

BAR STANDARDS BOARD

REGULATING BARRISTERS

Bar Standards Board Response to HM Treasury Consultation Improving the effectiveness of the Money Laundering Regulations

1. This is the response of the Bar Standards Board to the HM Treasury consultation Improving the effectiveness of the Money Laundering Regulations¹
2. The Bar Standards Board regulates barristers and specialised legal services businesses in England and Wales, in the public interest.
3. The Bar Standards Board is responsible for:
 - setting the education and training requirements for becoming a barrister;
 - setting continuing training requirements to ensure that barristers' skills are maintained throughout their careers;
 - setting standards of conduct for barristers;
 - authorising organisations that focus on advocacy, litigation, and specialist legal advice;
 - monitoring the service provided by barristers and the organisations we authorise to ensure they meet our requirements; and
 - considering reported concerns about barristers and the organisations we authorise and taking enforcement or other action where appropriate.

Overview

4. We fully support the aim of continuing to improve effectiveness of the Money Laundering Regulations through providing additional clarity where needed and strengthening some areas where gaps have been identified, whilst maintaining and improving proportionality. This can best be achieved through regular reassessment of risk, and system-wide prioritisation so that efforts are directed to where they will have the most impact on disrupting money laundering and terrorist financing.
5. Broadly, we support the proposals in the consultation and have commented below on certain questions most relevant to the Bar of England and Wales. We have contributed to, and support the joint response of the Legal Sector Affinity Group (LSAG), where relevant to barristers, and have not repeated here the points made through LSAG.

¹ <https://www.gov.uk/government/consultations/improving-the-effectiveness-of-the-money-laundering-regulations>

Due diligence triggers for non-financial firms in regulation 27 (Question 1)

6. We think that LSAG's interpretation of this provision (set out at 6.4 and 6.5 of the LSAG Part 1 guidance²) sufficiently addresses the question of when a "business relationship" is established. It takes a cautious approach, so any clarity about what the government envisages for how an "occasional transaction" might apply to the legal sector would be helpful. This could be added to the LSAG guidance.

Source of funds checks (Question 2)

7. There are different views in the legal sector about conducting source of funds (and source of wealth) checks. We agree that the Regulation should continue to allow the relevant person to apply such a check where it is necessary, based on their understanding of their sector, customer base and whether such a check would help them to establish the relevant level of risk. We think that it is helpful to have scenario-based examples in HM Treasury-approved sector guidance, based on a shared view of the current assessment of areas of highest risk.

Verifying whether someone is acting on behalf of a customer (Question 3)

8. We think that the LSAG guidance (part 1 sections 6.6 and 6.14.9) sufficiently addresses use of intermediaries in the legal sector context.

Cooperation with Companies House (Questions 29 to 31)

9. We support ongoing efforts to promote co-operation between Companies House and the supervisors, as proposed in the consultation.

Regard for the National Risk Assessment (NRA) (Questions 32 to 34)

10. In principal, it is appropriate for barristers to have regard for the NRA. In practice, it is of limited value to barristers in that it tends to highlight services are not typical of the work of the majority barristers. Although that can be interpreted as meaning that the Bar is at less risk of being used for money laundering or terrorist financing, it is not explicit about that. This makes it difficult for barristers to make practical use of it. Also, it is infrequently updated so it is not able to react in an agile way to areas of emerging risk.
11. We signpost barristers to the main conclusions of the NRA, how it applies to the Bar and where to find it, as well as other sources of relevant information. We think this is sufficient given the above limitations.

² <https://www.barstandardsboard.org.uk/for-barristers/compliance-with-your-obligations/anti-money-laundering-counter-terrorist-financing/aml-guidance.html>

System Prioritisation and the NRA (Question 35)

12. We strongly support the aim set out in the national Economic Crime Plan that more can be done to coordinate and prioritise our collective response to economic crime, including a commitment to establish a set of agreed system priorities to direct collective efforts to where they will have greatest impact (“system prioritisation”).
13. We see some potential for confusion if this is set out separately from, and not synchronised with the NRA. This may particularly be the case if the NRA is not updated with sufficient frequency and in response to emerging risk. The relationship between the two will therefore need to be clearly articulated.

Regulation of resale of companies and off the shelf companies by TCSPs (Questions 41-43)

14. Barristers do not typically trade off-the-shelf companies, but we agree that this gap should be addressed.

Bar Standards Board
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