ICAEW
REPRESENTATION 101/21

AMENDMENTS TO THE MONEY LAUNDERING, TERRORIST FINANCING AND TRANSFER OF FUNDS (INFORMATION ON THE PAYER) REGULATIONS 2017 STATUTORY INSTRUMENT 2022

Issued 13 October 2021

ICAEW welcomes the opportunity to comment on the Amendments to the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 Statutory Instrument 2022 consultation document published by HM Treasury on 21 July 2021, a copy of which is available from this link.

This ICAEW response of 14 October 2021 reflects consultation with the Economic Crime Sub-Committee, part of the Business Law Committee. The Economic Crime Sub-Committee includes representatives from public practice. The Business Law Committee is responsible for ICAEW policy on business law issues and related submissions to legislators, regulators and other external bodies.

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ICAEW is a supervisory body recognised by HM Treasury for the purposes of the Money Laundering Regulations 2017 dealing with approximately 13,000 member firms.

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KEY POINTS

Access to SARs by supervisors

1. We believe that access by AML/CTF supervisors to the content of the SARs of their supervised population is an effective tool that will assist supervisors in assessing the quality of, and raising the standard of, SARs submitted. We do not believe there should be an obligation to review SARs on every visit.
2. It is also helpful to review the contents of SARs to identify emerging risk trends to ensure that this is being fed back to the wider supervised population and is being captured in risk assessments. However, we believe a more effective way of collecting threats and trends identified through SARs would be through working groups with firms (such as the SARs engagement groups) where firms could share information as a supervisor may legitimately only review a small sample of SARs to perform their supervisory function.
3. Any explicit legal requirement for supervisors to review SARs should also be accompanied by the provision that SARs reviewed for this purpose would not result in the supervisor re-reporting that same suspicion to the NCA, as well as appropriate safeguards to protect the information from subject access requests.

Reporting of discrepancies

4. We support the objective of having a PSC register that is accurate and reliable and agree that the accuracy of the register would be enhanced by introducing an ongoing discrepancy reporting obligation provided that the registrar has the necessary powers to take appropriate action when reports are made. We do however have concerns that discrepancy reporting places resource pressure on the regulated sector, especially those smaller accountancy firms who have limited resources. By extending this obligation to an ongoing one, it increases the burden further. It is therefore imperative that firms reporting discrepancies have confidence that appropriate and timely action will be taken by the registrar, and ultimately will be able to rely on the register for CDD purposes.
5. Whilst we acknowledge that some relevant persons may wish to report discrepancies they become aware of on an ongoing basis, such as on periodic refreshes to client due diligence, any extension to the reporting obligation should only be brought into the legislation at such a time that Companies House has the appropriate powers to act on those discrepancies as planned via Companies House Reform. We know that almost a third of discrepancies reported aren't acted upon and so Companies House needs the necessary powers to make best use of the information provided by firms. The proposal to extend reporting to an ongoing obligation will exacerbate this problem – with firms re-reporting discrepancies that Companies House have not been able to correct.
6. A number of the discrepancies reported currently relate to the difference between who the PSC of a company is and who the beneficial owner is. This causes confusion for users of the PSC register and government should seek to set a consistent approach to who regulated firms are required to identify for the purposes of the MLRs and whose details the firms are obliged to check on the PSC register.
7. If Government are considering whether they might extend discrepancy reporting to areas other than the PSC, we suggest that the administrative burden for the regulated sector is properly considered and we recommend that if such changes to discrepancy reporting are to be made, this should be done as a one-off extension to the regime, rather than changing the requirements year-on-year.
8. Furthermore, it is important that any changes in relation to ongoing discrepancy reporting make it clear firms do not have an ongoing proactive obligation to check that the information held on the registrar of companies is accurate, as this would be unrealistic from a resource perspective. It is important that there is a clear definition of what 'reasonably have become aware of' means in practice.

9. As part of any changes made to the provisions on discrepancy reporting, government should consider clarifying the obligation within the MLRs such that firms are required to report not just the discrepancy, but also provide any further evidence or information that Companies House requires to assist with investigating the discrepancy. At present, there are concerns in relation to firms breaching confidentiality or data protection requirements if they provide supporting information or documents in relation to a reported discrepancy. This can prevent Companies House from adequately investigating a suspected discrepancy in the register.

ANSWERS TO SPECIFIC QUESTIONS

AISPS and PISPS

Question 1

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

10. Given that both AISPs and PISPs do not come into possession of funds nor execute payment transactions themselves, we would agree that the ML/TF risks are lower than for service providers that hold funds on behalf of their customers for the purpose of onward transfer.

Question 2

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

11. Obligations in respect of registering for AML supervision with the FCA and associated administrative burden may be disproportionate to the apparent level of ML/TF risk posed.

Question 3

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

12. No comments.

Question 4

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

13. On the basis that the likely risk of ML/TF has been assessed as low and there is no evidence of criminals using AISPs or PISPs in any money laundering methodology, it would appear sensible for AISPs and PISPs to be exempt from the regulated sector. However, we suggest that government consider performing a risk assessment to confirm the risk score before a final decision is made.

BPSPS and TDITPSPS

Question 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.

14. On the basis that the government believes there is not any market for BPSPs in the UK and TDITPSPs are only involved in the transfer of small sums of money between regulated bodies it would appear sensible to exclude them both from the MLRs.

Question 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?

15. We would expect a reduction in direct compliance costs.

16. We could also expect a reduction in available information/intelligence. For example, there may be less visibility of any future increase in the market presence of BPSPs and TDITPSPs, and also in the level of funds that they are involved in transferring.

Question 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?

17. We would expect both HMRC and registered business to see a reduction in cost and administrative burden.

Question 8

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

18. We would not expect there to be wider impacts on industry as TDITPSPs offer very specific services and there does not appear to be any evidence of any businesses in the UK operating as a BPSP.

Art Market Participants

Question 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.

19. No comments.

Question 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?

20. No comments.

Question 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.

21. We are satisfied that the proposed drafting clarifies that artists who sell their own works of art are excluded from the definition.

Question 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?

22. No comments.

SARs

Question 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?

23. We believe that access by AML/CTF supervisors to the content of the SARs of their supervised population is required to be able to assess the quality of the SARs being submitted by firms supporting the recent work of the UKFIU to raise the standard of the SARs submitted. The review should not extend to an assessment of whether there is a 'suspicion' or not, as suspicion is subjective. We do not believe there should be an obligation to review SARs on every visit. Disciplining members and firms for submitting poor quality SARs would not be possible since the SARs themselves can't be used as evidence in the disciplinary process. OPBAS should issue clear guidance on their expectations in relation to the review of SARs.
24. It is also helpful to review the contents of SARs to identify emerging risk trends to ensure that this is being fed back to the wider supervised population and is being captured in risk assessments. However, we believe a more effective way of collecting threats and trends identified through SARs would be through working groups with firms (such as the SARs engagement groups) where firms could share information as a supervisor may legitimately only review a small sample of SARs to perform their supervisory function.

Question 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?

25. We believe that Regulation 66 is sufficient based on our experience of using it to review SARs during our onsite monitoring reviews. ICAEW has been using Regulation 66 for this purpose since the beginning of 2020.
26. However, given that there exists some ambiguity and confusion amongst other supervisors, we feel that an explicit right of access to the content of SARs would be beneficial.

Question 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?

27. We believe that allowing AML/CTF supervisors access to the content of the SARs is an important element of an effective risk-based approach to supervision, as supervisors may use this information to understand sector risks and emerging trends. Supervisors are then able to relay this information back to firms so that they can improve and enhance their understanding of the risks they may face and provide support/guidance and training if there is a deficiency. However, we believe a more effective way of collecting threats and trends identified through SARs would be through working groups with firms (such as the SARs engagement groups) where firms could share information as reviewing a supervisors' review of SARs may only be of a small sample.
28. Furthermore, supervisors could also review internal SARs that were not reported to the NCA to allow them to understand, firstly, the decision-making process as to why that SAR wasn't made and secondly, any threats or trends where the suspicion bar was not met.
29. The new regulation should not result in supervisors reviewing <u>every</u> SAR submitted by firms. The reviewing of SARs should always be an activity that forms part of our wider AML monitoring activities.

Question 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?

30. We agree with the proposed approach which we consider necessary to overcome resistance from regulated firms who may be reluctant to share the content of their submitted SARs with supervisors without the existence of an explicit legal requirement in the MLRs.
31. However, any explicit legal requirement should also be accompanied by the provision that SARs reviewed for this purpose would not result in the supervisor re-reporting that same suspicion to the NCA.

Question 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.

32. There are no obvious cost impacts.
33. The change will aid supervisors perform their supervisory functions more efficiently and effectively. Whilst supervisors do currently request to view the contents of SARs under the existing MLRs, the proposed change will help ensure that they encounter less resistance from their supervised firms. ICAEW has had a very small number of cases where a firm has been reluctant to provide the contents of the SAR but in all such cases we have been able to gain access.
34. Any explicit legal requirement should also be accompanied by the provision that SARs reviewed for this purpose would not result in the supervisor re-reporting that same suspicion to the NCA.

Question 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.

35. Without appropriate mitigations, supervised firms may have concerns in respect of confidentiality and the risk of tipping off. It is important that these concerns are addressed through appropriate mechanisms to protect the confidentiality of important elements so that, for example, it is not possible to identify the reporter or subject of the SAR from documents retained by the supervisor. Protections should be set for supervisors against subject access requests under data protection legislation as well as maintaining the client's privilege (where appropriate).
36. The review should not extend to an assessment of whether there is a 'suspicion' or not, as suspicion is subjective.
37. Any explicit legal requirement should also be accompanied by the provision that SARs reviewed for this purpose would not result in the supervisor re-reporting that same suspicion to the NCA.
38. It is also important to recognise that there is no legal requirement to use glossary codes or fill out SARs templates in a certain way. As such, supervisors will not discipline a firm for a 'poor' quality SAR unless the information omitted was fundamental to the suspicion or if the firm has deliberately omitted information to conceal the identity of the subject. Creating a gateway to view the SARs does not confer an obligation to monitor/supervise/discipline the quality of the SARs beyond making best-practice recommendations to the firm and requiring (or offering) targeted training.

Credit and financial institutions

Question 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?

39. It would appear sensible to align Regulation 10 of the MLRs with FSMA to ensure consistency and remove any potential ambiguity concerning whether an activity comes within scope.

Question 20

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

40. We would expect that aligning the drafting of Regulation 10 of the MLRs with FSMA would provide clarity particularly as credit and financial institutions should already be familiar with FSMA.

Question 21

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

41. We do not have information regarding any activities that do not have clarity their inclusion within the scope of the regulated sector.

Question 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.

42. No comments.

Question 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.

43. No comments.

Question 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?

44. We are not aware of any likely unintended consequences.

Proliferation Financing Risk Assessment

Question 25

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

45. We agree with the proposal to use the FATF definition of proliferation financing as the basis for the definition in the MLRs given that the purpose of adding relevant provisions about proliferation financing is to align with the FATF standards.

Question 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.

46. We do not consider there to be any significant impacts on the accountancy sector particularly as firms in this sector are unlikely to encounter any businesses or transactions related to PF and will already be considering PF risks as part of the customer risk assessment.

47. There will be a small cost/resource impact related to the firm performing an assessment of the PF risks their business is subject to. For the vast majority of our supervised population, this may be a short 'one-liner' as it is unlikely to encounter any such businesses or transactions.

Question 27

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

48. Whilst the regulations do not currently include specific provisions about proliferation financing, we would expect that relevant persons would pick up on any red flags when conducting ML and TF risk assessments. Accountancy firms will consider PF risk and relevant sanctions information as part of their customer risk assessment where the client operates in the relevant sector but not routinely on all clients. The identification of anything related to weapons would be considered high risk. In practice, regulated firms in the accountancy sector are unlikely to come across risks associated with PF.

49. It would however be helpful for government to provide guidance on the risks of PF that can be disseminated to the regulated sector to help firms understand the relevant red flags and ways to mitigate risks in this area (we note the recent publication of the PF NRA). The related issues of dual use goods and trade embargos needs to be covered in any such guidance.

Question 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.

50. For the reasons already explained, we do not consider there to be any significant impact on the CDD obligations of relevant persons in the accountancy sector.

Question 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?

51. Supervisory authorities will assess whether relevant persons are assessing PF risks and taking effective mitigating action in the same way as for other ML and TF risks. We, therefore, do not consider there to be any new powers required. The government's PF NRA will inform supervisory authorities of specific risk areas.

52. We would, however, welcome greater clarity on supervisory obligations in relation to sanctions that go beyond checking risk assessments for PF risks. The current sanctions legislation doesn't place any obligations on the supervisory authorities set out in the MLRs but the sanctions regime is included within our scope via risk assessment and EDD requirements.

Question 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.

53. Based on the objective of aligning the regulations with the FATF standards, the proposed drafting adequately covers the intention of the change.

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)

Question 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?

54. We agree that Regulation 12(2)(a) should be amended to include all forms of business arrangement which are required to register with Companies House. The fact that LPs are not already included appears to be an anomaly within the regulations.

Question 32

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

55. We are not aware of any unintended consequences.

Question 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.

56. Direct compliance and administrative costs will increase for TCSPs as more business arrangements and services will fall within the scope of the regulations.

Question 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.

57. There would likely be an increase in the formation costs of these business arrangements as the services provided will fall within the scope of the regulations. We would also expect to see a reduction in the ML and TF risk associated with arrangements that were not previously subject to the regulations.

Extension of the term “business relationship” for services provided by TCSPs

Question 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?

58. We 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 but would argue that the meaning of the term in general requires more clarity in the regulations.

59. There is also confusion around where an accountancy firm that instructs a formation agent to form a business arrangement for its client is itself a TCSP, as well as the formation agent. Clarification on this point would be helpful, although this may be best achieved through guidance.
60. It would also be helpful to consider the roles that accountancy firms play in submitting documents to Companies House. Currently, filing documents as an administrative task are not currently covered by the TCSP definition – only the formal Company Secretary role is. Yet such filings may lend legitimacy to the underlying documents.

Question 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)?

61. We 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).

Question 37

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

62. We agree that the one-off appointment of a limited partner who has no management role should not constitute a business relationship but only if there is no fee attached to the work.

Question 38

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

63. Given that the term "business relationship" is not widely understood in the context of the regulations, changes made specifically in relation to TCSPs could result in a knock-on impact on the interpretation of other sectors. It would be helpful to have more clarity on the meaning of the term and application to each sector. It would be useful for there to be greater clarity on the term "element of duration". In the accountancy sector we interpret this as being a very short period, but this may not be a consistent interpretation across the regulated sectors.

Question 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.

64. Direct compliance and administrative costs will increase for TCSPs as more business arrangements and services will fall within the scope of the regulations.

Question 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.

65. There would likely be an increase in the formation costs of these business arrangements as the services provided will fall within the scope of the regulations.

Reporting of Discrepancies

Question 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.

66. We support the objective of having a PSC register that is accurate and reliable and agree that the accuracy of the register would be enhanced by introducing an ongoing discrepancy reporting obligation provided that the registrar has the necessary powers to take appropriate action when reports are made. We do however have concerns that discrepancy reporting places resource pressure on the regulated sector, especially those smaller accountancy firms who have limited resources. By extending this obligation to an ongoing one, it increases the burden further. It is therefore imperative that firms reporting discrepancies have confidence that appropriate and timely action will be taken by the registrar, and ultimately will be able to rely on the register for CDD purposes.
67. Whilst we acknowledge that some relevant persons may wish to report discrepancies they become aware of on an ongoing basis, such as on periodic refreshes to client due diligence, any extension to the reporting obligation should only be brought into the legislation at such a time that Companies House has the appropriate powers to act on those discrepancies as planned via Companies House Reform. We know that almost a third of discrepancies reported aren't acted upon and so Companies House needs the necessary powers to make best use of the information provided by firms. The proposal to extend reporting to an ongoing obligation will exacerbate this problem – with firms re-reporting discrepancies that Companies House have not been able to correct.
68. A number of the discrepancies reported currently relate to the difference between who the PSC of a company is and who the beneficial owner is. This causes confusion for users of the PSC register and government should seek to set a consistent approach to who regulated firms are required to identify for the purposes of the MLRs and whose details the firms are obliged to check on the PSC register.
69. If Government are considering whether they might extend discrepancy reporting to areas other than the PSC, we suggest that the administrative burden for the regulated sector is properly considered and we recommend that if such changes to discrepancy reporting are to be made, this should be done as a one-off extension to the regime, rather than changing the requirements year-on-year.
70. Furthermore, it is important that any changes in relation to ongoing discrepancy reporting make it clear firms do not have an ongoing proactive obligation to check that the information held on the registrar of companies is accurate, as this would be unrealistic from a resource perspective. It is important that there is a clear definition of what 'reasonably have become aware of' means in practice.
71. As part of any changes made to the provisions on discrepancy reporting, government should consider clarifying the obligation within the MLRs such that firms are required to report not just the discrepancy, but also provide any further evidence or information that Companies House requires to assist with investigating the discrepancy. At present, there are concerns in relation to firms breaching confidentiality or data protection requirements if they provide supporting information or documents in relation to a reported discrepancy. This can prevent Companies House from adequately investigating a suspected discrepancy in the register.

Question 42

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

72. As noted above, extending the reporting obligation to an ongoing requirement will increase the administrative burden on firms in the regulated sector, particularly smaller accountancy practices who have limited resources.
73. There is a risk that the change in requirements is misinterpreted whereby relevant persons believe they are responsible for monitoring the accuracy of information held on the registrar of companies on an ongoing basis. This would be a disproportionate and unfeasible

obligation for relevant persons so any guidance must make clear that this is not the intention of any amended regulation.

74. Firms may re-report discrepancies that Companies House have not been able to amend (paragraph 67).

75. If Government are considering whether they might extend discrepancy reporting to areas other than the PSC, we suggest that the administrative burden for the regulated sector is properly considered and we recommend that if such changes to discrepancy reporting are to be made, this should be done as a one-off extension to the regime, rather than changing the requirements year-on-year.

Question 43

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

76. The proposed change may be justified provided that it is made clear that the obligation is only in respect of discrepancies that the relevant person becomes aware of and that there is no expectation that relevant persons will be actively checking for discrepancies on an ongoing basis.

77. We believe the changes should only be brought into the legislation at such a time that Companies House has the appropriate powers to act on those discrepancies as planned via Companies House Reform – this would mean that the discrepancy reporting activity by firms was of value, and would also prevent re-reporting of the same discrepancy to Companies House.

Question 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?

78. Widening the PSC discrepancy reporting to an ongoing obligation rather than a one-off requirement will create additional work for all relevant persons, both in terms of needing to update internal systems and processes to manage the ongoing checking, and also the time in making reports. For larger firms, the financial burden of this additional work may be limited but it is a greater burden for smaller firms. Also, some firms consider it isn't a useful task for spending time and resources on – particularly without the necessary powers in place for Companies House to effectively act on the information provided.

79. If Companies House are given sufficient powers to take action to resolve identified discrepancies, and refer concerns to law enforcement, then the proposed change should have a positive impact on the accuracy of the register and ensuring that businesses are maintaining accurate and up-to-date information.

80. However, firms do see a benefit in extending discrepancy reporting to 'ongoing' and other areas of the register, if government also makes changes to allow relevant persons to place more reliance on the register when conducting their own customer due diligence procedures – this could reduce the administrative burden on firms.

81. The extension of the PSC discrepancy reporting obligation to an ongoing requirement will provide the ability for relevant persons to make reports without the risk of breaching client confidentiality. This is currently a concern for relevant persons making reports outside of the circumstances required in the regulations as there is currently no defence that the report is required by law or regulation.

Disclosure and Sharing

Question 45

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

82. We believe that it would be appropriate to add BEIS to the list of relevant authorities for the purposes of Regulation 52 as its role is somewhat limited without inclusion. It would be helpful to provide a list of departments within BEIS that will be included in Regulation 52, with a rationale as to why they are included.

Question 46

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

83. Assuming that Companies House is included in BEIS, we are not aware of other authorities that should be added to the list of relevant authorities.

Question 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?

84. We are of the view that the Regulation 52 gateway should be expanded to allow for reciprocal protected sharing. One of the criticisms of the existing arrangement is that while supervisory authorities are improving the volume and quality of information that they share with other relevant authorities through ISEWGs, FIN-NET and the PPTGs, those same other relevant authorities are not improving the flow of information back to the supervisory authorities.
85. We have experienced a specific circumstance where ICAEW's Professional Conduct Department have a crime number for an offence involving a member yet we aren't able to access the details from the police authorities and therefore weren't able to use the information to take forward a disciplinary case.
86. Consequently, supervisory authorities do not have visibility of how the information they have shared with relevant authorities has been used or whether there are members of their supervised population who are under investigation. It would be useful to be able to receive information from law enforcement where a criminal prosecution hasn't been possible but where the supervisory authority could take forward disciplinary action to disrupt activity.
87. Two-way information sharing would greatly increase awareness of the latest risks and threats and mean that regulators were in a far better position to contribute to disrupting criminal methodologies and share valuable information with their supervised populations.

Question 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.

88. We believe that the expansion of Regulation 52 will not have any significant direct impact on relevant persons. However, the wider benefits of improved intelligence and information sharing will likely result in higher quality information being shared.
89. There may be an increase in intelligence available to supervisory authorities that could have resource implications for supervisors. An increase in intelligence may cause challenges where there is a requirement to handle the information correctly, or where there are legal obligations under data protection legislation.

Question 49

In your view, what (if any) impact would the expansion of Regulation 52 have on supervisors, both in terms of the costs and wider impacts of widening their supervisory powers? Please provide evidence where possible.

90. We do not expect to see a significant impact on costs but expect that reciprocal sharing will result in supervisors receiving higher quality intelligence on a more timely basis. This is particularly important and relevant to ICAEW – we have invested heavily in an intelligence unit to harness internal intelligence and to deal with any information, or intelligence, we receive from external sources sensitively. However, little information and intelligence is shared by external sources.

Question 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?

91. No comments.

Information Gathering

Question 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.

92. Given the difficulties that the FCA currently has in gathering information from Annex 1 institutions we feel that any additional burden 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, we would not expect this to be overly onerous compared to the value it would be provide.

Question 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.

93. We feel that it would be sensible for the FCA to have similar powers across all the firms it supervises under the MLRs so that it can adopt a consistent approach to supervision across the whole population.

Question 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.

94. We believe that the expansion of powers is necessary to allow the FCA to fulfil its supervisory duties in relation to Annex 1 firms. With respect to skilled person reports, this will allow the FCA to verify that Annex 1 firms have addressed any issues identified or areas requiring improvement. Without power of direction, if it becomes apparent that Annex 1 firms are not complying with regulations, the FCA will not have necessary powers to influence behaviours and ensure that improvements are being made.

Question 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.

95. The expansion of the FCA's supervisory powers should ensure that there is a level playing field within the industry as regards regulatory requirements, which should ensure greater consistency between firms in terms of their approach to managing ML and TF risks.

Question 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.

96. We expect that the expansion of powers will allow the FCA to supervise Annex 1 firms more efficiently and effectively and allow it greater flexibility to follow a risk-based approach in respect of the whole population.

Transfers of cryptoassets

The approach to implementation

Question 56

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

97. We agree with the overarching approach of tailoring the provisions of the FTR to the cryptoasset sector so that there is consistency across the financial services industry.

Question 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.

98. We do not have information on the technological development needed to implement the travel rule.

Question 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?

99. As the compliance solutions do not currently exist, we consider it sensible to allow for a grace period, but do not have information in respect of how long is needed for these solutions to be developed.

Use of provisions from the FTR

Question 59

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

100. We agree with the principle that the requirements should be applied consistently to all firms in scope where possible but do not have information on how feasible this is specifically for the cryptoasset sector.

Provisions specific to cryptoasset firms

Question 60

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

101. No comments.

Question 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?

102. No comments.

Question 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?

103. No comments.

Question 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?

104. No comments.