

BAR STANDARDS BOARD

REGULATING BARRISTERS

Response to HM Treasury consultation

Amendments to the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 - Statutory Instrument 2022

We have responded only to the questions that are relevant to the Bar Standards Board.

Chapter 3: Clarificatory changes to strengthen supervision

Suspicious Activity Reports (SARs)

13. In your view, is access by AML/CTF supervisors to the content of the SARs of their supervised population necessary for the performance of their supervisory functions? If so, which functions and why?
14. In your view, is regulation 66 sufficient to allow supervisors to access the contents of SARs to the extent they find useful for the performance of their functions?
15. In your view, would allowing AML CTF supervisors access to the content of SARS help support their supervisory functions? If so, which functions and why?
16. Do you agree with the proposed approach of introducing an explicit legal power in the MLRs to allow supervisors to access and view the content of the SARs submitted by their supervised population where it supports the performance of their supervisory functions under the MLRs (in the event a view is taken that a power doesn't currently exist)?
17. In your view, what impacts would the proposed change present for both supervisors and their supervised populations, in terms of costs and wider impacts? Please provide evidence where possible.
18. Are there any concerns you have regarding AML/CTF supervisors accessing and viewing the content of their supervised populations SARs? If so, what mitigations might be put in place to address these? Please provide suggestions of potential mitigations if applicable.

BSB response

The National Crime Agency (NCA) has worked with some of the Professional Body Supervisors to educate relevant persons about how to submit a “good quality” SAR, where the NCA has identified problems. The BSB has approached the NCA to find out whether there are any concerns about either the number or quality of SARs submitted by those we supervise. So far, we have not had any feedback, but welcome any information that the NCA is able to provide us.

The Legal Services Act requires us to regulate in a way that is transparent, accountable, proportionate, consistent and targeted. We also have a statutory responsibility under the Regulators' Code to base our regulatory activities on risk, taking an evidence-based approach to determining the priority risks, and allocating our resources where we think they would be most effective in addressing those priority risks. Any work that we do in this area would therefore need to be targeted at an identified problem so that it does not distract resources that are better deployed to higher risk activity. We would hope that the new IT system will help to improve quality, with a more user-friendly interface and an ability to identify specific relevant persons that are submitting poor quality SARs or failing to submit SARs.

We are unclear what the concerns about quality are. If there is a failure to complete a glossary code, that is relatively straightforward to remedy. However, if there is concern about the qualitative information provided, we will potentially be getting into a debate about the merit of the SAR. Judgment about a suspicion, and the responsibility for submitting a SAR, must remain with the relevant person.

Most barristers are self-employed and, because of the nature of their work (which is often out of scope of the Regulations) do not submit many SARs. It is difficult to draw meaningful conclusions about quality in relation to individuals who may submit one SAR every few years.

If there is an evidence-based requirement for us to look at SARs, it would be helpful to make an explicit statement that we have the power to do so, since they contain potentially highly sensitive information.

Chapter 4: Expanded requirements to strengthen the regime

Proliferation financing

25. Do you agree with the proposal to use the FATF definition of proliferation financing as the basis for the definition in the MLRs?
26. In your view, what impacts would the requirement to consider PF risks have on relevant persons, both in terms of costs and wider impacts? Please provide evidence where possible.
27. Do relevant persons already consider PF risks when conducting ML and TF risk assessments?

28. In your view, what impact would this requirement have on the CDD obligations of relevant persons? Would relevant persons consider CDD to be covered by the obligation to understand and take effective action to mitigate PF risks.
29. In your view, what would be the role of supervisory authorities in ensuring that relevant persons are assessing PF risks and taking effective mitigating action? Would new powers be required?
30. In your view, does the proposed drafting for this amendment in Annex D adequately cover the intention of this change as set out? Please explain your reasons.

BSB response

We recognise that the intention is to align with the Financial Action Task Force standards. The National Risk Assessment identifies financial services (particularly the banking and insurance sectors) and company formation as the areas most at risk. In relation to the Bar, the two key risk areas would seem to be Trust or Company Service Provider (TSCP) activity (which is very limited within the profession) and ensuring policies and processes are in place to prevent sanctions breaches, which are covered as part of our Supervision programme.

Formation of limited partnerships

Extension of the terms 'Trust or Company Service Provider' and 'business relationship'

31. Do you agree that Regulation 12(2)(a) should be amended to include all forms of business arrangement which are required to register with Companies House, including LPs which are registered in England and Wales or Northern Ireland?
32. Do you consider there to be any unintended consequences of making this change in the way described? Please explain your reasons
33. In your view, what impact would this amendment have on TCSPs, both in terms of costs and wider impacts? Please provide evidence where possible.
34. In your view, what impact would this amendment have on business arrangements, including LPs which are registered in England and Wales or Northern Ireland, both in terms of costs and wider impacts? Please provide evidence where possible

BSB response

This change appears to be logical and clarification is helpful. We supervise very few TCSPs and those that we do supervise are very small. The bigger risk is those registering directly with Companies House where no such controls are exerted.

Extension of the term "business relationship" for services provided by TCSPs

35. Do you agree that Regulation 4(2) should be amended so that the term "business relationship" includes a relationship where a TCSP is asked to form any form of business arrangement which is required to register with Companies House?
36. Do you agree that Regulation 4(2) should be amended so that the term "business relationship" includes a relationship where a TCSP is acting or arranging for another person to act as those listed in Regulation 12(2)(b) and (d)?

37. Do you agree that the one-off appointment of a limited partner should not constitute a business relationship?
38. Do you consider there to be any unintended consequences of making these changes? Please explain your reasons.
39. In your view, what impact would this amendment have on TCSPs, both in terms of costs and wider impacts? Please provide evidence where possible.
40. In your view, what impact would this amendment have on business arrangements, including LPs which are registered in England and Wales or Northern Ireland, both in terms of costs and wider impacts? Please provide evidence where possible.

BSB response

This change appears to be logical and clarification is helpful. We supervise very few TCSPs and those that we do supervise are very small. The bigger risk is those registering directly with Companies House where no such controls are exerted.

Reporting of discrepancies: Expansion of Regulation 30A to introduce an ongoing requirement to report discrepancies in beneficial ownership information

41. Do you agree that the obligation to report discrepancies in beneficial ownership should be ongoing, so that there is a duty to report any discrepancy of which the relevant person becomes aware, or should reasonably have become aware of? Please provide views and reasons for your answer.
42. Do you consider there to be any unintended consequences of making this change? Please explain your reasons.
43. Do you have any other suggestions for how such discrepancies can otherwise be identified and resolved?
44. In your view, given this change would affect all relevant persons under the MLRs, what impact would this change have, both in terms of costs and benefits to businesses and wider impacts?

BSB response

This appears reasonable but the government needs to be careful not to place too great an obligation on relevant persons by including the requirement “or should reasonably have become aware of”. We think that, instead, the focus should be on the reform of controls at Companies House.

We would also question the assumption in the consultation that “minor discrepancies in spellings of names” are unimportant.

Chapter 5: Information Sharing & Gathering

45. Would it be appropriate to add BEIS to the list of relevant authorities for the purposes of Regulation 52?
46. Are there any other authorities which would benefit from the intelligence and information sharing gateway provided by Regulation 52? Please explain your reasons.
47. In your view, should the Regulation 52 gateway be expanded to allow for reciprocal protected sharing from other relevant authorities to supervisors, where it supports their functions under the MLRs?
48. In your view, what (if any) impact would the expansion of Regulation 52 have on relevant persons, both in terms of costs and wider impacts? Please provide evidence where possible.
49. In your view, what (if any) impact would the expansion of Regulation 52 have on supervisory authorities, both in terms of the costs and wider impacts of widening their supervisory powers? Please provide evidence where possible.
50. Is the sharing power under regulation 52A(6) currently used and for what purpose? Is it felt to be helpful or necessary for the purpose of fulfilling functions under the MLRs or otherwise and why?

BSB response

In line with our responses elsewhere in this consultation and the Call for Evidence, we welcome changes that enable Companies House to be brought fully into the AML/CTF regime.

We receive very little intelligence from law enforcement. If the reasons for this are the barriers described in the consultation document, then it is appropriate to amend the MLRs to create a level playing field in the sharing of information and intelligence.

We think there is currently some confusion arising from the wording of Regulation 52A(6) and clarification is welcome.

Bar Standards Board
14 October 2021