies of records.

**B.97** The previous consultation set out the benefits of this option to law enforcement. When following up an investigation, having copies of identity records is useful in tracking criminals, especially if photo identification is used.
Costs and benefits of option 2

B.98 The direct costs of option 2 are minimal and include time taken reading and understanding the new requirements. There are likely, however, to be considerable savings in time taken to photocopy identity and file it (either electronically or in paper form). Responses to the previous consultation document have also pointed out that keeping copies creates higher storage space costs, therefore removing this requirement would generate further savings.

B.99 The Government estimates that this option would save firms around 5 minutes per week of work hours. Using 2005 labour costs this leads to savings per firm of between £40 and £100 per year depending on staff costs. In their replies to the consultation document a small number of firms stated that they will keep copies for reasons unrelated to the Money Laundering Regulations. Assuming that around 75% of firms benefit from this option, total savings should be £10-14million including £1.5m in storage savings.

B.100 The risk of option 2 is the reduced amount of information that law enforcement can use if needed as part of an investigation. This could add extra time or impair an investigation, especially if fraudulent identification is used.

Small firms impact test

B.101 The sectors affected comprise firms of all sizes, including small firms.

Competition assessment

B.102 All sectors are subject to the record keeping obligations, without one firm having a market share of 10% or greater.

B.103 The only potential competition effects would arise in the wider market place if the UK chose have different record keeping requirements from the European and international standard as outlined in the Third Directive.

Consultation Responses and conclusion

B.104 The majority of consultation responses supported option 2, allowing an open choice for firms to keep either copies or references of identity as records; although a significant minority was content with the Regulations preferring copies but allowing references if keeping copies are not practicable. Law enforcement agencies also preferred including an explicit hierarchy in the Regulations.

B.105 In line with better regulation principles the Government has decided to allow an open choice of references of the evidence obtained or copies. It will, however, keep this matter under review. Regulation 13 sets out the new requirement.

Monitoring of the regulated sector

B.106 The Third Money Laundering Directive introduces the requirement that all sectors under anti money laundering legislation are monitored for their compliance. Many of the sectors are already monitored for their compliance either by Government agency or a self-regulatory organisation but there are gaps that need to be filled in implementation.
The RIA for the previous consultation document considered the costs of these requirements. Following consultation responses this regulatory impact assessment updates that work.

**Sectors affected**

The following table sets out those that are currently not monitored for their compliance with Regulations.

<table>
<thead>
<tr>
<th>Sector</th>
<th>Supervisor that monitors for compliance with AML and CTF measures</th>
<th>Estimated number of firms not currently monitored for AML/CTF</th>
</tr>
</thead>
<tbody>
<tr>
<td>Credit institutions</td>
<td>FSA</td>
<td>0</td>
</tr>
<tr>
<td>Financial Institution</td>
<td>Some of the activities by the FSA but not all. MSBs are supervised for AML/CTF purposes by HMRC.</td>
<td>21,000-71,000</td>
</tr>
<tr>
<td></td>
<td>Other annex 1 financial institutions not authorised and regulated by the FSA or HMRC, e.g. firms with consumer credit licences, other lending and financial leasing firms.</td>
<td></td>
</tr>
<tr>
<td>Legal Professionals</td>
<td>Large majority by self regulatory organisations (notaries regulated by the Master of Faculties but not for AML purposes, up to 900 although majority may be covered by existing professional societies such as the law society)</td>
<td>0-900</td>
</tr>
<tr>
<td>Accountants, tax advisers and auditors</td>
<td>Auditors and accountants under designated professional organisations are monitored for compliance for AML/CTF measures.</td>
<td>40,000</td>
</tr>
<tr>
<td>Estate Agents</td>
<td>Not monitored</td>
<td>10,000</td>
</tr>
<tr>
<td>Trust or Company Service Providers</td>
<td>Not monitored</td>
<td>5000</td>
</tr>
<tr>
<td>High Value Dealers</td>
<td>HMRC</td>
<td>0</td>
</tr>
<tr>
<td>Casinos</td>
<td>Gambling Commission</td>
<td>0</td>
</tr>
</tbody>
</table>
B.109 The maximum number of firms that need monitoring is estimated at between 78,000 – 127,000. Further work is to be carried out in relation to numbers of firms included in the definition of Consumer Credit Financial Institutions and annex I financial institutions.

B.110 This calculation and the costs below for options 2 and 3 does not include firms or individuals that are members of the listed professional bodies that will be taking on supervision. The Government does not expect firms to incur significant additional policy or administrative costs from the bodies taking on this work. The Government will work with those bodies to determine the extent of any new cost to firms or individuals.

Options

B.111 The consultation document for implementing the Third Money Laundering Directive described three main options for monitoring the above firms.

B.112 Option 1: no active monitoring. The Government has considered whether it could meet the requirements by giving powers to the law enforcement but with no active monitoring on their part. This is the do nothing option.

B.113 Option 2: risk based and proportionate monitoring. Monitoring firms for their compliance with the Regulations.

B.114 Option 3: a fuller monitoring regime comprising more visits, transaction monitoring, and relationship managers with firms.

Discussion and risks

B.115 Ensuring compliance, and taking action against those that are not compliant with the preventative measures of customer due diligence, internal procedures and record keeping and the reporting of suspicious transactions is crucial to the effectiveness of the anti-money laundering and counter-terrorist financing regime.

B.116 The following options look at how best to meet both the Directive’s requirements and the policy objectives behind them, in the most proportionate and targeted way.

B.117 The Government believes that option 2 is the best way to meet both the requirements Directive and the policy objectives that underlie the requirements.

Costs and benefits of option 1

B.118 The UK could refuse to implement the requirements on the basis that it is already a criminal offence not to comply with the Regulations.

Do you have any information on the additional costs to firms or individuals from the listed professional bodies monitoring for compliance with the Regulations?
The direct cost would be minimal as there is no change to the current situation. The indirect cost would be that of failing to meet the objectives behind the monitoring requirements, namely ensuring compliance with the measures to prevent and detect money laundering and terrorist financing. Not implementing the current UK Money Laundering Regulations is already an offence and yet sectors such as estate agents have been highlighted by SOCA as sectors that are underreporting relative to their vulnerability to money laundering. Further, the Government believes that this option would not meet the text of and intention behind the Third Directive which states that there should be “effective monitoring with a view to ensuring compliance”, that bodies should have the “powers to compel the production of information that is relevant to monitoring compliance and perform checks”, and that the competent authorities should have “adequate resources to perform their functions”. This option would therefore risk infraction proceedings by the Commission and certainly be marked down in our forthcoming FATF mutual evaluation as non-compliant with the recommendations (as other countries have been).

Costs and benefits of option 2

To estimate the costs of option 2 the previous RIA modelled the monitoring regime on that of HMRC’s existing procedure for monitoring of high value dealers. It is likely however, that fees may start higher and reduce over time, once full cost recovery of supervisors has been achieved. Further, fees can be varied according to size of firm.

Different supervisors will be able to charge whatever fee they feel is appropriate to cover the cost of their supervision, including set up costs. In practice this may lead to differences in fees across different sectors. For the purpose of this updated RIA, it is estimated that fees might average around £100 per premise, using an estimate of 2 premises per firm as an average, this leads to a total cost of option 2 to between £16 and 25 million. Supervisors will publish their stated fees for this work before the Directive comes into force.

In addition to fees there will be administration costs to firms associated with the time taken to fill in registration forms, annual returns or preparing for a monitoring visit. Since May 2005 HM Treasury and the OGC have been taking part in the Administrative Burdens Reduction project carried out by PricewaterhouseCoopers and coordinated by the Better Regulation Executive. This research produced a unit administration cost of £91 for the preparation of an assurance visit under the Money Laundering Regulations 2003, while the Government has assumed that 8 hours per year will be the time taken for time taken to fill out registration or annual return forms. Combining these costs across all firms generates to a total estimate of between £8 and 14 million.

One can also consider that as monitoring would increase compliance with the Regulations, there would also be costs on firms that do not already have measures such as know your customer or record keeping measures in place. The previous RIA assumed that compliance would increase by 1-5%.

The benefits of this option is that it meets the objectives behind the requirements of the FATF and Third Money Laundering Directive; increasing compliance with anti-money laundering measures and ensuring that firms are applying the preventative measures, and reporting suspicions. As supervisors will not only be able to monitor compliance but also take enforcement action (e.g. through issuing fines) against those that are seriously non compliant, this will also to ensure that we deter, detect and disrupt money laundering and terrorist financing.
Costs and benefits of option 3

B.125 The costs of this option are the cost of a fuller monitoring regime. There are no obvious models of this but features such as relationship managers and full transaction monitoring are examples. Assuming that a doubling of monitoring activity would double the costs to individual firms then, using the same assumptions as above that there are on average two premises per firm then a total cost would be around £32.50 million. In addition, administration costs would also be likely to double leading to an administration cost of £16.28 million.

B.126 The benefits of this approach could be an increase in compliance. However, this increase in compliance would be achieved at disproportionate cost.

Small firms impact test

B.127 All sectors affected by the monitoring requirements have a large proportion of small firms. Given this, and the costs involved, specific working groups have been held and the Small Business Service has been consulted.

B.128 The competent authorities that will take on the role of monitoring have direct power over the fees. The Government intends to work closely with the supervisors to ensure that the fees were proportionate and take into account the size or turnover of firms.

Competition Assessment

B.129 The market affected by this measure is very large and it is unlikely that one firm will have a share above 10%.

B.130 In both options 2 and 3 it is unlikely that the costs would put off new firms from considering entering the market, although this may become a concern for small firms if the fees rise significantly.

Consultation responses and conclusion

B.131 A large majority of consultation responses supported option 2. The Government has therefore proposed draft Regulations for supervisors that enable them to undertake this function. These Regulations are in part 4 of the Money Laundering Regulations.

Fit and proper test for trust and company service providers and money service businesses

B.132 The Third Money Laundering Directive requires the registration of casinos, money service businesses and trust and company service providers and the application of a fit and proper test as a precondition of registration. The Directive does not give any direction as to what that test should include but states that at a minimum the supervisor should be assured that the firm is not run for criminal purposes. The Gambling Commission already meets these requirements for casinos7. This section will therefore consider the costs and benefits for the different options for a fit and proper test for trust and company service providers and money service businesses. It updates the previous RIA.

7 Although the Gambling Commission does not cover Northern Ireland. Casinos are prevented by law in Northern Ireland which therefore means that there are no casinos that need to be subject to a fit and proper test.
Sectors Affected

B.133 Quantifying the number of trust and company service providers that are not already professional accountants or lawyers or authorised by the FSA is challenging as there is no existing register or academic estimates. For the purposes of this RIA the Government is using an estimate of 5000 firms. Consultation respondents have stated that this is broadly correct.

B.134 HMRC have registered 3,200 money service business firms.

Options

B.135 There are three broad options to consider:

B.136 Option 1: no fit and proper test for trust and company service providers and money service businesses. The Government could choose to not implement the requirement of the Third Money Laundering Directive on this point. This is the do nothing option.

B.137 Option 2: a targeted fit and proper test, for the purposes of prevention of money laundering and terrorist financing

B.138 Option 3: a fuller fit and proper test taking in prudential, capital adequacy and competency requirements.

Discussion and risks

B.139 This measure will help to prevent trust and company service providers and money service businesses, knowingly or unknowingly being complicit with criminals who wish to exploit their services to launder money or finance terrorism.

B.140 The previous consultation document considered there to be two main types of test—one based on negative criteria (option 2), the other based on a positive, holistic assessment (option 3).

B.141 The UK could opt for a test based on basic negative criteria. Under the negative criteria approach, the test would be failed if the applicant met certain criteria. The alternative is some form of positive, holistic assessment. This would involve the design of a test capable of establishing a more comprehensive account of an individual’s propriety.

Costs and benefits of option 1

B.142 The direct costs of option 1 would be minimal. It would equal the cost of monitoring without a fit and proper test highlighted in the section above.

B.143 The indirect costs would be the costs of not meeting the objectives for a fit and proper test for trust and company service providers and money service businesses. The Government could also be subject to infraction proceedings and marked down in future evaluations on our domestic anti-money laundering and counter-terrorism financing regime, with resulting reputation effects to both firms and the regime.

B.144 The benefits would be limited additional costs to the sector.
Costs and benefits of option 2

B.145 The costs of this measure will fall largely to the named supervisory body, the sector and consumers.

B.146 The supervisor will have to operate what will essentially be a licensing scheme for the sector. As discussed in the previous consultation document, the integrity of the scheme will need to be supported by a mechanism to remove the licenses of those found to be “unfit or improper” according to the criteria; and measures to “police the perimeter” to ensure that unlicensed traders are not operating.

B.147 There will be a number of implementation costs for the supervisor which would need to be reflected in fees charged to the sectors. It is likely that the fit and proper tests could be conducted in full when it is introduced and supplemented by a signed annual declaration from traders that their circumstances had not changed since the original application. For many businesses that have one person in charge or a small group of owners / directors who remain in post for a long period the cost will be minimal. For businesses with more frequent changes of responsible personnel there will be an ongoing cost in maintaining their fit and proper status. Regular random sampling to ensure the validity of declarations could support this system. Such a scheme would mean that the costs of the fit and proper test would largely be borne upfront for the majority of businesses, with much smaller recurring costs thereafter.

B.148 Preliminary estimates for option could be up to £5million. This would include the cost of creating the capacity and infrastructure to deliver the fit and proper tests. Administrative decisions on how these costs will be met will be made by the supervising body but as the majority of these start up costs will be translated into fees initial expectations are for them to be recovered gradually over time. Preliminary work is under way to estimate the cost of the test based on the likely number of businesses and the number of individuals within each business that will be liable to the test.

B.149 The Government has also looked at administrative costs of filling in information on fitness and propriety. It has estimated that this take firms an additional 8 hours per year. This would result in a cost of between an additional £60 -£150 per firm depending on labour costs. Resulting in a total administrative cost of £1m.

B.150 The benefits of a negative criteria approach would be offering important new safeguards to exclude clearly inappropriate persons (such as convictions for money laundering) from positions in money service businesses and trust and company service providers where they might abuse their role as gatekeepers to the financial system. Option 2 will also provide a number of collateral benefits including:

- Reduced risk of money laundering and terrorist financing through the sector;
- Reputational benefits—relating to Money Laundering Regulations compliance—for those who gain permission to operate;
- Improved competition in the sector, through the removal of those gaining a competitive advantage through criminal activity;
- Reduced risk to consumers from criminal abuse.

B.151 A risk of this negative criteria is that does not include the option for a more holistic assessment, or indeed other intelligence relating to money laundering or terrorist financing not specifically captured by the list of tests, such as if there was a criminal offence committed abroad.
Costs and benefits of option 3

B.152 The previous RIA looked at general FSA supervision of financial services and the Jersey Financial Services Authority supervision of trust and company service providers as a full model of authorisation (option 3). It estimated that costs could be up to £4000 per firm if a fuller fit and proper and supervision regime looked at prudential indicators of competency indicators. This is likely to be the very maximum estimate. Administrative costs under option 3 would also be significantly higher. An estimate of administrative costs is double that of option 2, leading to a total of £2m.

B.153 A more ‘holistic’ fit and proper test (option 3) would provide stronger reassurances that money service businesses and trust and company service providers licences were denied to those who lacked sufficient honesty, integrity, reputation, competence and capability to undertake their MLR obligations. It would have greater scope for more rounded judgements to be made by the regulator and for stronger reassurances to be given about those individuals occupying positions of influence in firms.

Small firms impact test

B.154 It is likely that there will be small firms who act as trust and company service providers. Given the impact of this measure and the potential costs to firms the Government has held a specific working group the on fit and proper test for trust and company service provider, and has consulted with the Small Business Service.

B.155 Almost all money service businesses can be categorised as small businesses. Concerned about this impact, we have from the outset been engaged in discussions with the Small Business Service, and with HMRC—responsible for supervising MSBs—to gain a deeper understanding of the implications of these options on the sector. The Government has held a series of meetings with representative bodies and pre consultation events to get preliminary feedback on our options. Such informal consultations have led us to a recommendation of option 2 to use a more limited negative set of criteria over option 3, a more holistic approach.

B.156 As with the monitoring requirements, it is in the power of the competent authority named as supervisor to structure fees to take account of different size firms.

Competition assessment

B.157 Trust and Company Service Providers are a small but diverse sector. In the sub sector of company formation agents it is known that 10 firms have over 50% of the share for company formations.

B.158 The UK MSB market is fairly concentrated, with the biggest firm controlling 51% of premises, and the top three firms controlling 66% of all premises. The rest of the market is largely made up of small firms—often sole premises. It follows from this that where regulatory burdens come with additional costs for firms in the sector, the large firms will be better positioned to absorb these costs than their smaller competitors.

B.159 The competition effects of option 3 would be significant. The costs of full prudential authorisation and supervision would prevent firms entering the market and could remove smaller firms.

B.160 We believe, however, that the impact of option 2 on the competitiveness of this sector will be minimal for the following reasons:
The small firms impact test revealed that small firms are largely welcoming of the proposals—no firms expressed the concern that the proposals might put them out of business—indicating that the proposals are unlikely to affect the market structure;

The proposals themselves are designed to level the playing field for firms, working to improve competition in the sector.

Consultation responses and conclusions

B.161 The consultation document proposed a set of negative criteria (option 2) rather than a more holistic list (3). While some of the responses favored this approach others preferred a more holistic test. One criterion felt necessary was the ability of the supervisor to take account of other specific intelligence related to but not included in the listed tests, such as if there was information that a person had committed a relevant offence overseas.

B.162 The Government continues to favour a more limited test but is persuaded of the need to ensure some specific additional intelligence can be taken into account in determining fitness and propriety. It therefore proposes that the test should also include a 'catch all’ to include other intelligence related to the listed tests, such as information on equivalent criminal offences convicted abroad. However, this catch all is limited to information that would show the person is “otherwise not fit or proper...with regard to the risk of money laundering or terrorist financing”. Regulation 22 includes the test for those persons that will be supervised by HMRC.

Other new measures in the Third Money Laundering Directive

Enhanced Customer Due Diligence for Politically Exposed Persons (PEPs)

B.163 As previously mentioned, the RIA for the Third Directive considered the total costs for implementing the Directive as a whole. It summarised that the main costs (other than those outlined above) were for the more specific customer due diligence measures, in particular the enhanced due diligence for PEPs.

B.164 It was estimated that this would effect potentially up to 50% of all sectors, except credit and financial institutions who, informal consultations have shown already largely implement through implementing the Joint Money Laundering Steering Group guidance.

B.165 Given that many firms are implementing a risk based approach it is possible that they will not have any additional costs as they will already be treating foreign clients or clients with politically exposed occupation as higher risk. Therefore the cost was given as a range with a minimum of £1-2m across all firms for familiarisation only

B.166 The previous RIA estimated that if enhanced due diligence could take up to 20min per week extra the costs would be between £160 and £450 per firm per year depending on labour costs
Using the updated sector information we can estimate the total cost. Using the same assumptions as in the previous RIA (i.e. that only the larger firms, approx 50% of the sector would potentially have a PEP as a customer and 5% non regulated financial institutions may not have taken into account the sectoral guidance on PEPs, the total cost would be around £19m.

**Consultation responses and conclusion**

A number of consultation responses claimed the costs of implementing the PEPs requirement would not only take labour time but costs of software and ongoing costs of running searches. To take account of this, this updated RIA includes an additional £2m capital cost.

**Other costs as mentioned in the RIA published on the Third Directive**

All other changes to the Directive were estimated as minimal costs. Leading to a total of £1-2m for familiarisation costs.

A few consultation responses to the previous RIA noted that there may be some costs in identifying and verifying beneficial ownership. While the Government does not agree that they would be significant, it will take account of these responses by adding £2m to the familiarisation costs. The Government did not receive any other responses that significantly alter our perception. The Government continues to welcome, however, your views on the assumptions in this RIA.

**Headline Costs**

The above sections have gone into detail on the costs and savings where the information is available. In summary the headline figures are the following:
## Policy costs

<table>
<thead>
<tr>
<th>Policy</th>
<th>Option 1 costs and savings</th>
<th>Option 2 costs and savings</th>
<th>Option 3 costs and savings</th>
</tr>
</thead>
<tbody>
<tr>
<td>Financial activity on an occasional and limited basis</td>
<td>No change to current system</td>
<td>Take advantage of the derogations. Up to £600,000</td>
<td>No third option</td>
</tr>
<tr>
<td>Identification policy for casinos</td>
<td>Identification on entry, no change to current system. Significant costs to larger casinos with large customer base</td>
<td>Identification when gamble over a threshold.</td>
<td>Choice of when to identify customers.</td>
</tr>
<tr>
<td>Simplified due diligence</td>
<td>Do not take advantage of the derogations. Minimal costs</td>
<td>Take advantage of the derogations. Approx £3million savings</td>
<td>Take advantage of some of the derogations. Between £0-3million in savings</td>
</tr>
<tr>
<td>Reliance</td>
<td>Minimal costs</td>
<td>Up to £11-17million in savings</td>
<td>Less than £11-17million in savings</td>
</tr>
<tr>
<td>Record Keeping</td>
<td>Minimal costs</td>
<td>Up to £10-14million in savings</td>
<td>No third option</td>
</tr>
<tr>
<td>Monitoring requirements</td>
<td>Minimal costs</td>
<td>£16-25million</td>
<td>£32-50million</td>
</tr>
<tr>
<td>Fit and proper test for trust and company service providers</td>
<td>Minimal costs</td>
<td>£5million</td>
<td>Up to £20million</td>
</tr>
<tr>
<td>Enhanced due diligence</td>
<td>No options over implementation. Cost estimated between £2-20m</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Compliance/familiarisation costs</td>
<td>Estimated at 2-4m</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
**Administration costs**

<table>
<thead>
<tr>
<th>Policy</th>
<th>Option 1 costs and savings</th>
<th>Option 2 costs and savings</th>
<th>Option 3 costs and savings</th>
</tr>
</thead>
<tbody>
<tr>
<td>Monitoring requirements</td>
<td>Minimal costs</td>
<td>£8-14m costs</td>
<td>£16-28m costs</td>
</tr>
<tr>
<td>Fit and proper requirements</td>
<td>Minimal costs</td>
<td>£1m</td>
<td>£2m</td>
</tr>
</tbody>
</table>

**B.172** The Government’s preferred options total £30-54million policy and £9-15million in administration costs for implementing the Directive. If other options were followed this cost could rise to £94million policy and £30 million in administration. The total potential savings in implementing the Directive are estimated at up to £25-35million per year over time.

**Enforcement and Sanctions**

**B.173** The measures discussed above will be implemented by a new set of Regulations.

**B.174** The monitoring of such measures is explicitly discussed in the sections above.

**B.175** The sanctions would be whatever sanction the supervisors choose for general non-compliance (for example administrative penalties) plus the fact that any non-compliance with the Regulations is a criminal offence and money laundering and terrorist financing are themselves criminal offences.

**Simplification measures**

**B.176** As outlined above, implementing the Government preferred options will cost around £43-54million (rising up to over £90million if other options are followed) with up to between £9 and 15million in administration costs arising from new monitoring requirements. The Directive itself also includes a number of simplification measures such as the simplified due diligence and reliance provisions.

**B.177** Following consultation with stakeholders the Government has also proposed to simplify record keeping requirements to make them in line with the requirements of the Directive. This RIA estimates these savings as up to £24-34million in total.

**B.178** The Government has been considering what further simplification measures can be achieved in anti-money laundering and counter-terrorist financing policy. As well as taking advantage of legal simplifications, the Government and its agencies has worked with industry to ensure that implementation is also in line with the better regulation agenda. Such partnership has produced fruitful results such as the publication of the JMLSG guidance, which promotes a more risk-based approach to implementation and the revision of the FSA money laundering handbook, which removes much of the previous prescription. Further the Money Laundering Advisory Committee is considering how to simplify implementation of identification requirements across all sectors, building on the work the FSA.
B.179 Benefits from the simplification measures are difficult to cost as they are only just being implemented. Across all of the sectors, however, we estimate the benefits adding up to approximately £10 -15million over 5 years.

B.180 Further the Third Directive, for the first time promotes in legislation a risk based approach to both the customer due diligence measures and the monitoring requirements. This over time should produce cost efficiencies in terms of firms and supervisors targeting their resources at areas of higher risk and away from areas of lower risk.

B.181 The Government will continue to work with industry to identify further simplification measures and would welcome any further suggestions to be included in firms’ responses to this consultation.

POST IMPLEMENTATION REVIEW

B.182 The Government has committed to a post implementation review of the Regulations to establish whether implemented Regulations are having the intended effect and whether they are implementing policy objectives efficiently. It will consider whether any further simplifications can be made, in particular with regard the monitoring regime, to minimise the policy and administrative compliance burdens. It will also consider whether the penalties regime is appropriate and proportionate in the context of the recommendations of the Macrory Review of Regulatory Penalties, accepted in full by the Government in November 2006. This review will be completed by December 2009.