HM Treasury

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

Response to the Consultation

June 2022

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Chapter 1

Introduction

Background

1.1 HM Treasury launched a consultation on 22 July 2021 entitled 'Amendments to the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 Statutory Instrument 2022'[1] ('the consultation'). This consultation outlined how the government intended to amend the UK's Money Laundering Regulations (the MLRs) in order to make several time-sensitive updates. These updates are required to ensure that the UK continues to meet international standards, whilst also strengthening and ensuring clarity on how the UK's anti-money laundering and counter-terrorist financing (AML/CTF) regime operates. This follows feedback from industry and supervisors on the implementation of the Money Laundering and Terrorist Financing (Amendment) (EU Exit) Regulations 2020.

1.2 The consultation closed on 14 October 2021, with HM Treasury receiving 94 responses from a wide range of respondents. These included AML/CTF supervisors, industry, civil society, academia, and several government departments. Through the consultation, the Treasury sought views and evidence on the changes it proposed to make to the MLRs. This document summarises the responses to the consultation and sets out the government's final approach to the relevant Statutory Instrument (SI).

1.3 Alongside the consultation for this SI, the Treasury also published a Call for Evidence to inform a broader review of the UK's AML/CTF regulatory and supervisory regimes ('the MLRs review'). The MLRs review, which will be published by June 2022, will assess the overall effectiveness of the regimes, their extent (i.e. the sectors in scope as relevant entities), and the application of particular elements of the regulations to ensure they are operating as intended. It will also consider the overarching structure of the supervisory regime, and the work of the Office for Professional Body Anti-Money Laundering Supervision (OPBAS) under their two objectives: to improve the effectiveness and consistency of Professional Body Supervisor (PBSs) supervision and to increase and facilitate information and intelligence sharing between the PBSs, other supervisors, law enforcement and other agencies. The government's aim has been to keep the MLRs SI focused on a set of specific measures, which will allow the broader MLRs review to focus on the overall direction of the UK's AML/CTF regulatory and supervisory regime for the coming years.

[1] https://www.gov.uk/government/consultations/amendments-to-the-money-laundering-terrorist-financing-and-transfer-of-funds-information-on-the-payer-regulations-2017-statutory-instrument-2022

1.4 The changes to the MLRs set out in this document have now been made through draft secondary legislation entitled 'The Money Laundering and Terrorist Financing (Amendment) (No. 2) Regulations 2022'. Most of the measures in this SI will come into force on 1 September 2022, subject to Parliamentary approval. There are four measures that will come into force at different times, as detailed in the relevant sections below. Sector-specific industry guidance will be updated to reflect the amended legislation.

Chapter 2

Changes in scope to reflect latest risk assessments

Account Information Service Providers and Payment Initiation Service Providers

Box 2.A: Account Information Service Providers and Payment Initiation Service Providers

1. What, in your view, are the ML/TF risks presented by AISPs and PISPs? How do these risks compare to other payment services?

2. In your view, what is the impact of the obligations on relevant businesses, in both sectors, in direct compliance costs?

3. In your view, what is the impact of such obligations dissuading customers from using these services? Please provide evidence where possible.

4. In your view should AISPs or PISPs be exempt from the regulated sector? Please explain your reasons and provide evidence where possible.

2.1 The consultation proposed excluding Account Information Service Providers (AISPs) from the regulated sector, given that the likely risk of money laundering and terrorist financing (ML/TF) had been assessed as low. The consultation also sought views on removing Payment Initiation Service Providers (PISPs) from the regulated sector but noted the potential higher risk of these payment service providers, relative to AISPs.

2.2 The government received 29 responses regarding this measure from stakeholders across sectors. Overall, 65% of responses were supportive of removing AISPs from scope of the MLRs, given that these businesses do not come into direct contact with customers' funds.

2.3 Supportive responses noted that AISPs are unlikely to influence any kind of activity that could give rise to ML and there is currently no evidence of criminals using AISPs in any ML methodology.

2.4 Several businesses that are registered as AISPs also raised concerns that by being within scope of the MLRs, they are negatively impacted by disproportionate and duplicative AML obligations and compliance costs. This is because they are required to comply with the MLRs by conducting

Customer Due Diligence (CDD) checks on customers, in addition to the CDD checks that are already carried out by the banks where the accounts of the customers are held.

2.5 With regard to removing PISPs from the regulated sector, there was some support from stakeholders, but there were also some concerns raised about making this change. For example, several responses acknowledged that although the ML/TF risks associated with PISPs are considered to be relatively low, it would be preferable to keep them in scope of the MLRs, given that the risks are potentially higher than those associated with AISPs, as they are more closely involved with the underlying payment process.

2.6 A number of responses commented that both AISPs and PISPs should be removed from scope of the MLRs given that they do not process transactions themselves.

2.7 On balance, the government has decided to remove AISPs from the regulated sector but keep PISPs within scope at this time. This reflects a higher number of stakeholder responses which raise concerns that PISPs, unlike AISPs, are involved in payment chains so may represent a higher risk of being used as a tool for economic crime more broadly (such as fraud).

Bill Payment Service Providers and Telecoms, Digital and IT Payment Service Providers

Box 2.B: Bill payment service providers and Telecoms, Digital and IT Payment Service Providers

5. In your view should BPSPs and TDITPSPs be taken out of scope of the MLRs? Please explain your reasons and provide evidence where possible.

6. In your view, if BPSPs and TDITPSPs were to be taken out of scope of the MLRs, what would the impact be on registered businesses, for example any direct costs? Are there other potential impacts?

7. Would the removal of the obligation for PSPs to register with HMRC for AML supervision, in your view, reduce the cost and administrative burden on both HMRC and registered businesses?

8. In your view, would there be any wider impacts on industry by making these changes?

2.8 The consultation proposed excluding Bill Payment Service Providers (BPSPs) and Telecoms, Digital and IT Payment Service Providers (TDITPSPs) from the regulated sector, given that the likely risk of ML/TF had been assessed as low by HM Revenue and Customs (HMRC) in relation to the specific (small) payment service providers (PSPs) supervised by them.

2.9 The government received 11 responses regarding this measure, from stakeholders across sectors. Overall, 55% of responses suggested that there

was a slightly higher risk of BPSPs and TDITPSPs being used as a tool for economic crime compared to AISPs (given that, like PISPs, they are involved in payment chains as intermediaries) and therefore should not be removed from the regulated sector.

2.10 Some responses noted that it would appear sensible to exclude both BPSPs and TDITPSPs from the MLRs, on the basis that they are only involved in the transfer of small sums of money, and therefore it could seem disproportionate to require them to stay within scope. A number of responses were also relatively supportive of removing these service providers from scope, to ease the costs and compliance burdens on small businesses registered as PSPs.

2.11 However, a higher number of responses suggested that the government should be cautious about removing these businesses from scope as there are likely to be unintended consequences of doing so, such as a heightened risk of fraud. Further responses suggest that there would be no detriment to them remaining in scope given that early analysis, included in the consultation, suggested that it was highly unlikely that any business in the UK truly operates as a BPSP as some may have registered in error.

2.12 In light of the above, the government believes that it would not be appropriate to remove BPSPs and TDITPSPs from the scope of the MLRs at this time. Further research would be necessary to confirm definitively whether any business in the UK is truly operating as a BPSP; and to develop a more in-depth understanding of the small payment institution TDITPSPs supervised by HMRC and any associated risks of ML, TF and proliferation financing (PF).

Art Market Participants

Box 2.C: Art Market Participants

9. In your view, what impact would the exemption of artists selling works of art, that they have created, over the EUR 10,000 threshold have on the art sector, both in terms of direct costs and wider impacts? In your view is there ML risk associated with artists and if so, how significant is this risk? Please provide evidence where possible.

10. As the AML supervisor for the art sector, what impact would this amendment have on the supervision of HMRC? Would the cost to HMRC of supervising the art sector decrease? Are there any other potential impacts?

11. In your view, does the proposed drafting for the amendment to the AMP definition in Regulation 14, in Annex D, adequately cover the intention to clarify the exclusion of artists from the definition, where it relates to the sale and purchase of works of art? Please explain your reasons.

12. In your view, should further amendments be considered to bring into scope of the AMP definition those who trade in the sale and purchase of digital art? If so, what other amendments do you think should be considered?

2.13 The consultation proposed to clarify the scope of the Art Market Participant (AMP) definition in the MLRs, by amending Regulation 14(1)(d) to explicitly exempt artists who sell their works of art over the EUR 10,000 threshold, either as an individual or through a company or partnership, where they are a shareholder or partner. The consultation sought to determine what the costs and impact of implementing this measure would be on relevant persons under the MLRs and on HMRC as the AML/CTF supervisor for AMPs.

2.14 The government received 26 responses regarding this measure, from stakeholders across sectors. Overall, around 76% of responses, especially those responses from the art sector, agreed with the proposal to exempt artists from the AMP definition. Many responses noted that this exemption would avoid artists being burdened with having to register as AMPs and creating administrative systems to comply with the obligations in the MLRs, and that it would also reduce the burden on HMRC as the AML/CTF supervisor for AMPs. Many responses also noted that there is likely to be only a small number of artists selling their art directly for over the EUR 10,000 threshold, as in those circumstances they would be more likely to sell through an intermediary who will remain regulated as an AMP.

2.15 In their response to the consultation, HMRC noted that if the number of artists selling directly remains small, this will not have much impact on HMRC's supervision. Excluding artists from the definition of AMPs could lead to an increase in the number of artists who chose not to use an AMP, thus

having a competitive impact on the intermediaries' market, reducing the number of AMPs supervised by HMRC.

2.16 A number of responses to the consultation noted the potential for this exemption to create a loophole for ML, whereby those looking to launder money through art could do so by buying directly from an artist, potentially putting artists at greater risk of ML/TF. Responses suggested that the Treasury and HMRC should continue to monitor the sector and review this exemption in due course, if there is significant evidence that artists need to be brought back into scope due to heightened ML/TF risks. HMRC have noted that reviewing how the sector reacts to this exemption would form part of their normal supervision practices.

2.17 Following the consultation, the government has decided to amend the definition of an AMP in Regulation 14(1)(d) to explicitly exclude from scope artists who sell their own works of art over the EUR 10,000 threshold. This exemption for artists will apply when the artist sells their works of art as an individual and when they sell their work through a company or partnership, where they are a shareholder or partner.

2.18 Question 12 in the consultation asked for views on whether further amendments to the AMP definition should be considered. Responses to this question gave a range of views on whether or not to expand the definition of AMP in the MLRs to include digital art, Non-Fungible Tokens (NFTs), antiques and antiquities; as well as whether the VAT Act definition of a 'work of art' should be expanded and views on increasing the EUR 10,000 threshold. The government will take these into consideration as we conduct further work to consider possible future changes to the definition.

Chapter 3

Clarificatory changes to strengthen supervision

Suspicious Activity Reports (SARs)

Box 3.A: Suspicious Activity Reports

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.

3.1 The consultation sought views on options to improve consistency of approach to accessing Suspicious Activity Reports (SARs) by supervisors. The government received 50 responses regarding this measure, from stakeholders across sectors. Overall, 66% of responses supported the proposal and requested greater clarity in the MLRs.

3.2 Respondents in support of the proposal to introduce an explicit legal power stated that access to SARs would allow supervisors to identify risks to their

supervised populations, to assess those populations' understanding of risk and to determine the quality and consistency of reporting. Of the rest, the main objections were regarding the maintenance of confidentiality when SARs content is disclosed to supervisors and the risk of 'tipping off'.

3.3 Following further consideration, the government has concluded that no increased tipping off risk is expected from the proposed amendment, as Sections 333A and Section 333D of the Proceeds of Crime Act 2002 already permit SARs to be disclosed to an authority that is the supervisory authority for that firm/individual under the MLRs without the offence of tipping off being engaged. Regarding wider concerns around confidentiality, as part of their supervisory responsibilities, the government expects supervisors to implement effective measures to ensure all information received from and in relation to SARs is handled appropriately.

3.4 For the reasons set out above, the government will therefore be taking this amendment forward through the SI. The measure will introduce a clear legal gateway for AML/CTF supervisors to access, view and consider the quality of the content of SARs submitted by supervised populations, provided they are necessary to fulfil supervisory functions. This will help standardise the approach to accessing SARs and clarifies the right of access to support supervisors in delivering their supervisory obligations under the MLRs (by allowing supervisors to review and provide feedback on SARs to their supervised population). Accessing and assessing the SARs of their supervised population also allows supervisors to obtain and identify information and intelligence to help better inform their understanding of sectoral risks, to be able to tailor guidance and, ultimately, to improve the effectiveness of their risk-based approach to supervision.

Credit and financial institutions (Regulation 10)

Box 3.B: Credit and Financial Institutions

19. In your view, what are the merits of updating the activities that make a relevant person a financial institution, as per Regulation 10 of the MLRs, to align with FSMA?

20. In your view, would aligning the drafting of Regulation 10 of the MLRs with FSMA provide greater clarity in ensuring businesses are aware of whether they should adhere to the requirements of the MLRs? Please provide your reasons.

21. Are you aware of any particular activities that do not have clarity on their inclusion within scope of the regulated sector?

22. In your view, what would be the impact of implementing this amendment on firms and relevant persons, both in terms of direct costs and wider impacts? Please provide evidence where possible.

23. In your view, what would be the impact of implementing this amendment on the FCA, both in terms of direct costs and wider impacts? Please provide evidence where possible.

24. In your view, would there be any unintended consequences of aligning Regulation 10 of the MLRs with FSMA, in terms of diverging from the EU position?

3.5 The consultation proposed steps to clarify the activities that make a person a credit and financial institution as per Regulation 10 of the MLRs, in response to FCA and stakeholder feedback that the current drafting of the regulation could be seen to cause confusion.

3.6 The government received 22 responses to this measure, from stakeholders across all sectors. Overall, 55% of responses explicitly supported clarifying the scope of the activities that make a relevant person a credit and financial institution. Some supportive responses noted that aligning the MLRs with the Financial Services and Markets Act 2000 (FSMA) would remove potential ambiguity of whether an activity is in scope and will help all UK regulated firms to understand their obligations to comply with MLR requirements.

3.7 However, there was also some concern from multiple respondents about how this change could be implemented in practice without unintended consequences. For example, some responses highlighted a risk that some firms could be brought unintentionally into scope, or dropped out of scope, if the government decided to be more prescriptive in setting out activities in Regulation 10. Some of these responses suggested that enhanced compliance and cost burdens for any new firms unintentionally brought into scope would likely outweigh any merits of attempting to clarify the current scope of Regulation 10.

3.8 Although the government agrees that it would be sensible to clarify activities under Regulation 10, and the intention behind this proposal was broadly supported in consultation responses, it is expected that the policy and legal analysis required to appropriately define all forms of credit and financial institution in detail will be especially complicated and technical. This work will require longer-term discussions with industry to ensure that any change to Regulation 10 does not have unintended consequences. Therefore, the government has decided not to take this measure forward through the SI at this time.

Chapter 4

Expanded requirements to strengthen the regime

Proliferation Financing Risk Assessment

Box 4.A: 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?

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 Proliferation Financing (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.

4.1 The consultation proposed changes to implement the Financial Action Task Force (FATF) standards in respect of Recommendation 1, to require financial institutions (FIs) and designated non-financial businesses and professions (DNFBPs) to identify, assess and take effective action to mitigate proliferation financing (PF) risk. In order to implement recent updates by FATF to Recommendation 1, the government is legislating to require the Treasury to make arrangements to carry out a PF National Risk Assessment and to require FIs and DNFBPs to complete their own risk assessments of PF, alongside their current risk assessments for money laundering and terrorist financing.

4.2 The government received 26 responses to this measure, from stakeholders across sectors. Overall, 75% of those that responded to Question 25 suggested it would be sensible to implement the FATF working definition of

PF, and most sectors agreed there would be no need for new powers to allow supervisory authorities to enforce these new requirements.

4.3 Respondents indicated concern about the additional burden created by including PF in risk assessments carried out by relevant persons under the MLRs. The government understands that this could be a concern, particularly for smaller businesses, and has therefore been clear that companies will have the flexibility to either create a new risk assessment or to incorporate PF into ML/TF risk assessments they are obligated to carry out, to reduce the burden and minimise additional costs.

4.4 Responses also suggested there was limited awareness of PF in each sector, and that outreach, communication and engagement would therefore be widely appreciated to develop understanding of: what constitutes PF, what the PF risks are in their sector, how to carry out a PF risk assessment and how to address risks identified. The government recognises the need for further information dissemination to the private sector in this area and will conduct outreach to the relevant supervisors, so they are able to support their regulated populations in understanding PF risks and carrying out assessments. The government also notes the publication in September 2021 of the UK's first National Risk Assessment of Proliferating Financing[2] which provides a macro level assessment of PF risks to the UK.

4.5 The government has therefore decided to take this measure forward through this SI to enable the UK to implement international standards set by the FATF, by supplementing Regulations 16,17 and 18 of the MLRs, and to strengthen the private sector's understanding and mitigation of proliferation financing risk. A definition of PF will also be included in the MLRs to clarify the type of activity that would be considered PF, whilst remaining tied to relevant UN Security Council Resolutions so as not to expand the scope included under FATF Recommendation 1.

Trust and Company Service Provider services and business relationships

4.6 The consultation proposed amending the scope of the Trust and Company Service Provider (TCSP) definition in the MLRs under Regulation 12(2)(a), which currently uses the term "legal persons", to ensure that firms or sole practitioners which form all types of business arrangement which must be registered with Companies House (including English and Welsh or Northern Irish limited partnerships (LPs)) fall within scope of the definition of a TCSP.

4.7 The government also sought views on whether any person considered a TCSP should be obliged to conduct CDD checks where it is seeking to form any business arrangement that must be registered with Companies House, irrespective of whether a TCSP expects to have a continuing relationship with that prospective business arrangement. For example, a customer might ask a formation agent to seek to form a limited liability partnership (LLP) with Companies House but want to file the LLP's confirmation and update

[2] https://www.gov.uk/government/publications/national-risk-assessment-of-proliferation-financing

statements independently, for reasons that are entirely legitimate. The government's intention was that the customer would be made subject to CDD checks in such circumstances, before it can be registered with Companies House.

4.8 Furthermore, the government sought views on whether the scope of Regulation 4 should properly apply so that a business relationship exists where a TCSP provides services under 12(2)(b) (where arranging for another person to act as a director, secretary, or partner etc) or (d) (where arranging for another person to act as a trustee of an express trust or similar legal arrangement or a nominee shareholder for a person other a listed company), even if this might otherwise lack the element of duration required under Regulation 4(1)(b).

Box 4.B: 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

4.9 The government received 31 responses regarding these measures, from stakeholders across sectors. All responses agreed to making the proposed changes to Regulation 12(2) and Regulation 4(2).

4.10 With regard to the change to Regulation 12(2)(a), responses to the consultation noted that costs associated with implementing this change should be minimal. Responses noted that the systems and procedures for compliance with the MLRs should already be in place for all other business arrangements dealt with by TCSPs and therefore the change will simply require TCSPs to extend controls to additional firms or sole practitioners. Responses also noted that expanding the definition of TCSPs to cover those who form and administer all forms of UK LPs, in particular, would help to cut down on their abuse for illicit purposes.

4.11 With regard to business arrangements, in particular English, Welsh and Northern Irish LPs, responses noted that there may be an increased

administrative burden associated with this measure, such as an increase in formation costs, as the services provided to these business arrangements by TCSPs will now fall within scope of the MLRs. However, there was general support for making this change and it was noted that any associated costs should not be deemed to be too prohibitive.

4.12 It was noted that a reduction in the ML/TF risk associated with business arrangements that were not previously subject to the MLRs should be expected. However, other responses noted that the implementation of this measure may result in new LPs setting up offshore rather than having to comply with UK requirements under the MLRs and giving the required information to Companies House, making the CDD process more difficult.

4.13 Overall, responses agreed that although there may be an increased administrative burden to both business arrangements and TCSPs, this is likely to be outweighed by the greater clarity this change would give and as a necessary intervention to deter ML/TF.

Box 4.C: 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.

4.14 With regard to the changes to Regulation 4(2), responses to the consultation noted that direct compliance and administrative costs will increase for TCSPs as more business arrangements and services fall within scope of the MLRs, however the impact would likely be minimal. It was noted that the proposed amendments in this measure are proportionate and therefore any associated costs are not deemed to be too prohibitive.

4.15 As with the change to Regulation 12(2)(a), responses noted that the impact on TCSPs and business arrangements of implementing these changes should be minimal, as the systems and procedures for AML/CTF compliance should already be in place for all other business arrangements dealt with by TCSPs. It was also noted that these changes are likely to result in a reduction of registered and newly registering LPs. However, it was not felt that the amendments are disproportionate and therefore the impact on legitimate LPs is not considered to be unduly negative.

4.16 A response from the financial sector also noted that banks may incur operational impacts if CDD has already been conducted and a risk-based approach applied to the relationship with a business arrangement, resulting in the requirement for remediation exercises.

4.17 Overall, responses agreed that the impact of implementing these changes, to both business arrangements and TCSPs, is likely to be minimal and the measure will provide greater clarity and be a necessary intervention to deter ML/TF.

4.18 Following responses to the consultation, the SI will amend Regulations 12 and 4 in the MLRs in order to achieve greater alignment between the forms of business arrangement that a TCSP can form and those that register with Companies House, in particular to include English, Welsh and Northern Irish LPs, as well as expanding the application of when a business relationship is established to form these business arrangements as well as those services a TCSP can provide in Regulation 12(2)(b) and (d).

4.19 In relation to partnerships, the government noted in the consultation that it regarded general partners as the actors whose management activities are thought to give rise to the higher risk of ML/TF as opposed to limited partners of an LP who have no role in the management of the LP. Therefore, in question 33 of the consultation the government asked whether the amendment to Regulation 4(2) should be limited so that a one-off appointment of a limited partner would not constitute the establishment of a business relationship.

4.20 A minority of responses thought this exemption should be made, but many responses noted that if the change was taken forward, this would create a potential loophole for increased ML/TF risk. Limited partners do not hold management positions and therefore potentially pose less of an ML/TF risk than general partners. However, as limited partners are the primary source of investment in an LP, responses argued that if there was no requirement to conduct CDD on limited partners, even if it was a one-off appointment, then this could leave open a loophole for illicit funds to enter the UK through such limited partners.

4.21 Therefore, following responses to the consultation, this measure will also include the appointment of a limited partner by a TCSP as constituting a business relationship and will therefore require CDD to be conducted on limited partners, if they are the customers of TCSPs.

Reporting of discrepancies

Box 4.D: 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?

4.22 The consultation proposed to enhance the accuracy and integrity of the companies register by considering the possibility of expanding the scope of Regulation 30A to cover both "before establishing a business relationship" and the ongoing relationship an obliged entity has with a client.

4.23 The government received 52 responses to this measure, from stakeholders across sectors. Overall, 66% of responses agreed with the proposal to make the discrepancy reporting obligation ongoing. However, there were strong calls from the accountancy sector and financial sector, in particular, to wait for planned Companies House reform to be implemented first.

4.24 Further issues raised included that the obligation should only apply where the relevant person is actually aware of changes not when they should be reasonably have become aware, and that legislation needs clarifying that it refers to reporting 'material' changes to the beneficial ownership, rather than 'any' discrepancy.

4.25 Other points raised by the responses noted, the need for more guidance on discrepancy reporting, the inclusion of a grace period before ongoing reporting is required and that a change to requirements should be accompanied by a simplified reporting mechanism and further clarity of what is required of firms, for example how a firm should build these requirements into its risk-based approach.

4.26 The government has therefore decided to expand the discrepancy reporting requirement by including an additional provision to Regulation 30A(1) to expand the scope of the measure to also cover the ongoing business relationship. Hence, when an obliged entity undertakes CDD pursuant to the ongoing CDD requirements in Part 3 of the MLRs (for example, the CDD required under Regulations 27(1)(a) and (d) and Regulation 27(8), and the

enhanced CDD required under Regulation 33) they will also be required to report discrepancies against information held on the appropriate register as they would have under the existing provisions under Regulation 30A. This should provide significant additional information on discrepancies, helping to identify those who seek to undermine the UK's open business environment for the purpose of facilitating economic crime.

4.27 To address concerns from respondents that the current drafting provides insufficient clarity, the government has decided to streamline the requirement so that it is clear only 'material discrepancies' need to be reported, and to provide a list setting out which types of discrepancy would be 'material'. This should help to mitigate the increased compliance obligations associated with the expansion of the regime.

4.28 Many respondents noted that the regime would function more effectively once broader Companies House reform has taken place and requested time to adjust to the expanded regime. To respond to this, a grace period will be added to this measure meaning it will not come into force until April 2023, subject to Parliamentary approval.

4.29 After the end of the consultation in October 2021, the government brought forward the Economic Crime (Transparency and Enforcement) Act to crack down further on dirty money and corrupt elites in the UK. The Act introduced a new public "Register of Overseas Entities" (ROE) owning UK property to sit alongside the existing public registers hosted by Companies House.

4.30 During Parliamentary passage of the Economic Crime (Transparency and Enforcement) Act, the opposition raised concerns about how the government will verify information on the ROE. The government has therefore decided to expand the discrepancy reporting regime to extend the requirement to include entities on the ROE.

Chapter 5
Information Sharing & Gathering

Disclosure and Sharing

Box 5.A: Disclosure and Sharing

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?

5.1 The consultation proposed to improve the Regulation 52 gateway in the MLRs, to allow for wider information-sharing and disclosure to a range of bodies, and to reduce the existing barriers to sharing information and intelligence that inhibit effective AML/CTF supervision. The government sought views on a number of proposals that could improve the Regulation 52 gateway, including expanding the gateway to allow for reciprocal sharing between supervisors and relevant authorities (particularly law enforcement); expanding the list of 'relevant authorities' to include other government agencies, such as the Department for Business, Energy & Industrial Strategy (BEIS) and Companies House; and seeking views on whether stakeholders think that the information-sharing provision in Regulation 52A is helpful.

5.2 The government received 38 responses to this measure, from stakeholders across sectors. Overall, all responses that responded directly to the question of whether the Regulation 52 gateway should allow for reciprocal protected

sharing between other relevant authorities to supervisors, where it supports their functions under the MLRs (36 responses), agreed with the proposal.

5.3 Many responses highlighted that it would be sensible for relevant authorities to share intelligence and information to support AML/CTF supervisors in identifying and targeting risks in their supervised populations. As AML/CTF supervisors have a key understanding of their sectors, the risks presented and how they translate into the business model of their regulated population, this could enable supervisors to assist in the disruption of ML and TF. Other responses noted that this amendment to the MLRs could enable further clarity on how information and intelligence can be shared between relevant authorities and supervisors.

5.4 Many responses also suggested that the government should ensure that disclosure between relevant authorities should be as open as possible to help ensure that they are able to identify and tackle criminal threats most effectively.

5.5 Most responses to the consultation were also in agreement that it would be appropriate to include BEIS on the list of 'relevant authorities' for the purposes of Regulation 52, though these responses also highlighted that it would be most useful to include the enforcement agencies within BEIS, such as Companies House and the Insolvency Service. Some responses highlighted that not all agencies under BEIS have a direct impact on AML/CTF controls and therefore some further thought is needed as to whether the government could be more explicit about which agencies would benefit most from this amendment.

5.6 With regard to whether the sharing under Regulation 52A is currently used and for what purpose, there were very few responses (9 responses) to this consultation question. However, those responses highlighted that although the power can be used in practice to share information, this is limited due to a lack of clarity on the purpose of Regulation 52A, the limited information-sharing gateways in Regulation 52, and the unhelpful interplay between Regulation 52 and 52A. For example, some responses noted that there is confusion arising from the wording of Reg 52A(6) and the lack of clarity around this provision results in its limited use. These responses suggest that the provision could be redrafted to make clearer the extent that the sharing of intelligence and information is permitted.

5.7 In light of the responses provided, and after further discussion with key stakeholders and AML/CTF supervisors, the government will amend Regulation 52 to: expand the intelligence and information-sharing gateway to allow for reciprocal sharing from relevant authorities (specifically law enforcement) to supervisors; expand the list of 'relevant authorities' to explicitly include certain parts of BEIS, to support their functions under the MLRs; and enable the FCA to disclose the confidential information it receives, in relation to its MLR duties, more widely. These changes are expected to have a positive impact on the overall objectives under the Economic Crime

Plan[3] to increase intelligence and information-sharing, particularly between the public and private sectors, and aim to provide more opportunities for a whole system approach to remove bad actors and those seeking to exploit the UK for criminal purposes.

Information Gathering

Box 5.B: Information Gathering

51. What regulatory burden would the proposed changes present to Annex 1 financial institutions, above their existing obligations under the MLRs? Please provide evidence where possible.

52. In your view, is it proportionate for the FCA to have similar powers across all the firms it supervises under the MLRs? Please explain your reasons.

53. In your view, would the expansion of the FCA's supervisory powers in the ways described above Annex 1 firms allow the FCA to fulfil its supervisory duties under the MLRs more effectively? Please explain your reasons in respect of each new power.

54. In your view, what impacts would the expansion of the FCA's supervisory powers in the ways described above have on industry and the FCA's wider supervised population, both in terms of costs and wider impacts? Please provide evidence where possible.

55. In your view, what impacts would the expansion of the FCA's supervisory powers in the ways described above have on the FCA, both in terms of costs and wider impacts? Please provide evidence where possible.

5.8 The consultation proposed to explore whether it would be beneficial to give the FCA additional powers of direction over Annex 1 firms, to encourage a more consistent approach to information gathering across the FCA's supervised population, and better inform its risk-based approach to supervision overall.

5.9 The government received 14 responses to this measure, from stakeholders across all sectors. Overall, the responses were split between support for giving the FCA additional powers and raising concerns about placing further regulatory burdens on firms.

5.10 Some comments suggested that AML/CTF supervisors may need to level-up their skilled resources (especially if reviewing additional content received from firms as a result of this proposal) which would also increase costs that would be passed on to firms and, in turn, their customers. Further responses welcomed the overall approach to the expansion of the FCA's supervisory

[3] https://www.gov.uk/government/publications/economic-crime-plan-2019-to-2022

powers but suggested that the approach to doing so and subsequent application should be proportionate to the ML/TF risks.

5.11 Supportive comments highlighted that the FCA should be able to apply its information gathering powers more flexibly across its supervised population. A number of responses also suggested that banks and firms already submit a wide range of information to the FCA, so it would be unlikely that these proposed changes would incur significant additional burdens.

5.12 Some responses suggested that, given the difficulties that the FCA currently has in gathering information from Annex 1 institutions, this amendment is necessary to ensure that the FCA has more comprehensive financial crime data. Whilst the introduction of new reporting requirements would be an additional administrative burden for Annex 1 financial institutions, the respondents noted that this is not expected to be overly onerous compared to the value that the change would provide through improved AML supervision.

5.13 The government has, on balance, decided to extend Regulations 74A-C to apply to Annex I firms. This measure will bring Annex I firms in alignment with the current powers that the FCA has available for cryptoasset businesses under Regulations 74A-C of the MLRs, creating a level playing field from the position of cryptoasset firms. By beginning to align the FCA's powers across its supervised population, the government intends that these powers under the MLRs will seem less disjointed and ambiguous and more aligned with FSMA, and will enable the FCA to better detect and manage harm wherever it occurs in its supervised population.

Chapter 6

Transfers of cryptoassets

Box 6.A: The approach to implementation

56. Do you agree with the overarching approach of tailoring the provisions of the FTR to the cryptoasset sector?

57. In your view, what impacts would the implementation of the travel rule have on businesses, both in terms of costs and wider impacts? Please provide evidence where possible.

58. Do you agree that a grace period to allow for the implementation of technological solutions is necessary and, if so, how long should it be for?

6.1 The consultation set out the government's proposed changes to comply with the expansion of the application of FATF Recommendation 16, regarding information sharing requirements for wire transfers, to cryptoassets (known as the 'Travel Rule'). The government received 30 responses to this measure, from stakeholders across sectors. All those who responded to Question 56 (26 responses) broadly agreed with the proposed approach of tailoring the provisions of the Funds Transfer Regulation (FTR) to the cryptoasset sector. However, many responses emphasised that the cryptoasset sector differs in important ways that make the tailoring of the provisions key to the Travel Rule's workability. For example, it was highlighted that terms such as "originator" and "beneficiary" would be preferable to "payer" and "payee", respectively.

6.3 In response to Question 57, respondents highlighted both short-term and long-term costs for businesses. In the short-term, industry will be faced with the cost of procuring and integrating technological solutions to enable compliance with the Travel Rule, in addition to creating internal compliance processes. Over the longer term, the ongoing costs of compliance will include having compliance staff process Travel Rule related issues, and the ongoing cost of technology to enable compliance. However, some respondents highlighted that these costs could be at least partially offset by the benefits to industry associated with cryptoassets being perceived as better regulated and therefore more attractive to mainstream investors.

6.4 Some respondents to Question 57 suggested that the volume of data that would need to be processed is disproportionate, and alternative methods should be used to achieve the goals of the Travel Rule. In particular, there were concerns that the public nature of the blockchain combined with the sharing of personal information such as names, addresses and personal identification numbers presents a risk to privacy. It was suggested that Zero

Knowledge Proofs[4] could be used to demonstrate that customer due diligence checks had been performed whilst obviating the need to share confidential information on the originator and beneficiary with each cryptoasset business involved in the transaction.

6.5 All respondents who responded to Question 58 (20 responses) agreed that a grace period to allow firms to implement the Travel Rule was desirable. Suggestions as to the appropriate length varied from 6 months to 24 months.

6.6 The government acknowledges that compliance with the Travel Rule presents a cost to doing business. The government believes that the overall costs of compliance are outweighed by the benefits to the sector and the economy, as a whole, from the reduction in the risk of cryptoassets being used for illicit purposes and the improved confidence in the sector that this will bring, but it has reflected these concerns through adjustments to the original proposals. The government will no longer require that both fiat currency and cryptoasset transfers are considered for the calculation of the de minimis threshold (explained in more detail below). It has also decided to make the information requirements relating to unhosted wallet transfers applicable on a risk sensitive basis only (explained in more detail below).

6.7 Reflecting the consensus in favour of a grace period, and taking into account the current status of compliance technology, the government has decided to allow a 12-month grace period, to run from the point at which the amendments to the MLRs take effect until 1 September 2023, subject to Parliamentary approval, during which cryptoasset businesses will be expected to implement solutions to enable compliance with the Travel Rule.

Box 6.B: Use of provisions from the Funds Transfer Regulation

59. Do you agree that the above requirements, which replicate the relevant provisions of the FTR, are appropriate for the cryptoasset sector?

6.8 There was broad acceptance of the proposed information that would need to be collected and shared by cryptoasset businesses. However, some respondents expressed concerns about the breadth of personal information collected. As outlined above, some respondents felt that collecting and sending information including addresses, dates of birth and passport numbers was disproportionate to the risk of illicit finance, and created risks around data security and privacy. In particular, respondents highlighted that the information, when combined with publicly available blockchain data, could potentially reveal a considerable amount about a person's finances and spending habits. Some respondents also argued that the ability of firms

4 A method by which one party is able to prove to another that a given statement is true without revealing additional information. In the context of AML controls, this might involve a trusted third party verifying that the originator or beneficiary of a transfer has passed CDD checks without sharing confidential information such as addresses, dates of birth or even names.

to use blockchain analytics to detect illicit transfers rendered the information sharing requirement unnecessary. There was also some uncertainty about whether each of an originator's address, date of birth and passport number would need to be sent with a transfer, or whether only one of these was sufficient.

6.9 Some respondents highlighted that the requirement in the FTR to potentially reject a transfer that is not accompanied by the necessary information cannot apply to cryptoasset transfers. This is because cryptoassets are transferred via the relevant blockchain, and there is no option for the beneficiary cryptoasset business to prevent the transfer.

6.10 Some respondents also expressed doubt over whether the concept of an "intermediary" cryptoasset service provider was too broad and which market participants it was intended to capture. Some respondents thought that intermediaries were only relevant in a correspondent banking context, and not for transfers of cryptoassets, which occur on chain.

6.11 Whilst acknowledging the concerns regarding data security and privacy, the government has decided to maintain the information sharing requirements as set out in the consultation. For the avoidance of doubt, only one of the originator's address, date and place of birth, and passport number will need to be sent with a cross-border transfer that is above the de minimis threshold.

6.12 The information to be collected reflects FATF requirements and cannot be changed unilaterally whilst remaining compliant with FATF standards. As similar requirements will be in place in other jurisdictions, it would also not be workable for the UK to adopt significantly different requirements, as firms would then be faced with inconsistent regulatory requirements for cross-border transfers. Whilst the government remains receptive to new ideas which allow counter-illicit finance policy objectives to be achieved in a less costly and more data secure way, it is its objective to uphold the current international standards.

6.13 The government considered whether the concept of an intermediary cryptoasset business might be over inclusive and has concluded that it is sufficiently clear and workable. Whilst there are potentially many entities which sit between the originator's and the beneficiary's cryptoasset businesses, the legislation will make clear that the Travel Rule only applies to intermediaries that are cryptoasset exchange providers or custodian wallet providers and will not capture others, like software providers, to whom the Travel Rule is not intended to apply.

6.14 The government's intention in including intermediaries within scope is to ensure that a cryptoasset business that is contracted to provide cryptoasset exchange or custodian wallet services on behalf of either the beneficiary's or the originator's cryptoasset business is also subject to the Travel Rule. For example, if Firm A offers custodian wallet services via its website, on which customers can manage their holdings, but has a sub-custody contract with Firm B, which makes and receives cryptoasset transfers and manages

cryptographic keys on its behalf, the Travel Rule will apply to both firms, ensuring that Firm A must collect and then supply Firm B with the required beneficiary and originator information, and Firm B must ensure that the information is received and passed on alongside the transfer.

6.15 As the proposals include an exemption for transfers which involve only UK-based cryptoasset firms (the full information need not be sent with the transfer, but must be provided to the beneficiary cryptoasset business on request) the government believes that it has taken appropriate steps to avoid the unnecessary transfer of personal data. For the avoidance of doubt, the proposals are not that the information should be shared "on chain" but that it should be sent alongside the transfer via a different system that is not publicly accessible, and that the usual data protection regulations will apply.

Box 6.C: Provisions specific to cryptoasset firms

60. Do you agree that GBP 1,000 is the appropriate amount and denomination of the de minimis threshold?

61. Do you agree that transfers from the same originator to the same beneficiary that appear to be linked, including where comprised of both cryptoasset and fiat currency transfers, made from the same cryptoasset service provider should be included in the GBP 1,000 threshold?

62. Do you agree that where a beneficiary's VASP receives a transfer from an unhosted wallet, it should obtain the required originator information, which it need not verify, from its own customer?

63. Are there any other requirements, or areas where the requirements should differ from those in the FTR, that you believe would be helpful to the implementation of the travel rule?

6.16 All respondents supported the existence of a de minimis threshold, but some drew attention to the fact that the FATF's recommended threshold is EUR 1,000/USD 1,000, both of which are less than the GBP 1,000 suggested at current exchange rates. Respondents broadly agreed with aggregating transactions that appear to be linked for the purpose of calculating this threshold, but some argued that only cryptoasset transfers (and not fiat currency transfers) should be included, due to technological difficulties in developing a system that would cover both types of transfer.

6.17 As the FATF's recommended de minimis threshold is EUR 1,000/USD 1,000, and to ensure alignment with the customer due diligence thresholds in the MLRs, HM Treasury has modified this proposal so that the threshold is now set at EUR 1,000. Given that there are relatively few businesses offering both fiat and cryptoasset transfers, the government has modified its proposal so that cryptoasset transfers are treated separately when calculating if the de minimis threshold has been cumulatively reached. Transfers of fiat currency will remain subject to a de minimis threshold under the FTR. HM Treasury

will consider changing Euro thresholds in the MLRs to Pounds Sterling more holistically after the MLRs Review, given that the Review will likely result in further legislative changes on the broader functioning of the MLRs, following consultation.

6.18 Respondent views were mixed as to the requirement that cryptoasset businesses collect but not verify beneficiary and originator information regarding unhosted wallets, with respondents from the cryptoasset sector generally opposing this requirement and other respondents supporting it. A small number of respondents argued that the information should be both collected and verified by cryptoasset businesses.

6.19 Arguments made against requiring the collection of this information related to the proportionality and effectiveness at preventing illicit finance. Primarily, opponents of this requirement argued that the burden of imposing this requirement on firms would be disproportionate to the benefits in preventing illicit finance. Respondents also argued that unhosted wallets do not pose a high risk of illicit finance, with the percentage of transfers connected to crime broadly in line with that seen across the market. Some respondents argued that without verification, such information would not be useful to firms or law enforcement. These divided into those who opposed the requirement in its entirety and a small number who argued that cryptoasset businesses should be required to verify the information collected.

6.20 Arguments made in favour of the government's proposal argued that it was important for the identity of the parties to the transaction be known, as with transfers between customers two cryptoasset businesses, and that unhosted wallet transactions should be viewed as higher risk.

6.21 In light of this feedback, the government has modified its proposals with regard to unhosted wallets. Instead of requiring the collection of beneficiary and originator information for all unhosted wallet transfers, cryptoasset businesses will only be expected to collect this information for transactions identified as posing an elevated risk of illicit finance. The minimum factors that firms should consider when making such a determination of risk will be set out in the legislation. The government does not agree that unhosted wallet transactions should automatically be viewed as higher risk; many persons who hold cryptoassets for legitimate purposes use unhosted wallets due to their customisability and potential security advantages (e.g. cold wallet storage), and there is not good evidence that unhosted wallets present a disproportionate risk of being used in illicit finance. Nevertheless, the government is conscious that completely exempting unhosted wallets from the Travel Rule could create an incentive for criminals to use them to evade controls.

6.22 The FATF do not currently expect that information collected regarding unhosted wallet transfers is verified. To require that the collected information is verified would present practical difficulties for both the users of cryptoassets and cryptoasset businesses. For example, if a beneficiary was asked to verify information provided on the originator, they could be expected to submit official documents proving the originator's address, date

and place of birth etc. This would, in many cases, not be practical. The government has therefore decided against amending the proposals to require verification.

Additional Changes to the Regulations

7.1 Further to the measures publicly consulted on, the government has also decided to take forward five additional measures as part of this SI. Detail on the policy rationale and agreed amendments to the MLRs, alongside the reasoning for including these measures in the final SI, have been set out in this chapter.

Bank Account Portal

7.2 The EU 5th Anti Money Laundering Directive (5MLD) was transposed into UK law through the MLRs in January 2020, when the UK was still a member of the EU, following public consultation on the changes made to the MLRs to comply with 5MLD. 5MLD required the UK to build a centralised automated mechanism which would help law enforcement and anti-money laundering supervisors to access information on the identity of holders and beneficial owners of bank and payment accounts and safe-deposit boxes. The intention was that this information could then support criminal investigations and recovery of the proceeds of crime. The system fulfilling this purpose is called a 'bank account portal' (BAP) and the requirement to implement a BAP in the UK was added to the MLRs under Part 5A of the Regulations.

7.3 Following the UK's exit from the EU and the agreement of the Trade and Cooperation Agreement (TCA) in January 2021, the government reviewed the case for building a BAP. To support the impact assessment of this decision, the government engaged PA Consulting to support the assessment of potential models for a BAP. This analysis was supported by surveys with the public and private sectors to capture data required to assess the costs and the benefits of delivering the system.

7.4 Given the uncertainty over the benefits, and substantial cost to the public and private sectors, the government ultimately concluded that it should not build a BAP. Therefore, the SI will remove the now redundant obligations on the private sector under Part 5A of the MLRs.

Terrorist Financing and Asset-Freezing etc. Act 2010

7.5 Upon leaving the EU, the Terrorist Asset-Freezing etc Act 2010 (TAFA) was replaced by the Counter-Terrorism (Sanctions) (EU Exit Regulations) 2019. The reference to TAFA in the MLRs is now redundant, and the government will therefore remove it.

7.6 This will bring the definition of Terrorist Financing in the MLRs into line with the current definition at s49 of the Sanctions and Anti-Money Laundering Act 2018 (SAMLA) (the regulations under which the MLRs are being

amended), which has been similarly amended to remove out of date references to TAFA.

7.7 The amendment will ensure historic legislation is not being referenced in the MLRs. This measure was not included in the SI Consultation Document as it is a minor, clarificatory change.

Regulation 15 Exclusions

7.8 Under the MLRs, Regulation 8(2) lists the relevant persons who are in scope of the Regulations. This includes: credit institutions, financial institutions, auditors, insolvency practitioners, external accountants and tax advisers, independent legal professionals, trust or company service providers, estate agents and letting agents, high value dealers, and casinos (8(2)(a)-(h)). Regulation 8(2) was expanded in January 2020, following the transposition of 5MLD, to include letting agents (8(2)(f)), art market participants (AMPs) (8(2)(i)), cryptoasset exchange providers (8(2)(j)), and custodian wallet providers (8(2)(k)).

7.9 Regulation 15 of the MLRs excludes certain activities from scope of the regulations. This includes, in Regulation 15(3), where those activities are 'occasional or very limited'. Regulation 15(3) goes on to list the conditions that must be fulfilled in order for the activity to fall within that description, including (Regulation 15(3)(f)) that the 'main activity' of the business does not fall within Regulation 8(2)(a) to (f) or (h), as listed above. As an illustration, if a person gave tax advice (Regulation 8(2)(c)) on an occasional or very limited basis (Regulation 15(3)(f)), this activity would not be in scope of the MLRs, unless that person's main activity was being a legal professional (Regulation 8(2)(d)).

7.10 Where Regulation 15(3) lists the conditions that must be met in order for activity carried out by relevant persons to be described as 'occasional or very limited', it does not currently include in Regulation 15(3)(f) AMPs, cryptoasset exchange providers or custodian wallet providers. This appears to have been an oversight from when 5MLD was transposed to not include these activities under Regulation 15(3)(f) and creates a potential loophole. Therefore, this measure will close the loophole by amending Regulation 15(3)(f) to include in its reference to relevant persons under Regulation 8(2), AMPs (8(2)(i)), cryptoasset exchange providers (8(2)(j)), and custodian wallet providers (8(2)(k)). High value dealers (HVDs) are also listed in Regulation 8(2) as part of the regulated sector, however, an exemption already exists for HVDs elsewhere in Regulation 15 and therefore at this time we do not consider that they should be included under the Regulation 15(3)(f) exemption. This assessment is in line with that of HMRC, who are the AML/CTF supervisor for HVDs.

7.11 This measure was not included in the SI Consultation Document as it was considered to be a minor clarificatory change.

Change in control – cryptoasset firms

7.12 Regulations 57 to 60A of the MLRs provide the FCA with the powers to refuse to register a cryptoasset firm and/or take steps to suspend or cancel the registration of a cryptoasset business if it is not satisfied that the firm or its beneficial owner is fit and proper. Currently, it can take up to 90 days from the date of acquisition to cancel a firm's registration. Firms could therefore bypass the MLRs' registration gateway by acquiring already-registered cryptoasset firms, potentially enabling the acquiring firm to undertake illicit activities before the FCA could take action.

7.13 This measure will close this gap in the MLRs by amending Regulation 57 and adding a new Regulation 60B and schedule 6B to require proposed acquirers of cryptoasset firms to notify the FCA ahead of such acquisitions, allowing the FCA to undertake a 'fit and proper' assessment of the acquirer, providing the FCA with powers to object to any such acquisition before it takes place and cancel registration of the firm being acquired. The measure will also capture Change in Control offences under the MLRs in the new schedule 6B.

7.14 This measure was not included in the SI Consultation Document as it came to the government's attention following the period of consultation. Nonetheless, in order to ensure the robustness of the MLRs this gap is being closed at the earliest opportunity, via this SI. The measure will therefore come into force as soon as possible once the SI is made.

Notices of refusal to register

7.15 Currently, Regulations 59 and 60 of the MLRs provides the FCA and HMRC with the power to publish notices relating to the cancellation and suspension of MLR registrations; however, neither is able currently to publish notices of refusal to register.

7.16 This measure will improve the transparency of FCA and HMRC decision-making by amending Regulation 59 to allow the FCA and HMRC the discretion to publish information about decisions not to register an applicant, aligning the treatment of notices of refusal to register with powers to publish notices for the cancellation and suspension of registrations. The measure will also allow the FCA to publish notices where it has objected to the acquisition of an already registered cryptoasset firm. This change will enable the FCA and HMRC to publish more detailed findings in the course of registration and acquisition assessments, allowing such notices to include a level of detail which could help other firms benchmark and improve their AML systems, providing greater transparency for the market by effectively signalling good/bad behaviour to other firms.

7.17 This change was consulted on as part of the 2019 Transposition of the Fifth Money Laundering Directive consultation and was therefore not included in the consultation for this SI. This measure will enhance the transparency of the decision-making processes and has been developed with the FCA in tandem with amendments to Regulations 57 and 59 of the MLRs. This measure will therefore also come into force at the earliest opportunity once the SI is made.