



Anti- Money Laundering and Counter Terrorist Financing Guidance to making Authorisation to Practise declarations

From 2018, barristers are required to make the following declarations at Authorisation to Practise, via the MyBar portal. The attached guidance will assist you in making an accurate declaration. If you have any comments or questions about this guidance, please email aml@barstandardsboard.org.uk

Declarations that barristers are required to make at Authorisation to Practise

1. I declare that I am undertaking, have current instructions or in the last 12 months have undertaken work which falls within the scope of paragraphs 11 (d) and 12 (1) (a) to (e) of the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017.
Please read: **Guidance to making your declaration under the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (“the Regulations”)**
 - a. Yes or No

2. I declare that I am undertaking, have current instructions or in the last 12 months have undertaken work as a trust or company service provider which falls within the scope of paragraphs 12 (2) (a) to (d) of the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017.
Please read: **Trust or Company Service Provider guidance**
 - a. Yes or No

3. (If yes to 1 and/or 2) I have or will obtain a DBS basic check and provide it to the BSB upon request.
Please read: **DBS basic check guidance**
 - a. Checkbox

4. (If yes to 1 and/or 2) With reference to paragraphs 26 (8) and (11) of the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017, have you have been convicted of a “relevant offence” as listed in Schedule 3 of the above Regulations?
Please read: **Guidance on what is a “relevant offence”**
 - a. Yes or No

1. Guidance to making your declaration under the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (“the Regulations”)

Where can I find a copy of the Regulations?

You can find the Regulations here: <http://www.legislation.gov.uk/ukxi/2017/692/made>. These Regulations came into force on 26 June 2017.

Why does the Bar Standards Board require me to declare if my work falls within the scope of the Regulations?

The Regulations impose certain obligations on the Bar Standards Board (“the BSB”), including to:

- carry out risk-based supervision (regulation 17);
- ensure that only those who are fit and proper persons are conducting work that falls within the scope of the Regulations (regulation 26); and
- provide a register of trust or company service providers (“TCSPs”) to HMRC (regulation 54).

To enable us to comply with these obligations we need to know which barristers are undertaking work that falls within the scope of the Regulations.

Also, from 2018, the BSB is subject to an oversight regulator called the Office for Professional Body Anti-Money Laundering Supervision (“OPBAS”). OPBAS will allocate its costs between the organisations that it supervises. Collecting data about how many barristers are engaged in relevant work will enable us to ensure that OPBAS costs are allocated to the Bar proportionately.

If you undertake work that falls within the scope of the Regulations then you have specific obligations under the Regulations.

For all these reasons, it is important for you to understand whether the work that you do falls within the scope of the Regulations and make an accurate declaration about whether you are undertaking, have current instructions or in the last 12 months have undertaken work which falls within the scope of the Regulations.

Does the work I do fall within the scope of the Regulations?

Regulations 11 and 12 set out who is subject to the Regulations: <http://www.legislation.gov.uk/ukxi/2017/692/made>

You should read the Regulations carefully to help you to decide whether the work you are doing falls within their scope. In particular, you should refer to the following paragraphs:

11 (d) **Tax adviser** means a firm or sole practitioner who by way of business provides advice about the tax affairs of other persons, when providing such services.

12. (1) In these Regulations, “**independent legal professional**” means a firm or sole practitioner who by way of business provides legal or notarial services to other persons, when participating in financial or real property transactions concerning:

- (a) the buying and selling of real property or business entities;
- (b) the managing of client money, securities or other assets;
- (c) the opening or management of bank, savings or securities accounts;
- (d) the organisation of contributions necessary for the creation, operation or management of companies; or
- (e) the creation, operation or management of trusts, companies, foundations or similar structures,

and, for this purpose, a person participates in a transaction by assisting in the planning or execution of the transaction or otherwise acting for or on behalf of a client in the transaction.

12 (2) In these Regulations, “**trust or company service provider**” means a firm or sole practitioner who by way of business provides any of the following services to other persons, when that firm or practitioner is providing such services:

- (a) forming companies or other legal persons;
- (b) acting, or arranging for another person to act:
 - (i) as a director or secretary of a company;
 - (ii) as a partner of a partnership; or
 - (iii) in a similar capacity in relation to other legal persons;
- (c) providing a registered office, business address, correspondence or administrative address or other related services for a company, partnership or any other legal person or legal arrangement;
- (d) acting, or arranging for another person to act, as:
 - (i) a trustee of an express trust or similar legal arrangement; or
 - (ii) a nominee shareholder for a person other than a company whose securities are listed on a regulated market.

An affirmative declaration is required if your work covers either regulations 11, 12 or both.

HM Treasury has decided that there should be one set of guidance for the legal sector in England, Wales, Scotland and Northern Ireland. The BSB has been working with the other legal regulators and representatives from the professions to develop the joint guidance, which is available here:

<https://www.barstandardsboard.org.uk/regulatory-requirements/anti-money-laundering-and-counter-terrorist-financing/>

You should read this guidance to help you to decide whether the work that you do falls within the scope of the Regulations.

HM Treasury has confirmed that the following would not generally be viewed as participation in a financial transaction and therefore not within the scope of the Regulations:

- payment on account of costs to a legal professional or payment of a legal professional's bill;
- provision of legal advice;
- participation in litigation or a form of alternative dispute resolution.

This means that not all public access work falls within the scope of the Regulations.

If you act as a trustee or a company director in a personal capacity, which is not related to your business as a self-employed barrister, you are not in scope of the Regulations. You would only be in scope if your company or organisation was doing relevant work.

The Bar Council has produced additional guidance with some case studies to further assist barristers, chambers and BSB entities in deciding whether the work that they do falls within the scope of the Regulations:

<http://www.barcouncilethics.co.uk/documents/money-laundering-terrorist-financing/>

If, after reading the Regulations and the guidance, you are still unsure about whether the work that you do falls within the scope of the Regulations, you can contact the Bar Council Ethical Enquiries Service: <http://www.barcouncilethics.co.uk/ethical-enquiries-service/>

When making your declaration to the first part please note that an affirmative answer is required whether the work you do is within 11(d) and/or 12(1)(a)-(e) of the Regulations.

Currently, I don't do work that falls under the Regulations, but the cab rank rule means that I might do in the future. What should I declare?

We only require you to confirm annually, at Authorisation to Practise ("AtP"), whether you are undertaking, have current instructions or in the last 12 months have undertaken work which falls within the scope of the Regulations.

Regulation 56 says that you must not act as a trust or company service provide ("TCSP": see Trust or Company Service Provider guidance) unless you are registered with HMRC: <http://www.legislation.gov.uk/ukxi/2017/692/made>

If you commence work as a TCSP after AtP, you should contact aml@barstandardsboard.org.uk to ensure that you are included on the register.

Where can I get help in understanding my obligations under the Regulations?

HM Treasury has decided that there should be one set of guidance for the legal sector in England, Wales, Scotland and Northern Ireland. The Bar Standards Board ("BSB") has been working with the other legal regulators and representatives from the professions to develop the joint guidance, which is available here:

<https://www.barstandardsboard.org.uk/regulatory-requirements/anti-money-laundering-and-counter-terrorist-financing/>

The Bar Council has produced additional guidance with some case studies to further assist barristers, chambers and BSB entities in deciding whether the work that they do falls within the scope of the Regulations:

<http://www.barcouncilethics.co.uk/documents/money-laundering-terrorist-financing/>

If, after reading the Regulations and the guidance, you are still unsure about whether the work that you do falls within the scope of the Regulations, you can contact the Bar Council Ethical Enquiries Service: <http://www.barcouncilethics.co.uk/ethical-enquiries-service/>

2. Trust or Company Service Provider guidance

What is a trust or company service provider (“TCSP”)?

TCSPs are defined in the Regulations as follows:

<http://www.legislation.gov.uk/uksi/2017/692/made>

12 (2) In these Regulations, “**trust or company service provider**” means a firm or sole practitioner who by way of business provides any of the following services to other persons, when that firm or practitioner is providing such services:

- (a) forming companies or other legal persons;
- (b) acting, or arranging for another person to act:
 - (i) as a director or secretary of a company;
 - (ii) as a partner of a partnership; or
 - (iii) in a similar capacity in relation to other legal persons;
- (c) providing a registered office, business address, correspondence or administrative address or other related services for a company, partnership or any other legal person or legal arrangement;
- (d) acting, or arranging for another person to act, as:
 - (i) a trustee of an express trust or similar legal arrangement; or
 - (ii) a nominee shareholder for a person other than a company whose securities are listed on a regulated market.

Why do you need a separate declaration for trust or company service providers (“TCSPs”)?

Regulation 54 requires HMRC to maintain a register of all TCSPs and Regulation 56 requires all TCSPs to be registered with HMRC:

<http://www.legislation.gov.uk/uksi/2017/692/made>

If you declare that you carry out work as a TCSP, you do not need to register directly with HMRC. Instead, we have an obligation to submit the following information about you to HMRC so that they can include you on the register:

- Names of BSB entities or individuals acting as a TCSP.
- Practising address.

- Confirmation that relevant persons are fit and proper (with reference to Regulation 26).

This data is already publicly available on the BSB website. This arrangement will be governed by a Memorandum of Understanding between the BSB and HMRC.

Regulation 56 says that you must not act as a TCSP unless you are registered with HMRC:

<http://www.legislation.gov.uk/ukxi/2017/692/made>

If you commence work as a TCSP after Authorisation to Practise you should contact aml@barstandardsboard.org.uk to ensure that you are included on the register.

Where is the authority in the Regulations for the BSB to disclose information to HMRC and for it to use this to maintain the TCSP register?

Regulation 52(1) provides legal authority for professional body supervisors (such as the BSB) to disclose information to HMRC for a function under these Regulations. Regulation 54(2)(c) provides that HMRC has a duty to maintain a register of relevant persons who are TCSPs and not registered with the FCA. The combined effect of regulation 52 and 54 creates an express gateway by which information may be passed.

Will HMRC be publishing the TCSP register and who will the data be shared with?

While HMRC has the power to publish all or part of the register, it currently has no intention of doing so publicly. HMRC intends to share the data with Law Enforcement Agencies, who will be able to use the information for their enforcement activity. Law enforcement agencies include the Police, the National Crime Agency, Ministry of Defence Police, the National Fraud Intelligence Bureau, the Office of Security and Counter Terrorism and the Serious Fraud Office. HMRC does not intend to communicate directly with barristers or BSB entities on the register, although information held by HMRC for the purpose of one function may be used by HMRC for other HMRC functions.

HMRC is subject to the requirements of the Freedom of Information Act 2000.

Supervisors (such as the BSB) will only be able to see data about their own regulated individuals or entities and will not have access to information about other supervisors' registered individuals or businesses.

3. DBS basic check guidance

What is a DBS basic check? Do I need to obtain one? Do I need to submit it to the Bar Standards Board? How long does it take to obtain one? How much does it cost?

A DBS basic check is a criminal record check provided by the Disclosure and Barring Service ("DBS") which shows unspent convictions and conditional cautions.

The Regulations impose certain obligations on the Bar Standards Board (“the BSB”), including to ensure that only those who are fit and proper persons are conducting work that falls within the scope of the Regulations (regulation 26).

The DBS basic check is a one-off requirement. Barristers who have already obtained a Basic Disclosure Check (as it was formerly known) or a Disclosure and Barring Service (DBS) check since being Called to the Bar will not be required to obtain a new check.

Barristers who have not obtained a basic check and have declared that they are currently undertaking or have current instructions for work which engages the Regulations, or whose practice regularly engages the Regulations, are required to obtain a check before 26 June 2018.

Barristers who have not declared at Authorisation to Practise but who subsequently accept instructions for work within the scope of the Regulations must request a DBS basic check upon accepting instructions and only begin the work after the result of the check has been received.

You are not required to send the check to the BSB, but should be prepared to do so if asked.

You can obtain a basic check yourself. The DBS provide this service for those who live or work in England and Wales. The check costs £25. Most checks will be processed in 14 days. More details can be found here:

<https://www.gov.uk/government/publications/basic-checks>

If you live elsewhere, please contact aml@barstandardsboard.org.uk

4. Guidance on what is a “relevant offence”

What is a “relevant offence” for the purposes of the Regulations?

See Schedule 3 of the Regulations:

<http://www.legislation.gov.uk/ukxi/2017/692/schedule/3/made>

You should only answer “yes” if you have any UNSPENT convictions on the list on the above link.