HM Treasury

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

A response by
CILEx Regulation

14 October 2021

Introduction

This response represents the views of CILEx Regulation, the regulatory body for Chartered Legal Executives, CILEX Practitioners and legal entities. Chartered Legal Executives (Fellows) are members of the Chartered Institute of Legal Executives (CILEX). CILEX Practitioners are authorised by CILEx Regulation to provide reserved legal activities. CILEX is the professional body representing around 17,500 members and is an Approved Regulator under the Legal Services Act 2007 (LSA). Fellows and CILEX Practitioners are authorised persons under the LSA. CILEx Regulation regulates all grades of CILEX members.

CILEx Regulation is also a regulator of entities through which legal services are provided. It authorises entities based upon the reserved and regulated activities.

CILEx Regulation and CILEX provide an alternative route to legal qualification and practice rights allowing members and practitioners, who do not come from the traditional legal route to qualify as lawyers and own their own legal practice.

CILEX became an approved supervisory authority for money laundering on 6 February 2015. Its authorised entities are supervised by CILEx Regulation as the independent regulator of CILEX members, CILEX Practitioners and entities.

CILEx Regulation is a member of the Legal Sector Affinity Group and the AML Supervisors forum. We support the aims of reinforcing a risk-based approach across all sections of the anti-money laundering and counter-terrorist finance regime.

Its authorised entities and a small number of individuals working as sole practitioners are supervised for money laundering compliance.

HM Treasury – Statutory Instrument 2022 Consultation

Response to the HM Treasury consultation

We are submitting a response to the proposed amendments to the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017.

In this response to the consultation, we have made no comment on the following questions which are not directly relevant to our supervisory activities:

AISPs and PISPs 1-4

BPSPs and TDITPSPs 5-8

Art Market Participants 9-12

Credit and financial institutions 19-24

Proliferation Financing Risk Assessment 25-30

Information Gathering 51 - 55

Transfers of cryptoassets 56 - 63

The numbering in the document relates to the questions in the consultation.

SARs

In considering our responses to the following questions, we were uncertain as to the driver for the changes that are being put forward and the presumption that these are necessary at this point.

We believe that these relate to the continuing perception of issues on the quality of SARS and/or that supervisors should be using SARS to gain intelligence about risks that their sector faces.

If there is an ongoing quality issue, which has never been raised with CILEx Regulation, then we would assume that the new SARS IT system has been designed to address any issues by ensuring that all sectors are able to use it easily and that it demands consistent well-presented information from the inputter.

We believe that it would be inappropriate to bring in new requirements across all supervisors without having given the new IT system time to bed in and demonstrate its effectiveness. Only after a period of training, use and review, should any further changes be proposed. It would seem sensible for these to take in to account any new consultation on the Proceeds of Crime Act.

In respect of accessing information within a SAR, there has been no discussion with the supervisors on why this needs to be addressed on an individual basis by each supervisor and what the current quality issues are that are impacting on the NCA accessing this information from the SARS that are currently submitted to them. The new SARS IT system should be the ideal opportunity to address this lack of information and for the NCA to better communicate with all sectors on the risks identified.

There are risks that will be common across all legal supervisors and therefore having one provider of information must be more straightforward that having many different supervisors trying to access information from their own supervised population. There is also a presumption that all populations are of the same size and see the same risks, but this is clearly not the case. For CILEx Regulation we have a very small, supervised population, so would have limited access to risk intelligence compared to, say, the SRA.

It must also be more cost effective for this information to be disseminated from the NCA (one organisation), which is in receipt of all the SARS and therefore all the intelligence, rather than the PBS (22 organisations) each having to put a system in place to gather this information from their firms and then try and disseminate that to all the other PBS. Clearly that would have resource and cost implications for all PBS.

The model being proposed also seems to imply that we will visit all the firms we supervise every year so that we can see all SARS submitted in a year. This is not the case even in smaller supervisors where we adopt a risk-based approach. On that basis each supervisor would only see a small sample of the SARS submitted. That would then require SARS to be sent to us, which neither the firms nor us would not be comfortable with.

Finally, if the proposals are to increase the number of SARS that are submitted by the legal sector, because it is perceived that these are not being done, then consideration needs to be given as to how this is practically achieved.

We believe that this could only be achieved by reviewing all the files that an individual firm has to see if they have 'missed' any opportunity to submit a SAR. This might then be subjective as to whether it was correct or not.

We believe that to carry out a full review of every file in a firm could take a significant time and clearly would be disproportionate in both time and cost for both the supervisor and firm. The cost of AML supervision would need to increase to a level that we do not believe firms would accept, especially as there is no evidence to back up the need for this approach.

Making SARS easier to submit through a better IT system and maintaining that SARS are to assist law enforcement and protect the firm and the public should be key. Moving them to be seen as a supervisory and therefore regulatory tool would we believe be a mistake.

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?

We see no benefit in having access to the contents of SARS in the performance of our supervisory functions, although we fully understand the necessity to collect information about the number of SARS completed by our firms.

One of the arguments is that this would enable us to gain an insight into the risks are firms face. However, with a small number of supervised firms, we would gain little insight as we have set out above. We believe that this is a function that the NCA should provide with the benefit of all

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?

As set out above we do not believe this is necessary at present to access the content of SARS.

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?

As set out above we do not believe this is necessary at present.

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?

As set out above we do not believe this is necessary at present.

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.

This has been covered above.

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.

As set out above we do not believe this is necessary at present.

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)

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?

Yes, we agree that this is a sensible approach to extend this definition.

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

We are not aware of any unintended consequences.

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.

We are unable to comment on the impact on TCSPs

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.

We believe that the additional clarity that this amendment provides to all parties concerned, out weighs any impact in terms of costs.

Extension of the term "business relationship" for services provided by TCSPs

35. Do you agree that Regulation 4(2) should be amended so that the term "business relationship" includes a relationship where a TCSP is asked to form any form of business arrangement which is required to register with Companies House?

We agree that this closes a gap which may have been relied upon not to carry out CDD checks, so are in support of the amendment.

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)?

Yes, we believe that this would provide useful clarity to a TCSP.

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

Yes, we believe that this should not constitute a business relationship

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

We are not aware of any unintended consequences.

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.

Whilst we believe that it would have no major impact, we do not have any evidence to support our view.

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.

Whilst we believe that it would have no major impact, we do not have any evidence to support our view.

Reporting of Discrepancies

In providing answers to the following questions, we are very much in favour of the recently proposed developments regarding Companies House and the proposed controls set out in their recent consultations. We are supportive of their adoption as soon as possible as we believe that Companies House has a vital role to play by being a more pivotal part of the AML regime including the carrying out of due diligence checks.

As these are brought into place, then the requirements for reporting of discrepancies will become less onerous on relevant persons as the beneficial ownership register improves in quality.

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.

We are supportive that there remains a requirement for anyone to report discrepancies as they are identified but that there is no ongoing requirement to be checking the accuracy of beneficial ownerships after a business relationship has ended.

This would seem to be good practice in that it is helping to improve the standard of the register.

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

As stated in Q41, as long as it does not create an ongoing requirement for a relevant person once the initial business relationship has completed and they are certain that the records are accurate at that point.

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

Clearly the adoption of the proposals for Companies House as soon as possible will be the best approach to reducing the number of discrepancies.

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?

We do not believe it would be significant, but it is important that the Companies House proposals are adopted as soon as possible. They will have the greatest impact in a cost-effective way, rather than relying upon all relevant persons to pick up discrepancies. Also, because an individual can set up a company, they may have no contact with a relevant person; therefore, the Companies House changes are a vital to close this loophole.

Disclosure and Sharing

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

We would support the addition of BEIS to the list of relevant authorities to facilitate the sharing of information with Companies House. This is in line with our earlier comments regarding the increased role of Companies House in combatting money laundering.

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

From our experience of the use of Regulation 52, we are not aware of any other authorities that would benefit.

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?

We would support the creation of a reciprocal gateway to enable further clarity on how information can be shared between relevant authorities and supervisors.

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.

We would not see it having a significant impact.

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.

We would not see it having a significant impact.

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?

We do not currently use this power, so are not in a position to comment.

Any questions relating to this consultation response can be directed to David Pope, Entity Authorisation & Client Protection Manager (david.pope@cilexregulation.org.uk).