

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

A consultation issued by HM Treasury (HMT)

Comments from ACCA

14 October 2021

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GENERAL COMMENTS

ACCA is a Professional Body Supervisor (**PBS**) for anti-money laundering (**AML**) in the UK. We welcome the opportunity to provide views on the government's approach and plans for amending the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (**MLRs**). Our response to this consultation has been informed by input obtained from our supervised population and discussions with other accountancy PBSs.

ACCA fully supports the development of an effective UK AML regime that provides confidence in the UK as a safe, transparent and compliant jurisdiction to conduct business in. We believe that a robust and effective framework to tackle economic crime will help improve and facilitate further commercial activity for businesses in the UK.

We are generally supportive of the proposed changes to the MLRs to ensure that the legislation remains proportionate and effective. For example, we welcome the inclusion of specific legal requirements in relation to Suspicious Activity Reports (**SARs**) will enable supervisors to enhance the performance of their supervisory functions.

However, we have identified some areas of concern and these are highlighted in our responses to the questions raised where appropriate. In particular, we have concerns about potential amendments in relation to SARs and the reporting of discrepancies that may have unintended consequences and create additional burdens on supervisors, supervised populations and other agencies. We would therefore encourage HMT and the government to engage in further conversations and work to provide clarity on expectations and areas of concern, identify practical solutions, and ensure a consistent approach across the PBSs.

As an AML supervisor, we do not believe it is appropriate for ACCA to comment on specific aspects of the consultation that are not relevant to PBSs. For that reason, we have no further comments to make in respect of questions 1 to 12, 19 to 24, and 48 to 63.



AREAS FOR SPECIFIC COMMENT

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?

ACCA agrees that access for AML/CTF supervisors to the SARs of their supervised population is necessary.

We believe that the review of SARs submitted by a PBS's supervised population forms a key part of the overall supervisory activities conducted by a supervisor. It allows supervisors to assess a number of factors including how quickly the Money Laundering Reporting Officer (**MLRO**) of the firm makes reports to the authorities after receiving an internal report and the quality of the SAR ie is it clear and well written to articulate the suspicion to law enforcement, have the relevant glossary codes been used and are all the involved parties included?

The identification of suspicious activity and subsequent filing of a clear, good quality SAR is the output of all the controls and frameworks that a firm puts in place. By checking a firm has identified suspicious activity, supervisors can ensure that the MLRO is able to meet the obligation to report and is also able to articulate the suspicion and file meaningful SARs. This will help with the overall assessment of the firm's compliance with the regulations.

The accountancy sector has been highlighted for a perceived low level of SAR reporting when compared to other sectors such as banks. However, despite numerous requests to law enforcement agencies, we continue to have no meaningful feedback on the quality of the sector's SARs. ACCA believes that by checking our supervised population's SARs as part of our supervisory activities we will be able to understand more about the quality of SARs and identify issues of concern.

In addition, we see an added benefit that if we identify trends or risks in the SARs we review, it will allow us to factor them into our supervisory activity / framework, or use them to inform educational tools for our supervised population such as technical factsheets or articles.



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?

ACCA believes that if the expectation and intention of the Regulation is for AML supervisors to request SARs then the Regulation should be clearly written to include a reference to SARs as being something that a supervised firm must provide upon request to a supervisor. This will remove any uncertainty and make it explicitly clear to those supervised that it is a requirement to provide SARs.

Throughout our AML compliance reviews we have found the majority of firms are content to supply their SARs. However, we have encountered occasions where we have had to enter into dialogue to justify why it is not a breach of General Data Protection Regulation (**GDPR**) for the firm and why, as the AML Supervisor of that firm, they can provide the SARs to us.

Regulation 66 currently gives us a broad right to require the supervised firm to provide information and documents that a supervisor requests as part of its monitoring activities. We believe that the inclusion of an explicit, clearly written, reference to SARs in the Regulation will provide clarity to supervisors and the supervised population.

Some AML supervisors may have previously been reluctant to review SARs due to concerns this may amount to 'Tipping Off'. This may mean some firms who are supervised by those supervisors will not have their SARs reviewed as part of the AML monitoring activities and this could result in an inconsistent approach across the AML supervised population. An explicit reference to SARs within Regulation 66 will alleviate these concerns and promote a consistent approach amongst AML supervisors.

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?

ACCA believes it would be helpful and our responses to questions 13 and 14 above provide our views on this matter. ACCA considers that it would enable us to assess the end-to-end process within our supervised firms to ensure that they are reporting suspicions in a clear manner to the relevant authorities.

In our view, when making any amendments to the Regulation care should be taken to ensure there is not an unintended consequence where an AML supervisor is expected to review **every** SAR submitted by the firms it supervises. This could lead to AML supervisors becoming an education function to provide feedback solely on SARs and this would take away resource from

monitoring the firms' compliance with the MLRs. The review of SARs should always be an activity that forms part of the wider AML monitoring activities.

16. Do you agree with the proposed approach of introducing an explicit legal requirement 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)?

ACCA is supportive of proposals that bring a clear and consistent approach to the reviewing of SARs. We believe that all requirements in the MLRs should be clearly written and reflect exactly what is intended and required to avoid any unintended consequences or misinterpretation. This would also guard against regulatory arbitrage. Regulation 66 should clearly state that an AML supervisor has the right to access SARs from its supervised firms where it considers it necessary to fulfil its supervisory activities.

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.

AML supervisors will need to factor the review of SARs into their overall methodology and framework. If they are not already doing this activity, there may be a resource impact as they will need to factor in this task both during and after the reviews.

AML supervisors will also need to assess the mechanism for how they receive and store the SARs from the supervised firm, and give consideration to the types of monitoring review and firm risk profile they will request the SARs from.

ACCA is keen to ensure that the ongoing work being conducted in respect of SARs reform is aligned with this requirement. For example, will there be consideration of system developments so AML supervisors can access information on SARs filed by their populations directly and securely?

Consideration should also be given to the wider impact on data retention. Will supervisors be expected to retain copies of what we check if we are to take disciplinary / remediation action for a poor quality SAR so we have evidence? How does this fit with confidentiality?

ACCA would welcome further discussions on the expectation on an AML supervisor when a poor quality SAR is identified. Whilst an AML supervisor can consider disciplinary action against a firm, is there an expectation for the AML supervisor to re-submit the SAR or require the firm to re-submit? Additional clarity would be welcome in respect of expectations for the AML supervisor to produce a separate regular report of poor SARs to the UK Financial Intelligence Unit (**UKFIU**) detailing what we have done for each. We would also welcome clarity on whether there is an expectation that AML supervisors will produce a report on metrics of quality of SARs for other parties. AML supervisors would need to assess the impact of these proposed changes on their supervisory activities, in terms of resource, cost and added value.

ACCA feels this area would benefit from further discussion to understand if the UKFIU will also provide feedback to supervisors when they see perceived poor quality SARs submitted by the firms. This would enhance our own work and help us understand what work conducted by the UKFIU could complement the work of an AML supervisor.

Supervised firms submit SARs and should be retaining copies currently so there should not be an additional cost or resource requirement on them.

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 can be put in place to address these? Please provide suggestions of potential mitigations if applicable.

ACCA is concerned that the current system restraints within the SARs Online reporting platform could cause issues. For example, if a firm has not saved a PDF of the SAR prior to clicking the submit button then there is no way to see the content of it. Once a SAR is submitted it cannot be retrieved. ACCA feels further discussion on this issue would be of benefit to understand how this will be resolved and what the expectation of the supervisor would be in these cases.

Consistency on how AML supervisors assess SARs will be vital. AML supervisors will need the same training and guidance so that they are all checking SARs to the same standard and have a consistent approach for any findings and action taken where a firm falls below that standard. The current materials available do not provide a level of detail that will achieve this and help an AML supervisor understand the parameters that the UKFIU use to judge quality.

During ACCA's compliance reviews some firms have expressed concerns about the provision of copies of SARs that we have requested. For example, they may incorrectly think GDPR is an issue or believe that, as SARs are confidential, the MLRO is not permitted to share them. Any

requirements would need to be clearly and explicitly written so everyone has a clear reference point in the MLRs to refer to in these situations.

ACCA would like clarity on the expectations on the AML supervisors and to understand if the requirement will develop into an expectation that supervisors should review every SAR submitted by a firm as this will have an impact on resources and would not be proportionate. In our opinion, a sample check using our methodology would be more appropriate and could be used in conjunction with better cooperation and information sharing by the UKFIU.

ACCA believes that the UKFIU has an important role to play in driving up SAR quality. Currently the level of feedback the UKFIU provides on SAR quality to AML supervisors is extremely low. There is a role for the UKFIU to play in establishing an effective, meaningful feedback loop on all SARs. The UKFIU has made positive progress in delivering webinars and podcasts. However, we would welcome improvements in sharing quality issues with supervisors.

Proliferation Financing Risk Assessment

25. Do you agree with the proposal to use the FATF definition of proliferation financing as the basis for the definition in the MLRs?

ACCA agrees that it would be sensible to follow the Financial Action Task Force (**FATF**) definition. However, we note that the UK government published a Proliferation Financing National Risk Assessment (**NRA**) on 23 September 2021.

ACCA believes that further discussions should be held on this subject once all relevant parties have been able to review and understand the impacts of the findings detailed in the NRA. We will then be in a position to provide an informed and considered response to this question (and subsequent questions) on how it will impact ACCA and our supervised population.

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.

See Q25.



27. Do relevant persons already consider PF risks when conducting ML and TF risk assessments?

See Q25.

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.

See Q25.

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?

See Q25.

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.

See Q25.

Formation of Limited Partnerships

Extension of the application of the term TCSP to cover all forms of business arrangement (that are registered with Companies House)

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?

ACCA agrees with the proposed amendment.

32. Do you consider there to be any unintended consequences of making this change in the way described? Please explain your reasons

ACCA has not identified any immediate unintended consequences.

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.

ACCA believes that any amendments should not place unnecessary financial or administrative burdens onto firms. However, our initial view is that this amendment would have minimal impact (for both costs and administratively) on most of our supervised firms as the changes will extend controls they should already have in place.

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.

ACCA believes that any amendments should not place unnecessary financial or administrative burdens onto firms. However, our initial view is that this amendment would have minimal impact (for both costs and administratively) on most of our supervised firms as the changes will extend controls they should already have in place.

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?

ACCA agrees with the proposed amendment.

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)?

ACCA agrees with the proposed amendment.

37. Do you agree that the one-off appointment of a limited partner should not constitute a business relationship?

ACCA broadly agrees. However, we feel that this subject warrants a further discussion with the AML supervisors.

The intention of the Regulations is to drive transparency and prevent criminals from exploiting loopholes in the system. We are concerned if we do not treat it as a business relationship there is potential for exploitation by criminals. Therefore, ACCA would welcome further debate on this issue to understand the government's assessment of the risks involved with this proposal and ensure potential loopholes in the legislation are addressed at the earliest opportunity.

38. Do you consider there to be any unintended consequences of making these changes? Please explain your reasons.

ACCA has not identified any unintended consequences at this time and supports enhancements to transparency.

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.

ACCA believes that any amendments should not place unnecessary financial or administrative burdens onto firms. However, our initial view is that this amendment would have minimal impact on most of our supervised firms as the changes will extend controls they should already have in place.

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.

ACCA believes that any amendments should not place unnecessary financial or administrative burdens onto firms. However, our initial view is that this amendment would have minimal impact on most of our supervised firms as the changes will extend controls they should already have in place.

Reporting of Discrepancies

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.

ACCA believes that this is an area that would benefit from a wider discussion. Whilst ACCA recognises the intention of this requirement, we are concerned about the unintended consequences and the potential to add a significant burden for firms.

It is presently unclear what the impact of the 35,000 reports made to Companies House to date has been. ACCA believes that if the government is now looking to widen a requirement it would be beneficial to understand the impact of the current provisions.

ACCA believes that the requirement needs to be clearly written. We are currently unsure if the intention of the change is to place a mandatory requirement on the supervised population to periodically check that ownership matches, or to undertake this check as part of the client engagement process. Furthermore, is it the intention that this requirement should form part of a firm's ongoing monitoring process and be incorporated into their risk-based approach and checks, dependent of the risk profile of the client. In addition, there needs to be clarity on the timelines for reporting as well as consideration given to a period of grace to allow the client to resolve any discrepancies so that a report is not required.

ACCA believes that regardless of the intention, the proposed change will have an impact on the supervised population and has the potential to add a huge administrative burden, both in time and cost.

ACCA has noted that the consultation states that one third of the 35,000 reports received to date have proved not to be valid. This represents a large number and that will require resource for the firms submitting and Companies House to process. In addition, it is not clear if, and when, feedback was provided to the submitter on invalid reports to prevent a recurrence.

ACCA is concerned that if the reporting scope is widened this will result in more referrals and Companies House will need to find additional resource to handle the reports in a timely manner.

**42. Do you consider there to be any unintended consequences of making this change?
Please explain your reasons.**

In our view the change could create a significant administrative burden for firms who will be required to check all clients and make a report. It would also result in an increased administrative burden for Companies House who could see a major increase in the reports they receive.

ACCA believes that it would be helpful to understand the views of Companies House on the benefits arising from the submission of reports on discrepancies in beneficial ownership and the impact on preventing economic crime.

In addition, ACCA would welcome clarity on the expectations of AML supervisors when we identify any situations where reports have not been made by firms so that there is a consistent approach. For example, will AML supervisors be expected to raise a remediation issue in a report or take forward disciplinary proceedings? If a requirement is placed in the Regulations, we need to be clear on the consequences of non-compliance. If the expectation is that a supervisor will take disciplinary action, a clear requirement should be included in the MLRs so that AML supervisors can take enforcement action. In our opinion, disciplinary action should not be the default option for every case as it may not be a proportionate response. Therefore, AML supervisors should have the flexibility to consider any regulatory and disciplinary action that is proportionate and in line with a risk-based approach to monitoring.

43. Do you have any other suggestions for how such discrepancies can otherwise be identified and resolved?

ACCA would welcome further discussions on this issue as we believe the case for change is not clearly made. It would be of benefit for AML supervisors to understand the impact of the 35,000 reports received by Companies House on reducing criminal activity and preventing money laundering. The proposed change will create additional work for firms, AML supervisors and Companies House so we would welcome further engagement in order to fully understand the reasons for the proposed change and the desired outcomes and impact.

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?

ACCA believes that it is difficult to assess the impact with the limited information we have at present. We would welcome further detail on the impact of the current reports on any disruption to economic crime. We note that 35,000 reports have been submitted but (other than one third of these reports not being valid) there is no detail on the impact of the reports and any resulting actions. Therefore, we are unclear on what the benefits are and what increasing the scope of these reports will achieve.

Disclosure and Sharing

45. Would it be appropriate to add BEIS to the list of relevant authorities for the purposes of Regulation 52?

ACCA supports the sharing of intelligence and feels it is a key component to tackling economic crime. The Department for Business, Energy & Industrial Strategy (**BEIS**) is a large ministerial department and while we would support its inclusion in the list of relevant authorities we would welcome guidance on the relevant BEIS departments and the information that will be shared between BEIS (including Companies House) and an AML supervisor.

46. Are there any other authorities which would benefit from the information sharing gateway provided by Regulation 52? Please explain your reasons.

ACCA has not identified any other agencies.

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?

ACCA supports the sharing of intelligence and we believe it is a key component to tackling economic crime. The more relevant parties that are actively sharing intelligence the better the response to combatting economic crime will be.

The accountancy supervisors all have individuals that have been vetted by the National Crime Agency (**NCA**) and have Criminal Justice Secure eMail (**CJSM**) accounts so there should be no barrier to sharing intelligence with us.

