Transposition of the Fifth Money Laundering Directive: consultation
Response from Propertymark
June 2019

Background

1. ARLA Propertymark is the UK's foremost professional and regulatory body for letting agents; representing over 9,000 members. ARLA Propertymark agents are professionals working at all levels of letting agency, from business owners to office employees.

2. NAEA Propertymark is the UK's leading professional body for estate agency personnel; representing more than 11,000 offices from across the UK property sector. These include residential and commercial sales and lettings, property management, business transfer, auctioneering and land.

Questions

Expanding the scope in relation to tax matters

3. It's not relevant for us to respond to this section.

Letting agents

3. What are your views on the ML/TF risks within the letting agents sector? What are your views on the risks in the private landlord sector, especially comparing landlord-tenant to agent-landlord-tenant relationships? Please explain your reasons and provide evidence where possible.

4. There are two ML/FT risks within the letting agents sector and the private rented sector as a whole. Firstly, letting agents and self-managing landlords hold significantly more cash than estate agents. Secondly, the size and growth of the private rented sector means it is vulnerable to ML/TF including links to drugs and modern-day slavery if the ownership and occupation of property is left unchecked.

5. Unlike estate agents, letting agents and self-managing landlords hold a significant amount of money from deposits, rents, service charges and ground rent which highlight the opportunities for cash payments to be made and 'clean' dirty money. We know of one letting agent who had a tenant explain that they could not pay through a bank account but was able to pay 12 months' rent in advance, in cash. This amounted to £26,000. Although it is best practice to do so and letting agents must carry out Right to Rent checks, they have no statutory obligation to carry out Customer Due Diligence. Alarmingly, in circumstances as outlined above, letting agents would not be committing a criminal offence by not submitting a Suspicious Activity Report. By including both landlords and letting agents within the Money Laundering Regulations this will reduce the risk. If the government do not include landlords as well, criminals carrying out money laundering and

terrorist financing activity will stop using letting agents and the problem will be pushed further underground.

6. The private rented sector is vulnerable to criminal activity for two reasons. Firstly, the size and growth of the private rented sector. Secondly, many letting agents who do not carry out estate agency work in accordance with section one of the Estate Agents Act 1979 (as amended), do not fall within the scope of the Money Laundering Regulations and are therefore vulnerable to abuse. For instance, it is relatively easy for someone to obtain a rented property and then use it for a cash-based business. Individuals may then subsequently use criminal money to buy property and/or launder money through various layers of activity. This is highlighted by the case of Aqeel Khan who in December 2014 used profits from laundering millions of pounds for criminals and conned financial institutions to fund a property portfolio and buy a fleet of luxury sports cars. Mr Khan's network included his brother who controlled and co-ordinated the distribution of cash into third party bank accounts. He then used one of his employees to launder money through his accounts and had property assets put into his name.[1]

7. The size and transient nature of the private rented sector means it can be used to enable criminal gain. In the last 15 years the size of the private rented sector has more than doubled. The number of households in the private rented sector in the UK increased from 2.8 million in 2007 to 4.5 million in 2017, an increase of 1.7 million (63%) households.[2] As homeownership becomes out of reach for more people, we are likely to see the private rented sector continue to grow. Consequently, whilst the lettings agent sector is not included within the scope of the Money Laundering Regulations the sheer size of the private rented sector means it is vulnerable to criminal activity. Furthermore, with lettings activity not included within the Money Laundering Regulations there is a risk of money laundering activity transferring from the sales sector into the lettings sector where firms do not have to register with HMRC for anti-money laundering supervision.

4. What other types of lettings activity exist? What activities do you think should be included or excluded in the definition of letting agency activity? Please explain your reasons and provide evidence where possible.

8. Aside from the types of lettings activity outlined on page 10 of the consultation document (introductory services, lets only, rent collection, social housing, commercial lettings, full property management, block management) we think that letting agents who rent and manage property on behalf of local authorities should be included in the definition of letting agency activity.

[1] https://www.yorkshirepost.co.uk/news/latest-news/bradford-money-launderer-s-fleet-of-luxury-cars-1-7017328

[2] https://www.ons.gov.uk/economy/inflationandpriceindices/articles/ukprivaterentedsector/2018

9. In order to define letting agency activity the government should use the definition of letting agency work as set out in Enterprise and Regulatory Reform Act 2013.[3] This will provide consistency. If another definition is used it will create confusion and uncertainty. The definition in the Act says,

"lettings agency work" means things done by any person in the course of a business in response to instructions received from—
(a)a person seeking to find another person wishing to rent a dwelling-house in England under a domestic tenancy and, having found such a person, to grant such a tenancy ("a prospective landlord");
(b)a person seeking to find a dwelling-house in England to rent under a domestic tenancy and, having found such a dwelling-house, to obtain such a tenancy of it ("a prospective tenant").

5. Should the government choose a monthly rent threshold lower than EUR 10,000 for letting agents? What would the impact be, including costs and benefits, of a lower threshold? Should the threshold be set in euros or sterling? Please explain your reasoning.

10. Yes, the government should set a lower monthly rent threshold for letting agents. The government should remove the EUR 10,000 monthly rent threshold and set this at zero. There are two main impacts. Firstly, the EUR 10,000 threshold will not capture most tenancies let in the private rented sector in the UK and will thus not contribute to the UK government's efforts in tackling money laundering. Secondly, removing the threshold will create consistency across the industry rather than agents having a complex cap to administer.

11. Setting the monthly rent threshold at zero would create consistency across the industry because a higher threshold would create uncertainty when calculating monthly rent. For instance, if the rent is below the threshold at the start of the tenancy but goes up during the tenancy, there will likely be confusion and inconsistency as to when to carry out Customer Due Diligence under the Money Laundering Regulations. Furthermore, it could lead to rents being paid just under the threshold to avoid the extra checks. We know from the estate agency sector that agents need clear guidance from the government that is simple, quick and easy to apply. Following the introduction of the Fourth Money Laundering Directive, sales agents were not given enough time to adapt to the changes. Until recently only interim guidance was available and there is a need for better guidance for reporting suspicious activity. We believe that the Money Laundering Regulations should be extended to the letting agents' sector but introducing a threshold on top of the industry continuing to understand the requirements will create widespread confusion and likely non-compliance.

12. A EUR 10,000 threshold for letting agents will not capture most tenancies let in the private rented sector. The latest statistics from the private rental market summary from the Valuation Office

[3] http://www.legislation.gov.uk/ukpga/2013/24/section/83/enacted

Agency show that the median monthly rent recorded between 1 October 2017 and 30 September 2018 in England was £690. London had the highest median monthly rents, and the largest variation in rental values, followed by the South East. The median rent in London (£1,473) was more than double the English median rent. The North East had the lowest median rent at £495.[4] The average two-bed monthly rent in Scotland in 2018 was £652[5]. In Wales, during 2017, the median rent for two bed properties was £500.[6] In Northern Ireland, the estimated average (median) rent per week for the private rented sector in 2016-17 was £98 equating to £392 per month.[7] In addition to this, from the period April 2017 to March 2018 the estate agency sector only submitted 710 Suspicious Activity Reports.[8] Therefore, including letting agents within the Money Laundering Regulations and setting a very high threshold for compliance based on the lower average cost of rents across the UK is unlikely to contribute to the UK Government's aims of tackling money laundering and terrorist financing. The EUR 10,000 monthly rent threshold should be removed and set at zero.

13. If the government decide to introduce the threshold this should be set in sterling.

6. Do letting agents carry out CDD checks on both contracting parties (tenants and landlords) when acting as estate agents in a transaction?

14. Letting agents are legally required to carry out Right to Rent checks on tenants and will also carry out a pre-tenancy application process using a form and a reference check. Most letting agents do not currently carry out checks on landlords.

7. The government would welcome views on whom CDD should be carried out and by what point? Should CDD be carried out before a relevant transaction takes place (if so, what transaction) or before a business relationship has been established? Please explain your reasoning.

15. CDD should be carried out on the tenant and landlord. Checks on any potential customers will help letting agents avoid committing a money laundering offence and protect the reputation of their business.

16. Checks on tenants should be carried out at the same time as the Right to Rent check. This will ensure checks are done before "entering into" the tenancy (a contract signature). Checks at this stage will also reduce the risk of properties being used for what could be illegal purposes.

[4] https://www.gov.uk/government/statistics/private-rental-market-summary-statistics-october-2017-to-september-2018--2
[5] https://www.gov.scot/publications/private-sector-rent-statistics-2010-2018/
[6] https://gweddill.gov.wales/statistics-and-research/private-sector-rents/?lang=en
[7] https://www.communities-ni.gov.uk/news/northern-ireland-housing-statistics-2017-18-released
[8] https://www.naea.co.uk/news/january-2019/suspicious-activity-reports-2018-how-many-did-agents-submit/

Furthermore, for landlords if a tenant gets caught money laundering, their funds will be frozen, resulting in no rent.

17. Checks on landlords should be carried before letting agents market a property. This will prevent invalid agreements which can lead to letting agents losing out on fees. The government must recognise that the landlords are not purchasing anything. They have already bought the property. If the property was bought by ill-gotten gains, then the estate agent, banks or lawyers have responsibility to flag it up. Letting agents carrying out checks on landlords will only verify that they are who they say they are.

8. The default supervisor of relevant letting agents will be HMRC, but professional bodies can apply to OPBAS to be a professional body supervisor. Are you a member of a professional body, and would this body be an appropriate supervisor? If this body would be an appropriate supervisor, please state which professional body you are referring to.

18. Propertymark believe that HMRC and self-regulatory bodies should be appointed supervisors of estate agents and letting agents. We would advocate professional bodies acting as the self-regulatory body for their members and HMRC would remain as the supervisor for agents who are not members of these bodies. We feel that self-regulatory bodies acting as supervisors are best placed to understand their own sectors and to gather information about developing risks and anti-money laundering methodologies. Should a professional body like Propertymark become a professional body supervisor for estate agents then we believe the organisation should have the flexibility to include lettings and sales together.

9. What do you see as the main monetary and non-monetary costs to your business of complying with the MLRs (e.g. carrying out CDD, training staff etc.)? Please provide figures (even if estimates) if possible.

19. There are three main monetary costs for letting agency businesses to comply with the MLRs. Firstly, staff training. Secondly, the use of IT systems. Thirdly, staff time in carrying out the checks.

20. A significant number of Propertymark members use electronic third-party checking services, which mean that agents do not have to see, copy and retain any original documents from the client. In terms of costs we know that Smart Search, a unique Anti-Money Laundering verification platform, charge £750 for a specified amount of individual or businesses searchers.[9] SmartSearch can be integrated with several third-party CRM and Case Management Providers across all sectors, and with a large number of bespoke client systems. To this end, many letting agents under the Money Laundering Regulations would need to upgrade their compliance regimes to incorporate

[9] https://www.smartsearchuk.com/

electronic verification and demonstrate their compliance with the rules in a much more cost-effective manner in order to reduce their operational risk.

21. From a business point of view staff training is essential, particularly when taking on new staff, and this could take a few days or up to a week each month to ensure they fully understand the Money Laundering Regulations. The Regulations also advise staff training at least every two years. We recommend training annually and for agents to keep records accordingly. In addition, members of Propertymark are required to log twelve hours of Continued Professional Development (CPD) each year. Members identify their own development needs and at least four hours of CPD is expected to be recorded through attendance of an event or training course. It is integral to Propertymark membership and ensures that our members are constantly keeping up to date with changes to legislation and the industry. For anti-money laundering we run three courses.[10] Firstly, an online introductory course lasting thirty minutes designed to raise awareness of money laundering activities and reduce agency risks. This course costs £30 plus VAT for members and £40 plus VAT for non-members. Secondly, we run a foundation course which is a four-hour classroom-based course covering the latest developments such as Money Laundering Regulations and the Bribery Act. This costs £89.00 plus VAT for members and £130.00 plus VAT for non-members. Thirdly, our advance course is designed for people with anti-money laundering duties within their firm such as the MLRO or Deputy MLRO. The advanced course last four hours and costs £89.00 plus VAT for members and £130.00 plus VAT for non-members.

22. Letting agents carrying out CDD and chasing clients for documents has a salary cost implication, which is the largest monetary cost to any business. In February 2018, we launched Propertymark Passport, which is now available to all NAEA Propertymark members.[11] Propertymark Passport supports agents in assessing the authenticity of ID documents, regardless of their type or country of origin.[12] It is an app which uses artificial intelligence with biometrics to help confirm someone's identity and report issues and concerns of money laundering. For a fee of £1-£3 per check, the app streamlines the process, increasing the agent's ability to spot issues during identity checks. Developed with Trust Stamp, Propertymark Passport does not replace face to face checks but gives agents more tools to ensure they consistently comply with the Money Laundering Regulations.

10. Should the government extend approval checks under regulation 26 of the MLRs to letting agents? Should there be a "transition period" to give the supervisor and businesses time to complete approval checks of the appropriate existing persons (beneficial owners, managers and officers)?

23. Yes, the government should extend approval checks under regulation 26 of the MLRs to letting agents.

[10] https://www.naea.co.uk/lobbying/money-laundering-regulations/
[11] https://www.naea.co.uk/news/february-2018/propertymark-passport/
[12] https://propertymark.pro/

24. Yes, there should be a "transition period" to give the supervisor and businesses time to complete approval checks of the appropriate existing persons (beneficial owners, manager and officers). We do not want a situation where criminals move from sales to lettings because they're not covered by Regulation 26.

11. Is there anything else that government should consider in relation to including letting agents under the MLRs?

25. We have nothing further to add.

Art intermediaries

26. What are your views on the current risks within the sector in relation to art intermediaries and free ports? Please explain your reasons and provide evidence where possible.

26. Propertymark believes there are two current risks within the sector in relation to art intermediaries. Firstly, the high value of single items means that the sector is vulnerable to money laundering. Secondly, within the sector, awareness of money laundering risk is low. We are not aware of free ports and therefore do not have views on the current risks they face.

27. Luxury goods, auction houses, arts and antique sectors are all being used by the corrupt to hide the illegal proceeds of crime. Weak levels of compliance mean that the sector is vulnerable to money laundering. Between April 2017 and March 2018, High Value Dealers in the UK submitted 249 Suspicious Activity Reports.[13] In the sector, it is common for foreign and offshore accounts to be used as well as for intermediaries to carry out a transaction through online auctions or over the telephone. Furthermore, awareness of money laundering risks is low. Despite small elements of good practice, practitioners must do more than just be wary of buyers paying with cash or using intermediaries. They need to actively train staff on implementing the Money Laundering Regulations. Furthermore, greater awareness and enforcement are needed within the sector to drive up standards and improve reporting levels.

27. Who should be included within the scope of the term 'art intermediaries'?

28. We think that firms and sole traders as well as luxury goods, auction houses, art and antique dealers should be included within the scope of the tern 'art intermediaries.'

28. How should a 'work of art' be legally defined, do you have views on whether the above definitions of 'works of art' would be appropriate for AML/CTF? Please provide your reasoning.

[13] https://nationalcrimeagency.gov.uk/who-we-are/publications/256-2018-sars-annual-report/file

29. In order to define 'work of art' the government should refer to case law and/or any industry or academic definitions.

29. How should art intermediaries be brought into scope of the MLRs? On whom should CDD be done and at what point?

30. Art intermediaries should be brought into the scope of the MLRs before money changes hands. To this end, CDD should be carried out before any individual or entity is paid a commission for its role in the sale or consignment of an art object to any persons and entities that engage in the trade of art objects. Where the intermediary is an entity of any kind, the identity of the ultimate beneficial owner as a natural person should be obtained and verified. This could be done through a written statement confirming the information is correct.

30. Given that in an auction, a contract for sale is generally considered to be created at the fall of the gavel, what are your views on how CDD can be carried out to ensure that it takes place before a sale is finalised? How should the government tackle the issue around timing of CDD given the unpredictability of the sale value, and linked transactions which result in the EUR 10,000 threshold being exceeded?

31. In the case of an auction we welcome the government's updated guidance which clarifies that CDD must be carried out before a binding contract is entered, such as by pre-registering bidders or creating a condition so that customer due diligence is completed in order to allow the contract to be binding.

31. Should the government set a threshold lower than EUR 10,000 for including art intermediaries as obliged entities under the MLRs? Should the threshold be set in euros or sterling? Please explain your reasoning.

32. No, the government should not set a threshold lower than EUR 10,000 for including art intermediaries as obliged entities under the MLRs. This would ensure that the rules are consistent with the current obligations applying to the art world when a dealer accepts payments in cash of EUR 10,000 or more. The threshold should be set in sterling.

32. What constitutes 'a transaction or a series of linked transactions'? Please provide your reasoning.

33. Propertymark believe that a transaction is an agreement between a buyer and a seller to exchange goods or services. Linked transactions would constitute a series of transactions or a transaction that is split into several smaller amounts.

33. What do you see as the main monetary and non-monetary costs to your business of complying with the MLRs (e.g. carrying out CDD, providing information to a supervisor, training staff etc.)? Please provide statistics (even if estimates) where possible.

34. There are three main monetary costs for businesses to comply with the MLRs. Firstly, staff training. Secondly, the use of technology and IT systems. Thirdly, staff costs carrying out CDD. We believe that large international art businesses and auction houses will be more able to adapt to the changes, whereas small businesses and sole traders that have more limited resources are likely to find compliance more of an administrative and technical burden.

35. From a business point of view staff training is essential, particularly when taking on new staff, and this could take a few days or up to a week each month to ensure they fully understand the Money Laundering Regulations. The Regulations also advise staff training at least every two years. We recommend training annually and for agents to keep records accordingly. In addition, members of Propertymark are required to log twelve hours of Continued Professional Development (CPD) each year. Members identify their own development needs and at least four hours of CPD is expected to be recorded through attendance of an event or training course. It is integral to Propertymark membership and ensures that our members are constantly keeping up to date with changes to legislation and the industry. For anti-money laundering we run three courses.[14] Firstly, an online introductory course lasting thirty minutes designed to raise awareness of money laundering activities and reduce agency risks. This course costs £30 plus VAT for members and £40 plus VAT for non-members. Secondly, we run a foundation course which is a four-hour classroom-based course covering the latest developments such as Money Laundering Regulations and the Bribery Act. This costs £89.00 plus VAT for members and £130.00 plus VAT for non-members. Thirdly, our advance course is designed for people with anti-money laundering duties within their firm such as the MLRO or Deputy MLRO. The advanced course last four hours and costs £89.00 plus VAT for members and £130.00 plus VAT for non-members.

36. Time when carrying out CDD and staff chasing clients for documents has a salary cost implication. In order to comply the industry will need to put in place procedures for dealing with CDD, risk assessment and record keeping. The industry will also need to maintain more client and transaction documentation. This will include personal data, and thus influence compliance with the requirements of the General Data Protection Regulation and the need to have the necessary procedures and policies in place to process that data. In addition, many sales of art now take place over the internet rather than in the traditional auction house or dealer's showroom. This means that the intermediary usually never meets the buyer in person, which may make identity verification problematic. It will likely mean that invest in identification databases and software is required.

34. What do you see as the main benefits for the sector and your business resulting from art intermediaries being regulated for the purposes of AML/CTF?

[14] https://www.naea.co.uk/lobbying/money-laundering-regulations/#

37. We see a reduction in risk and greater compliance as the main benefits for the sector resulting from intermediaries being regulated for the purposes of AML/CTF.

35 Should the government extend approval checks, under regulation 26, to art intermediaries? Should there be a "transition period" to give the supervisor and businesses time to complete relevant approval checks on the appropriate existing persons (beneficial owners, managers and officers)?

38. Yes, the government should extend approval checks, under regulation 26, to art intermediaries.

39. Yes, there should be a "transition period" to give the supervisor and businesses time to complete approval checks of the appropriate existing persons (beneficial owners, manager and officers). It is important that all aspects of the sector are covered and do not fall outside of the scope of the rules.

36 Is there anything else that government should consider in relation to including art intermediaries under the MLRs e.g. how reliance could be used when dealing with agents representing a buyer or seller.

40. We have nothing further to add.

Electronic Money

41. It's not relevant for us to respond to this section.

Customer due diligence

44. Is there a need for additional clarification in the regulations as to what constitutes "secure" electronic identification processes, or can additional details be set out in guidance?

42. We believe that there is a need for minimum standards or equivalence so that users have comfort that there is consistency in how the information is being checked.

45. Do you agree that standards on an electronic identification process set out in Treasury-approved guidance would constitute implicit recognition, approval or acceptance by a national competent authority?

43. Yes, we agree that standards on an electronic identification process set out in Treasury-approved guidance would constitute implicit recognition, approval or acceptance by a national competent authority.

46. Is this change likely to encourage firms to make more use of electronic means of identification? If so, is this likely to lead to savings for financial institutions when compared to traditional customer onboarding? Are there any additional measures government could introduce to further encourage the use of electronic means of identification?

44. Yes, we think the change will likely encourage firms to make more use of electronic means of identification. Yes, we do think this will likely lead to savings for financial institutions when compared to traditional customer onboarding.

47. To what extend would removing 'reasonable measures' from regulation 28(3)(b) and (4)(c) be a substantial change? If so, would it create any risks or have significant unintended consequences?

45. We believe that removing 'reasonable measures' from regulation 28(3)(b) and (4)(c) would be a substantial change but would help to police the sector better.

48. Do you have any views on extending CDD requirements to verify the identity of senior managing officials when the customer is a body corporate and the beneficial owner cannot be identified? What would be the impact of this additional requirement?

46. We do not see the benefit in extending CDD requirements to verify the identity of senior managing officials when the customer is a body corporate and the beneficial owner cannot be identified. This is because if there is no beneficial owner, then CDD will be carried out on senior management. Therefore, we do not see what impact this rule change would have.

49. Do related ML/TF risks justify introducing an explicit CDD requirement for relevant persons to understand the ownership and control structure of customers? To what extent do you already gather this information as part of CDD obligations?

47. We do not think there is justification to introduce an explicit CDD requirement for relevant persons to understand the ownership and control structures of customers. This is because property agents must already be able to prove the identity of both parties and any beneficial owner of the customer to the property sale. It is a cumulative process and means obtaining the customer's: Full name; Official documentation which confirms their identity (preferably a form of photo ID); Residential address and date of birth; Details of any resulting beneficial owners. The level of due diligence depends on the agent's risk assessment of each customer. Under the Money Laundering Regulations, estate agents must be able to prove the identity of both the buyer and seller, and any beneficial owner of the customer, to the property sale. Whilst the beneficial owner is likely to own or control the customer, it may also be the person on whose behalf a transaction or activity is carried out. The level of due diligence is down to the individual employee to decide, but if the agent has any doubts about a customer's identity, they must cease activities with them until doubts are resolved.

50. Do respondents agree we should clarify that the requirements of regulation 31 extend to when the additional CDD measures in regulation 29 and the EDD measures in regulations 33-35 cannot be applied?

48. Yes, we agree that the government should clarify that the requirements of regulation 31 extend to when the additional CDD measures in regulation 29 and the EDD measures in regulations 33-35 cannot be applied. This will allow for consistency in approach.

51. How do respondents believe extending regulation 31 to include when EDD measures cannot be applied could be reflected in the regulations?

52. Do respondents agree the requirements of regulation 31 should not be extended to the EDD measures which already have their own 'in-built' follow up actions?

49. We do not have enough information to answer questions 51 and 52.

Obliged entities: beneficial ownership requirements

53. Do respondents agree with the envisaged approach for obliged entities checking registers, as set out in this chapter (for companies) and chapter 9 (for trusts)?

50. Yes, we agree with the envisaged approach for obliged entities checking registers, as set out for companies and for trusts.

54. Do you have any views on the government's interpretation of the scope of 'legal duty'?

55. Do you have any comments regarding the envisaged approach on requiring ongoing CDD?

51. In relation to questions 54 and 55 and reviewing information as well as requirements to apply CDD when businesses have any legal duty in a calendar year to contact the customer for reviewing their relevant beneficial ownership information, we would point out that long term relationships in this regard are not relevant for property.

Enhanced due diligence

56. Are there any key issues that the government should consider when defining what constitutes a business relationship or transaction involving a high-risk third country?

52. The government should include working examples of customers or companies from third countries who are buying or selling or the owner of property to allow agents to understand what they need to do and be able to apply it to spot potential risks with transactions from third

countries. It must also be made clear in the definition that the high-risk third country list is monitored and subject to review with countries added and delisted.

57. Are there any other views that the government should consider when transposing these Enhanced Due Diligence measures to ensure that they are proportionate and effective in combatting money laundering and terrorist financing?

53. We have no further comment to add.

58. Do related ML/TF risks justify introducing 'beneficiary of a life insurance policy' as a relevant risk factor in regulation 33(6)? To what extent is greater clarity on relevant risk factors for applying EDD beneficial?

54. It is not relevant for us to answer this question.

Politically exposed persons: prominent public functions

59. Do you agree that the UK functions identified in the FCA's existing guidance on PEPs, and restated above, are the UK functions that should be treated as prominent public functions?

55. Yes, we agree that the UK functions identified in the FCA's existing guidance on PEPs, and restated above, are the UK functions that should be treated as prominent public functions.

60. Do you agree with the government's envisaged approach to requesting UK headquartered intergovernmental organisations to issue and keep up to date a list of prominent public functions within their organisation?

56. Yes, we agree with the government's envisaged approach to requesting UK headquartered intergovernmental organisations to issue and keep up to date a list of prominent public functions within their organisation

Mechanisms to report discrepancies in beneficial ownership information

61. Do you have any views on the proposal to require obliged entities to directly inform Companies House of any discrepancies between the beneficial ownership information they hold, and information held on the public register at Companies House?

57. If obliged entities know of any discrepancies between the beneficial ownership information they hold, and information held on the public then they should directly inform Companies House. However, it is also important that Companies House have the capacity and mandate to verify all the information provided.

Verification

62. Do you have any views on the proposal to require competent authorities to directly inform Companies House of any discrepancies between the beneficial ownership information they hold, and information held on the public register at Companies House?

58. We welcome the proposal to require competent authorities to directly inform Companies House of any discrepancies between the beneficial ownership information they hold, and information held on the public register at Companies House.

63. How should discrepancies in beneficial ownership information be handled and resolved, and would a public warning on the register be appropriate? Could this create tipping off issues?

59. Companies House must be able to make checks and ensure documents are legitimate. To this end, Companies House must be adequately resourced to ensure they can verify information that is provided, and the register is accurate.

Trust registration service

60. It's not relevant for us to respond to this section.

National register of bank account ownership

61. It's not relevant for us to respond to this section.

Requirement to publish an annual report

88. Do you think it would still be useful for the Treasury to continue to publish its annual overarching report of the supervisory regime as required by regulation 51 (3)?

62. Yes, we do think it would still be useful for the Treasury to continue to publish its annual overarching report of the supervisory regime as required by regulation 51 (3).

Other changes required by 5MLD

89. Are you content that the existing powers for FIUs and competent authorities to access information on owners of real estate satisfies the requirements in Article 32b of 4MLD as amended?

63. Yes, we are content that the existing powers for FIUs and competent authorities to access information on owners of real estate satisfies the requirements in Article 32b of 4MLD as amended.

90. Are you content that the government's existing approach to protecting whistle-blowers satisfies the requirements in Article 38 of 4MLD as amended?

64. Yes, we are content that the government's existing approach to protecting whistle-blowers satisfies the requirements in Article 38 of 4MLD as amended.

Pooled client accounts

91. Are there differences in the ML/TF risks posed by pooled client accounts held by different types of businesses?

65. We do not have enough information to answer this question.

92. What are the practical difficulties banks and their customers face in implementing the current framework for pooled client accounts? Which obligations pose the most difficulties?

66. Within the current framework for pooled client accounts letting agents find it very difficult to open client accounts with no legal requirement to register with HMRC for anti-money laundering supervision. This makes it very difficult for letting agents to adhere to The Client Money Protection Schemes for Property Agents (Requirement to Belong to a Scheme etc.) Regulations 2019, which were introduced on 1 April 2019.[15] Consequently, they may end up in breach of the Client Money Protection Regulations even though they have done everything they can to get Client Money Protection. Furthermore, the Client Money Protection providers require client accounts in order to safeguard themselves in the event a business goes into administration, but the client account remains intact. This is important because the bank or administrators can offset the businesses' losses from client funds in a business account but can't if the funds are in a client account. This increases the risks to the Client Money Protection Schemes and therefore the schemes will only accept agents with the client funds held in pooled client accounts. If the government introduce a monthly rent threshold of EUR 10,000 for letting agents, this will not assist property agents in obtaining a client account from a bank.

93. If the framework for pooled client accounts was extended to non-MLR regulated businesses, what CDD obligations should be undertaken by the bank?

67. If the framework for pooled client accounts was extended to non-MLR regulated businesses, we believe that the banks should be required to undertake CDD on all businesses. Currently, under the guidance provided by the Joint Money Laundering Steering Group, made up of the leading UK Trade Associations in the Financial Services Industry, banks must determine appropriate CDD measures on a risk-sensitive basis, depending on the type of customer, business relationship,

[15] http://www.legislation.gov.uk/uksi/2019/386/pdfs/uksi_20190386_en.pdf

product or transaction.[16] By ensuring that CDD is undertaken on all businesses and reducing the monthly rent threshold when bringing the letting agency sector under the scope of the Money Laundering Regulations, this will provide banks with the reassurance they need, they know the property sector is being policed correctly and where the money is coming from.

Additional technical amendments to the MLRs

Enforcement powers

94. Do you agree with our proposed changes to enforcement powers under regulations 25 & 60?

68. Yes, we agree with the proposed changes to give the FCA or HMRC more power to publish written notices regarding directions on group undertakings related to AML failings.

95. Do you agree with our proposed amendment to the definition of "officer "?

69. We acknowledge the proposal to amend the definition of "officer" to include "manager" but believe that further clarity on the term "manager" is required as this can be applied differently across business. It maybe that the definition needs to be restricted to senior positions only.

Information sharing

96. Do you agree with our proposed changes to information-sharing powers of regulations 51,52?

70. Yes, we agree with the government's proposal to allow clearer information sharing between the Treasury and the Office for Professional Body AML Supervision (OPBAS).

Requirement to cooperate

97. Do you have any views on this proposed new requirement to cooperate?

71. We are happy for the introduction of a requirement (along with appropriate sanctions) for professional body supervisors to deal with OPBAS in an open and cooperative way, and to disclose to OPBAS anything relating to the professional body supervisor of which OPBAS would reasonably expect notice.

Changes to the requirement to be registered

98. Do you agree with our proposed changes to regulations 56?

[16] http://www.jmlsg.org.uk/

72. We do not have enough relevant information to answer this question.

Complex network structures

99. Does your sector have networks of principals, agents and sub-agents?

100. Do complex network structures result in those who deliver the business to customers not being subject to the training requirements under the MLRs?

101. Do complex network structures result in the principal only satisfying himself or herself about the fitness and propriety of the owners, officers and managers of his or her directly contracted agents, and not extending this to sub-agents delivering the business?

102. If you operate a network of agents, do you already provide the relevant training to employees? Do you ensure the agents who deliver the service of your regulated business are 'fit and proper'?

73. We do not have enough relevant information to answer questions 99 to 102.

Criminality checks

103. Do the proposed requirements sufficiently mitigate the risk of criminals acting in regulated roles?

74. Yes, we agree that self-declaration on relevant criminal convictions by those holding a management function or who are beneficial owners in the relevant sectors is not enough to comply with the regulations. Therefore, any application made to a professional body supervisor under the regulations must include enough information to enable the supervisor to determine whether the person concerned has been convicted of a criminal offence.

104. Should regulation 19(4)(c) be amended to explicitly require financial institutions to undertake risk assessments prior to the launch or use of new products, new business practices and delivery mechanisms? Would this change impose any additional burdens?

75. Yes, the regulation should be amended to explicitly require financial institutions to undertake risk assessments prior to the launch or use of new products, new business practices and delivery mechanisms. We would hope that risk assessments are already common practice within the industry.

105. Should regulation 20(1)(b) be amended to specifically require relevant persons to have policies relating to the provision of customer, account and transaction information from branches and subsidiaries of financial groups? What additional benefits or costs would this entail?

76. Yes, regulation 20(1)(b) should be amended to specifically require relevant persons to have policies relating to the provision of customer, account and transaction information from branches and subsidiaries of financial groups. We believe that this should already be in place.