Title: The Money Laundering and Terrorist Financing (Amendment) (No. 2) Regulations 2022 Statutory Instrument **IA No:** **RPC Reference No:** RPC-HMT-5079(2) **Lead department or agency:** HM Treasury **Other departments or agencies:** HM Revenue and Customs, Home Office, Department for Business, Energy & Industrial Strategy, Companies House, Financial Conduct Authority, Office for Professional Body Anti-money laundering Supervision	Impact Assessment (IA) **Date:** 14/07/2022 **Stage:** Development/Options **Source of intervention:** Domestic **Type of measure:** Secondary legislation **Contact for enquiries:** Anti-MoneyLaunderingBranch@hmtreasury.gov.uk

Summary: Intervention and Options

RPC Opinion: RED

Cost of Preferred (or more likely) Option (in 2022 prices)			
Total Net Present Social Value	**Business Net Present Value**	**Net cost to business per year**	**Business Impact Target Status**
£4.0m	£4.0m	£-0.5m	£-2.3

What is the problem under consideration? Why is government action or intervention necessary?

Combatting economic crime is the driver for ensuring the effectiveness of the Money Laundering Regulations (MLRs), and this is the rationale for intervention. The recent Russian invasion of Ukraine has further highlighted the need to remain vigilant in tackling illicit finance, and we need to be able to respond to emerging money-laundering risks, such as those related to cryptoassets. Amending the MLRs through this Statutory Instrument (SI) will allow the government to make some time-sensitive updates, to ensure that the UK adapts to new threats and continues to meet international standards, whilst also strengthening and ensuring clarity on how the anti-money laundering/counter-terrorist financing (AML/CTF) regime operates in line with feedback from industry and supervisors, through relatively minor proposals for change.

What are the policy objectives of the action or intervention and the intended effects?

The government's objective is to make the UK's financial system difficult to exploit for illicit finance purposes, whilst minimising the burden on legitimate businesses. The proposed approach to amending the MLRs intends to make the regulations as effective and proportionate as possible, while maintaining compliance with Financial Action Task Force (FATF) international standards. Effective AML/CTF regulations will contribute to making the UK a hostile environment for illicit finance, protecting the UK's reputation as a safe place to conduct business and maintaining confidence in the financial system with associated benefits to inward investment and access to foreign market by UK firms.

What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)

The baseline scenario (Option 0) is to take no action. However, this would mean failing to update risk assessments, respond to requests from industry for technical and clarificatory changes, or comply with the latest changes to international standards. Option 1 is to wait to make any further amendments to the MLRs until after the wider MLRs Review is published in June 2022, at which point we might want to pursue more substantive reform that would require further consultation (likely into 2023) before legislation. This option would not enable us to make the targeted changes required to implement new cryptoassets standards, for instance, in a timely way, as there will be a significant time lag before any additional legislation can be developed and brought forward. Option 2 is to legislate to implement the proposed changes to the MLRs ahead of the conclusion of the MLRs Review. This is the preferred option. This option will maintain the UK's compliance with international standards, strengthen the UK's AML/CTF regime including in response to emerging risks, and clarify its operation.

Will the policy be reviewed? It will be reviewed.			**If applicable, set review date:** 2027	
Is this measure likely to impact on international trade and investment?		Unable to quantify		
Are any of these organisations in scope?	**Micro** Yes	**Small** Yes	**Medium** Yes	**Large** Yes
What is the CO_2 equivalent change in greenhouse gas emissions? (Million tonnes CO_2 equivalent)		**Traded:** N/A		**Non-traded:** N/A

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible Minister Richard Fuller Date: 13/07/2022

Summary: Analysis & Evidence Policy Option 2 (preferred option)

Description: Making amendments to the regulations now, to meet FATF standards and gaps identified in the supervision regime.

FULL ECONOMIC ASSESSMENT

Price Base	PV Base	Time Period	Net Benefit (Present Value (PV)) (£m)		
2019	2022	10 Years	**Low:** -1.8	**High:** 9.9	**Best Estimate:** 4.0

COSTS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	8.0		3.2	35.8
High	14.1		3.2	41.9
Best Estimate	**11.0**		**3.2**	**38.8**

Description and scale of key monetised costs by 'main affected groups'

Direct costs:

There are only two of the measures in the SI where there has been sufficient available evidence to monetise the estimated costs. These measures are:

- *Further information-gathering powers in relation to Annex 1 firms* – this change will require transitional costs (£5.1 million) and annual costs (£2.5 million) of compliance for Annex I institutions, and transitional cost (£neg) to the Financial Conduct Authority as the AML/CTF supervisor for these businesses.
- *Implementation of the "Travel Rule" for cryptoassets* - there will be costs to regulated businesses of complying with the Travel Rule, including transition costs (£6.6 million), such as training, setting-up of systems and processes, and purchase of compliance solutions, and the ongoing costs (£0.9 million) of required technology. There will also be ongoing compliance staffing costs, but we have been unable to quantify these costs.

Indirect costs:

We have been unable monetise any of the indirect costs based on the evidence available. The reasons for this and more detail on the evidence available for each measure can be found throughout this impact assessment.

Other key non-monetised costs by 'main affected groups'

Direct costs:

We have not been able to fully quantify these costs based on the evidence available, despite gathering views from the responses to the consultation and further engagement on the costs and impacts of implementing these measures with key stakeholders. Further measure-specific non-monetised costs may include:

- *Removal of Account Information Service Providers from scope -* no expected cost for the FCA or businesses already registered as AISPs.
- *Excluding artists who sell their own works of art from scope of the definition in the MLRs* – HMRC will have to refund the supervision fees for those artists who have already registered (expected to be very small) and may receive lower fee income (depends on competitive impact on intermediaries' market).
- *Clarifying access to Suspicious Activity Reports* - potential cost implications of accessing and reviewing the contents of SARs for supervisors, but will form part of a supervisor's wider risk-based approach.
- *Requirement to undertake proliferation financing risk assessment* - additional finance, time and staff burden of including PF in firms' risk assessments, and for supervisors to supervise compliance, though there is an existing legal obligation to comply with relevant sanctions regimes. Potential public sector cost of outreach/education, especially for small and micro businesses.
- *Clarifying requirements for Trust and Company Service Providers* – extending systems and procedures for compliance with the MLRs, which should already be in place for all other business arrangements dealt with by TCSPs, to other business arrangements. Potential increase in formation costs for some business arrangements like LPs.
- *Ongoing "material" Discrepancy Reporting* - increased volumes of work and additional costs for both Companies House and firms, somewhat mitigated by the change to narrow the scope of the regime to 'material discrepancies' and establish a grace period.
- *Expand list of relevant authorities for Information-sharing (reg 52)* – potential future need for additional professional body supervisor (PBS) resource to receive and respond to requests, depending on the volume of intelligence and information shared through the new gateway.
- *Requirement to notify of a change in control of a cryptoasset firm* - small additional cost for the FCA, associated with the requirement to assess changes in control within 60 days, updates to forms and systems, and additional training. No direct costs to registered cryptoasset firms.
- *Power to publish Notices of Refusal to Register* - not expected to entail an additional cost to businesses, nor the FCA.
- *Removing Terrorist Asset-Freezing Act reference* - No impact on supervisors or relevant persons, but relevant persons may need to delete any reference in their policies and procedures.
- *Clarification of exclusions under Regulation 15(3)* - costs to both relevant persons and supervisors would likely be negligible, but it would be extremely difficult to quantify this.

Indirect costs:

There are likely to be additional indirect or wider non-monetised costs of several of these measures, which are particularly uncertain and difficult to quantity. We have aimed to consider these as far as possible throughout this impact assessment.

BENEFITS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	1.5		4.5	**40.1**
High	2.6		5.0	**45.7**
Best Estimate	**2.1**		**4.7**	**42.8**

Description and scale of key monetised benefits by 'main affected groups'

Direct benefits:

There are only two of the measures in the SI where there has been sufficient evidence available to monetise the estimated benefits. These measures are:

- *Excluding artists who sell their own works of art from scope of the definition in the MLRs* - saving for affected artists, as they will no longer have to pay the upfront costs for AML/CTF supervision (£2.2 million) or have to afford the ongoing costs (£1.3 million) of complying with the MLRs.
- Removing the requirement from the MLRs to implement a Bank Account Portal - annual savings (£3.8 million) to business and law enforcement, over a 10-year period, from not having to implement a BAP.

Indirect benefits:

We anticipate that there may be wider monetised benefits of these measures, for example for the customers of artists no longer in scope of the MLRs, however, we are unable to quantify these at this time.

Other key non-monetised benefits by 'main affected groups'

Direct benefits:

There may be additional benefits associated with other measures in this SI, however, as detailed in the impact assessment below, we have not been able to fully quantify these based on the evidence available, despite gathering views from the responses to the consultation and further engagement on the impacts of implementing these measures with key stakeholders. Examples include:

- *Removal of Account Information Service Providers from scope* - direct savings to those businesses who have previously sought to comply with the AML/CTF rules (such as customer due diligence). May also reduce duplication and widen access to AISP services.
- *Excluding artists who sell their own works of art from scope of the definition in the MLRs* - may also reduce the ongoing costs of supervising the art sector for HMRC, as the number of entities to be supervised decreases (depends on competitive impact on intermediaries' market).
- *Further information-gathering powers in relation to Annex 1 firms* - FCA potentially able to carry-out more effective and targeted interventions, eliminating the need for unnecessary onsite/offsite work.
- *Requirement to notify of a change in control of a cryptoasset firm* – potential cost saving as the acquirer would be notified of the FCA's intention to refuse registration prior to the acquisition.

Indirect benefits:

The MLRs as a whole provide a disincentive to crime by reducing the profitability and funding available to finance future criminal activity. They also protect the integrity of the financial system and the reputation of UK businesses, with beneficial effects on inward investment, and access to foreign markets by UK companies. The proposed changes will ensure that the UK meets the international standards set by FATF and fill gaps to the AML/CTF regime, such as those identified by AML/CTF supervisors. More detail is set out throughout the impact assessment in relation to specific measures.

Indirect benefits are expected to include:

- *Clarifying access to Suspicious Activity Reports* - legal clarity, allowing for a consistent approach, and enhanced ability to take risk-based approach to supervision.
- *Requirement to undertake proliferation financing risk assessment* - increased understanding of risks of PF so it can be better mitigated. Allows the UK to meet international standards.
- *Clarifying requirements for Trust and Company Service Providers* – provides greater clarity of scope, reduces potential loopholes for illicit funds to enter the UK.
- *Ongoing "material" Discrepancy Reporting* – supports wider efforts to enhance the accuracy and integrity of the companies register.
- *Expand list of relevant authorities for Information-sharing (reg 52)* – positive impact on the overall objectives under the Economic Crime Plan to increase intelligence and information-sharing particularly between the public and private sectors.
- *Implementation of the "Travel Rule" for cryptoassets* – likely improved trust and confidence in the cryptoasset sector could support the sector's growth. Allows the UK to meet international standards.
- *Requirement to notify of a change in control of a cryptoasset firm* – likely to be a consumer benefit from the additional scrutiny of proposed controllers, and a consequent reduction of harm to consumers.
- *Power to publish Notices of Refusal to Register* - could help other firms benchmark and improve their AML systems, providing greater transparency for the market by effectively signalling good/bad behaviour to other firms.
- *Clarification of exclusions under Regulation 15(3)* – closing a potential loophole in the MLRs, maintaining the government's commitment to tackling economic crime.

Key assumptions/sensitivities/risks **Discount rate (%)**	3.5%
Set out in relation to individual measures throughout the Impact Assessment.	

BUSINESS ASSESSMENT (Option 2)

Direct impact on business (Equivalent Annual) £m:			**Score for Business Impact Target (qualifying provisions only) £m:**
Costs: 4.5	**Benefits: 5.0**	**Net: -0.5**	**-2.3**

Summary: Analysis & Evidence

Policy Option 1

Description: Awaiting the conclusion of the MLRs Review before making amendments to the regulations to meet FATF standards and gaps identified in the supervision regime.

FULL ECONOMIC ASSESSMENT

Price Base	PV Base	Time Period	Net Benefit (Present Value (PV)) (£m)		
			Low: Optional	**High:** Optional	**Best Estimate: Not available**

COSTS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	Not available		Not available	**Not available**
High	Not available		Not available	**Not available**
Best Estimate	Not available		Not available	**Not available**

Description and scale of key monetised costs by 'main affected groups'

As we are unsure how long it will be until future legislation will be brought forward where we can make these changes, we are unable to quantify the direct or indirect costs of waiting until after the MLRs Review.

Other key non-monetised costs by 'main affected groups'

Direct costs:

We anticipate that by waiting to implement these measures until after the MLRs Review has concluded there would be direct costs to regulated businesses. For example, without clarifying the scope of the AMPs definition, artists who sell their own works of art, above the threshold, would have to continue to pay supervision fees to HMRC and bear compliance costs of complying with the requirements under the MLRs.

Indirect costs:

Recent events with Russia and Ukraine, for instance, have highlighted the need to be vigilant about the risk of illicit finance entering the UK financial system, and to continue to take steps to protect against it.

By not introducing the measures proposed as part of this SI until much later, the UK will be delayed in being fully compliant with the international standards set by FATF and will not be taking the opportunity to strengthen and ensure clarity on how the AML regime operates, following feedback from industry and supervisors. For instance, there are likely to be indirect non-monetised costs of not implementing the Travel Rule measure, as maintaining anonymity in cryptoasset transactions is likely to benefit those who use these assets for illicit purposes.

This would not align with the government's commitment to combat economic crime and maintain the proportionality of the MLRs. The UK would also not be proactively protecting the UK financial system by not responding to emerging risks that have been identified, including from new technologies like cryptoassets.

BENEFITS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	Not available		Not available	**Not available**
High	Not available		Not available	**Not available**
Best Estimate	Not available		Not available	**Not available**

Description and scale of key monetised benefits by 'main affected groups'

As we are unsure how long it will be until future legislation is brought forward where we can make these changes, we are unable to quantify the direct or indirect benefits of waiting until after the MLRs Review.

Other key non-monetised benefits by 'main affected groups'

Direct benefits:

The potential direct monetised benefits to businesses by waiting to implement these measures until after the MLRs Review has been concluded, would include those for Annex I firms, firms affected by the Travel Rule and TCSPs and business arrangements with regard to having more time to prepare for regulatory change.

Indirect benefits:

There may be additional non-monetised benefits to businesses by waiting to implement these measures until after the MLRs Review has been concluded. However, due to uncertainty over the timing of the next legislative opportunity to bring these changes forward, we are unable to quantify this benefit.

Key assumptions/sensitivities/risks	Discount rate	
Set out in relation to individual measures throughout the Impact Assessment.		

BUSINESS ASSESSMENT (Option 2)

Direct impact on business (Equivalent Annual) £m:			Score for Business Impact Target (qualifying provisions only) £m:
Costs: Not available	**Benefits: Not available**	**Net: Not available**	Not available

Evidence Base

I. Problem Under Consideration and Rationale for Intervention

1. The Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (MLRs) were introduced in June 2017. The international standards on money laundering and terrorist financing (ML/TF) set by FATF, an intergovernmental body which promotes effective implementation of measures for combatting ML/TF along with other threats to the integrity of the international financial system, are at the heart of the UK's approach to combatting ML/TF. Compliance with FATF standards was previously achieved through the transposition of EU Directives into UK law. The UK will continue to seek to comply with the international standards set by FATF, going forward, through further amendments to UK legislation. The MLRs were amended multiple times, most significantly through the transposition of the EU Fifth Money Laundering Directive (5MLD) in January 2020, and most recently by the Money Laundering and Terrorist Financing (High-Risk Countries) (Amendment) Regulations 2022 in March 2022. The MLRs are designed to combat illicit finance, while minimising the burden on legitimate customers.
2. The scope of this legislation, and the international standards that inform it, covers both ML and TF. ML includes how criminals change money and other assets into clean money or assets that have no obvious link to their criminal origins. ML can undermine the integrity and stability of our financial markets and institutions. It is a global problem and represents a significant threat to the UK's national security. ML is a key enabler of serious and organised crime, which costs the UK at least £37 billion every year.
3. TF involves dealing with money or property that you know or have reasonable cause to suspect may be used for terrorism. There is an overlap between ML and TF, as both criminals and terrorists use similar methods to store and move funds, but the motive for generating and moving funds differs. The UK has a comprehensive anti-money laundering and counter-terrorist financing (AML/CTF) regime, and the government is committed to ensuring that the UK's financial system is effectively able to combat ML/TF.
4. Combatting economic crime continues to be the driver for ensuring the proportionality of the MLRs and maintaining the UK's commitment to comply with international standards. To this end, it is right for the government to continue to review the effectiveness and proportionality of the MLRs and is the rationale for intervention through the proposed measures in this Statutory Instrument (SI). The implementation of these measures will allow the government to make some changes to the MLRs, which are required to ensure that the UK continues to meet international standards, whilst also strengthening and ensuring clarity for the regulated sector on how the AML regime is intended to operate, by responding to requests for change from industry to further clarify the MLRs.
5. In addition to the work considered here, the government is also undertaking a broader and more fundamental review of the MLRs ahead of a statutory deadline to publish its findings in June 2022. We intend for this review to shape the UK's AML regulatory direction for the coming years.
6. This impact assessment examines approaches to amending the MLRs through the proposed targeted, and in some cases time sensitive, SI measures in line with updated risk assessments, requests for technical and clarificatory changes on supervisory powers, as well as ensuring compliance with new international standards. A Consultation was conducted between July and October 2021, where views from the regulated sector and AML/CTF supervisors were sought, in order to fully assess the impacts of the proposed measures and to better weigh up the costs and benefits of the changes we are going to make through this SI.

II. Policy Objectives and Options

7. Effective AML/CTF regulations will contribute to making the UK a hostile environment for illicit finance, protecting the UK's reputation as a safe place to conduct business and maintaining confidence in the financial system with associated benefits to inward investment and access to foreign market by UK firms. Updating the Regulations will help improve the detection and prosecution of crime and provide a disincentive to crime by reducing the profitability of illicit activities.
8. In its approach to amending Regulations, the government seeks to minimise costs on legitimate businesses while making sure the Regulations are proportionate with the risks of money laundering and terrorist financing, and that they meet our international commitments. The government will need to legislate to implement the proposed changes, in part to comply with the international standards of the FATF on AML/CTF.

    - **Option 0 - Do nothing.** Under this option, the government would not make any further amendments to the MLRs. This would mean that the government would not be responding to updated risk assessments, taking into consideration requests for technical and clarificatory changes on supervisory powers, or complying with new international standards. It would damage the UK's reputation as a legitimate and trustworthy place to do business.
    - **Option 1 - Wait for the MLRs Review to be concluded.** This option would mean waiting to make any further amendments to the MLRs until the wider MLRs Review has been conducted by June 2022. As the MLRs Review is likely to produce more proposals for change, those changes and the proposed measures for this SI could be made at a later date. However, any proposed changes to the MLRs that come out of the Review will need to be publicly consulted on and therefore it is likely it would be 2023 before a consolidated SI could be laid. This option would result in the government not responding to updated risk assessments or taking into consideration requests from industry for technical and clarificatory changes on supervisory powers. It is important that the MLRs stay proportionate to the risks posed and do not become overburdensome on businesses in the regulated sector, this option would jeopardise this. This option would also prevent us from implementing new international standards in a timely way, damaging the UK's reputation as a legitimate and trustworthy place to do business.
    - **Option 2 (preferred option) - Amend the MLRs through an SI.** Legislate to implement the proposed measures for this SI ahead of the wider MLRs review. This option would maintain the UK's commitment to comply with international standards and would ensure the continued proportionality of the MLRs, by responding to updated risk assessments and taking into consideration the need for technical and clarificatory changes on supervisory powers, following valued feedback from industry and supervisors. This option would strengthen the UK's AML regime whilst ensuring clarity on how the regime operates.

Summary and preferred option with description of implementation plan

9. Option 2 is the preferred option. This option will be implemented via secondary legislation which will be laid in June 2022. This approach for intervention will lead to the intended achievement of the policy objective as through updating the MLRs to comply with international standards, respond to updated risk assessments, and implement clarificatory changes, the MLRs will help to improve the detection and prosecution of crime and provide a disincentive to crime by reducing the profitability of illicit activities. By amending the MLRs through this option, the government will also be meeting its aim to minimise costs on legitimate businesses while ensuring the MLRs are proportionate to the money laundering and terrorist financing risks posed.

III. The Challenges of cost-benefit analysis work

10. This impact assessment is informed by evidence gathered through engagement with regulators and relevant stakeholders from regulated sectors as well as publicly available government and private research on the costs of AML compliance. Further evidence to support the impact assessment of the proposed changes to the MLRs has also been gathered through analysis of the responses to the SI consultation, with the intention to improve the accuracy of our analysis and allow us to monetise further costs.
11. The MLRs and the FATF standards are underpinned by a risk-based approach which requires obliged entities to have a detailed understanding of the ML/TF risks within their sector and their own vulnerability to those risks. Once they understand the risks, they must apply appropriate procedures to mitigate their risks including verifying the identity of their customers and understanding the purposes of their activity (customer due diligence (CDD)). The ML/TF risks vary across regulated sectors and the regulations do not prescribe how regulated entities should carry out CDD checks. As a result, the policies and procedures regulated businesses adopt to comply with the MLRs vary greatly depending on the sector, the size of the business, the nature of their customer base and their risk appetite. This approach ensures businesses take measures to manage risks proportionate to the risks, whilst minimising burden on legitimate customers and giving businesses flexibility in their approach to compliance.
12. Due to the nature of the risk-based approach and the flexibility it gives businesses in how to comply with the regulations, it is extremely difficult to know what actions businesses will take to comply with changes in the Regulations. This makes cost-benefit analysis of the regulation challenging, particularly in relation to evaluating the monetised costs of CDD.
13. Earlier reviews and impact assessments of the MLRs have highlighted the difficulty for regulated industries to identify the costs of AML CDD checks. This is partly because CDD checks are integrated into businesses' commercial activities rather than carried out separately. It is also difficult to isolate the costs to businesses incurred by changes to UK law from costs incurred by international considerations. A range of businesses would seek to verify the identity of their customers, monitor high-risk customer and gather data on customers as a commercial and risk management practice. Financial institutions with inadequate CDD standards expose themselves to legal and reputational risks. For example, businesses that operate in the United States (US) or carry out transactions which may be subject to investigation by the US authorities will often seek to meet US standards. Therefore, businesses' compliance and risk management strategies for ML/TF and their associated costs is not solely influenced by changes in UK law.
14. The government will also be seeking further evidence on the cost of compliance with the MLRs to inform its review of the effectiveness of the MLRs and publish the initial findings of this assessment by June 2022. This will consider the cost of complying with the requirements set out in the MLRs for different businesses within the regulated sector, and how they compare to the activities which would be undertaken in the absence of the MLRs. With regard to associated benefits, the review will rely on previous analysis conducted on the monetised costs and benefits of the economic crime regime.

IV. Consultation

15. On 22 July 2021, we published a 12-week consultation[1] on this SI to seek a wide range of stakeholder views on our SI proposals, which we highlighted should be very focussed and include a number of measures that either need to be implemented quickly or have a clearly defined rationale. These proposals were intended to make time-sensitive updates

[1] https://www.gov.uk/government/consultations/amendments-to-the-money-laundering-terrorist-financing-and-transfer-of-funds-information-on-the-payer-regulations-2017-statutory-instrument-2022

to the MLRs, which are required to ensure that the UK continues to meet international standards.

16. We included proposals for 11 policy measures, including:

- Removing Account Information Service Providers (AISPs) and Payment Information Services Providers (PISPs) from scope of the MLRs.
- Removing Bill Payment Service Providers (BPSPs) and Telecoms, Digital and IT Payment Service Providers (TDITPSPs) from scope of the MLRs.
- Expanding the application of the FATF information sharing standard for wire or bank transfers to cryptoassets (Travel Rule).
- Including requirements pertaining to Proliferation Financing, as required by updated FATF standards through the amended Recommendation 1.
- Amending the MLRs to include the formation of all business arrangements required to register at Companies House as part of the services a Trust and Company Service Provider (TCSP) can provide under Regulation 12, as well as the formation of these business arrangements, and other services provided by TCSPs under Regulation 12(2)(b) and (d), by a TCSP to constitute a business relationship under Regulation 4(2).
- Including an explicit gateway for AML/CTF supervisors to view the contents of Suspicious Activity Reports (SARs) submitted by their supervised population (subject to further work on confidentiality implications).
- Amending the Art Market Participants' (AMPs) definition in Regulation 14 of the MLRs to exempt artists selling their own works of art over the EUR 10,000 threshold.
- Extending the powers that the FCA currently have under Reg 74A-C to cover Annex I firms.
- Extending the scope of the discrepancy reporting regime to the ongoing relationship.
- Clarifying the activities that make a person a credit and financial institution as per Reg 10 of the MLRs to align with the FSMA and defined terms under the Regulated Activities Order.
- Improving the Intelligence and information-sharing gateway in Regulation 52 of the MLRs, by:
    - Expanding the information-sharing gateway in Reg 52, to allow for reciprocal sharing from 'relevant authorities' (including law enforcement agencies) to supervisors.
    - Expanding the list of 'relevant authorities', in Reg 52 of the MLRs, to include BEIS and the agencies within it.
    - Amending Reg 52 so that the FCA are able to disclose the confidential information it receives, in relation to its MLR duties, more widely.

17. During this period of consultation, we also carried out extensive stakeholder engagement with industry, civil society, supervisors and other Government Departments (including law enforcement) to further seek detailed views on the potential measures and supplement our policy thinking for the final SI.

18. The consultation formally closed on 14 October 2021, and we received 94 responses in total from stakeholders across all sectors. We subsequently spent a few months analysing responses, seeking further views from stakeholders (to either clarify consultation views or to ask additional questions to enhance our policy-making process) and finalising the policy approach on each SI measure.

19. After analysing all consultation responses, and considering the helpful comments raised in our SI stakeholder engagement session, we decided to take forward 9 of the measures that we consulted on. The 2 measures that we decided not to take forward in this SI include:

- Removing Payment Information Services Providers (PISPs) from scope of the MLRs (originally part of the measure to also remove AISPs from scope), as well as removing Bill Payment Service Providers (BPSPs) and Telecoms, Digital and IT Payment Service Providers (TDITPSPs) from scope of the MLRs.
- Clarifying the activities that make a person a credit and financial institution as per Reg 10 of the MLRs to align with the FSMA and defined terms under the Regulated Activities Order.

20. We have decided not to remove PISPs, BPSPs and TDITPSPs from scope of the MLRs as during the consultation stage, we became aware of stakeholder concerns associated with doing so. It was highlighted that these payment services, unlike AISPs, are involved in payment chains so may represent a slightly higher ML/TF risk. Consultation responses noted that there was a slightly higher risk of PISPs being used as a tool for economic crime, given that they have access to customers funds, and BPSPs and TDITPSPs, like PISPs, are also involved in payment chains as intermediaries. Although we acknowledge that these payment services providers (PSPs) deal with relatively low levels of funds, we received mixed views from stakeholders on taking these measures. Some responses were relatively supportive of removing these service providers from scope of the MLRs, to ease the costs and compliance burdens on small businesses registered as payment service providers. However, several responses suggested that the government should be cautious about removing these PSPs and the potential unintended consequences of doing so, such as a heightened risk of fraud and prematurely amending scope of a growing business sector which is newly in scope of the MLRs. Therefore, we think it would be sensible to continue to monitor the ML/TF risks closely as this sub-sector develops further.
21. In terms of clarifying the activities that make a person a credit and financial institution as per Regulation 10 of the MLRs, we also decided not to take this measure forward at this time. Although we agree that the FCA's proposal to clarify activities under Regulation 10 is sensible, and the intention behind the proposal was broadly supported in consultation responses, we expect that the policy and legal analysis required to appropriately define all forms of credit and financial institution in detail will be especially complicated and technical, and will require longer-term discussions with FCA, legal advisers and external stakeholders to ensure that any change does not have unintended consequences. We do not consider this measure to be as time sensitive as some of the other changes that are required in this SI, but HMT and the FCA will dedicate more time and resource, after this SI has been laid, to ensure that we are sufficiently addressing FCA and stakeholder feedback.
22. We had planned to publish a consultation-stage impact assessment, highlighting any early assumed costs and impacts of implementing the proposed measures. However, it was clear that there were still many unknown factors and missing data, which needed to be tested through consultation. It was ultimately decided that we should wait until the consultation had formally closed to properly analyse stakeholder responses, to better inform our assessment of the costs and impacts of the measures in the SI.
23. The main changes between the draft consultation-stage impact assessment and this final-stage impact assessment are the inclusion of additional measures which were not part of the consultation, the removal of two of the measures which were part of the consultation (for the reasons listed above), and more fully developed policy options and rationale for the measures which were publicly consulted on.

24. A full summary of the measures that we consulted on and will be/ will not be taking forward through this SI can be found in our government response to the SI Consultation[2].

V. Monetised and non-monetised costs and benefits of each option (including administrative burden)

25. This section discusses each measure of the SI in turn, identifying the different options and approaches to implementing the measures that have been considered, the finalised approach, and where possible the direct and indirect costs, benefits and impacts of each measure.

26. Based on data collected from AML/CTF supervisors in the latest HM Treasury annual returns, covering the period between 6 April 2020 and 5 April 2021, we estimate that around 101,211 entities are within scope of the MLRs. However, although we estimate that some of the proposed measures will affect many of those regulated under the MLRs, other measures are targeted on specific regulated sectors, for example the art market, and therefore are likely to have a smaller impact on the entire population regulated under the MLRs.

27. The government published a consultation on 22 July 2021 entitled "Amendments to the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 Statutory Instrument 2022". This Consultation outlined how the government intended to amend the MLRs and was open for responses until 14 October 2021. As part of this consultation, the government asked respondents for their views on the costs and impacts of the proposed measures. These responses have been analysed and views from responses have been included below in order to better assess the impact of the proposed measures.

28. Although the responses to the consultation did give us a greater understanding of how each measure could impact different firms, in many areas the responses did not yield as much quantitative data as we would have hoped in order to accurately quantify the costs and impacts associated with this SI, and the individual measures within it. In an attempt to address where we have gaps in our evidence base, and to supplement the consultation responses, we bilaterally engaged with key stakeholders, including BEIS, Companies House and Home Office, but in particular HMRC, the FCA and OPBAS.

29. We engaged with these three stakeholders the most as, through their supervisory responsibilities, HMRC and the FCA cover the majority of the regulated sector, and therefore can represent both the views of regulated businesses and themselves as AML/CTF supervisors, whilst OPBAS' oversight function of the professional body supervisors (PBSs) in the accountancy and legal sectors allows them to comment on the cost to non-statutory supervisors.

30. Despite further stakeholder engagement, gaps in evidence still remain in relation to specific costs and impacts. Where possible, we have included estimated costs using figures based on extant, relevant information. Our main sources for this additional information have been further bilateral engagement with relevant stakeholders, other published impact assessments, and relevant information in the public domain. The MLRs do not explicitly require stakeholders to collect data on the costs and impacts of complying with the requirements under the MLRs, and we have found it challenging to identify sources of information on the costs and impacts to both regulated businesses and AML/CTF supervisors of implementing many of the measures in this SI.

[2] https://www.gov.uk/government/consultations/amendments-to-the-money-laundering-terrorist-financing-and-transfer-of-funds-information-on-the-payer-regulations-2017-statutory-instrument-2022

31. We have only been able to quantify the costs and benefits for four of the measures. These estimated costs and benefits have largely been based on multiple assumptions from other information available in the AML/CTF landscape, meaning the overall estimate of the EANDCB is somewhat limited in use. However, we will continue to keep the operation of the changes, and the availability of data, under review.

32. As noted, HM Treasury is also conducting a wider review of the MLRs which is intended to shape the UK's AML/CTF regulatory direction for the coming years, and a report on the review's findings is due to be published by June 2022. Although the MLRs review report will be published in June 2022, proposals to further amend the MLRs will then need to be publicly consulted ahead of further legislation, which may not be until 2023 or later. This will allow time for the regulated sector and supervisors to adjust to the changes through this SI before having to consider any future changes as a result of the review.

1. Changes in Scope to Reflect Latest Risk Assessments

1.1 Account Information Service Providers

Policy objective and rationale for intervention

33. With regard to the Payment Services Directive and 4MLD, we have discovered a potential issue with bringing businesses that are defined as Account Information Service Providers (AISPs) and Payment Initiation Service Providers (PISPs) into scope of the MLRs for the first time.

34. AISPs are purely informational tools and allow customers to view their data and link it to other services but they cannot access accounts to make payments, and do not come into possession of funds or execute payments. AISPs are data driven technology services that were brought into scope of the MLRs, on back of the Payment Services Directive 2, as a way to facilitate burgeoning technology in Europe. They are able to access a customer's data in an online banking environment then present that data back to a customer in granular detail. AISPs are commonly used in the Small and Medium-sized Enterprises (SME) accounting sector and include firms such as Intuit (who provide financial software) and Sage (who provide a business and accounting management interface). In this context an AISP is able to access an SMEs bank accounts several times per day and present transaction data so that SMEs can easily track cash flow, digitise their accounts and make better informed lending decisions. Essentially, AISPs provide spending analytics as a read only function – they don't have access to accounts.

35. Discussions with stakeholders, and with the Financial Conduct Authority (FCA), who currently supervise AISPs under the MLRs, indicate there is little to no credible AML methodology which could exploit AISPs. Therefore, it was suggested that they should be removed from scope of the MLRs. This view was widely supported during a series of MLRs stakeholder engagement sessions and in SI consultation responses, with the majority of consultation responses on AISPs suggesting that they should be removed from scope.

36. Despite stakeholders' views that AISPs are 'low risk' for ML and TF, the National Risk Assessment 2020 highlighted that all Payment Service Providers are at medium risk of ML, as the business models of these service providers continue to mature and evolve, which make it difficult to detect and identify money laundering methodologies. However, this risk assessment did not make mention of the key differences between the types of

Payment Service Provider – for example, AISPs do not have access direct access to customers funds whereas Payment Information Service Provers (PISPs), Bill Payment Service Providers (BPSPs) and Telecoms, Digital and Information Technology Payment Service Providers (TDITPSPs) do have direct access to customers funds and therefore pose a clear higher risk.

37. After careful consideration, we agreed that AISPs should be removed from scope of the MLRs given that they do not come into possession of funds or execute payments themselves and requiring them to duplicate CDD/compliance checks (which banks already perform) and endure additional regulatory costs, could be considered disproportionate to the relatively low ML/TF risks.

Description of options considered

- **Option 0 - Do nothing**. Maintain the status quo by keeping AISPs within scope of the MLRs. This option would mean that firms registered as AISPs would be required to continue to comply with the MLRs, incurring costs with limited value to the prevention or detection of money laundering. This option would not be well received by stakeholders, and the FCA, who believe that this option is disproportionate to the low ML/TF risks associated with these firms.
- **Option 1 (preferred option) - Remove AISPs from scope of the MLRs.** Given their low ML/TF risk, we consulted on removing AISPs from scope of the MLRs. As highlighted above, SI consultation responses were very supportive of removing AISPs from scope. As they cannot be used to transfer funds and represent a very low risk for ML/TF, there is unlikely to be sufficient risk to justify AISPs remaining in scope of the MLRs. Therefore, this is the option we recommended to ministers and obtained clearance on.

Monetised and non-monetised costs and benefits

38. Before publishing the consultation, we had a very limited understanding of AISPs, but were aware that there could be indirect costs and benefits to making these changes within the MLRs. For example, it could be seen as the UK loosening its MLRs system or more effectively and proportionately targeting its risk-based approach at businesses which genuinely pose a risk. We used the consultation as an opportunity to get a better understanding of the current impact of AML obligations and compliance costs on relevant businesses and carried out further engagement with the FCA to seek information on the potential costs to them, as the AML/CTF supervisor, and AISPs if we were to remove them from scope.

Direct and indirect costs

39. We can confirm that there will be no change in direct or indirect costs to the FCA. This is because AISPs will still be subject to FCA regulation under the Payment Services Regulations (this change won't impact FCA supervision directly).

40. There also will be no additional direct or indirect costs to the businesses that are currently registered as AISPs.

Direct and indirect benefits

41. AISPs have been subject to AML obligations since 2017 so we expect that there may be direct savings to these businesses who have previously sought to comply with the AML rules. We do not have specific figures to demonstrate the estimated saving to businesses as we do not have a clear picture of the number of businesses, who are currently registered as AISPs (could be c.120 but the number of businesses registered as AISPs

on the FCA register is not a static figure as new firms seek registration and firms cease to need this permission), and the costs of compliance.

42. However, in line with the 5MLD impact assessment, which estimated that the assumed cost of undertaking customer due diligence ranged from £3-£15 per customer, we can make a rough estimate of the direct benefit for business that are currently registered as AISPs. For example, if 120 businesses are registered as AISPs and each of these businesses are currently carrying out one duplicative CDD check on a customer, we would expect this amendment to the MLRs to result in costs and savings as follows:

43.

Low estimate (assumes £3 cost of CDD check, one check per AISP)	£3 x 120 (no. of AISPs) = £360
High estimate (assumes £15 cost of CDD check, one check per AISP)	£15 x 120 (no. of AISPs) = £1,800
Best estimate (for whole sector)	((£360 + £1,800) ÷ 2) = £1,080
Best estimate (per AISP)	((£3 + £15) ÷ 2) = £9

44. These estimates are uncertain. There is a lack of comprehensive data on the costs of CDD across AML sectors– the MLRs do not explicitly require supervisors to collect certain types of data. Additionally, the nature of the risk-based approach underpinning the regulations make it extremely difficult to monetise the overall ongoing cost of CDD.

Summary

45. As limited evidence was obtained through the consultation, we sought further evidence from stakeholders and the FCA but were unable to obtain it.

46. Estimating costs and savings to AISPs is extremely difficult, as we do not have access to data which sets out, the size of each business (based on the number of employees); and how many CDD checks are being carried out by each AISP. AISPs may carry out more than one CDD check on their customer base, which would lead to higher costs than estimated above. Given that limited availability of data, we will not attempt to monetise this benefit for the purpose of the EANDCB.

47. There is still a clear gap in our evidence base. HMT are committed to reviewing the MLRs on a regular basis and should evidence come to light of disproportionate costs associated with this measure, we will review our approach at the next opportunity.

	Cost type	**Estimate per firm (best estimate)**	**Estimate for sector (best estimate)**
Direct costs		Not quantified	Not quantified
Indirect costs		Not quantified	Not quantified
Direct benefits		Not quantified	Not quantified
Of which to firms	One-off	Not quantified	Not quantified
	Ongoing	Not quantified	Not quantified

Of which to supervisors		Not quantified	Not quantified
Indirect benefits		Not quantified	Not quantified

Impact on small and micro businesses

48. The MLRs apply to all those that are in the AML regulated sector regardless of the size of the business. For those AISPs that are considered a small or micro business (SMBs), this measure means they will no longer be subject to disproportionate MLRs compliance costs, resulting in a direct benefit to SMBs.

49. We do not have a clear picture of the size of businesses currently registered as AISPs. As highlighted in the assessment above, the number of employees that make up a firm is not a specific metric that businesses have to supply when registering with the FCA. Although resourcing in compliance may be discussed at the point of registration, this data is not consistently available.

50. However, we expect that a number of AISPs could be SMBs and therefore accrue this benefit.

Wider Impacts

51. Regarding this measure, no wider impacts are expected, however, the questions relating to this measure in the consultation did not specifically ask whether the implementation of this measure would have any potential wider impacts, such as on trade, innovation and competition.

52. As with the costs associated with this measure and impacts on small and micro businesses, we are aware that despite engagement with relevant stakeholders, there is still significant gaps in our evidence base. Although we currently have no substantial evidence of the impact that this measure will have, we are committed to reviewing the MLRs on a regular basis and should evidence come to light of any significant wider impacts or heightened ML/TF risk associated with this measure, we will review our approach at the next opportunity.

1.2 Art Market Participants

Problem under consideration

53. The definition of an Art Market Participant (AMP) in Regulation 14(1)(d) of the MLRs can currently be interpreted to include within scope artists who sell, by way of business, works of art, as defined by the VAT Act 1994, over a threshold of EUR 10,000. The term artist, for the purpose of this measure, is held to mean an individual who personally creates works of art, as defined in the VAT Act 1994, or where works of art are attributable to that artist.

54. The provision for bringing the art sector into scope of the MLRs came about due to the expansion of obliged entities, those who are regulated for ML/TF, under 5MLD, which expanded the scope to include art intermediaries for transactions exceeding EUR 10,000, including, but not limited to, art galleries, auction houses, and freeports. The government published a consultation on the transposition of 5MLD and following the analysis of the responses to this consultation, a definition was incorporated into the MLRs under the term “Art Market Participants”.

55. When transposing the definition relating to art intermediaries into the MLRs, it was not the government's intention to include artists who sell their own works of art as AMPs. The government's intention was to bring into scope those in the art sector who could be seen to present a higher ML/TF risk, in particular those who often play an intermediary role in the sale and purchase of works of art, such as art dealers, galleries and auction houses. However, feedback from industry indicated that the current definition lacks clarity about the precise scope of application of the definition. We therefore consulted on whether to change the definition to make it clearer for the sector, including clarifying which participants in the sector need to register with HMRC for AML/CTF supervision.

56. Following responses to the consultation, this measure will amend the definition of an AMP in Regulation 14(1)(d) to explicitly exclude from scope artists who sell their own works of art over the EUR 10,000 threshold. This exemption for artists will apply when the artist sells their works of art as an individual and when they sell their work through a company or partnership, where they are a shareholder or partner.

Rationale for intervention

57. There is limited evidence of the money laundering and terrorist financing risk associated with artists, whether they are selling their works of art themselves, or via an intermediary. Our best understanding of the scale and nature of the risk is that of the 60,000 estimated artists in the UK, between 800 and 1,500 could be caught by the present AMP definition, by selling art over the EUR 10,000 threshold.

58. There is currently limited evidence to inform an assessment of the ML/TF risk of artists in particular. The ML/TF risks of the art sector more broadly are set out in the National Risk Assessment 2020[3], but HMRC, as the AML/CTF supervisor for AMPs have noted that owing to the recent addition of AMPs to the MLRs, their knowledge of this sector, including evidence of ML/TF for or by artists selling directly to their customers is limited. HMRC have also noted the ML/TF risk is likely to be lower when an artist sells their art via an AMP, as risks would be mitigated due to the AML/CTF policies, controls and procedures put in place and adequate customer due diligence checks. With artists out of scope, direct sales to customers would potentially be exposed to exploitation by criminals of direct purchases from artists, however we are not currently able to quantify this risk. Therefore, since there is a need for the scope of the MLRs to be proportionate to the risk posed, this measure will clarify the exclusion of artists who sell their own works of art over the EUR 10,000 threshold, through amending the definition of an AMP in the MLRs.

59. Given the pressing need to clarify the position for the art sector on who was required to register as an AMP, it was decided in May 2021 to amend the AML sector guidance for the art sector, published by the British Art Market Federation (BAMF) in association with HMRC, as the AML/CTF supervisor for AMPs. We are now looking to align current practice with clearer language in the MLRs specifying the exclusion of artists selling their own art from scope of being an AMP through this SI, as the next legislative opportunity to amend the MLRs. As a result, the impact of the legislative change itself is likely to be minimal.

Policy Objective

60. The objective of this measure is to clarify the scope of the AMP definition, by amending Regulation 14(1)(d) to exempt artists who sell their works of art over the EUR 10,000 threshold, either as an individual or through a company or partnership, where they are a shareholder or partner. This measure was tested through the consultation in order to

[3] https://www.gov.uk/government/publications/national-risk-assessment-of-money-laundering-and-terrorist-financing-2020

determine what the costs and impacts of implementing this measure would be on relevant persons under the MLRs and HMRC, as the AML/CTF supervisor for AMPs.

61. Overall, the majority of responses across sectors, and especially from the art sector, agreed with the proposal to exempt artists from the AMP definition.. Many responses noted that this exemption would avoid artists being burdened with having to register as AMPs and having to create administrative systems to comply with the obligations in the MLRs and would also potentially reduce the burden on HMRC as the AML/CTF supervisor for AMPs. Many also noted that there is likely to be only a small number of artists selling their art directly for over the EUR 10,000 threshold as in those circumstances they would be more likely to sell through an intermediary who will remain regulated as an AMP.

Description of options considered

- **Option 0 - Do nothing.** This option would result in maintaining the current AMP definition in the MLRs, which would continue to lack clarity for the sector in relation to which art market participants are in scope and would maintain the confusion as to who should register with HMRC for AML/CTF supervision. Therefore, this option is not recommended.
- **Option 1 – Amend the MLRs to clarify the inclusion of artists as AMPs.** This option would require legislative change to amend the definition of an AMP to clarify the inclusion of artists who sell their own works of art over the EUR 10,000 threshold. This option would provide clarity for the art sector as to whether artists are in scope of the AMP definition. It would also mean that any artist who, by way of business, sells their own art over the EUR 10,000 threshold would have to pay to register with HMRC for AML/CTF supervision and incur the costs of seeking to comply with the requirements in the MLRs. This option would place a disproportionate burden on artists, as it would go against the lack of evidence we have of the ML/TF risk attributed to artists selling their own works of art either directly or via an intermediary.
- **Option 2 – Clarify the scope of the AMP definition in guidance.** This option would not require legislative change and would provide clarity for the sector as to which participants in the art sector would be in scope of the AMP definition in the MLRs. However, although this would provide a level of clarity for the sector, AML/CTF sectoral guidance is not legally binding and the AMP definition in the MLRs would still be open to interpretation as to whether artists are in scope or not. Therefore, legislative change would be needed in addition to updating the guidance to change behaviour.
- **Option 3 (preferred option) - Legislate to amend the AMP definition in the MLRs to exclude artists who sell their own works of art over the EUR 10,000 threshold.** This option requires amending the MLRs to exempt artists from scope of the AMP definition, providing clarity to the art sector and ensuring the MLRs remain proportionate to the ML/TF risks posed by those in the regulated sector.

62. Option 3 is the preferred option. Amending the AMP definition to clearly exclude artists who sell their own works of art would provide much needed clarity for the art sector as to who is in scope of the definition. This option would also maintain the proportionality of the MLRs, by not placing undue burden on artists to register with HMRC for AML/CTF supervision and incur the costs of complying with the requirements in the MLRs, given the lack of evidence of the ML/TF risk posed by artists selling their own works of art, either directly or via an intermediary.

Monetised and non-monetised costs and benefits

63. This measure will affect HMRC, as the AML/CTF supervisor for the art sector, as well as the artists in the UK that can be seen to fall within scope of the current AMP definition, which is estimated to be between 800 and 1,500 artists. It is worth noting that in the consultation, a response from the art sector noted that this estimated figure is likely an underestimate, however, as noted, evidence on the sector from HMRC's supervision is at present limited due to the relatively recent addition of AMPs to the regulated sector.

Direct/ indirect costs

64. In their response to the consultation, HMRC noted that if the number of artists selling directly remains small, this will not have much impact on HMRC's supervision. HMRC's costs would not decrease because artists who sell directly are deemed currently out of scope for all practical purposes. However, excluding artists from the definition of AMPs could lead to an increase in the number of artists who choose not to use an AMP, thus having a competitive impact on the intermediaries' market, reducing the number of AMPs supervised by HMRC. This may potentially increase HMRC's costs associated with supervising a smaller population and increase the risk in the sector. Other consultation responses that responded to questions relating to this measure did not explicitly comment on potential costs of implementing an exemption for artists from the AMP definition.

65. Following the implementation of this measure, HMRC will have to refund the supervision fees for those artists who have already registered as AMPs, due to the lack of clarity of who was in scope of the definition. HMRC have noted that the number of necessary refunds will be very small and can be achieved without significant cost or wider impacts.

66. There were no expected negative impacts of this measure ahead of consulting on the measures of this SI and we used the consultation to test what the associated costs and impacts would be of implementing this measure.

67. In addition to views gathered from responses to the consultation, we subsequently further tested stakeholders (HMRC, FCA and OPBAS) on what the estimated costs of implementing the measure would be on both relevant persons under the MLRs and AML/CTF supervisors. No significant further information became available.

Direct/ indirect benefits

68. Implementing this measure will provide a saving for affected artists, as they will no longer have to pay for AML supervision or have to afford the costs of complying with the MLRs, and may also reduce the ongoing costs of supervising the art sector for HMRC, as the number of entities to be supervised decreases.

69. To work out the estimated savings for those who will be clarified as not in scope of the AMP definition, we can refer to the assessment of the costs from the 'Transposition of the Fifth Anti-Money Laundering Directive' impact assessment (5MLD IA) completed in October 2019[4]. This remains the most comprehensive data we have available.

70. Based on responses from the art sector, it was concluded in the 5MLD IA that AMPs would bear the costs of familiarising themselves with the MLRs, setting up a system for carrying out CDD checks and ongoing training of staff, as well as identifying and assessing the ML/TF risks to which they are subject and develop appropriate internal

[4] https://www.legislation.gov.uk/ukia/2019/172/pdfs/ukia_20190172_en.pdf

controls, policies and procedures to mitigate and effectively manage these risks, including training employees.

71. Prior to the expansion of obliged entities under 5MLD, some AMPs were previously regulated for their high value dealer activity, when acting in relation to transactions in cash over EUR 10,000. The monetised and non-monetised costs to these businesses were seen to be lower than the estimates for businesses without previous compliance experience. Although feedback from industry indicated that most of the newly in scope AMPs would not have had previous experience of compliance with the MLRs, many firms were seen to conduct due diligence as part of existing commercial practices.

72. The below cost assessment is based on the 5MLD IA cost assessment for including AMPs in scope of the MLRs. We have used this structure to show the estimated savings that artists will make by not being in scope of the AMP definition. For ease of reference, the term business has been used to work out the estimated savings for artists based on the 5MLD IA's assessment of costs, however it should be noted that not all artists operate as businesses.

Start-up savings[5]:

Assumptions:

I. New customer premises fee: £300
II. Approval fee: £40 per person
III. Estimated average number of beneficial owners, officers and managers (BOOMs) per AMP: 1.5
IV. Average number of AMP premises:1.2
V. Estimated total number of artists in-scope as AMPs: 800-1500
VI. Cost of writing policy: £1000- £2000

Scenarios:

VII. Start-up savings (assumes: low cost of writing policy, 800 artists), per business and per sector: (£40x1.5)+ (£300x 1.2)+ £1000=£1420 per business, £1420x 800= £1.136 million for sector; or
Start-up savings (assumes: low cost of writing policy, 1500 artists), per business and per sector: (£40x1.5)+ (£300x 1.2)+ £1000=£1420 per business, £1420x 1500= £2.130 million for sector
VIII. Average start-up savings for sector (assume: low cost of writing policy): ((£1.136 million + £2.130 million) ÷ 2) = £1,633,000 (£1.6 million)
IX. Start-up savings (assumes: high cost of writing policy, 800 artists), per business and per sector: (£40x1.5) +(£300x1.2) +2000=£2420 per business, £2420x800=£1.936 million for sector; or
Start-up savings (assumes: high cost of writing policy, 1500 artists), per business and per sector: (£40x1.5) +(£300x1.2) +2000=£2420 per business, £2420x1500=£3.630 million for sector
X. Average start-up savings for sector (assume: high cost of writing policy): ((£1.936 + £3.630) ÷ 2) = £2,783,000 (£2.8 million)
XI. Best estimate (average) (per business): ((£1420 + £2420) ÷ 2) = £1920
XII. Best estimate of start-up savings for sector: ((£1,633,000 + £2,783,000) ÷ 2) = £2,208,000 (£2.2 million)

[5] The supervision costs are based on HMRC's current supervision fees, the cost of writing policies uses estimates of the 5MLD impact assessment. The estimate of number of businesses and premises is based on HMRC's analysis and engagement with the sector.

Ongoing annual savings[6]:

Assumptions:

XIII. Supervisor renewal fee: £300 (per premises)
XIV. Average number of AMP premises: 1.2
XV. Estimated total number of artists in-scope as AMPs: 800-1500
XVI. Annual cost of staff training: low estimate: high estimate: assuming average affected business has 5 FTE and training takes 1 day per year, annual training costs may be 5 days per year at £100-£200 per day. Therefore, low estimate = £500, high estimate = £1000.
XVII. Annual cost of CDD checks: unknown- this is highly variable depending on the business's client base, risk appetite, business model and software.

Scenarios:

XVIII. Annual savings (assume: low training costs, 800 artists): (£300x1.2)+£500=£860 per business, £688,000 for sector; or
Annual savings (assume: low training costs, 1500 artists): (£300x1.2)+£500=£860 per business, £1.290 million for sector
XIX. Average annual savings for sector (assume: low training costs): ((£688,000 + £1,290,000) ÷ 2) = £989,000 (£1 million)
XX. Annual savings (assume: high training costs, 800 artists): (£300x1.2)+£1000=£1360 per business, £1.088 million for sector; or
Annual savings (assume: high training costs, 1500 artists): (£300x1.2)+£1000=£1360 per business, £2.040 million for sector
XXI. Average annual savings for sector (assume: high training costs): ((£1,088,000 + £2,040,000) ÷ 2) = £1,564,000 (£1.6 million)
XXII. Best estimate (average) (per business): ((£860 + £1360) ÷ 2) = £1110
XXIII. Best estimate of annual savings for sector: ((£989,000 + £1,564,000) ÷ 2) = £1,276,000 (£1.3 million)

73. From the above cost assessment, we can work out what the estimated saving would be for around 800-1,500 artists who will no longer be in scope of the AMP definition, following the implementation of this measure**. For start-up savings, the best estimate for savings per business would be £1920, and a best estimate for the savings per sector would be £2.2 million. For ongoing annual savings, the best estimate for savings per business would be £1110, and a best estimate for the savings per sector would be £1.3 million.**

74. From further bilateral engagement with HMRC, it has been noted that there may be an indirect benefit to the customers of artists who will not be in scope of the MLRs, as these artists will not have to recover the costs of supervision from their sales. However, how and if this were to be applied will vary between artists and so we are unable to quantify it. There may be indirect costs and benefits due to a change of behaviour relating to art sales. For example, AMPs will have to conduct CDD and will pass on their costs to their customers, so we may see an increase in artists selling directly and a reduction in the use of intermediary AMPs. This could have an impact on AMPs' business and could lead to some closures of, for example smaller AMPs. However, we are unable to anticipate and quantify this.

[6] The supervision costs are based on HMRC's current supervision fees annual training costs use estimates of the 5MLD impact assessment. The estimate of number of businesses and premises is based on HMRC's analysis and engagement with the sector.

Summary

75. In light of the above assessment of the direct and indirect costs and benefits of implementing this measure, it is clear there is a limit to what can be quantified for the purpose of the EANDCB.

76. What we have been able to quantify is the direct benefit to artists who will no longer have to be supervised by HMRC for AML/CTF supervision. These estimated savings have been based on figures used in the 5MLD IA, for when AMPs were first brought into the regulated sector – we have no improved data since this time (including gathered through the consultation) and so have used these figures for the EANDCB.

77. There are direct and indirect costs and benefits, both to HMRC as the AML/CTF supervisor for AMPs and other regulated AMPs, but also to the customers of artists, that have not been possible to quantify. There will be a direct cost to HMRC of refunding the supervision fees to artists who have already registered with HMRC for AML/CTF supervision, as well as a potential cost to HMRC of supervising a smaller sector, however, these costs are likely to be small and at present we are unable to quantify them.

78. There may also be an impact on the intermediary AMP market if more artists decide to sell directly; and to customers of artists no longer seeking to recoup supervisions costs. We are not able to quantify these costs.

	Cost type	**Estimate per firm (best estimate)**	**Estimate for sector (best estimate)**
Direct costs		Not quantified	Not quantified
Indirect costs		Not quantified	Not quantified
Direct benefits		Not quantified	Not quantified
Of which to firms	One-off Ongoing	£1920 (range is £1420-£2420) £1110 (range is £860-£1360)	£2.2 million (range is £1.6-£2.8 million) £1.3 million (range is £1-1.6 million)
Of which to supervisors		Not quantified	Not quantified
Indirect benefits		Not quantified	Not quantified

Impact on small and micro businesses

79. The MLRs apply to all those that are in the AML regulated sector regardless of the size of the business. Those businesses that fall within scope of the AMP definition will continue to be supervised by HMRC for AML/CTF on a risk-based approach. The impact of this measure is likely to be a positive one, where artists are selling their own art, as they will not have to register with HMRC for AML supervision or comply with the requirements under the MLRs. We expect this benefit will by its very nature accrue primarily to individuals, and small and micro businesses. This measure will also have a beneficial impact on those who may have already registered as an AMP with HMRC due to a lack of clarity around the scope of the AMP definition. We therefore do not anticipate that the requirements of the measure will have a significant impact on small businesses and no mitigating measures are required.

Wider impacts

80. Regarding this measure, no wider impacts are expected, however, the questions relating to this measure in the consultation did not specifically ask whether the implementation of this measure would have any potential wider impacts, such as on trade, innovation and competition.

81. As with the costs associated with this measure and impacts on small and micro businesses, we are aware that despite engagement with relevant stakeholders, there is still significant gaps in our evidence base. Although we currently have no substantial evidence of the impact that this measure will have, we are committed to reviewing the MLRs on a regular basis and should evidence come to light of any significant wider impacts or heightened ML/TF risk associated with this measure, we will review our approach at the next opportunity.

2.Clarificatory Changes to Strengthen Supervision

2.1 Suspicious Activity Reports

Problem under consideration

82. The Proceeds of Crime Act 2002 (POCA) requires persons working in the regulated sector to submit a Suspicious Activity Report (SAR) in relation to information or intelligence that they receive, if they know or suspect, or have reasonable grounds to know or suspect, that a person is engaged in or is attempting money laundering and/or terrorist financing. Those supervised under the MLRs therefore fall within the scope of this obligation. Firms or individuals that fail to report knowledge or suspicion could be guilty of a 'failure to report' offence.

83. The current approach to the use of SARs by supervisors, as part of the AML/CTF supervisory regime, is varied. Currently the MLRs state that AML/CTF supervisors can, when performing their supervisory functions under the MLRs, collect information regarding the quantity of SARs that any of its supervised population has submitted, as it considers necessary. However, the wording of the MLRs is unclear on whether supervisors are also allowed to access, view or consider the quality of those SARs submitted by their supervised population. This has led to an inconsistent approach being taken across all 25 AML/CTF supervisors (3 statutory supervisors (HMRC, FCA and Gambling Commission) and 22 Professional Body Supervisors), with each taking their own view on whether they can undertake these activities as part of their approach to AML/CTF monitoring.

Rationale for intervention

84. Currently, the approach AML/CTF supervisors are taking is varied to accessing, viewing and assessing the quality of SARs submitted by their supervised population. Whilst some supervisors factor these activities into their risk-based approach to supervision and assessment of a firm's or individual's compliance, other supervisors do not given the perceived ambiguity of the MLRs and the absence of explicit permission to do so.

85. Discussion with stakeholders on this issue has revealed queries regarding the clarity of the MLRs. Non-legislative interventions have been considered and OPBAS has stated expectations for the PBSs to undertake such assessments, however this approach increases potential inconsistencies and will not resolve the lack of legal clarity surrounding the rights of supervisors under the MLRs to access and consider the quality of their populations' SARs as they are currently drafted. Amending the MLRs to provide

an explicit legal gateway will give legal clarity to supervisors on their ability to access, view and assess the SARs of their supervised population. A legislative amendment will also improve overall consistency by granting the permission to all 25 AML/CTF supervisors on an equal basis, as well as providing supervisors with the ability to challenge their supervisory population if they are refused access.

86. By amending the MLRs to introduce an explicit legal right of access that would allow supervisors to view and consider the quality of the content of their supervised populations' SARs, a greater consistency of approach to utilising SARs within the AML/CTF supervisory landscape would be achieved. Furthermore, by clarifying the right of access, this could aid AML/CTF supervisors in delivering their supervisory obligations under the MLRs more effectively. AML/CTF supervisors could draw overarching themes from the content of SARs which could be used to identify emerging threats or trends in the supervised sector, deepening both the supervisors' and the supervised populations' understanding of money laundering and terrorist financing risks.

Policy objective

87. This measure will amend the MLRs to introduce an explicit legal right of access for AML/CTF supervisors to access, view and consider the quality of their supervised populations' SARs. This will allow AML/CTF supervisors the discretion to better understand the risk and trends in their sector, apply this intelligence to inform their risk-based approach to supervision and drive a more consistent approach across all 25 supervisors. Furthermore, AML/CTF supervisors will be able to use their access to and consideration of their populations' SARs to help inform their education approach and guidance for their members to improve the overall quality of SARs submitted.

Description of options considered

- **Option 0 - Do nothing.** This option would result in the current ambiguous wording of the MLRs being maintained. This option will not require legislative change but will result in the continuation of the inconsistent approach to accessing, viewing and assessing the quality of their supervised populations' SARs by supervisors as part of their risk-based approach. This scenario would also restrict opportunities for supervisors and their populations to improve their understanding of sector risks through utilising the content of SARs to perform thematic reviews and identify emerging threats and trends.
- **Option 1 - Government guidance is released which states that the MLRs allow for AML/CTF supervisors to access, view and assess the quality of their supervised populations' SARs**. This option would not require legislative change, however, the ambiguity of the MLRs may result in increased risks of a legal challenge to the guidance. Furthermore, guidance may not provide confidence to AML/CTF supervisors who have requested additional legal clarity.
- **Option 2 (preferred option) - Amending the MLRs.** This option would amend the MLRs to introduce an explicit legal right of access which will allow supervisors to access, view and assess the quality of the content of the SARs of their supervised population. This will require amending the MLRs via secondary legislation to remove the legal uncertainty regarding these activities and help to ensure a consistent approach to viewing SARs as part of AML/CTF supervisors' risk-based approach to supervision. Furthermore, this scenario could increase the ML/TF risk and threat understanding of AML/CTF supervisors and their firms or individuals through the identification of emerging trends and threats from the content of SARs.

88. Option 2 is the preferred option. An explicit legal right to allow supervisors to access, view and consider the quality of their supervised populations SARs would provide a consistent power to all 25 AML/CTF supervisors while retaining their ability to exercise discretion and flexibility on how to incorporate these activities into their AML/CTF

supervisory approach. As such, there will be scope for this right to be factored into a supervisor's risk-based approach with supervisors not legally obliged to consider SARs.

Monetised and non-monetised costs and benefits

89. This measure will impact both the AML/CTF supervisors as well as their supervised populations. This includes those in the regulated sectors such as (but not limited to) financial institutions, accountants, lawyers, estate agents and other such gatekeepers to the financial system.

<u>Direct/ indirect costs</u>

90. It is difficult to evaluate the monetised costs associated with implementing this measure as it will form part of a supervisor's wider risk-based approach to supervision. Furthermore, the measure aims to provide a consistent power to all AML/CTF supervisors and does not intend to introduce an explicit legal obligation to review the content of SARs, thus it will be at a supervisor's own discretion on how to apply and incorporate this right into their supervisory approach. OPBAS already expect PBSs to review SARs as part of their supervisory approach and some AML/CTF supervisors are already utilising SARs content in their risk-based approach, therefore no significant impact or change in conditions/costs is expected with respect to those supervisors and supervised firms.

91. Regarding potential negative impacts of this measure, no expected 'tipping off' impact is expected as s.333D (1)(a) of POCA states that SARs can be disclosed to an authority that is the supervisory authority for that firm/individual under the MLRs. Furthermore, as supervised firms/individuals are already required to submit instances of suspicious activity and maintain appropriate records as part of their obligations under POCA and their own risk-based approach, we do not expect significant increases in compliance costs. While some organisations have raised the potential cost implications of accessing and reviewing the contents of SARs for supervisors, there won't be significant changes in approach as supervisors are already and will continue to be expected to take a proportionate approach to reviewing SARs.

92. This change will enable PBSs to gain a better understanding of the risks and threat their population are exposed to and help the PBSs to tailor the guidance they give their sectors on SARs in response to what they are seeing. Overall, we anticipate this change to provide additional context for the risk assessments of both the PBSs and their populations, ultimately improving supervisory effectiveness.

93. The impact of this on the PBSs will be an additional requirement in their monitoring processes and may include training or upskilling requirements to PBS staff. OPBAS already has an expectation that the PBSs review and assess the SARs of their supervised population, as part of their monitoring assessment. This is currently being undertaken inconsistently by the PBSs due to concerns over the legal permission to do so, which was one of the main drivers for this amendment. Given these inconsistencies, there may be associated indirect training costs for the PBSs who are yet to undertake these assessments, to ensure their assessment teams are trained on assessing SARs for quality indicators. However, these indirect costs are likely to be minimal as training and expectations have already been provided by OPBAS and the UKFIU in joint published guidance. The UKFIU have also made multiple offers to the PBSs on training which has had limited uptake. To enable these assessments to be undertaken. This may also include changes to IT systems may be required to allow this process to be completed remotely during desk-based assessments. However, this will be a part of

wider work on SARs reform and will be considered as part of the MLRs review. A detailed analysis on the impacts of this will be carried out as part of those processes.

94. In addition to views gathered from responses to the consultation, we also asked stakeholders (HMRC, FCA and OPBAS) what the estimated costs of implementing the measure would be on both relevant persons under the MLRs and AML/CTF supervisors. The FCA noted that they already require firms to disclose SARs to them in the course of their supervision so this measure will not carry any direct cost for the FCA. HMRC noted that the increased possibilities for risking using SARs will add to their activity, with minor associated resource impacts. However, HMRC note that this cost would not be enough to quantify. In line with the above, OPBAS noted that they anticipate that the cost implications are likely to be related to training/comms (both internally at the PBSs and externally to their population) on amended expectations and possible increases in PBS supervisory resource depending on need linked to their risk-based approach.

Direct/ indirect benefits

95. By clarifying the right of access to view and consider the quality of SARs, this could aid AML/CTF supervisors in delivering their supervisory obligations under the MLRs more effectively. For example, a supervisor could draw overarching themes of threat or identify emerging risks/trends from viewing the SARs submitted by their supervised population. These findings could then be fed back to the firms/individuals in their supervised population, ensuring that the risks/trends identified are incorporated into risk assessments and ultimately enhance the supervisors' and supervised firms' own understanding of sector risks. AML/CTF supervisors could therefore benefit from an enhanced understanding of its supervised population, and the risk they are exposed to, as well as improving their own risk-based approach to supervision. An enhanced understanding of ML/TF risks will benefit businesses indirectly by maintaining the integrity of the UK's financial system and the UK's reputation as a safe and attractive place to do business.

96. This measure will also provide legal clarity on the ability of supervisors to access the content of their supervised populations SARs, allowing for a consistent approach across all supervisors to accessing the content of SARs.

97. In the responses to the consultation on this measure, industry raised concerns around data protection risks and confidentiality as supervisors are given access to the contents of SARs. From these responses however, it was also clear that where regulators are dealing with sensitive information, they are already taking precautions to safeguard this information.

Summary

98. Given that there are still some gaps in our quantitative data, with regards to this measure, we estimate that this change will only have small impacts in practice, in comparison to many of the other measures in the SI. Therefore, we will not attempt to monetise the expected costs and benefits for the purposes of the EANDCB.

99.

	Cost type	**Estimate per firm (best estimate)**	**Estimate for sector (best estimate)**
Direct costs		Not quantified	Not quantified
Indirect costs		Not quantified	Not quantified

Direct benefits		Not quantified	Not quantified
Indirect benefits		Not quantified	Not quantified

Impact on small and micro businesses

100. The MLRs apply to all those in that are in the AML regulated sector regardless of the size of the business. As such, if they are in the AML regulated sector, they will be subject to AML supervision and may have their supervisor request to access the content of the SARs they submit. AML/CTF supervisors take a risk-based approach to supervision and therefore businesses will be subject to the supervisor's discretion to determine which businesses hold the most significant ML/TF risk. We do not anticipate that the requirements of the measure will have a significant impact on small businesses and no mitigating measures are required.

101. In addition to views gathered from responses to the consultation, we also asked stakeholders (HMRC, FCA and OPBAS) what the estimated costs of implementing the measure would be on both relevant persons under the MLRs and AML/CTF supervisors. The FCA noted that there would be no additional impacts to the FCA or the relevant persons under the FCA's remit of making this change. HMRC noted that seeing more SARs from supervised businesses should deliver benefits to HMRC, not only in improved insights to supervised businesses, their compliance and exposure to risk, but also in tackling economic crime beyond supervision, where SAR intelligence supports wider efforts. In addition to the above, OPBAS also noted that their expectation for PBSs' effectiveness has been stated publicly in their third report and they anticipate restating this expectation more clearly in our upcoming OPBAS sourcebook consultation process later this year.

102. Despite responses to the consultation and engagement with relevant stakeholders, it is difficult to calculate costs for the purposes of the EANDCB due to general limited data on the cost of accessing and reviewing SARs. However, we will continue to review the MLRs and should evidence come to light of disproportionate costs associated with this measure, we will review our approach at the next opportunity.

Wider impacts

103. Regarding this measure, no wider impacts are expected. However, it is important to note that the consultation responses we received lacked evidence to support the possibility of wider impacts.

104. In addition to views gathered from responses to the consultation, we also asked stakeholders (HMRC, FCA and OPBAS) what the estimated costs of implementing the measure would be on both relevant persons under the MLRs and AML/CTF supervisors. The FCA, HMRC and OPBAS all noted that they do not expect supervisor viewing of SARs to impact on trade, innovation and competition.

105. As with the costs associated with this measure and impacts on small and micro businesses, we are aware that despite consultation responses and engagement with relevant stakeholders, there is still a gap in our evidence base. Although we currently have no substantial evidence of the impact that this measure will have, we are committed to reviewing the MLRs on a regular basis and should evidence come to light of any significant wider impacts or heightened risk associated with this measure, we will review our approach at the next opportunity.

3. Expanded Requirements to Strengthen Regime

3.1 Proliferation Financing Risk Assessment

Policy objective and rationale for intervention

106. In October 2020, the Financial Action Task Force (FATF) adopted amendments to its international standards, in particular Recommendation 1 which requires countries and the private sector to identify and assess the risks of potential breaches, non-implementation or evasion of the targeted financial sanctions related to proliferation financing (PF), as contained in FATF Recommendation 7, and to take action to mitigate these risks, as well as to enhance domestic co-ordination. In order to implement these recommendations, the UK should carry out a PF National Risk Assessment (NRA) and legislate to require Financial Institutions (FIs) and Designated Non-Financial Businesses and Professions (DNFBPs) to complete their own risk assessments of PF, alongside their current risk assessments for money laundering and terrorist financing (ML/TF). This requirement is designed to enable FIs and DNFBPs to detect and prevent the non-implementation, potential breach, or evasion of targeted financial sanctions pertaining to PF under Recommendation 7 of the FATF standards.

107. Our policy objective is to implement these new standards through the updates to the MLRs. The UK should implement these new standards to meet international standards, particularly ahead of the UK's next Mutual Evaluation Review (MER) in 2025. Updates will also give the private sector a greater understanding of PF risk through the creation of a risk assessment, enabling them to more effectively mitigate the risks identified.

Description of options considered

- **Option 0 - Do nothing**. If the UK does not implement the new international standards on PF this will be noted in future FATF MERs. These evaluations are public reports which assess the strength of a country's counter-illicit finance system. The UK's ratings in this assessment would be negatively affected by a failure to implement the new PF requirements, which would have detrimental reputational effects for the UK. Not creating requirements for FIs and DNFBPs to carry out risk assessments on PF and then mitigate the identified risks would mean the private sector are not fully aware of PF risks which can be exploited by proliferating actors.
- **Option 1 (preferred option) - Amend the MLRs to align with the specific FATF requirements.** This would impose a requirement on the government to conduct a PF NRA and for FIs and DNFBPs to understand and mitigate risks related to breaching PF-related sanctions. As expanded upon below, this will increase understanding of PF risk to the private sector so it can be mitigated. It will also allow the UK to meet international standards.
- **Option 2 - Amend the MLRs to introduce broad requirements related to PF risk understanding and mitigation, going beyond FATF standards.** The FATF requirements on PF under Recommendation 1 are limited to the understanding of risks of sanctions breaches of relevant PF sanctions regimes. The UK is aware that PF risk extends wider than this, as identified in the UK's PF NRA published in September 2021. However, the UK does not have legal powers to go beyond FATF standards: powers set out in the Sanctions and Anti-Money Laundering Act 2018 (SAMLA) only allow the UK to meet the implementation of standards published by FATF, not go beyond them where this does not relate to ML/TF.

108. Amending the MLRs to require a PF risk assessment for the government and the private sector, then requiring the private sector to mitigate risks identified, would increase awareness of PF and minimise PF activity in the UK.

109. Therefore, this measure will amend the MLRs in line with Option 1. As we do not have legal powers to go beyond FATF standards Option 2 is not feasible. Equally, Option 0 would go against international standards that the UK has committed to fulfilling.

110. It is expected that, as with the ML/TF risk assessment requirements, the supervisory authorities would be responsible for operation and enforcement of these new arrangements. Similarly, it is expected that where relevant persons do not carry out PF risk assessments, per these requirements, that designated supervisory authorities have powers to impose penalties and publish statements censuring relevant persons.

Monetised and non-monetised costs and benefits

111. The amendments to the MLRs will impose obligations on the government and the private sector. The government has produced a PF NRA in line with these obligations, which was published in September 2021. The government will endeavour to update this with similar regularity to the ML/TF NRA. The ongoing requirement to maintain this resource would come at a minor cost to government.

Direct/ indirect costs

112. Relevant persons under the MLRs are already required to conduct risk assessments related to ML and TF and to have policies and procedures in place to mitigate these risks. The amendments to the MLRs would impose additional similar requirements related to PF. To comply with the new requirements, relevant persons would need to incorporate PF into their existing risk assessments, policies and procedures. This is not anticipated to pose a significant burden on relevant persons, particularly since they already have a legal obligation to comply with the relevant sanctions regimes.

113. Consultation responses indicated that respondents were concerned about the additional finance, time and staff burden of including PF in their risk assessments. The main concerns on this stemmed from creating a separate risk assessment for PF which would likely have a duplication burden. Respondents preferred to extend the current ML/TF risk assessment to encompass PF. However, given that the MLRs do not dictate how to carry out the risk assessments, they have the flexibility to either create a new risk assessment or to incorporate PF into their current ML/TF risk assessment, where the extra cost is likely to be minimal. The FCA do not anticipate the cost of completing a risk assessment of PF to be high given most firms already have financial sanctions, including evasion, as part of their risk assessment and are unlikely to need to substantively update them. Given the diversity of supervised populations, supervisors were unable to provide estimated direct costs of risk assessments. They noted that direct costs will typically be higher for businesses with greater exposure to risks and more variables in their supervised activity. The costs to relevant persons will include the cost of familiarising themselves with the new requirements, carrying out the risk assessment, and taking any actions to mitigate risks.

114. As with current ML/TF requirements, where relevant persons have not fulfilled their requirements to carry out a risk assessment and take suitable mitigating action, the designated supervisory authority has the power to impose penalties and publish a statement censuring the relevant persons. Extending these actions to PF may result in an increased direct cost to supervisory bodies, although we do not anticipate this to be

high, given they already have these requirements in respect of ML/TF. The government is sometimes required to support supervisory authorities, where appropriate, with investigation and enforcement costs for ML/TF regimes. It is possible this will also be required for PF which could come at a small cost to the government.

Direct/ indirect benefits

115. The consultation also indicated that outreach, communication, and engagement would be widely appreciated across sectors to develop understanding of PF, including how to carry out a PF risk assessment, and what PF looks like in their sector. Engagement could be incorporated into ongoing outreach carried out by supervisors and other government departments. This would create a small cost to the government but would likely lead to more effective compliance due to enhanced understanding.

116. The minor costs to the government for creating and maintaining a PF NRA, and engagement with sectors, is proportionate to the more effective compliance this will lead to on PF. Equally, particularly for larger firms, the costs of incorporating PF in the current risk assessment will be minor. The minor costs involved of introducing these amendments are outweighed by the benefits achieved of increased understanding of risks of PF.

Summary

117. Given that there are clear gaps in our evidence base, and we do not have access to more focussed quantitative data we are not in a position to accurately monetise the expected costs and benefits for the purpose of the EANDCB. However, we will review the MLRs on a regular basis and should evidence come to light of disproportionate costs associated with this measure, we will review our approach at the next opportunity.

118. It is also clear that for this measure in particular the application of the risk-based approach, which is a central part of how the requirements under the MLRs are applied, has been a limiting factor in terms of being able to quantify the cost to businesses and AML/CTF supervisors of having to assess PF risks alongside their existing risk assessments for ML and TF. Due to being unable to quantify how much it costs to undertake an ML/TF risk assessment, we are unable to apply this to estimate the cost of conducting a PF risk assessment for the purposes of the EANDCB.

119.

	Cost type	**Estimate per firm (best estimate)**	**Estimate for sector (best estimate)**
Direct costs		Not quantified	Not quantified
Indirect costs		Not quantified	Not quantified
Direct benefits		Not quantified	Not quantified
Indirect benefits		Not quantified	Not quantified

Impact on small and micro businesses

120. Updates to Recommendation 1 of FATF standards, being implemented through this amendment, apply to all FIs and DNFBPs. For this reason, small and micro businesses (SMBs) are covered by this provision.

121. It is likely that requirements for PF risk assessments will disproportionately burden small and micro businesses where the barrier to entry in the form of initial resource costs will be disproportionately high. Whereas large FIs, for example, are likely to have specific personnel assigned to monitoring risks from ML/TF and now PF, this is less likely to be the case for smaller firms. Any additional requirement is likely to have increased financial and time burden on SMBs. Consultation responses emphasised this concern, including highlighting that small firms are very unlikely to come across risk of PF, in terms of implementation of the DPRK and Iran sanctions regimes, with the clients they deal with. For example, in the case of one response from the accountancy sector, their supervised population is almost exclusively small firms dealing with individuals, small and mid-sized enterprises. Supervisors have commented that because larger businesses often subscribe to online electronic services for checks on sanctions and other customer due diligence obligations, SMBs paying for individual checks are likely to have more of an explicit increase in cost. However, current requirements mean SMBs already carry out ML/TF risk assessments so allowing the option of folding PF into these ML/TF risk assessments will reduce this burden.

122. Since SMBs cannot be exempt from these requirements it would also be beneficial to focus specific government engagement and outreach on supporting SMBs to implement the new requirements into their current risk assessments. Such engagement could mitigate some of the disproportionate impacts outlined above.

Wider Impacts

123. The requirements for relevant persons relate to the risk of breaching PF sanctions. Relevant persons already have a legal obligation to comply with these sanctions, a better understanding of risks as a result of these amendments and any follow-up engagement is likely to enhance sanctions compliance. We do not anticipate any negative impact to trade, competition, and innovation resulting from the need to complete a risk assessment encompassing PF.

124. Where risks are identified of breaching relevant sanctions in relation to PF, trade which is found to have the potential to breach these regulations is likely to reduce in line with firms' legal obligations. We do not assess this will impact a substantive amount of trade: per the UK's PF NRA, the UK already has a robust counter proliferation legal framework to protect the country from PF. Equally, sanctions regimes on DPRK and Iran already restrict trade with these countries substantially.

125. As with the costs associated with this measure and impacts on small and micro businesses, we are aware that despite consultation responses and engagement with relevant stakeholders, there is still a gap in our evidence base. Although we currently have no substantial evidence of the impact that this measure will have, we are committed to reviewing the MLRs on a regular basis and should evidence come to light of any significant wider impacts or heightened risk associated with this measure, we will review our approach at the next opportunity.

3.2 Trust and Company Service Provider services and business relationships

Problem under consideration and rationale for intervention

126. Companies House is responsible for incorporating and registering information about companies and making information about them available to the public. In December 2018, the Department for Business, Energy and Industrial Strategy (BEIS) issued proposals to reform the legislation on limited partnerships (LPs) and in September 2020, issued proposals for improving the transparency and integrity of the register.

127. Under Regulation 12(2)(a) of the MLRs, a firm or sole practitioner would be considered a trust or company service provider (TCSP) if it forms “companies or other legal persons”. The term “legal person” does not extend to all forms of business arrangement that are required to register with Companies House. For example, an LP that is registered in England and Wales or Northern Ireland is a legal arrangement, but it is not a “legal person” in its own right that is distinct from its partners.

128. Regulation 4 of the MLRs also limits the definition of a “business relationship” in a way that excludes services provided by a TCSP, such as the formation of these business arrangements, if the sole role of the TCSP is to seek their formation, as well as the provision of services stated in Regulation 12(2)(b) (where arranging for another person to act as a director, secretary, or partner etc) or (d) (where arranging for another person to act as a trustee of an express trust or similar legal arrangement or a nominee shareholder for a person other a listed company) even if this might otherwise lack the element of duration required under Regulation 4(1)(b).

Policy objective

129. Amending the scope of the TCSP definition in the MLRs so that Regulation 12(2)(a), which currently uses the term “legal persons”, captures all relevant business arrangements, will ensure that firms or sole practitioners which form all types of business arrangement which must be registered with Companies House (including English and Welsh or Northern Irish (EWNI) LPs) fall within scope of the definition of a TCSP.

130. The government also wants to ensure that any person considered a TCSP is obliged to conduct CDD checks where it is seeking to form any business arrangement that must be registered with Companies House. This should be irrespective as to whether a TCSP expects to have a continuing relationship with a prospective business arrangement. For example, a customer might ask a formation agent to seek to form a limited liability partnership (LLP) with Companies House but want to file the LLP’s confirmation and update statements independently, for reasons that are entirely legitimate. The government intends the law to provide that the customer would be made subject to CDD checks in such circumstances, before it can be registered with Companies House.

131. The MLRs specify that where a person forms a company for its customer, this is to be treated as forming a business relationship with the customer (notwithstanding that this transaction might otherwise lack the expectation of duration otherwise required for a business relationship) (Regulation 4(2)). The government considers that the scope of Regulation 4 should properly apply so that a business relationship exists where a TCSP provides services under 12(2)(b) (where arranging for another person to act as a director, secretary, or partner etc) or (d) (where arranging for another person to act as a trustee of an express trust or similar legal arrangement or a nominee shareholder for a person other a listed company) even if this might otherwise lack the element of duration required under Regulation 4(1)(b).

132. Following responses to the consultation, this measure will amend Regulations 12 and 4 in the MLRs in order to align the forms of business arrangement that a TCSP can form with those that are required to register with Companies House, in particular to include EWNI LPs, as well as expanding the application of when a business relationship is established to cover these business arrangements as well as those services a TCSP can provide in Regulation 12(2)(b) and (d).

133. In relation to partnerships, the government noted in the consultation that it regarded general partners as the actors whose management activities are thought to

give rise to the higher risk of ML/TF as opposed to limited partners of an LP who have no role in the management of the LP. Therefore, in the consultation the government asked whether the amendment to Regulation 4(2) should be limited so that a one-off appointment of a limited partner would not constitute the establishment of a business relationship.

134. Having analysed the responses to the relevant questions in the consultation for this change, it is clear that there was not an overwhelming majority of responses that thought this exemption should be made and many responses noted that if the change was taken forward, this would create a potential loophole for increased ML/TF risk. As limited partners are the primary source of investment in an LP, responses argued that although limited partners do not hold management positions and therefore potentially pose less of an ML/TF risk than general partners, if there was no requirement to conduct CDD on limited partners, even if it was a one-off appointment, then this could leave open a loophole for illicit funds to enter the UK through such limited partners.

135. Therefore, following responses to the consultation, this measure will also include the appointment of a limited partner by a TCSP as constituting a business relationship and will therefore require CDD to be conducted on limited partners, if they are the customers of TCSPs.

Descriptions of options considered

- **Option 0 - Do nothing.** This option would result in maintaining the current position under the MLRs which excludes forms of business arrangement which are required to register with Companies House, other than "legal persons". It would also mean that other categories of business arrangement, such as EWNI LPs, will continue not to be subject to CDD checks, should they ask a formation agent to form the LP. Therefore, this option is not recommended.

- **Option 1 (preferred option) - Amend the MLRs.** This option would amend the MLRs to clarify that the formation of all forms of business arrangement which are required to register with Companies House, by a third party, fall within scope of the definition of a TCSP and to subject these business arrangements to CDD checks, as well as subjecting those appointed by TCSPs under Regulation 12(2)(b) and (d) to CDD checks.

Monetised and non-monetised costs and benefits

136. Data from our 2020-2021 AML/CTF supervisor annual returns suggests that there are about 17,921 firms and about 5,989 sole practitioners acting as TCSPs in the regulated sector. This means that TCSPs account for around 23% of the AML/CTF sector, which from our data is estimated to be around 101,211 entities. HMRC as the main AML/CTF supervisor for TCSPs, directly supervises around 2,030 TCSPs, as of the end of September 2021.

137. There were no expected negative impacts of this measure ahead of consulting on the measures of this SI and we used the consultation to test what the associated costs and impacts would be of implementing this measure, both on TCSPs and the businesses they provide services to.

<u>Direct/ indirect costs</u>

138. With regard to the change to Regulation 12(2)(a) to include all forms of business arrangement which are required to register with Companies House, in particular EWNI LPs, responses to the consultation noted that costs associated with implementing this

change should be minimal. Responses noted that the systems and procedures for compliance with the MLRs should already be in place for all other business arrangements dealt with by TCSPs and therefore the change will simply extend these controls to other business arrangements.

139. Responses also noted that there may be an increased administrative burden associated with this measure, in particular an increase in formation costs for some business arrangements like LPs, as the services provided to those business arrangements by TCSPs will fall within scope of the MLRs. However, there was general support for making this change and it was noted that any associated costs should not be deemed to be too prohibitive. One response noted that business arrangements, and LPs in particular, will need to ensure that they comply with the requirements of the MLRs and ensure sufficient resources are allocated to do so, however they believed that these costs should not be problematic for legitimate LPs and TCSPs.

140. With regard to the changes to Regulation 4(2), to include a relationship where a TCSP is asked to form any business arrangement required to register with Companies House and where a TCSP is acting or arranging for another person to act as those listed in Regulation 12(2)(b) and (d), responses to the consultation noted that direct compliance and administrative costs will increase for TCSPs as more business arrangements and services fall within scope of the MLRs, however the impact would likely be minimal. One response in particular noted that the proposed amendments in this measure are proportionate and therefore any associated costs are not deemed to be too prohibitive.

141. Overall, responses agreed that although there may be an increased administrative burden to both business arrangements and TCSPs, this is likely to be outweighed by the greater clarity this change would give and as a necessary intervention to deter ML/TF.

142. In addition to views gathered from responses to the consultation, we also asked stakeholders (HMRC, FCA and OPBAS) what the estimated costs of implementing the measure would be on both relevant persons under the MLRs and AML/CTF supervisors. The FCA noted that they do not hold specific data around the costs to supervisors or relevant persons of making this change as the TCSP activities supervised by the FCA is only for a small number of FSMA authorised firms, and company formation is always undertaken as part of a business relationship. HMRC noted that the costs of implementing this change should be negligible, as the vast majority of formations are already covered by the MLRs.

143. Although we did not receive any quantified costs from either the responses to the consultation or from supplementary engagement with several stakeholders, from further bilateral engagement with BEIS we are aware of data regarding estimated costs of implementing their separate reforms on LPs.

144. If we were to use this data as a proxy to estimate costs of the measures in this SI, then we would need to apply several assumptions to focus on the relevant type of business arrangement for this measure.

145. The number of EWNI LPs would have to be drawn from BEIS' assumption of the estimated number of new registrations of EWNI LPs per year, based on previous years' incorporations data for EWNI LPs and Scottish LPs, between 2018-19 and 2020-21. We would also have to consider that EWNI LPs already on the Companies House Register may require formation services by TCSPs, as set out in Regulation 12(2)(b) and (d). In this instance we considered using analysis used by BEIS from Companies House, in order to apply that to the assumed CDD costs for TCSPs. However, due to the large

number of overlapping assumptions this would not give an accurate representation of all business arrangements in scope.

146. We could also attempt to estimate the potential transition and ongoing costs of implementing this measure, based on the estimated costs to LPs of complying with BEIS LP reform, as set out in the table below. These costs were originally based on information from the Review of the implementation of the PSC Register[7], published in 2019, which were then applied to BEIS LP reform. BEIS took into consideration that LPs are likely to be more complex in terms of ownership structure, on average, than companies registering on the PSC Register, and therefore, the costs below were uprated for 2019 prices using the estimated mean costs for complex companies for initial PSC submissions.

Assumptions: Direct costs of implementing (LPs measure per affected firm)

Transition costs per firm [in 2019 prices]	
Familiarisation	£156
Identifying and collecting beneficial ownership information	£129
Providing beneficial ownership information to a central registry	£55
Registration fee to Companies House	£20
Ongoing costs per firm [in 2019 prices]	
Checking, identifying and collecting new beneficial ownership information	£137
Submitting beneficial ownership information	£35

147. Alternatively, we could try to estimate the cost to TCSPs of conducting CDD, using the informal estimates for the average cost of initial CDD measures by banks (£3-£15) as set out in the 5MLD IA[8]. However, this estimate should be treated with caution as different banks will likely have cited different average costs for CDD depending on their size, business model, customer base and risk appetite; banks are also likely to differ in their practices from TCSPs. TCSPs will need to carry out CDD checks on their customers more often than just at the onboarding stage. However, due to the lack of comprehensive data on the costs of CDD across sectors and the nature of the risk-based approach underpinning the MLRs, it is extremely difficult to quantify the overall cost of CDD, including ongoing costs.

148. While the measure in this SI differs from the introduction of the PSC Register and BEIS LP reform policy proposals, this is the only data we are aware of that assumes costs to LPs, in particular EWNI LPs, for compliance with a regulatory change. Therefore, if we were to use this data we would have to assume that the cost of compliance with the MLRs for EWNI LPs would likely be similar to that of LPs having to comply with BEIS LP reform, however this is most likely a significant overestimation.

149. Overall, there are several uncertainties with basing the costs of implementing this measure on the above estimates and assumptions derived from data used by BEIS in relation to their own policy measures, and estimated CDD costs. As repeatedly set out already in this document, there is a lack of comprehensive data on the costs of CDD

7 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/822823/review-implementation-psc-register.pdf
8 https://www.legislation.gov.uk/ukia/2019/172/pdfs/ukia_20190172_en.pdf

across AML/CTF sectors. We are also unable to quantify how many TCSPs will have relationships with business arrangements being brought into scope, and how many existing business arrangements will require the services of a TCSP, as set out in Regulation 12(2)(b) and (d) of the MLRs.

150. Due to the number of assumptions required to try to quantify the cost of implementing this measure on TCSPs and business arrangements, any attempt to monetise the costs could not be seen as an accurate representation of the potential costs. We have therefore concluded that we cannot monetise the costs for the implementation of this measure for the purpose of the EANDCB.

Direct/ indirect benefits

151. From analysing the responses to the consultation and further engagement with stakeholders, we have not identified any direct or indirect benefits of implementing this measure which we can quantify for the purpose of the EANDCB.

Summary

152. Basing the estimated impacts for both TCSPs and business arrangements on several assumptions linked to separate policy measures would most likely overestimate the cost of implementing this measure, and would not take into consideration other costs of compliance with the MLRs, for example the cost to TCSPs of carrying out ML/TF risk assessments of business arrangements they establish business relationships with. Similarly, basing costs to business arrangements, and particularly EWNI LPs, on estimated compliance and familiarisation costs of adhering to BEIS LP reform would not accurately reflect costs business arrangements may face through compliance and familiarisation with the MLRs. Using overestimations would skew the figures of the EANDCB, and we have therefore not quantified the costs of this measure.

	Cost type	**Estimate per firm (best estimate)**	**Estimate for sector (best estimate)**
Direct costs			
Of which to firms		Not quantified	Not quantified
Of which to supervisors		Not applicable	Not applicable
Indirect costs		Not quantified	Not quantified
Direct benefits		Not quantified	Not quantified
Indirect benefits		Not quantified	Not quantified

Impact on small and micro businesses

153. Ahead of consulting on this measure, it was anticipated that as the measure affects TCSPs, it is likely that the implementation of the measure would affect small and micro businesses, as our 2020-2021 annual returns suggests that there are about 5,989 sole practitioners acting as TCSPs in the regulated sector. However, how much impact this measure would have on TCSPs was unknown and we therefore used the consultation to test what the associated impacts would be of implementing this measure.

154. The change to Regulation 12(2)(a) to include all forms of business arrangement which are required to register with Companies House, in particular EWNI LPs, was

considered by consultation responses to have a minimal impact, including on small and microbusinesses.

Wider impacts

155. The questions relating to this measure in the consultation did not specifically ask whether the implementation of this measure would have any potential wider impacts, such as on trade, innovation and competition. Further engagement with HMG stakeholders did not identify any further wider impacts.

156. The introduction of this measure may have an impact on the level of investment into the UK through LPs, due to the imposition of additional regulatory requirements, which may incentivise more LPs to set up offshore. However, the impact of this would be extremely difficult to quantify and as responses to the consultation noted, this should not be an unduly negative impact on legitimate LPs.

157. Some consultation responses noted that expanding the definition of TCSPs to cover those who form and administer all forms of UK LPs, in particular, would help to cut down on their abuse for illicit purposes. An example of the abuse of LPs for illicit purposes can be seen by the case study on the FinCEN files below.

Case study: **The FinCEN files**

158. *In Autumn 2020, thousands of Suspicious Activity Reports from the US Financial Crimes Enforcement Network (FinCEN) were leaked. The reports alleged that 3,267 UK LLPs and LPs were set up for suspicious illicit purposes by registration agents between 1999 and 2017. In general, ownership of these LPs and LLPs was hidden by registering them with owners that were companies based in so called 'secrecy jurisdictions' - where companies can be registered without publicly revealing who owns them. This allowed the UK partnerships to be owned and controlled anonymously and potentially used to launder money.*[9]

159. One consultation response in particular noted they would expect to see a reduction in the ML/TF risk associated with business arrangements that were not previously subject to the MLRs. However, another response noted that the implementation of this measure may result in new LPs setting up offshore rather than having to comply with UK requirements under the MLRs and giving the required information to Companies House, making the CDD process more difficult.

160. With regard to the changes to Regulation 4(2), to include a relationship where a TCSP is asked to form any business arrangement required to register with Companies House and where a TCSP is acting or arranging for another person to act as those listed in Regulation 12(2)(b) and (d), responses to the consultation noted that the impact on TCSPs and business arrangements of implementing these changes should be minimal. As the systems and procedures for AML/CTF compliance should already be in place for all other business arrangements dealt with by TCSPs, the changes will simply extend controls to cover all UK LPs. One response in particular noted that these changes are likely to result in a reduction of registered and newly registering LPs. However, they did not feel the amendment is disproportionate and therefore the impact on legitimate LPs is not considered to be unduly negative.

[9] See: International Consortium of Investigative Journalists

161. A response from the financial sector also noted that banks may incur operational impacts if CDD has already been conducted and a risk-based approach applied to the relationship with a business arrangement, resulting in the requirement for remediation exercises.

162. With regard to what impact the requirement to conduct CDD on limited partners would have on regulated entities, a number of responses to the consultation noted that there should be minimal impact as these entities should already have in place the necessary controls and procedures to accommodate this. Overall, responses agreed that the impact of implementing these changes, to both business arrangements and TCSPs, is likely to be minimal and the measure will provide greater clarity and be a necessary intervention to deter ML/TF.

163. In addition to views gathered from responses to the consultation, we also asked stakeholders (HMRC, FCA and OPBAS) what the estimated impacts of implementing the measure would be. Only HMRC and the FCA responded, both noting that the impact of implementing this measure on supervisors and relevant persons would be nil or negligible if any. Further engagement with BEIS did not yield any further impacts of this measure.

3.3 Discrepancy Reporting

Problem under consideration and rationale for intervention

164. Regulation 30A in the MLRs requires relevant persons to report to the registrar of companies any discrepancies between the information they hold about the beneficial owners of companies, as a result of CDD measures, and the information to be recorded by Companies House on the public companies register. This requirement applies at the onboarding stage, “before establishing a business relationship”, as stated in Regulation 30A(1).

165. The requirement exists before the establishment of the business relationship, and this means that if a relevant person later comes into possession of beneficial ownership information about its customer that is different from that held at Companies House, there is no clear obligation to report this to the registrar. Whilst the option is available to voluntarily report the information, concerns about client confidentiality in the absence of a requirement to report constrain reporting later on.

166. This has implications for the accuracy and integrity of the company register, and whilst the lack of reporting means it is difficult to assess the extent of this gap, the government considers that, in line with other government proposals to enhance the accuracy and integrity of the companies register, the obligation to report beneficial ownership discrepancies identified by relevant persons should be ongoing.

167. This measure will therefore amend the MLRs to make the requirement to report beneficial ownership discrepancies an ongoing requirement. In light of concerns raised by consultation responses regarding the clarity of the current drafting of the discrepancy requirement in the MLRs, this measure will also narrow the scope of discrepancies that must be reported from ‘a discrepancy’ to a ‘material discrepancy’.

168. Furthermore, during Parliamentary passage of the Economic Crime (and Transparency and Enforcement) Act and the introduction of Register of Overseas Beneficial Owners (ROEBO) the opposition raised concerns how the government will

verify information on ROEBO. Therefore, the government will also use this measure to expand the discrepancy reporting regime to extend the requirement to include ROEBO.

Policy objective

169. Further enhancing the accuracy and reliability of the companies register will play an important role in the fight against economic crime. Where discrepancies exist but have not been highlighted to the registrar, action cannot be taken against those abusing UK corporate structures by providing false or misleading information to Companies House.

170. One of the FATF's key criteria for assessing if a country has a robust anti-money laundering regime is the availability of accurate and up to date information on basic company and beneficial ownership information. Under wider reforms on the future of Companies House, the government has indicated its intention to extend the scope of the discrepancy reporting regime.

171. The government sought views through the consultation as to whether to align the beneficial ownership discrepancy reporting obligation to the ongoing obligation on relevant persons to carry out CDD on the beneficial ownership of their clients. This should provide significant additional information on discrepancies, helping to identify those who seek to undermine the UK's open business environment for the purpose of facilitating economic crime.

Descriptions of options considered

- **Option 0 - Do nothing.** This option would result in maintaining the current position under the MLRs which requires the reporting of discrepancies in beneficial ownership information only at the onboarding stage, before establishing a business relationship. This means that if a relevant person later comes into possession of beneficial ownership information about its customer that is different from that held at Companies House, there is no obligation to report this to the registrar. This has implications for the accuracy and integrity of the company register and therefore, this option is not recommended.
- **Option 1 - Amend the MLRs to make the requirement to report beneficial ownership discrepancies an ongoing requirement.** This option would expand the discrepancy reporting requirement by including an additional provision to Regulation 30A(1) to expand the scope of the measure to also cover the ongoing business relationship by requiring that when an obliged entity undertakes CDD pursuant to the ongoing CDD requirements in Regulations 27(1)(a) and (d) and Regulation 27(8) they must also report discrepancies under the same set of conditions as the existing provisions in Regulation 30A. This should provide significant additional information on discrepancies, helping to identify those who seek to undermine the UK's open business environment for the purpose of facilitating economic crime, but would increase the resource burden on both Companies House and obliged entities without addressing broader concerns on the clarity of the regulation Therefore this option is not recommended.
- **Option 2 (preferred option) - Make the requirement to report beneficial ownership discrepancies an ongoing requirement and narrow the scope of discrepancies that must be reported from 'a discrepancy' to a 'material discrepancy'.** This option builds upon Option 1. By expanding the requirement to be ongoing, this should provide significant additional information on discrepancies, helping to identify those who seek to undermine the UK's open business environment for the purpose of facilitating economic crime. However, this option also addresses concerns from consultation respondents that the current drafting provides insufficient clarity. Addressing these concerns by setting out the definition of material discrepancy should mitigate increased compliance costs associated with the expansion of the regime. The government also wishes to expand the discrepancy reporting regime to extend the requirement to include ROEBO.

Monetised and non-monetised costs and benefits

172. The latest HM Treasury annual returns, covering the period between 6 April 2020 and 5 April 2021, estimate that around 101,211 entities are within scope of the MLRs. As this measure would extend the beneficial ownership discrepancy reporting requirement for all relevant persons under the MLRs, this means that all of these entities are likely to be affected by this measure.

173. The overall value to the economy of information published free and online by Companies House was estimated at up to £3 billion in 2019. Further enhancing the accuracy of that information will add to its overall value.

Direct/ indirect costs

174. There will be costs associated with the proposal to extend discrepancy reporting (Regulation 30A). However, the direct cost associated with each discrepancy report and the number of additional reports extending the scope of the regime are evidence gaps and therefore we have no accurate assessment of the cost to businesses of expanding the scope of the regime to an ongoing basis.

175. To try and fill this evidence gap, during the consultation process we sought further information on the costs and benefits to both relevant persons and AML/CTF supervisors. Many of the responses noted that it's difficult to assess the additional time and costs impact of this proposal without the statistical information to help determine the extent to which clients have incorrect data held on Companies House and the impact of reports. However, the majority of responses noted this could create increased volumes of work and additional costs for both Companies House and firms. Including the change to narrow the scope of the regime to 'material discrepancies' should mitigate the increased resource burden.

Direct/ indirect benefits

176. Many respondents noted that the regime would function more effectively once broader Companies House reform has taken place and requested time to adjust to the expanded regime. To respond to this, a grace period will be added to this measure meaning it will not come into force until April 2023. Data from Companies House suggests that currently up to 40% of reports received do not constitute a material discrepancy. By eliminating these from being reported this would reduce the cost of reporting by 40%.

Summary

177. Although we received responses to the consultation on this measure and had further bilateral engagement with relevant stakeholders, such as BEIS and Companies House, to obtain further evidence of the costs and impacts related to this measure, there is still a lack of quantitative data. Therefore, we will not attempt to monetise any estimated costs and impacts for the purposes of the EANDCB. In line with our approach to other SI measures, should any future evidence come to light of disproportionate costs associated with this measure, we will review our approach at the next opportunity.

	Cost type	**Estimate per firm (best estimate)**	**Estimate for sector (best estimate)**
Direct costs		Not quantified	Not quantified
Indirect costs		Not quantified	Not quantified

Direct benefits		Not quantified	Not quantified
Indirect benefits		Not quantified	Not quantified

Impact on small and micro businesses

178. The MLRs apply to all those that are in the AML regulated sector regardless of the size of the business. As such, if they are in the AML regulated sector, they will be subject to this measure which seeks to make the requirement to report discrepancies in beneficial ownership information an ongoing requirement for all relevant persons under the MLRs.

179. Responses to the consultation did not specifically comment on the impact to small and micro businesses and therefore we have a gap in our evidence base in this respect. However, we are committed to reviewing the MLRs on a regular basis and should evidence come to light of disproportionate impacts associated with this measure, we will review our approach at the next opportunity.

Wider impacts

180. Regarding this measure, no wider impacts are expected, however, the questions relating to this measure in the consultation did not specifically ask whether the implementation of this measure would have any potential wider impacts, such as on trade, innovation and competition.

181. As with the costs associated with this measure and impacts on small and micro businesses, we are aware that despite engagement with relevant stakeholders, there is still significant gaps in our evidence base. Although we currently have no substantial evidence of the impact that this measure will have, we are committed to reviewing the MLRs on a regular basis and should evidence come to light of any significant wider impacts or heightened ML/TF risk associated with this measure, we will review our approach at the next opportunity.

4. Information-Sharing & Gathering

4.1 Information-Sharing (Regulation 52/52A)

Problem under consideration and rationale for intervention

182. High quality intelligence and information-sharing across both the public and private sectors is a key tool in the fight against financial crime and was an important focus in the Economic Crime Plan 2019-22. As currently drafted, the MLRs allow for the sharing of intelligence and information between supervisory authorities, and other relevant authorities, for specific purposes connected to their functions. However, during our stakeholder engagement sessions, and through the consultation, key industry stakeholders highlighted that the MLRs should allow for wider information-sharing to a range of bodies, with key roles in AML/CTF, to reduce the existing barriers to sharing information and intelligence about AML threats and firms' compliance.

183. Reg 52(1) in the MLRs limits the disclosure or sharing of intelligence and/or information by supervisory authorities to relevant authorities for the purposes of their functions under the MLRs. A ‘relevant authority’ is defined by Reg 52(5) as either another supervisory authority, HM Treasury, any law enforcement authority, or an overseas authority as defined by Regulation 50(4). This list does not explicitly include other government departments or agencies who have enforcement powers under the MLRs.

As a result, OPBAS and the FCA proposed that the list of relevant authorities in Regulation 52(2) be expanded to explicitly include departments such as BEIS, and the enforcement agencies within BEIS, to utilise the gateway for the protected sharing of information and intelligence relevant to their MLR functions. For example, by making this change, supervisors are likely to benefit from being able to share information or intelligence with Companies House, to support its work on discrepancy reporting and register reform.

184. Stakeholders across all sectors also raised concerns that while the information-sharing gateway provided by Regulation 52 allows supervisors to share information with each other relating to their functions under the MLRs, and with law enforcement and relevant overseas authorities, there is currently no reciprocal gateway for information-sharing between law enforcement and supervisory authorities for the same purpose. It is suggested that expanding the gateway to permit such reciprocal sharing would allow for confidential and protected information and intelligence to be disclosed from relevant authorities, especially law enforcement agencies to supervisory authorities. The FCA and OPBAS believe that this change to the MLRs can be used to: support and enhance the supervision of individuals/firms, increase knowledge and understanding of risks and threats in supervised sectors; and may also allow regulators to contribute to disruption efforts against those seeking to exploit professional services. By expanding the gateway to also include Law Enforcement Authorities, the aim is to provide a clear gateway for ML/TF related intelligence and information to be shared and to promote a whole system approach to making the UK a hostile environment to economic crime. Law enforcement already have a number of intelligence and information sharing mechanisms or gateways, including with those considered supervisory bodies under the MLRs. However, OPBAS have raised that there is a lack of clarity around what is shareable within these gateways, which has led to inconsistent interpretations between authorities on permissible sharing and has resulted in them either not being used or being used ineffectively.

185. Finally, the FCA also expressed concern that Regulation 52 – which permits the disclosure of information to HM Treasury, other MLRs supervisors and law enforcement agencies – is subject to Regulation 52A and where the FCA receives confidential information in relation to its MLR duties, it cannot share that information with HM Treasury and others even if this would assist one or both of the FCA and HM Treasury's public functions. The current wording in Regulation 52 specifies that the supervisory authorities may not disclose information to HM Treasury unless this relates to HM Treasury functions under the MLRs (for example, if related to national risk assessments (Regulation 16); annual publication of consolidated information received from supervisory authorities (Regulation 51) and reviewing the MLRs (Regulation 108)). The FCA have also raised that under the FSMA disclosure regime, received confidential information may be shared by the FCA to the HM Treasury in order to enable or assist in any of HM Treasury's public functions. Therefore, it seems that Regulation 52 provides for a narrower gateway to HM Treasury than the FSMA disclosure regime. Though there does not appear to be anything prohibiting the FCA from disclosing material it holds relevant to its MLR supervisory functions under the wider section 349 FSMA disclosure regime, where this applies. It has also been highlighted that HMRC appear to have a wider ability to disclose material under Regulation 52A(3)(d) in the MLRs, so the FCA believe that they should have a similar ability under the MLRs.

186. Therefore, the government will take forward three specific amendments to Regulation 52 in the MLRs, to improve the info-sharing gateway:

a) Expand Regulation 52 gateway to allow for reciprocal sharing from relevant authorities (including law enforcement) to supervisors

b) Expand the list of 'relevant authorities' in Regulation 52 to explicitly include other government agencies, such as Companies House
c) Amend Regulation 52 to enable the FCA to disclose the confidential information it receives, in relation to its MLR duties, more widely

Description of options considered

187. We considered a range of options for all three proposals. These are as follow:

a) Expansion of the Regulation 52 gateway to allow for reciprocal sharing from relevant authorities (including law enforcement) to supervisors

- **Option 0 - Do nothing.** By keeping the Regulation 52 gateway as it is, those at BEIS and the agencies within it, with key roles in AML supervision and enforcement, will continue to be unable to share intelligence and information in relation to their MLR functions. The government would miss an opportunity to align the information-sharing gateway in Regulation 52 with the previously expanded of scope of the MLRs. This would also be a missed opportunity to enhance the quality of AML supervision through an increased ability to better identify firms which have been knowingly or inadvertently handled illicit wealth and would continue to prevent supervisors from being able to provide vital intelligence to law enforcement agencies that they would not otherwise have been aware of.
- **Option 1 – Expand information-sharing gateway but include specific criteria in the MLRs to clarify what kind of info can be shared, by whom and when.** This option would likely provide more safeguards around confidential information being shared between relevant authorities. However, it is unlikely that this change could be made in time for this SI timeline. This option would require further discussion with law enforcement agencies, to ensure that the drafting was sufficient. The FCA and OPBAS also do not agree that this option should be taken forward – there are valid concerns that by including additional definitions into Regulation 52 (to define what information can be shared when, why and by whom) there is a real risk of discouraging intelligence and information-sharing in the wider context where material may be considered relevant. Also, the MLRs are not intended to be overly prescriptive, therefore this option would not be appropriate in terms of drafting.
- **Option 2 (preferred option) - Expand the information-sharing gateway and keep it as wide as possible.** By expanding the gateway to explicitly include law enforcement agencies, this change will promote a whole system approach to making the UK a hostile environment for economic crime. We consulted on this proposal last summer and all respondents (across all AML sectors) agreed that the Regulation 52 gateway should be expanded widely to allow for reciprocal sharing. Consultation responses highlighted that keeping the gateway as wide as possible will avoid any preventable restrictions on what may be shared within it, why and when. Also, by taking this approach, Regulation 52 will encompass the existing categorisation of reasons to share information or intelligence, as set out in Regulations 52(1)(a), (b) and (c), so that the gateway is the same whether information is flowing out from supervisors or into them.

b) Expansion of the list of 'relevant authorities' in Regulation 52 to explicitly include other government agencies, such as Companies House

- **Option 0 - Do nothing.** By keeping the 'relevant authorities' list as it is, BEIS and the enforcement agencies within it will not be able to utilise the Regulation 52 gateway for the protected sharing of information and intelligence relevant to their MLR functions. This option would not be well received by stakeholders across all AML sectors who have expressed broad support for including BEIS enforcement agencies, such as Companies House and the Insolvency Service, on the 'relevant authorities' list within the MLRs.

- **Option 1 - Amend Regulation 52 to expand the list of relevant persons to explicitly include BEIS and the agencies within it, such as Companies House and the Insolvency Service etc.** This option will mean that we include some narrow and specific drafting in the MLRs and would be in response to the majority of the consultation responses being supportive of including BEIS as a whole on the list of relevant authorities, However, given that the names of government departments can be changed, it is against conventional drafting practice to give powers to specific departments (HM Treasury excepted) in legislation. For example, if we were to include 'BEIS' on the 'relevant authorities' list and the departments' name changed in future, it would no longer have the powers provided under this specific change in the MLRs.
- **Option 2 (preferred option) – Amend Regulation 52 to expand the list of relevant persons to include the term 'Secretary of State' (this option will cover BEIS and the agencies within it).** This option provides is a more straightforward way of expanding the list of 'relevant authorities' to cover the necessary agencies under BEIS. Although this drafting would cover all Secretaries of State (and thus all Departments) in practice, the powers in Regulation 52(1) would only allow disclosure to a Secretary of State if it relates to their functions under the MLRs. Therefore, we would not expect that departments who are not subject to the MLRs to make use of this power. This option would also be in line with stakeholders preferred approach as it will cover BEIS and the enforcement agencies within it.

c) <u>Amendment of Regulation 52 to enable the FCA to disclose the confidential information it receives, in relation to its MLR duties, more widely</u>

- **Option 0 - Do nothing.** By keeping the Regulation 52 drafting as it is, the MLRs would continue to provide for a narrower gateway for confidential information-sharing between the FCA and HM Treasury. A narrower gateway is likely to affect FCA/HM Treasury dialogue as it would be more difficult for the FCA to be open about the confidential information that it receives from relevant persons.
- **Option 1 (preferred option) - Amend wording in Regulation 52 to enable the FCA to disclose the confidential information it receives, in relation to its MLR duties, more widely.** By amending Regulation 52 in this way, we are reflecting that the interplay with Regulation 52A is not ideal, and by doing so we will address stakeholder concerns that the purpose of Regulation 52A is confusing. By improving clarity on the purpose of Regulation 52A, the FCA and HMRC's ability to disclose confidential information will be more aligned.

Monetised and non-monetised costs and benefits

188. Given that the amendment to create a reciprocal gateway will be a completely new gateway for intelligence and information sharing between supervisors and law enforcement agencies, specifically in relation to the MLRs, it is difficult to predict or quantify direct cost implications both on supervisors and on law enforcement agencies. However, systems, procedures and resource are already allocated within each relevant organisation to send and receive intelligence and information sharing requests. It would be reasonable to anticipate that those pre-existing systems, procedures, and controls will be transferable for this new gateway and will therefore result in limited set-up cost implications.

<u>Direct/ indirect costs</u>

189. We do not expect any direct costs to AML supervisors by making these changes to the MLRs, but in addition to views gathered from responses to the consultation, we also asked stakeholders (HMRC, FCA and OPBAS) what the estimated costs of

implementing the measure would be on both relevant persons under the MLRs and AML/CTF supervisors.

190. OPBAS estimated that there could be some minimal costs to Professional Body Supervisors (PBSs) by making the Regulation 52 information-sharing gateway reciprocal and by expanding the ‘relevant authorities’ list in the MLRs.

191. One potential indirect cost impact, on PBSs in particular, may be a future need for additional resource to receive and respond to requests depending on the volume of intelligence and information shared through the new gateway. It is anticipated that these costs may be focused on building and maintaining internal capacity and capability to receive, handle and action incoming intelligence and information sharing referrals from relevant authorities, most likely centred on law enforcement agencies. However, this cost is not expected to be material as PBSs are already taking steps to increase their capacity and capabilities in line with effectiveness expectations, and this risk is mitigated by the requirement under the MLRs to have sufficient resource to undertake their supervisory obligations under the MLRs including information-sharing.

192. There is also unlikely to be any additional training or familiarisation costs associated with this measure. This is because supervisors, including PBSs, already handle, receive, and store intelligence and information through other existing mechanisms, including sensitive material through platforms such as the Shared Intelligence Service (SIS) and/or the Financial Crime Information Network (FIN-NET).

193. It is also expected that any direct or indirect costs will be realised over time as we anticipate the use of the information-sharing gateway to gradually increase as relevant authorities, especially law enforcement agencies, are made aware of and become familiar with the gateway and its uses.

194. We do not anticipate any direct costs to PBSs or AML supervisors by enabling the FCA to disclose the confidential information that it receives. The government and OPBAS will discuss the potential impact of these changes with PBSs.

<u>Direct/ indirect benefits</u>

195. In addition to the consultation, we also asked stakeholders (HMRC, FCA and OPBAS) what the estimated impacts of implementing the measure would be.

196. OPBAS noted that from an intelligence and information-sharing perspective, this change will have a positive impact on the overall objectives under the Economic Crime Plan to increase intelligence and information-sharing particularly between the public and private sectors. It will permit increased exchanges and aims to provide more opportunities for a whole system approach to remove bad actors and those seeking to exploit the UK for criminal purposes. For example, part of the rationale for this change was a lack of a clear and consistent gateway for law enforcement to share cases featuring enablers with the supervisors for the purposes of intelligence or to consider regulatory action where criminal action may not be possible.

<u>Summary</u>

197. As with many other measures in this SI, there is a clear lack of quantitative data from which to draw more accurate estimates of the potential costs and benefits.

Therefore, we have not attempted to monetise any estimated costs and impacts for the purposes of the EANDCB.

	Cost type	Estimate per firm (best estimate)	Estimate for sector (best estimate)
Direct costs		Not quantified	Not quantified
Indirect costs		Not quantified	Not quantified
Direct benefits		Not quantified	Not quantified
Indirect benefits		Not quantified	Not quantified

Impact on small and micro businesses

198. The MLRs encourage businesses to take a risk-based approach to AML, which means that the extent to which small and micro businesses will be affected by this change may vary considerably (as each business may take a different approach to sharing intelligence and information based on the situation and risks presented). This means that any specific direct or indirect impacts on small and micro businesses are difficult to quantify.

199. The MLRs apply to all those that are in the AML regulated sector regardless of the size of the business. As such, if they are in the AML regulated sector, they will be subject to this measure which seeks to increase intelligence and information-sharing particularly between the public and private sectors.

Wider impacts

200. The questions relating to this measure in the consultation did not specifically ask whether the implementation of this measure would have any potential wider impacts, such as on trade, innovation and competition. However, we do not believe that there would be any direct impacts on these areas as a result of making these changes in the MLRs.

201. As we cannot rely only on the views from across the regulated sector on the estimated wider impacts of implementing this measure, in order to address this gap in evidence, we also asked stakeholders (HMRC, FCA and OPBAS) what the estimated impacts of implementing the measure would be. OPBAS and the FCA noted that they were not aware of any such potential wider impacts of implementing this measure.

4.2 Information-Gathering (Regulation 66/ 74A-C)

Policy objective and rationale for intervention

202. The FCA is the supervisory authority for a number of relevant persons, including approx. 870 Annex I financial institutions. This includes a diverse group of institutions, including existing firms who have registered an unregulated part of their group to do corporate finance or lending, and perform activities such as renting out safe deposit boxes and commercial lending (the full list of activities of an Annex I firm is defined in Schedule 2 to the MLRs).

203. The FCA is required, by the MLRs, to monitor Annex I firms' compliance but they currently do not have powers to oversee the prudential strength of these institutions or

their treatment of consumers. Although the FCA is required, by the MLRs, to supervise these firms for compliance, these activities sit outside of regulated activities under FSMA.

204. However, the FCA has indicated that its supervisory tools under the MLRs are limited in respect of Annex I firms, when compared against other sectors in FCA remit, and particularly under FSMA. The FCA has therefore requested additional information gathering powers and powers of direction over Annex I firms in the MLRs. This is in response to the FCA becoming more concerned with Annex I firms' activities, especially in light of several recent compliance cases, which has suggested a greater risk in this sector.

205. The FCA has highlighted that by having additional powers of direction over Annex I firms, it would encourage a more consistent approach to information gathering across the FCA's supervised population and tackling non-compliance, and as a result, the FCA will better inform its risk-based approach to supervision overall. The FCA has said that these powers have supported its approach to supervision of the other sector it solely supervises under the MLRs, cryptoassets businesses under Regulation 14A.

206. Currently, the FCA has powers to gather firm-specific information from Annex I financial institutions, but they must give notice and provide reasons for requesting this information. However, these current powers (under Regulation 66 of the MLRs) would not likely be used to direct regular reporting by a group/sub-group of Annex I institutions. These powers are currently determined on a case-by-case basis, meaning that the FCA is required to give notices to require regular reporting (for example, by way of annual return) from a group/sub-group of Annex I institutions. This current system would be administratively cumbersome and costly if the FCA were to increase their requests for information in response to an increasing assessment of the risks posed by those in this portfolio of firms. This administrative hurdle could prevent the FCA from easily conducting sector-wide information-gathering exercises for Annex I financial institutions, for example preventing the FCA from including Annex I institutions in any annual return for financial crime data.

207. The FCA has highlighted that they have more flexible powers to gather annual information for financial and credit institutions under FSMA and other legislation, while Regulations 74A-C in the MLRs provide flexibility in relation to cryptoasset businesses. Therefore, the FCA are seeking further powers to bring Annex I firms in alignment with the current powers available to them for cryptoasset businesses under Regulations 74A-C of the MLRs.

208. We were keen to test the merits of reviewing the FCA's powers with industry, and with those firms that fall within FCA's supervised population, through the consultation. In particular, we sought to understand:

a. Whether there would be a regulatory burden to Annex I institutions, above their existing obligations under the MLRs, if we were to legislate to extend the FCA's powers.
b. Whether the inclusion of Annex I institutions in the FCA's sector-wide information-gathering powers would be proportionate to any risk presented by these businesses.
c. If the FCA had further powers under the MLRs to bring Annex I firms into alignment with current powers for cryptoasset businesses, whether this would allow the FCA to supervise firms more effectively.
d. Whether there would be any wider impacts on industry/FCA's supervised population by granting FCA further powers.

Description of options considered

- **Option 0 - Do nothing**. This option would mean that the FCA's supervisory tools under the MLRs would continue to be limited in respect of Annex I firms. The FCA will be required to continue to issue notices to all Annex I firms when requesting reporting information which would hamper a consistent approach to AML supervision for all firms within the FCA's supervisory regime.
- **Option 1 - Amend Regulation 66 to clarify the FCA's current powers.** Given that the MLRs are non-prescriptive, it is debateable whether the FCA can use their current powers under Regulation 66 to request regular reporting information from Annex I firms. This option includes making a small drafting change to Regulation 66 in the MLRs to make clear that this Regulation may be used for sector wide info-gathering. However, during the policy analysis stage it became clear that it would not be appropriate to use Regulation 66 to require Annex I firms to submit an ongoing report, as it is expected that this would present a material legal risk - it has been highlighted during informal consultation with stakeholders, that they have interpreted the power in Regulation 66 of the MLRs as enabling the collection of information on a non-periodic basis only. This option also does not address concerns that there would be additional admin costs and burdens for the FCA. If they were to rely on Regulation 66 to issue a written request every year (e.g., for the submission of the FCA's annual financial crime data), this is likely to be more resource intensive and costly both for the FCA and for firms subject to the requirement (for example, the FCA would likely be required to issue hundreds (possibly thousands) of notices to firms).
- **Option 2 (preferred option) - Extend Regulations 74A-C to apply to Annex I firms.** This option would bring Annex I firms in alignment with the current powers that FCA have available to them for cryptoasset businesses under Regulations 74A-C of the MLRs. This would include extending FCA powers to include skilled person reports, power of direction (such as restricting a businesses' ability to take on new customers), would enable the FCA to request specific fees data required for the purposes of calculating fees for Annex I firms in a fair and consistent manner and would provide an opportunity for more effective supervision overall. With increased information-gathering powers, the FCA will be able to collect more information from Annex I firms in a consolidated manner which will subsequently allow more in-depth assessment of the types of risks that might manifest in this sector, and better targeted interventions to avoid unnecessary onsite/offsite work. This option would also complement other actions that the FCA are currently taking to enhance their supervision of Annex I firms, for example, the FCA has proposed increasing the fee for Annex I firms, in a recent consultation, to fund additional supervisory work in relation to these firms. Extending Regulations 74A-C to Annex I firms will also remove the admin/cost burdens (requirement to issue hundreds/thousands of notices to gather the required info) and would reflect the greater money laundering risk the FCA assesses Annex I firms pose. A number of consultation responses are supportive of the FCA having wider powers to gather information more flexibly across their supervised population - stakeholder comments noted that any addition in regulatory burden as a result of this change is necessary to ensure that the FCA has more comprehensive financial crime data. However, we must also acknowledge that some consultation responses suggested that, if we make this change in the SI, the increase in regulatory burden on firms might be disproportionate to the risks that they pose (given that historically Annex I firms have been considered 'low risk').

Monetised and non-monetised costs and benefits

Direct/ indirect costs

209. We expect that there will be direct costs to Annex I firms by making this particular amendment to the MLRs, however, we anticipate that these will be outweighed by the benefits. We do not have detailed estimates of these costs but in addition to views

gathered from responses to the consultation, we also asked stakeholders (HMRC, FCA and OPBAS) what the estimated costs of implementing the measure would be on both relevant persons under the MLRs and AML/CTF supervisors.

210. The FCA responded to highlight that they had previously carried out a cost-benefit analysis (as part of an FCA Consultation in 2020[10]) on extending their Annual Financial Crime Reporting Obligation to an extra 5000 or so firms. (The FCA has written final rules that use their powers in Regulation 74A to require cryptoassets businesses to complete an annual financial crime return from March 2022, we can use this 2020 cost-benefit analysis to provide rough estimates of the potential direct costs to the c.870 Annex I firms as follows.

	Cost type	Estimate for 5000 firms	Estimate for c. 870 Annex I firms	Estimate for 1 Annex I firm
Direct costs to firms	One-off Ongoing	£29.4m £14.2m	£5.1m £2.5m	£5,862 £2,874
Direct costs to the FCA	One-off Ongoing	£0.1m -	£17.4k -	£20 -
Benefits	One-off Ongoing	Not quantified Not quantified	Not quantified Not quantified	Not quantified Not quantified

211. However, there are several uncertainties with these estimates so this data should be treated with caution. As highlighted in previous sections of this document, there is generally a lack of comprehensive data on the costs to specific businesses across the AML sectors. This is, in part, due to the deliberately non-prescriptive nature of the MLRs – the MLRs do not explicitly require supervisors to collect this type of data. Despite the estimated costs above, in practice, we would expect less of a cost to Annex I financial institutions as we believe that most of these firms are typically smaller (than the firms considered as part of FCA's 2020 consultation) so collecting annual financial data may be less time and resource intensive (for example, when compared to a retail bank or similarly sized firm) and therefore less costly to the firms themselves and the FCA.

212. We are unable to provide specific cost estimates for making the proposed amendment to Regulation 74B as these costs will depend on the extent of a skilled person review and the complexity of a firm and how often the FCA uses this power. Therefore, direct costs are likely to vary between Annex I firms. FCA's use of skilled person powers for FSMA are set out in the FCA's Handbook and set out that the FCA may only require a report by a skilled person on a case-by-case basis taking in to account all relevant factors including cost considerations.

213. Regarding the estimated costs of expanding Regulation 74C, we expect this to be relatively cost neutral for the FCA (unless a firm initiates an appeals process), however, we do expect that there will be some indirect costs for firms. For example, if the FCA were to direct a firm to cease taking on new customers for a period until they have remediated their controls, this would result in a cost, but this would only occur if the FCA believe that there are significant ML/TF risks associated with the firm in question.

Direct/ indirect benefits

214. As highlighted above, this amendment to the MLRs would enable the FCA to request specific fees data required for the purposes of calculating fees for Annex I firms,

[10] 2020 CP for extending the REP-CRIM

in a fair and consistent manner. With increased information gathering powers, we expect that there will be an opportunity for more effective FCA AML supervision overall as the FCA will be able to undertake more in-depth assessments of the risks that might evolve in this sector. This would likely result in the FCA being able to carry-out more effective and targeted interventions, eliminating the need for unnecessary onsite/offsite work; and being better aligned with the other actions that the FCA are currently taking to enhance their supervision of Annex I firms overall.

215. A number of consultation responses, which highlighted support for the FCA having wider information-gathering powers, commented that any additional regulatory burden as a result of this amendment to the MLRs would be necessary to ensure that the FCA has more comprehensive financial crime data.

Summary

216. Despite further bilateral engagement with relevant stakeholders, such as the FCA, it is extremely difficult to quantify specific costs to Annex I firms as a result of this change to the MLRs, given the diversity of different types of firms in this population these firms will differ in size (based on the number of employees), business model, customer base and risk appetite. Although the estimated costs are uncertain, as highlighted above, we have used these estimates to feed into overall monetised costs and benefits as part of the EANDCB.

	Cost type	**Estimate per firm (best estimate)**	**Estimate for sector (best estimate)**
Direct costs			
Of which to firms	One-off Ongoing	£5,862 £2,874	£5.1 million £2.5 million
Of which to supervisors	One-off Ongoing	£20 Not quantified	£17,400 Not quantified
Indirect costs		Not quantified	Not quantified
Direct benefits		Not quantified	Not quantified
Indirect benefits		Not quantified	Not quantified

Impact on small and micro businesses

217. Although it is difficult to confirm whether this amendment to the MLRs will disproportionately impact SMBs, the FCA will be required to undertake a cost-benefit analysis ahead of expanding their financial crime return or a similar data request to this sector, which means that they are unlikely to increase burdens unnecessarily. Similar to the FCA's other powers under the MLRs, the FCA also plan to follow their general approach to the use of these powers under FSMA, including the appropriateness of the use of those powers in any given case. It is also worth noting here that the FCA are accountable to HM Treasury via the Annual Reporting process and to Parliament via the Treasury Select Committee (and others on occasion), so they will be required to continue to demonstrate how they are using these powers appropriately.

218. Given some of the points raised above, we believe that the potential costs to Annex I firms would also be balanced by the benefits of levelling the playing field from the position of cryptoasset firms. We believe that levelling-up the FCA's powers across its supervised population, will result in less disjointed and ambiguous powers under the

MLRs, which are more aligned with FSMA, and will enable FCA to better detect and manage harm wherever it occurs in their supervised population.

219. In addition to the consultation, we also asked key stakeholders what the estimated impacts of implementing the measure would be. We did not receive any further information in addition to the points outlined above.

220. Given that evidence gaps do remain on affordability for SMBs, we are committed to reviewing the MLRs on a regular basis and will continue to monitor the outcomes of this measure alongside the FCA and other key stakeholders. If evidence comes to light of any disproportionate impacts to SMBs , we will review our approach at the next opportunity.

Wider impacts

221. The SI consultation questions relating to this measure did not specifically ask whether the implementation of this measure would have any potential wider impacts, such as on trade, innovation and competition.

222. As we cannot rely only on the views from across the regulated sector on the estimated wider impacts of implementing this measure, in order to address this gap in evidence, we also asked stakeholders (HMRC, FCA and OPBAS) what the estimated impacts of implementing the measure would be. The FCA noted that they were not aware of any such potential wider impacts of implementing this measure.

223. Although we currently have no substantial evidence of the impact that this measure will have, we are committed to reviewing the MLRs on a regular basis and should evidence come to light of any significant wider impacts or heightened risk associated with this measure, we will review our approach at the next opportunity.

5.Cryptoasset Firms

5.1 Travel Rule

Policy objective and rationale for intervention

224. The UK, as a member state of the FATF, is expected to implement the FATF's recommendations and standards. FATF Recommendation 16 requires that member states ensure that local financial institutions include required and accurate originator information, and required beneficiary information, on wire transfers and related messages, and that this information remains with the transfer or related message throughout the payment chain.

225. The objective of Recommendation 16 is to reduce the risk of ML/TF by ensuring that financial institutions can effectively monitor transfers for suspicious activity, and that the identity of those making and receiving transfers is retained and, where appropriate, disclosed to law enforcement. It has been clarified that the scope of Recommendation 16 encompasses cryptoasset service providers – which include cryptoasset exchanges and custodian wallet providers – as well as conventional bank transfers. As the existing legislation implementing Recommendation 16, the Funds Transfer Regulation, only applies to transfers of fiat currency, currency established as money often by government regulation, it is necessary for the UK to amend domestic legislation to ensure full compliance with Recommendation 16.

Description of options considered

- **Option 0 - Do nothing**. This option would result in the scope of Recommendation 16 remaining confined to transfers of funds between conventional financial institutions and risks the UK being found to fall short of international standards. The risk of money laundering and terrorist financing could increase, as other jurisdictions implement Recommendation 16 for cryptoassets, and the UK could attract illicit activity as a result of regulatory arbitrage.
- **Option 1 (preferred option) - Implement Recommendation 16 in line with FATF Guidance (i.e., without 'gold plating').** The MLRs would be amended to require that cryptoasset service providers put in place systems and processes to ensure that the required beneficiary and originator information is transmitted alongside a transfer of cryptoassets. The information that must accompany the transfer will depend on its value and whether all cryptoasset service providers involved in the transfer are carrying on business in the UK. Intermediary cryptoasset service providers – defined as those which are not acting directly for either the beneficiary or the originator, but which facilitate a transfer of cryptoassets as an intermediate element in a chain of transfers – will be required to ensure that the relevant beneficiary and originator information accompanies the transfer. Where the required information is missing, a beneficiary or intermediary cryptoasset service provider will be required to take appropriate measures to obtain this information or prevent the cryptoasset from being made available to the beneficiary. Cryptoasset service providers will be required to maintain a record of the above information of a period of five years from the end of the business relationship.

Monetised and non-monetised costs and benefits

There are currently 34 cryptoasset service providers admitted to the FCA's Register of cryptoasset businesses, as of 25 May 2022.

<u>Direct/ indirect costs</u>

226. Businesses will be faced with one off transition costs of training staff, hiring compliance specialists to set-up systems and processes, and the purchase of technological compliance solutions. The total transition costs will be calculated by:

How long to set up new process x daily cost of the process

227. Previous changes to the MLRs affecting cryptoasset firms that required new processes and controls to be set-up took 6-12 months for firms to implement.

228. Stakeholder engagement suggested that the average number of staff required to implement the changes would be four (3 developers and 1 product manager), who would generally be taken from the already employed pool of staff rather than specially hired. Where a project manager/implementation manager is specifically hired to implement the Travel Rule, stakeholders informed us that the likely day rates would range from £550 to £800. However, it is not clear how many firms will seek to hire a contractor for this role rather than relying on existing staff. Implementation staff do not generally represent an additional cost to the business, but there will be an opportunity cost in the form of other products or functions that these staff would have been working on; quantifying this opportunity cost across the sector is not possible.

229. Businesses will be faced with ongoing costs of ensuring compliance with the travel rule, which will consist of ongoing IT costs and the cost of compliance staff to monitor and oversee the process. The total ongoing costs will be calculated by:

(Estimate from ONS on median cost for employing a QA/regulatory professional) x (estimated no. of compliance staff required) + (Estimated average cost of IT technology).

230. Stakeholder engagement suggested that the average number of staff required to ensure compliance with the Travel Rule on an ongoing basis would vary significantly between firms. Large firms are likely to allocate compliance responsibilities to an existing compliance team, but smaller firms may need to recruit compliance professionals. As with staff required for implementation, where existing staff are used, there is no additional cost to the business; however, there may be opportunity costs which are not possible to quantify.

231. Stakeholder engagement suggested that the average ongoing cost of technology would be USD 36,000 per annum, consisting of a fee paid to the technology company to use their software. However, the estimated range of fees is between USD 500 and USD 50,000 per annum, depending on the volume of transactions being handled by the cryptoasset business.

232. In addition to views gathered from responses to the consultation, we also asked stakeholders (HMRC, FCA and OPBAS) what the estimated costs of implementing the measure would be on both relevant persons under the MLRs and AML/CTF supervisors. FCA's supervision of this measure, as the AML/CTF supervisor for cryptoasset exchange providers and custodian wallet providers, will be incorporated in their overall supervision under the MLRs. The FCA anticipate that some work from supervisors will be needed to understand the solutions as they develop, address concerns on implementation and then to supervise against it once the transition period ends. This cost will be subsumed in to FCA's overall supervision. The FCA do not have reliable data on costs to relevant persons of implementing this measure.

Transition costs:

I. How long to set up the new process (6-12 months) x daily cost of the process (£550-800)
II. Low estimate: (£550 x 182.5 days (6 months) = £100,375) x 34 (no. of crypto firms) = £3,412,750 (£3.4 million)
III. High estimate: (£800 x 365 days (12 months) = £292,000) x 34 (no. of crypto firms) = £9,982,000 (£9.9 million)
IV. Best estimate (per sector): ((£100,375 + £292,000) ÷ 2 = £196,187.50) x 34 (no. of crypto firms) = £6,670,375 (£6.7 million)

Annual costs:

I. Average ongoing cost to business = USD 36,000 per annum (from stakeholder engagement). GBP equivalent = £27,511.74 (as of 1 April 2022).
II. **Annual cost to business (per sector): £27,511.74 x 34 (no. of crypto firms) = £935,399.16 (£0.9 million)**

Direct/ indirect benefits

233. From analysing the responses to the consultation and further engagement with stakeholders, we have not identified any direct or indirect benefits of implementing this measure which we can quantify for the purpose of the EANDCB.

234. Some consultation respondents identified improved trust and confidence in the cryptoasset sector as being a benefit that would support the sector's growth. However, it is not possible to estimate the size of this benefit, particularly as few jurisdictions have implemented the Travel Rule so far, and there is limited data available that could support an estimate based on the experiences of those that have. Moreover, it would not be possible to disaggregate possible confidence boosting effects of the Travel Rule from the effects of other recent reforms to the regulation of cryptoassets.

Summary

235. From stakeholder engagement we have been able to quantify transition and ongoing costs to cryptoasset firms of implementing this measure, for the purpose of the EANDCB.

Where we have not been able to meaningfully quantify costs is with regard to staffing costs. This is due to it not being clear how many firms will seek to hire a contractor for this role rather than relying on existing staff and that the average number of staff required to ensure compliance with the Travel Rule on an ongoing basis would vary significantly between firms. We have therefore not included staffing costs for this measure in the EANDCB calculation.

	Cost type	Estimate per firm (best estimate)	Estimate for sector (best estimate)
Direct costs			
Of which to firms	One-off Ongoing	£196,187.50 (range is £100,375-£292,000) £27,511.74	£6,670,375 (£6.7 million) £935,399.16 (£0.9 million)
Of which to supervisors		Not applicable	Not applicable
Indirect costs		Not quantified	Not quantified
Direct benefits		Not quantified	Not quantified
Indirect benefits		Not quantified	Not quantified

Impact on small and micro businesses

236. The travel rule will apply to all cryptoasset service providers, regardless of size. It is not currently clear how many of the 34 firms currently registered are small or micro businesses. Therefore, it is very difficult to confirm the potential impact on affordability for SMBs as a result of this amendment to the MLRs.

237. In addition to the consultation, we also asked stakeholders (HMRC, FCA and OPBAS) what the estimated impacts of implementing the measure would be. Only the FCA responded, noting that much like the FCA supervision of how banks and other payment service providers implement wire transfers this will be integrated into overall AML supervision, and they do not anticipate extensive impacts on supervisors.

Wider impacts

238. Improved regulation for the cryptoasset sector may give greater legitimacy to and confidence in the sector, and thereby help to create a foundation for its future growth. There may also be opportunities created for firms which specialise in the development of compliance solutions, and firms which advise on regulatory compliance.

239. As FATF standards are global, the opportunity for the loss of business to other jurisdictions through regulatory arbitrage is limited.

240. As with associated costs and general impacts, we also asked stakeholders (HMRC, FCA and OPBAS) for their views on potential wider impacts, such as on trade, innovation and competition, of implementing this measure. Only the FCA responded,

noting that unlike wire transfers that are submitted via existing payment systems and via SWIFT messaging standards, there are a variety of different solutions in the cryptoasset space and not all are interoperable. This could create additional costs, depending on where firms are sending transfers to.

6. Additional changes to the Regulations

6.1 Change in control - cryptoasset firms

Policy objective and rationale for intervention

241. Regulations 57 to 60A of the MLRs provide the FCA with the powers to refuse to register a cryptoasset firm and/or take steps to suspend or cancel the registration of a cryptoasset business if it is not satisfied that the firm or its beneficial owner is fit and proper. Currently, it can take up to 90 days from the date of acquisition to cancel a firm's registration. Firms could therefore bypass the MLRs' registration gateway by acquiring already-registered cryptoasset firms, potentially enabling the acquiring firm to undertake illicit activities before the FCA could take action.

242. This measure will close this gap in the MLRs by amending Regulation 57 and adding a new Regulation 60B and schedule 6B to require proposed acquirers of cryptoasset firms to notify the FCA ahead of such acquisitions, allowing the FCA to undertake a 'fit and proper' assessment of the acquirer, providing the FCA with powers to object to any such acquisition before it takes place and cancel registration of the firm being acquired. The measure will also capture Change in Control offences under the MLRs in the new schedule 6B.

243. This measure was not included in the SI Consultation Document as it came to the government's attention following the period of consultation. Nonetheless, in order to ensure the robustness of the MLRs this gap is being closed at the earliest opportunity, via this SI. The measure will therefore come into force as soon as possible once the SI is made.

Description of options considered

- **Option 0 - Do nothing.** This option would maintain current FCA powers to assess and potentially object to and cancel the registration of acquired firms after the acquisition has taken place, meaning it would take the FCA up to 90 days from the date of an acquisition to cancel a firm's registration. In light of recent acquisitions announced by non-regulated cryptoasset firms, there is a risk that this gap in the MLRs could be further exploited, attracting illicit activities.
- **Option 1 (preferred option) - Amend the MLRs to allow the FCA to scrutinise proposed changes in control prior to the change, including powers to object and cancel registration.** The MLRs would be amended to require proposed acquirers of cryptoasset firms to notify the FCA ahead of such acquisitions, allowing the FCA to undertake a 'fit and proper' assessment of the acquirer, including FCA powers to object to such an acquisition and cancel registration of the firm being acquired. This option would close the identified gap in the MLRs by enabling the FCA to respond prospectively to proposed acquisitions of cryptoasset firms.

Monetised and non-monetised costs and benefits

244. As this measure was not included in the public consultation for this SI, we do not have the benefit of views from across the regulated sector on the estimated costs of

implementing this measure. In order to address this gap in evidence, we engaged bilaterally with the FCA, as the key stakeholder.

Direct/ indirect costs

245. As of 25 May 2022, there are 34 cryptoasset firms registered with the FCA. The affected population is therefore small, and this number is not expected to rise significantly year on year. The FCA received approximately 2,000 'Change in Control' notifications in 2021 for a population of approximately 50,000 firms.

246. This measure will therefore entail a small additional cost for the FCA, associated with the requirement to assess changes in control within 60 days. There will also be a small cost associated with update forms and systems to accommodate the expanded scope of the change in control regime, and additional training which will be provided to the FCA change in control team around the regime and the cryptoasset market more broadly.

247. Proposed controllers will not be faced with a fee for notifying the FCA of a proposed change in control. There will also be no systems changes or set up costs for proposed controllers. Change in control notifications are made through the FCA's online portal, for which there is no fee. Proposed controllers are also free to email their notifications or submit them in hard copy. There are no direct costs to registered cryptoasset firms arising as a result of proposed acquisitions.

248. Where there are proposed changes to the business plan of the registered firm for new directors to be appointed as a result of the acquisition, the assessment period will impact the proposed controllers' ability to implement changes. However, the FCA expects that this time period would have already been built into the overall transaction, in line with changes in control under FSMA.

249. The FCA objects and issues a Warning Notice to a small number of transactions. However, a larger proportion withdraw their notifications following FCA scrutiny. The associated costs of exercising the FCA's public function are staff costs and are not passed on to the notice-giver.

250. With respect to indirect costs, some proposed controllers seek the advice and/ or assistance of consultancies or law firms in the preparation and/ or handling of the change in control matter on their behalf. These are sunk costs irrespective of whether the notification is approved. Alternatively, and to save on costs, the FCA's experience has been that certain proposed controllers prepare and provide change in control notification forms in-house.

251. If the proposed controller is listed on an exchange, and the FCA proposes to object to the change in control, the proposed controller is likely to be obliged to disclose the objection to the market which could impact its share price. It is not clear whether the cost is greater under the SI than under the existing MLR regime though the market disclosure obligation remains irrespectively.

252. There is a potential cost should the FCA revoke registration of acquired businesses in the event of concerns about the acquirer, constricting the acquired business's ability to undertake regulated activities under the MLRs. However, the measure could result in a cost saving as the acquirer would be notified of the FCA's intention to refuse registration prior to the acquisition.

Direct/ indirect benefits

253. The FCA does not anticipate increased familiarisation or training costs to firms, since the SI brings together two known regimes.

254. The expansion of the scope of the change in control regime should not be overly burdensome. The two regimes are known to market participants. Part XII FSMA (Part XII) implemented the Acquisitions Directive in March 2009. The test introduced by the SI is an existing test under the MLRs. The forms and required supporting documentation are in plain English and are currently completed by a wide range of individuals from both a financial services and non-financial services background.

255. Currently, the impact of the widened scope of the regime on registered cryptoasset firms is likely to be small as there are 34. However, the wider financial services market should benefit from greater certainty provided by the regime, though we have not been able to quantify this in the time available. There is likely to a consumer benefit from the additional scrutiny of proposed controllers beforehand provided by the SI, and a consequent reduction of harm to consumers. although once again we have not been able to quantify this nor are we certain that such data can be reliably sourced.

Summary

256. We are aware that despite engagement with relevant stakeholders, there is still a gap in our evidence base. Therefore, we will not attempt to monetise estimated costs and benefits for the purposes of the EANDCB. We will continue to engage with the FCA, as the relevant stakeholder and AML/CTF supervisor, and should we become aware of any disproportionate costs associated with this measure we will endeavour to address them.

	Cost type	**Estimate per firm (best estimate)**	**Estimate for sector (best estimate)**
Direct costs		Not quantified	Not quantified
Indirect costs		Not quantified	Not quantified
Direct benefits		Not quantified	Not quantified
Indirect benefits		Not quantified	Not quantified

Impact on small and micro businesses

257. This measure is not expected to disproportionately impact small-micro businesses, nor is it expected to entail any additional monetary or administrative cost for businesses, as firms are already required to notify the FCA of changes in acquisition, post-acquisition.

258. The FCA does not hold affordability data around small and micro business acquisitions. At this stage, it is unlikely that small and micro businesses will be in a position to acquire to cryptoasset firms but they are no more affected by the acquisition than any other acquirer. To the extent that small and micro business firms are end consumers of in-scope crypto products, they may benefit from the additional regulatory scrutiny pre-acquisition.

259. This measure was identified by HM Treasury following the MLR SI consultation, meaning this change has not been consulted on. We are therefore aware of gaps in our evidence base with respect to impacts on small and micro businesses, and have engaged bilaterally with the FCA to mitigate these. We have determined that this measure should progress to ensure the robustness of the MLRs by rectifying this gap at the earliest opportunity.

260. As with the costs associated with this measure, we are aware that despite engagement with relevant stakeholders, there is still a gap in our evidence base. Continued engagement with the FCA should ensure that if there are any disproportionate impacts associated with this measure, that we are aware of them in good time and are able to amend our approach where necessary.

Wider impacts

261. We do not anticipate that this measure will have any wider impacts and have engaged bilaterally with the FCA to try to address this gap in evidence.

262. As with the costs associated with this measure and impacts on small and micro businesses, we are aware that despite engagement with relevant stakeholders, there is still a gap in our evidence base. Although we currently have no substantial evidence of the impact that this measure will have, we are committed to reviewing whether this measure will have any associated significant wider impacts or heightened ML/TF risk and if any evidence of this comes to our attention we will seek to amend our approach accordingly..

6.2 Notices of refusal to register

Policy objective and rationale for intervention

263. Currently, Regulations 59 and 60 of the MLRs provide the FCA and HMRC with the power to publish notices relating to the cancellation and suspension of MLR registrations; however, neither is able currently to publish notices of refusal to register.

264. This measure will improve the transparency of FCA and HMRC decision-making by amending Regulation 59 to allow the FCA and HMRC the discretion to publish information about decisions not to register an applicant, aligning the treatment of notices of refusal to register with powers to publish notices for the cancellation and suspension of registrations. The measure will also allow the FCA to publish notices where it has objected to the acquisition of an already registered cryptoasset firm. This change will enable the FCA and HMRC to publish more detailed findings in the course of registration and acquisition assessments, allowing such notices to include a level of detail which could help other firms benchmark and improve their AML systems, providing greater transparency for the market by effectively signalling good/bad behaviour to other firms.

265. This change was consulted on as part of the 2019 Transposition of the Fifth Money Laundering Directive consultation and was therefore not included in the consultation for this SI. This measure is being taken forward through this SI as it will enhance the transparency of the decision-making processes and has been developed with the FCA in tandem with amendments to Regulations 57 and 59 of the MLRs. The measure will therefore also come into force at the earliest opportunity once the SI is made.

Description of options considered

- **Option 0 – Do nothing.** This option would maintain current FCA and HMRC powers to publish notices relating to the cancellation and suspension of MLR registrations, but not notices of refusal to register. This option would therefore retain limits on the FCA and HMRC's ability to publish information relating to refusals to register which might otherwise be utilised by firms to benchmark their behaviours.
- **Option 1 (preferred option) - Amend the MLRs to allow the FCA and HMRC to publish notices of refusal to register.** The MLRs would be amended to allow the FCA and HMRC to publish notices of refusal to register, setting out the facts of the case and the basis of the FCA and HMRC's decision to refuse to register firms, providing greater transparency for the market by effectively signalling good/bad behaviour to other firms. Respondents to the 2019 Transposition of the Fifth Money Laundering Directive consultation welcomed the proposed change, noting it would contribute to transparency and improve compliance with the MLRs.

Monetised and non-monetised costs and benefits

266. Although this measure was consulted on as part of the 2019 Transposition of the Fifth Money Laundering Directive consultation, this measure was not included in the 5MLD IA and therefore we do not have an approximation for what the associated costs of implementing this measure would be. As this measure was not included in the public consultation for this SI, we do not have the benefit of additional views from across the regulated sector on the estimated costs of implementing this measure.

267. In order to try to address this gap in evidence, we engaged bilaterally with the FCA, as a key stakeholder, in an attempt to gather more evidence on the costs and benefits of the implementation of this measure. The FCA noted that this measure is not expected to entail an additional cost to businesses, nor the FCA.

268. Given that we do not have any quantitative data in relation to this measure, we have not included monetised costs and benefits as part of the EANDCB. We will continue to liaise with the FCA and engage with HMRC to ensure any disproportionate costs associated with this measure which come to our attention are addressed.

	Cost type	Estimate per firm (best estimate)	Estimate for sector (best estimate)
Direct costs		Not quantified	Not quantified
Indirect costs		Not quantified	Not quantified
Direct benefits		Not quantified	Not quantified
Indirect benefits		Not quantified	Not quantified

Impact on small and micro businesses

269. This measure will apply to all firms intending to register with the FCA and HMRC, regardless of size, it is therefore not expected to disproportionately impact small and micro sized businesses.

270. No concerns were raised during the 2019 Transposition of the Fifth Money Laundering Directive consultation as to the potential impacts of this measure on small and micro businesses specifically, and officials have consulted bilaterally with the FCA to confirm this understanding. Respondents to the consultation were supportive of the

change, noting it would improve transparency and act as a deterrent to potential breaches of the MLRs.

271. As with costs, we are aware that despite engagement with relevant stakeholders, there is still a gap in our evidence base. Therefore, we will continue to engage with the FCA and HMRC to ensure any significant impacts associated with this measure which come to our attention are addressed.

Wider impacts

272. We do not anticipate that this measure will have any wider impacts. No wider impacts were flagged during the 5MLD consultation on this measure, and officials have engaged with the FCA bilaterally to consider and confirm this understanding. Respondents to the 5MLD consultation were supportive of the change, noting it would improve transparency and act as a deterrent to potential breaches of the MLRs.

273. As with the costs associated with this measure and impacts on small and micro businesses, we are aware that despite engagement with relevant stakeholders, there is still a gap in our evidence base. Although we currently have no substantial evidence of the impact that this measure will have, we will continue to engage with the FCA and HMRC to ensure any significant wider impacts associated with this measure which come to our attention are addressed, and if necessary we will ensure our approach is reviewed at the next opportunity.

6.3 Bank Account Portal

Policy objective and rationale for intervention

274. 5MLD was transposed into UK law through the MLRs in January 2020, when the UK was still a member of the EU, following public consultation on the changes made to the MLRs to comply with 5MLD. 5MLD required the UK to build a centralised automated mechanism which would help law enforcement and anti-money laundering supervisors to access information on the identity of holders and beneficial owners of bank and payment accounts and safe-deposit boxes. The intention was that this information could then support criminal investigations and recovery of the proceeds of crime. The system fulfilling this purpose is called a ‘bank account portal’ (BAP) and the requirement to implement a BAP in the UK was added to the MLRs under Part 5A of the Regulations.

275. It could be argued that such a system would increase the speed of access, and number of bank accounts and safety deposit boxes accessible, by having a central mechanism to find this information. However, it would also impose large costs to the public and private sectors to implement and would have a lesser benefit compared to some EU partners due to the more widespread use of credit reference agencies by law enforcement in the UK.

276. Following the UK’s exit from the EU and the agreement of the Trade and Cooperation Agreement (TCA) in January 2021, the government reviewed the case for building a BAP. To support the impact assessment of this decision, the government engaged PA Consulting to support the assessment of potential models for a BAP. This analysis was supported by surveys with the public and private sectors to capture data required to assess the costs and benefits of delivering the system.

277. Whilst the evidence portrayed a “best case” view on the benefits, there was some risk that these could decrease over time and the costs to the private sector were not

calculated and included in this figure due to there not being enough evidence cross-sector to make an estimate.

278. Given the uncertainty over the benefits, and the substantial cost to the public and private sectors, the government ultimately concluded that it should not build a BAP.

279. This measure was not included in the SI Consultation Document as by implementing this measure we are aligning with cross-Government policy decisions. The measure is being taken forward through this SI, as the first appropriate legislative opportunity to make amendments to the MLRs, following the decision to remove the requirements to implement a BAP in the Regulations.

Description of options considered

280. Four options were considered to deliver a solution to provide access to bank account and safety deposit information by law enforcement.

- **Option 0 (preferred option) - Do Nothing:** This option requires users to continue requesting data through existing processes, such as through Customer Information Orders (CIOs) and other tools under the Proceeds of Crime Act 2002 (POCA), to extract information on bank accounts from financial institutions. While CIOs do require law enforcement to apply to the courts, they can be aimed at one bank, several banks, or all banks in the country. Law enforcement did not believe there was a strong requirement for an alternative, centralised mechanism in order to support their work, or meet their obligations to international partners.
- **Option 1 - Automated Workflow:** This option would automate the existing process by creating a workflow tool for users to request bank account and Safety Deposit Box data from organisations. Whilst this was the lowest cost option, it would have limited benefit beyond formalising existing manual processes through a system.
- **Option 2 – Setting up a register:** Through this option, data would be submitted to the host organisation by contributing firms on a regular basis and collected and held by the host on a central database. Large up-front costs, and moderate costs in the medium term. Additional benefit of mass data analysis, however this could raise challenges around data privacy and handling.
- **Option 3 – Setting up a portal:** Through this option, data would be retrieved on request only through secure connections between a portal held by the host and the contributing firms. Large up-front costs, but lower costs later for law enforcement and partners thanks to automation.

281. All options would achieve the requirements under the EU TCA but would have differing costs and benefits.

282. Of the costed options, only the introduction of a portal had a positive benefit to cost ratio. However, this did not include costs to the private sector, as there were not sufficient survey results to form an average, but quotes ranged up to £22m per institution. Additionally, given the array of different public sector anti-money laundering programmes currently being delivered, the relative prioritisation of the BAP was challenging.

283. This analysis led to the conclusion that options 1-3 (as above) should be rejected, in favour of the ‘Do Nothing’ option. Whilst implementing a BAP may provide some efficiency and effectiveness benefits which we would forgo by removing the requirement to implement a BAP from the MLRs, it would not deliver a step change in activity and the benefits are uncertain given the nature of assumptions required. Additionally, given the system would also present a substantial cost to the public and private sectors and that

there are wider funding pressures on anti-money laundering activity, it was judged that the proposals for a BAP should be rejected.

284. Therefore, this measure will remove the current provisions in Part 5A of the MLRs, which requires the delivery of a BAP-like system in the UK.

Monetised and non-monetised costs and benefits

285. As this will be at baseline, there are no costs and benefits over the current baseline.

Direct/ indirect costs

286. In addition to the analysis conducted by PA Consulting, we also asked stakeholders (HMRC, FCA and OPBAS) for views on any potential costs to supervisors and businesses associated with implementing this measure. Only FCA responded and noted that when the assessment of implementing a BAP was conducted, supervisory costs were not considered, as the National Crime Agency (NCA) were in line to host the BAP and therefore discussions were focused on costs to the NCA.

287. The costs were estimated through identifying multiple possible high-level technical architectures, and identifying the corresponding workforce, IT infrastructure and licensing and delivery costs. Industry implementation costs were excluded as there was not sufficient evidence to calculate.

288. Private sector costs were not included due to challenges in evidence gathering. These would be substantial however, as banks would need to undertake substantial technical integration and/or increases to their workforce to handle the increase in requests. It was judged that whilst costs would be substantial for large institutions, it would likely impact small providers substantially given the number of new requests they would receive.

Direct/ indirect benefits

289. Two primary benefits were calculated by PA Consulting. The first was an efficiency benefit, assessed through a top-down assessment of the operational time spent each year on pre-enquiry checks, and estimating the potential time saved through workshops. An effectiveness benefit was calculated by estimating the volume of the bank/building society market currently not engaged in pre-enquiry checks and estimating the potential additional assets which could be identified through these means.

290. The costs were estimated through identifying multiple possible high-level technical architectures, and identifying the corresponding workforce, IT infrastructure and licensing and delivery costs. Industry implementation costs were excluded as there was not sufficient evidence to calculate.

291. Private sector costs were not included due to challenges in evidence gathering. These would be substantial however, as banks would need to undertake substantial technical integration and/or increases to their workforce to handle the increase in requests. It was judged that whilst costs would be substantial for large institutions, it would likely impact small providers substantially given the number of new requests they would receive.

292. The quantified costs and benefits were mapped over 10-years to calculate the net-present values (NPVs). PA Consulting estimated that had a BAP been delivered there was evidence of an NPV of up to £38m over 10 years. However, given substantial

uncertainty on the deliverability of the benefits and the non-inclusion of costs to the private sector (which could amount to up to £20m per institution) it was judged that the real NPV was likely to be substantially negative.

293. If wider reforms to economic crime are delivered, it is possible that the number of requests for a BAP to be implemented will increase. However, removing the requirement to implement a BAP from legislation will not stop the government from building a BAP if the case for change is strengthened in the future. The case for change of a BAP will be monitored and if it strengthens this could be re-explored.

Without further analysis of the benefit of removing the requirement to implement a BAP, and without the inclusion of the assessment of the costs to the private sector, we have taken PA Consulting's view of the estimated cost of implementing a BAP and used this to assume the annual saving, over 10 years, from implementing this measure which will remove the requirements from the MLRs to build a BAP.

Transition costs:

I. No estimated transition costs.

Annual costs:

I. Potential saving of £38 million over 10 years (as estimated by PA Consulting).
II. Annual cost to businesses: (£38 million ÷10 years) = £3.8 million per year

294. In addition to the analysis conducted by PA Consulting, we also asked stakeholders (HMRC, FCA and OPBAS) for views on any potential costs to supervisors and businesses associated with implementing this measure. FCA noted that when the assessment of implementing a BAP was conducted, supervisory costs were not considered, as the National Crime Agency (NCA) were in line to host the BAP and therefore discussions were focused on costs to the NCA.

Summary

295. From the analysis conducted by PA Consulting, we have been able to assume the annual savings to business and law enforcement, over a 10-year period, from not having to implement a BAP. We have therefore used this figure to represent the quantified benefit of implementing this measure for the purpose of the EANDCB.

296. However, we have not been able to assess how many firms would have born the cost of implementing a BAP and therefore the estimated benefit of not having to implement a BAP, used in the EANDCB, may not be an accurate reflection but in lieu of further analysis this is the best estimate we have to reflect the impact of this measure.

	Cost type	**Estimate per firm (best estimate)**	**Estimate for sector (best estimate)**
Direct costs		Not applicable	Not applicable
Indirect costs		Not expected	Not expected
Direct benefits		Not quantified	Not quantified
Of which to firms	One-off Ongoing	Not quantified Not quantified	Not quantified £3.8 million (per year over 10 years)
Of which to supervisors		Not applicable	Not applicable
Indirect benefits		Not quantified	Not quantified

Impact on small and micro businesses

297. Removing the requirement for the BAP from legislation will avoid additional burdens on small and micro businesses, as additional technical integration and volumes of requests could lead to additional effort for these businesses.

298. We also asked stakeholders for views on the estimated impacts to supervisors and relevant persons of making this change. FCA noted that, as with costs, when the assessment of implementing a BAP was conducted, impacts on supervisors were not taken into consideration, as the focus was largely on the impacts to NCA of hosting the BAP.

Wider impacts

299. By removing the requirement to implement a BAP from the MLRs, we do not consider that there will be any wider impacts of this measure given our existing capability, through CIOs and other tools under POCA, to extract information on bank accounts and safe-deposit boxes from financial institutions. Law enforcement also believe there is no strong requirement for an alternative, centralised mechanism in order to support their work, or meet their obligations to international partners.

300. As with costs and general impacts of implementing this measure, we asked stakeholders for views on any potential wider impacts, such as on trade, innovation and competition. Only FCA responded and noted that there are no wider impacts that they are aware of from removing the requirements to implement a BAP in the UK from the MLRs.

6.4 Terrorist Asset-Freezing etc Act 2010 reference

Policy objective and rationale for intervention

301. The definition of Terrorist Financing in the Money Laundering Regulations was previously updated by Foreign, Commonwealth and Development Office lawyers at the request of HMT, to ensure that the up-to-date legislation was being referenced. This included removal of references to the ISIL (Da'esh) and Al-Qaida (United Nations Sanctions) (EU Exit) Regulations 2011, which were replaced with references to the Counter-Terrorism (International Sanctions) (EU Exit Regulations) 2019 and Counter-Terrorism (Sanctions) (EU Exit Regulations) 2019. These amendments retained a reference to the Terrorist Asset Freezing etc Act 2010 (TAFA). However, this was replaced in law at the end of the transition period by the Counter Terrorism (Sanctions) (EU Exit) Regulations 2019.

302. As TAFA has now been replaced by the Counter-Terrorism (Sanctions) (EU Exit Regulations) 2019, the reference to TAFA in the MLRs is now redundant and should be removed.

303. This measure was not included in the SI Consultation Document due to its being a consequential amendment to a decision that had already been legislated for elsewhere for the removal of outdated references in the MLRs to ensure better alignment with cross-Whitehall legislation. This measure is being taken forward through this SI as it is an appropriate legislative opportunity to amend the MLRs to remove references to redundant legislation.

Description of options considered

- **Option 0 - Do nothing**. Failing to update the legislation would mean the definition of terrorist financing in the MLRs is out of date, as TAFA has since been repealed. Failing to update the definition would also fail to address the inconsistency between the definitions of terrorist financing in SAMLA and the MLRs.
- **Option 1 (preferred option) - Removing the reference to TAFA**. This will ensure that we are not referencing outdated legislation in the MLRs and will ensure that the definition is based on current legislation.

- Option 1 is the preferred option. Removing the outdated reference to TAFA will bring the definition of Terrorist Financing in the MLRs into line with the current definition at s49 of SAMLA (the regulations under which the MLRs are being amended), which has been similarly amended to remove references to TAFA and will tidy the regulations by making sure historic legislation is not being referenced.

Monetised and non-monetised costs and benefits

304. The only change this measure is seeking to make is to remove an out-of-date reference to legislation referred to in the MLRs. Therefore, no associated costs or benefits have been identified.

305. As this measure was not included in the public consultation for this SI, we do not have the benefit of views from across the regulated sector on the estimated costs of implementing this measure. We asked stakeholders (FCA, HMRC and OPBAS) what the estimated costs of implementing the measure would be on both relevant persons under the MLRs and AML/CTF supervisors. FCA noted that as the TAFA reference is a redundant there will be no impact on supervisors or relevant persons, but relevant persons may need to delete any reference to this legislation in their policies and procedures.

	Cost type	Estimate per firm (best estimate)	Estimate for sector (best estimate)
Direct costs		Not quantified	Not quantified
Indirect costs		Not quantified	Not quantified
Direct benefits		Not quantified	Not quantified
Indirect benefits		Not quantified	Not quantified

Impact on small and micro businesses

306. This measure will have no impact on any business regulated under the MLRs, including small and micro businesses, as it is solely removing a redundant reference to the TAFA legislation from the MLRs.

307. As with costs, we asked stakeholders what the estimated impacts of implementing the measure would be on both relevant persons under the MLRs and AML/CTF supervisors. FCA noted that as the TAFA reference is a redundant there will be no impact on supervisors or relevant persons.

Wider impacts

308. No wider impacts have been identified for removing an outdated reference to TAFA in the MLRs.

309. As with costs and general impacts, we asked stakeholders for views on any potential wider impacts, such as on trade, innovation and competition, of implementing the measure. FCA noted that there were no wider impacts of making this change that they were aware of.

310. Removing references to TAFA would not exclude those who committed offences under TAFA while it was in force from the scope of the MLRs, as s16 of the Interpretation Act contains a presumption that the repeal of an enactment will not affect any obligation, liability or penalty incurred under it, in respect of which any investigation, legal proceeding or remedy may also be instituted as if the repealing Act had not been passed. Therefore, the updated MLR definition would not be taken to apply retroactively.

6.5 Exclusions (Reg 15)

Policy objective and rationale for intervention

311. Under the MLRs, Regulation 8(2) lists the relevant persons who are in scope of the Regulations. This includes: credit institutions (8(2)(a)), financial institutions (8(2)(b)), auditors, insolvency practitioners, external accountants and tax advisers (8(2)(c)), independent legal professionals (8(2)(d)), trust or company service providers (8(2)(e)), estate agents and letting agents (8(2)(f)), high value dealers (8(2)(g)), and casinos (8(2)(h)). Regulation 8(2) was expanded in January 2020, following the transposition of 5MLD, to include letting agents (8(2)(f)), art market participants (AMPs) (8(2)(i)), cryptoasset exchange providers (8(2)(j)), and custodian wallet providers (8(2)(k)).

312. Regulation 15 of the MLRs excludes certain activities from scope of the regulations. This includes, in Regulation 15(3), where those activities are ‘occasional or very limited’. Regulation 15(3) goes on to list the conditions that must be fulfilled in order for the activity to fall within that description, including (Regulation 15(3)(f)) that the ‘main activity’ of the business does not fall within Regulation 8(2)(a) to (f) or (h), as listed above. As an illustration, if a person gave tax advice (Regulation 8(2)(c)) on an occasional or very limited basis (Regulation 15(3)(f)), this activity would not be in scope of the MLRs, unless that person’s main activity was being a legal professional (Regulation 8(2)(d)).

313. Where Regulation 15(3) lists the conditions that must be met in order for activity carried out by relevant persons to be described as ‘occasional or very limited’, it does not currently include in Regulation 15(3)(f) AMPs, cryptoasset exchange providers or custodian wallet providers. This appears to have been an oversight from when 5MLD was transposed to not include these activities under Regulation 15(3)(f) and creates a potential loophole. Therefore, this measure will close the loophole by amending Regulation 15(3)(f) to include in its reference to relevant persons under Regulation 8(2), AMPs (8(2)(i)), cryptoasset exchange providers (8(2)(j)), and custodian wallet providers (8(2)(k)). High value dealers (HVDs) are also listed in Regulation 8(2) as part of the regulated sector, however an exemption already exists for HVDs elsewhere in Regulation 15 and therefore at this time we do not consider that they should be included under the Regulation 15(3)(f) exemption. This assessment is in line with that of HMRC, who are the AML/CTF supervisor for HVDs.

314. This measure was not included in the SI Consultation Document as it was considered to be uncontentious in nature due to simply closing a loophole in the MLRs. HMRC proposed this measure for inclusion in the SI and alongside the FCA, as the AML/CTF supervisors for AMPs, and cryptoasset exchange providers and custodian wallet providers respectively, they are supportive of this measure and see no unintended

consequences of closing this loophole. The measure is being taken forward through this SI as the first appropriate legislative opportunity to amend the MLRs to close this loophole in the Regulations, following it coming to the attention of HM Treasury.

Description of options considered

- **Option 0 - Do nothing**. If Regulation 15(3)(f) was not amended to align with the list of those regulated under the MLRs, as set out in Regulation 8(2), a loophole would continue to exist in the MLRs, whereby if a regulated person's main business was that of an AMP, cryptoasset exchange provider or custodian wallet provider they could also carry out other regulated activity under the MLRs, such as giving tax advice, on an occasional or very limited basis and this would be exempt from the Regulations.
- **Option 1 (preferred option) - Amending Regulation 15(3)(f) to align with Regulation 8(2)**. This would close a loophole and regularise the position to say that if a person's main activity is an AMP, cryptoasset exchange provider or custodian wallet provider then they (in line with how other relevant persons except HVDs are treated) will still need to adhere to the MLRs in respect of occasional or very limited basis "other kinds of" regulated work they might be doing for their clients.

315. Option 1 is the preferred option. Without amending Regulation 15(3)(f) a loophole persists under the MLRs, which could be exploited for illicit purposes. The government is committed to tackling economic crime and therefore any loopholes, regardless of size, in the MLRs which are brought to the attention of HM Treasury should be addressed.

Monetised and non-monetised costs and benefits

Direct/ indirect costs

316. The monetised costs of implementing this measure are difficult to assess, as it is unclear from engaging with the relevant AML/CTF supervisors how many businesses may be affected by this change. As this measure was not included in the public consultation for this SI, we do not have the benefit of views from across the regulated sector on the estimated costs of implementing this measure.

317. In order to try to address this gap in evidence, we asked stakeholders (HMRC, FCA and OPBAS) what the estimated costs of implementing the measure would be on both relevant persons under the MLRs and AML/CTF supervisors. HMRC noted that the cost to both relevant persons and supervisors would likely be negligible, but it would be extremely difficult to quantify this.

Direct/ indirect benefits

318. The non-monetised benefits of implementing this measure will be closing a loophole in the MLRs, maintaining the government's commitment to tackling economic crime.

Summary

319. We are aware that despite engagement with relevant stakeholders, there is still a gap in our evidence base, however, we will continue to engage with HMRC and the FCA with regard to their supervision of the affected sectors to ensure any disproportionate costs associated with this measure are reviewed at the next opportunity.

	Cost type	Estimate per firm (best estimate)	Estimate for sector (best estimate)

Direct costs		Not quantified	Not quantified
Indirect costs		Not quantified	Not quantified
Direct benefits		Not quantified	Not quantified
Indirect benefits		Not quantified	Not quantified

Impact on small and micro businesses

320. This measure should have a positive impact on smaller businesses who carry out regulated activity, such as that of an AMP, cryptoasset exchange provider or custodian wallet provider, on an occasional or very limited basis, as providing their main business is not also activity which is regulated, they will be exempt from complying with the requirements under the MLRs. This would likely reduce administrative burden and compliance costs.

321. However, if a small business does currently carry out AMP, cryptoasset exchange provider or custodian wallet provider regulated activity as their main business, and also conducts other regulated activity on an occasional or very limited basis, then they are technically exempt from the MLRs for that activity. By making this change we would then be bringing those businesses into scope of the MLRs, and they would have to comply with all of the requirements. This would increase the administrative burden and cost of compliance for those businesses. However, in practice it is likely that these businesses would already be supervised for their main business if it is in scope of the regulated sector, and therefore any additional burden or cost may be minimal.

322. In both cases, presenting evidence to support the potential impacts this measure would have to all businesses, including small and micro businesses, is difficult to provide. As noted above, this measure was not included in the public consultation for this SI, and we therefore do not have the benefit of views from across the regulated sector on the estimated impacts of implementing this measure.

323. In order to address this gap in evidence, we also asked stakeholders what the estimated impacts would be to supervisors and relevant persons of implementing this measure. HMRC noted that within HMRC's supervised population there are only 29 AMPs that are also registered as HVDs, and some of these AMPs have used the Regulation 15 financial activity exemption. The impact noted for HMRC as a supervisor is that they will need to inform the AMP that they are no longer allowed to carry out occasional financial activity, unless also registered for supervision under the appropriate sector, in this case the art sector. However, HMRC have not provided an estimate for the impact this would have on the relevant persons themselves.

324. As with the costs associated with this measure, we are aware that despite engagement with relevant stakeholders, there is still a gap in our evidence base, due to it being extremely difficult to quantify the impacts of this measure. However, we will continue to engage with HMRC and the FCA with regard to their supervision of the affected sectors and should there be disproportionate impacts associated with this measure that come to our attention, we will review the approach at the next opportunity.

Wider impacts

325. It is not expected that this measure will have any wider impacts, including for example on trade, innovation or competition. However, as noted above, finding evidence to support this claim is challenging as this measure was not included in the public

consultation for this SI, and we therefore do not have the benefit of views from across the regulated sector on the estimated impacts of implementing this measure.

326. In order to address this gap in evidence, we also asked stakeholders whether they had views on any wider impacts, such as on trade, innovation and competition, associated with implementing this measure. HMRC noted that by definition the use of the Regulation 15 exemption should be marginal so there should not be any significant impacts on businesses or on wider trade, innovation and competition. HMRC are also not aware of any valid reason for the earlier omission of AMPs from the list of cross-references to Regulation 8(2) in Regulation 15(3)(f).

327. The FCA have also confirmed that they do not currently have any casework on issues in this area of anyone in their supervised populations using Regulation 15 as an excuse for not registering for supervision, and therefore any impacts associated with this measure are unknown.

328. As with the costs associated with this measure and impacts on small and micro businesses, we are aware that despite engagement with relevant stakeholders, there is still a gap in our evidence base. We will continue to bear this in mind when reviewing the MLRs, as we are committed to doing on a regular basis, and through engaging with HMRC and the FCA on their supervision of the affected sectors. Should evidence come to light of any significant wider impacts or heightened ML/TF risk associated with this measure, we will review our approach at the next opportunity.

VI. Impact on small and micro businesses

329. The MLRs apply to all those that are in the AML/CTF regulated sector regardless of the size of the business. Data from our 2020-2021 annual returns suggests that about 26,057 of the estimated 101,211 entities regulated under the MLRs are sole practitioners, the majority of which are legal and accountancy professionals. This makes up around 26% of the regulated sector.

330. As the section above has outlined, the implementation of the proposed measures which make up this SI is unlikely to cause a significantly disproportionate burden on small and micro businesses regulated under the MLRs. By testing the measures with industry and supervisors through the consultation, we have been able to provide a better assessment of the impact on businesses, in particular SMBs.

331. However, it is clear from the responses to the consultation that across many of the measures in the SI we are lacking evidence with regard to the impacts on SMBs. In order to address this gap, we engaged bilaterally with key stakeholders, namely HMRC, the FCA and OPBAS (for reasons previously stated) to ask for further views on the impacts of the measures that make up this SI.

332. Despite efforts to bolster our evidence base, we are aware that gaps in substantial evidence to support claims persist. A potential reason for this lack of evidence may be due to the absence of more granular data held by supervisors on the sizes of businesses that they supervise, which in the longer-term may be improved through the implementation of measures in this SI, such as on SARs and information-sharing. However, HM Treasury is committed to reviewing the MLRs on a regular basis and therefore should evidence come to light of disproportionate impacts associated with the implementation of the measures in this SI, we will review our approach at the next opportunity.

333. No mitigating factors have been included for SMBs, as although all sizes of firm are regulated under the MLRs, due to the risk-based approach of complying with the requirements under the MLRs, which is a central part of the application of the Regulations to regulated firms, the cost to and impact on regulated SMBs of complying with the measures in this SI is likely to be lower than for other regulated firms, as not all changes will apply to SMBs. However, due to the lack of evidence to support our assumptions, we cannot meaningfully assess the impact of the implementation of the measures in this SI on regulated SMBs at this stage. Reviewing the MLRs on a regular basis will help to address this.

VII. Conclusion

334. ML and TF are serious threats to the security and prosperity of the UK. They impact society as a whole, including citizens, businesses and the government. The government is committed to protecting the integrity of our financial system and ensuring the UK remains and attractive place to carry out business and invest. This commitment to fight ML/TF has also been restated through the government's Economic Crime Plan.

335. The last FATF MER of the UK, in 2018, found that the UK had one of the most robust systems for combating ML/TF. However, criminals are continuously adapting their methods and exploiting new technological developments and we need to continue to ensure that our AML/CTF system evolves to meet these emerging threats.

336. The proposed amendments to the MLRs represent the government's continued commitment to combatting these emerging threats, as well as to meeting the international standards set by FATF and ensuring AML/CTF supervisors have all the necessary powers to carry out their supervisory functions. By continuing to review the effectiveness of the MLRs, the government can ensure that the Regulations remain proportionate to the risks posed, whilst clamping down on illicit flows and minimising burdens on legitimate businesses.

VIII. Monitoring and Evaluation

337. As noted in the above section on monetised and non-monetised costs and benefits of each measure, we have only been able to quantify the costs and benefits of implementing the measures in the SI for a few of the measures. These estimated costs and benefits have largely been based on multiple assumptions from other information available in the AML/CTF landscape, meaning the overall estimate of the EANDCB is somewhat limited in use. This is particularly the case for the measure regarding TCSPs and business arrangements, as the approximations are most likely an overestimation, and this has therefore skewed the overall figures for this impact assessment. However, we will continue to keep the operation of the changes under review.

338. HM Treasury is required to conduct a review of the MLRs at intervals of no less than 5 years, to ensure the requirements set out remain appropriate, proportionate and effective, and publish a report setting out the review's findings. The first of these reviews is currently being undertaken by HM Treasury and will publish its initial findings and next steps in June 2022. Alongside the consultation for this SI, HMT also published a call for evidence to inform the review of the UK's AML/CTF regulatory and supervisory regimes (the MLRs review). The MLRs review will assess the overall effectiveness of the regimes, their extent (i.e., the sectors in scope as relevant entities), and the application of particular elements of the Regulations to ensure they are operating as intended. It will also consider the structure of the supervisory regime, and the work of OPBAS to improve effectiveness and consistency of Professional Body supervision.

339. Whether the implementation of these measures has met the government's intended objectives will be monitored and evaluated through the next NRA of ML/TF, which is published by HM Treasury. The NRA monitors whether new risks have been brought into the system and will therefore provide a comprehensive assessment of ML/TF in the UK.

340. The MLRs review, for which a report will be published in June 2022, will assess if the MLRs are functioning as intended, however given the timing for laying this SI and publishing a report on the findings of the MLRs review, the review will not be able to look specifically at these measures. The next comprehensive review of the MLRs is due to be conducted in 2027, and these measures will be assessed as part of that review. HM Treasury also engages frequently with stakeholders in both the public and private sectors to understand how the MLRs are being applied and actively works to resolve any issues.