Title: Money Laundering Regulations 2007 **IA No:** **Lead department or agency:** HM Treasury **Other departments or agencies:** HMRC, OFT	Impact Assessment (IA) **Date:** 20 June 2012 **Stage:** Final **Source of intervention:** EUROPEAN **Type of measure:** Secondary legislation **Contact for enquiries**: David Lewis david.lewis@hmtreasury.gsi.gov.uk

Summary: Intervention and Options

RPC Opinion: Awaiting Scrutiny

Cost of Preferred (or more likely) Option				
Total Net Present Value (£m)	**Business Net Present Value (£m)**	**Net cost to business per year (EANCB on 2009 prices)**	**In scope of One-In, One-out?**	**Measure qualifies as In/Out/zero net cost**
29.71	28.58	-3.13	Yes	Out

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

The Money Laundering Regulations 2007 (the Regulations) transpose part of the EU Third Money Laundering Directive 2006 (EU Directive) in the UK. The EU Directive reflects global standards agreed by the 36 member countries of the Financial Action Task Force (FATF). The UK, as a member of FATF, plays a leading role in developing these standards and is committed to implementing them fully. While the Government review of the Regulations published in 2011 found implementation was generally effective and proportionate to the risks of money laundering and terrorist financing, it also identified businesses that did not need to be subject to the Regulations, others that did, and practical difficulties for supervisors of ensuring compliance. Changes to the Regulations are required to address some of these specific issues.

What are the policy objectives and the intended effects?

The aim of the Regulations is protect the UK and global financial system, of which the UK is an integral part, from criminal and terrorist finances through effective and proportionate compliance with the global standards and EU Directive. The EU Directive is a minimum harmonisation directive intended to allow Member States to take additional measures commensurate with the risks they face. The Regulations and these proposals do not go beyond the minimum requirements of the EU Directive. The proposals will ensure that only businesses identified in the EU Directive and global standards as high risk are subject to regulation and that supervisors can ensure compliance. The Regulations and the supervision of compliance with them by businesses are risk-based. They allow businesses flexibility in the measures they take to protect themselves from these risks and discourage a tick-box approach. The UK has interpreted the EU Directive to allow for the maximum degree of self-regulation, designating professional bodies as supervisors for most regulated sectors. The intended effect of this approach and the changes proposed are to focus limited resources on the highest areas of risk and minimise unnecessary burdens on businesses.

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

The options identified in the Government review were not limited to changes to the Regulations and the majority of the changes sought are being pursued through dialogue with regulated businesses, industry and Government supervisors, the EU and FATF. The Government has sought to minimise changes to the Regulations in order to minimise the impact on businesses. It is only proposing to make changes that either reduce burdens or address minor but significant vulnerabilities by clarifying the scope of the Regulations and providing legal clarity for supervisors to ensure compliance. Wherever possible alternative solutions to changing the Regulations have been identified. These include working with industry to improve guidance for businesses and working with the industry and Government supervisors to ensure a common sense and risk-based approach to compliance. The Government is leading work as a member of FATF and the EU to ensure Governments and businesses do not take a tick-box approach to compliance that they assess and understand the different risks they face and take measures commensurate with these. The Government is resisting calls for prescriptive requirements on businesses that may not be effective or proportionate in the UK. Changes to the Regulations have only been proposed where no alternative has been identified and where these proposals have the general support of regulated businesses.

The proposals in this assessment and the costs and benefits provided have been subject to consultation and reflect the responses received from a wide range of stakeholders. Industry representatives have consistently told the Government that it is not possible to provide estimates of costs (and therefore estimate savings from the reduction of regulatory burdens) as the systems and controls they use for complying with the Regulations are also used for a number of other purposes. This includes to identify and report suspicious activity under the Proceeds of Crime Act 2002 as part of their wider anti-money laundering and counter-terrorist financing measures; for complying with UN and EU sanctions; to protect themselves and their customers from fraud and for their own commercial due diligence. The combined costs vary widely on a case by case basis and according to the risks of different products, channels, countries, customers and third party relationships.

(Following revised guidance on the method for calculations, some of the numbers in this assessment differ from the pre-consultation stage assessment.)

Will the policy be reviewed? Yes. **If applicable, set review date:** The Regulations will be reviewed and updated to comply with revisions to the EU Directive following the publication of new global standards in February 2012 and an EC review of implementation by Member States. The EC published an Application Report in April 2012 and intends to publish proposals in October 2012 for negotiation by Member States in 2012 and 2013. The Government review is informing these proposals.

Does implementation go beyond minimum EU requirements?			No		
Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.	**Micro** Yes	**< 20** Yes	**Small** Yes	**Medium** Yes	**Large** Yes
What is the CO_2 equivalent change in greenhouse gas emissions? (Million tonnes CO_2 equivalent) N/A			**Traded:** N/A	**Non-traded:** N/A	

I have read the Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) that the benefits justify the costs.

Signed by the responsible Minister James Lawson Date: 20/06/2012

Summary Table of Impact of All Measures

Measure	Total Net Present Value (£m)	Business Net Present Value (£m)	Net cost to business per year (EANCB on 2009 prices)	In scope of One-In, One-out?	Measure qualifies as In/Out/zero net cost
Extending use of Reliance	16.63	16.63	-1.82	Yes	Out
Exempting non-lending credit institutions	14.22	14.22	-1.56	Yes	Out
Regulating overseas estate agents	-2.26	-2.26	0.25	No	
Amending the Fit and proper test	-0.01	-0.01	0	No	
Introducing a Right to appeal	0	0	0	No	
Regulatory enforcement measures	1.13	0	0	No	
TOTAL	29.71	28.58	-3.13	Yes	Out

The first two measures qualify as Outs. The remaining measures are out of scope of one in one out (OIOO) as they make changes to the regulations to comply with the EU Directive or are required to ensure compliance with the regulations.

The EU Directive allows Member States to decide which firms can be relied upon by others to reduce duplication of customer identity checks. In transposing the EU Directive the UK did not make full use of this measure and therefore 'gold-plated' the EU Directive. The Government proposes to apply this derogation fully. For this reason the change proposed qualifies as an 'out' under Government guidelines.

The EU Directive requires businesses that lend money to be regulated but does not require Member States to regulate businesses that allow customers time to pay for goods and services. These businesses were inadvertently regulated by reference to the Consumer Credit Act in the regulations meaning that the UK gold-plated the EU Directive. The Government proposes to amend the regulations to exempt these businesses. For this reason the change proposed qualifies as an 'out' under Government guidelines.

The remaining changes are out of scope of OIOO as they are required to address deficiencies in the regulations and to comply with the EU Directive. In all cases the review of the regulations and the consultation provided evidence demonstrating the need for these changes.

The Fit and Proper Test, Right to Appeal and Regulatory Enforcement Measures are out of scope due as they are required to enforce compliance with the Regulations.

Summary: Analysis & Evidence

Extending use of reliance

The Government will extend the use of reliance, a mechanism by which firms can rely on the customer due diligence (CDD) carried out by others, in order to minimise the duplication of checks by the regulated sector and the burden it places upon customers. The Government will allow firms to rely on CDD carried out by firms and practitioners supervised by professional bodies contained in Part 2 of Schedule 3 of the Money Laundering Regulations 2007 and OFT-supervised debt purchasers to rely on CDD carried out by non-FSA authorised debt sellers. The evidence base discusses these two extensions of reliance separately, and only the second has monetised benefits (neither have monetised costs).

FULL ECONOMIC ASSESSMENT

Price Base Year2011	PV Base Year2011	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: 16.63	**High:** 166.33	**Best Estimate:** 16.63

COSTS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	**0**	0	0	**0**
High	0		0	**0**
Best Estimate	0		0	**0**

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

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

BENEFITS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	**0**	0	2	16.6
High	**0**		20	**166.3**
Best Estimate	0		2	**16.6**

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

Extension of reliance for debt purchasers: 46 OFT supervised debt purchasers that handle over 20 million accounts a year could save a minimum of £1 on basic automated CDD checks with the extension of reliance, saving up to £20 million if reliance was used in all cases in future. The Credit Services Association (CSA) estimate that a conservative estimate of the benefits would be £2 million per year.

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

Regulated businesses will be able to rely on 12,000 additional firms and practitioners.

The OFT and the Credit Services Association (CSA) report frustration from customers being chased for CDD purposes years after their debt was first issued. The CSA reports operational delays for debt purchasers when customers fail to provide identification documents, without which the account cannot be used, and the cost of the diminishing asset which has been purchased during this time. This change will reduce customer frustration and save businesses money.

Key assumptions/sensitivities/risks	3.5%

Responses to the consultation said that it was not possible to identify the cost saving from extending the use of reliance because as the costs of compliance cannot be reliably estimated, the number of businesses and volume of trade that will benefit from it is uncertain. The CSA estimates that many businesses will benefit from this change but it cannot estimate how many. It is unlikely that trading volume will fall significantly in future years. The CSA estimate of £2m p.a. is used as the best estimate as well as the low estimate as no information is available on which to estimate the number of businesses or volume of trade which the measure will benefit.

BUSINESS ASSESSMENT

Direct impact on business (Equivalent Annual) £m:			**In scope of OIOO?**	**Measure qualifies as**
Costs: 0	**Benefits: 1.8**	**Net** 1.8	Yes	Out

Exempting non-lending credit institutions

Description: Only businesses that lend and advance money should be subject to the Regulations. The Regulations will be amended to exempt credit institutions that offer time to pay for non-refundable services, such as annual membership for health and golf clubs, dental work etc. Such businesses were subject to the Regulations in 2007 by reference to businesses required to register with the OFT under the Consumer Credit Act. The Government does not consider that such businesses present a high risk of money laundering and terrorist financing or that the global standards and EU Directive require such businesses to be regulated.

FULL ECONOMIC ASSESSMENT

Price Base Year 2011	**PV Base Year** 2011	**Time Period Years** 10	**Net Benefit (Present Value (PV)) (£m)**		
			Low: 4.74	**High: 23.7**	**Best Estimate:** 14.22

COSTS (£m)	**Total Transition**	**Average Annual**	**Total Cost**
Low	**0**	0	**0**
High	0	0	**0**
Best Estimate	0	0	**0**

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

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

The affected group will be the Consumer Credit Financial Institutions (CCFIs) which do not lend monies but allow for time to pay for non-refundable services for up to 12 months. These businesses will become exempt from the Regulations. Exempt businesses will no longer incur the annual anti-money laundering supervisory fees or the costs of compliance with the Regulations including customer due diligence, record keeping and staff training.

CCFIs are not required to identify themselves as such when registering with the OFT so the OFT has no means of providing a reliable estimate of the number of these businesses. As an indicative figure, the OFT consider that 2850 businesses may no longer be subject to the Regulations. The OFT estimates the annual cost of compliance to range from £200 to £1000 due to varying size of CCFIs. Using this estimate, the change will save businesses between £570,000 and £2,850,000 annually. Responses to the consultation have not challenged or provided alternative views of either the number of businesses affected or the costs of compliance. For the purpose of this assessment the middle of the range has been used, i.e. £1,710,000.

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

The Government requires supervision of compliance by businesses to be self-funding. While this will entail a loss of revenue for the supervisor of the affected group, the Office of Fair Trading (OFT), this will be offset by the reduced number of businesses to be supervised.

BENEFITS (£m)	**Total Transition** (Constant Price) Years	**Average Annual** (excl. Transition) (Constant Price)	**Total Benefit** (Present Value)
Low	**0**	0.6	**4.7**

High	**0**		2.9	**23.7**
Best Estimate	0		1.7	**14.2**

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

The OFT estimates that there are 7,000-12,000 businesses which should have registered under the current Regulations but which have yet to do so. These businesses will no longer be required to register. The measure supports the Government's commitment to minimise regulatory burdens on businesses.

Key assumptions/sensitivities/risks	**Discount rate (%)**	3.5%

BUSINESS ASSESSMENT

Direct impact on business (Equivalent Annual) £m:			**In scope of OIOO?**	**Measure qualifies as**
Costs: 0	**Benefits:** 1.6	**Net:** 1.6	Yes	Out

Regulating estate agents for overseas properties

Description: Global standards and the EU Directive require the regulation of estate agents as businesses at high risk of money laundering. Estate agents selling overseas properties will be regulated at present if they also sell properties in the UK. The change will ensure that estate agents that only sell properties overseas are also regulated. Estate agents dealing exclusively in overseas properties were not subject to the Regulations in 2007 by reference to the Estate Agency Act 1979. UK Law Enforcement Agencies routinely identify UK criminals using the proceeds of crime to purchase property overseas and the global standards and EU Directive does not provide an exemption for these businesses. The Regulations will be amended accordingly.

FULL ECONOMIC ASSESSMENT

Price Base Year 2011	**PV Base Year 2011**	**Time Period Years** 10	**Net Benefit (Present Value (PV)) (£m)**		
			Low: -2.26	**High: -1.23**	**Best Estimate:** -2.26

COSTS (£m)	**Total Transition** 1 Year		**Average Annual** 10 year	**Total Cost** (Present Value)
Low	**0.2**		0.1	**1.2**
High	0.4		0.2	**2.3**
Best Estimate	0.4		0.2	**2.3**

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

The OFT estimates that a maximum of 200 businesses could be affected by this change. Responses to the consultation did not challenge this estimate or provide any information for it to be refined or otherwise qualified.

Registration charges with the OFT are £74 per premises capped at 20 premises, and annual fees are £53 per premises, capped at 20 premises. Estate agents have, on average, 1.9 premises.

Affected businesses will be required to introduce and maintain procedures to comply with the requirements of the Regulations such as customer due diligence, staff training and ongoing monitoring. Industry bodies have consistently and repeatedly told the Government that it is not possible to estimate the costs of compliance.

For the purpose of this assessment, assumptions for the cost of compliance have been made and are provided in the evidence base. Responses to the consultation did not challenge these estimates or provide further information for alternative estimates to be used.

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

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	**0**	0	**0**
High	**0**	0	**0**
Best Estimate	0	0	**0**

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

The Government requires supervision of compliance to be self-funding. While the OFT will receive additional fees as a result of this change, this will be offset by the costs of supervision.

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

This change will reduce the risk of money laundering through helping to prevent and detect UK criminals using the proceeds of crime to purchase property overseas. It will ensure the UK complies with global standards and the EU Directive. All responses to the consultation supported this proposal, including estate agents and other businesses, industry bodies, supervisors and law enforcement agencies who confirm that real estate continue to be one asset continuously used by criminals to launder money and that "complex or overseas property portfolio is often encountered as a way to try and frustrate asset recovery in the UK".

Key assumptions/sensitivities/risks **Discount rate (%)** 3.5%

Possible changes to OFT duties would not have an impact on the outcome of this consultation. Any new supervisory authority will be responsible for complying with the Government changes to the Regulations.

BUSINESS ASSESSMENT

Direct impact on business (Equivalent Annual) £m:			In scope of OIOO?	Measure qualifies as
Costs: 0.2	**Benefits: 0**	**Net:** - 0.2	No	

Amending the fit and proper test

Description: The EU Directive requires that individuals who own or direct money service businesses (MSBs) are fit and proper. The Regulations will be amended to provide greater clarity for HMRC to apply the fit and proper test in a manner consistent with the intention of the global standards and the EU Directive and the fit and proper test under by the FSA under the Payment Services Regulations. HMRC's application of the fit and proper test will be improved to help ensure that "unfit" or "improper" individuals are not controlling businesses at high risk of money laundering and terrorist financing.

Price Base Year 2011	PV Base Year 2011	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low:	**High:**	**Best Estimate: -0.01**

COSTS (£m)	Total Transition		Average Annual	Total Cost (Present Value)
Low	**0**		**0**	**0**
High	**0**	0	**0**	**0**
Best Estimate	0		0	**0.1**

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

The fit and proper test costs businesses £50 per individual. As a result of this change, HMRC will review 223 persons that have passed the fit and proper test while pending criminal prosecution. Where persons are no longer considered fit and proper to control a money service business, those businesses will need to apply to register alternative persons or cease to operate. The costs of 223 applications would be £11,150. The costs to HMRC of undertaking the test are covered by the £50 fee to applicants.

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

BENEFITS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	**0**		0	**0**
High	**0**	0	0	**0**
Best Estimate	0		0	**0**

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

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

Individuals that are not considered by HMRC to be fit and proper will be not be able to own or direct money service businesses. These businesses are at high risk from money laundering, terrorist financing and proliferation financing. This change will ensure that these risks are properly mitigated as required by the EU Directive and global standards.

Key assumptions/sensitivities/risks	Discount rate (%)	N/A

BUSINESS ASSESSMENT

Direct impact on business (Equivalent Annual) £m:			In scope of OIOO?	Measure qualifies as
Costs: 0	**Benefits: 0**	**Net: 0**	No	

Introducing a right to appeal for the fit and proper test

Description: The Government will clarify the right to appeal, to ensure that individuals have easy and economic access to a fair hearing if they believe they have been unfairly classified as unfit or improper by HMRC.

Price Base Year 2011	PV Base Year 2011	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: 0	**High: 0**	**Best Estimate: 0**

COSTS (£m)	Total Transition		Average Annual	Total Cost (Present Value)
Low	**0**		**0**	**0**
High	**0**	0	**0**	**0**
Best Estimate	0		0	**0**

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

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

HMRC have stated that previous appeals have incurred no costs to businesses.
Since 2007 HMRC have removed 23 people's fit and proper status. 3 of these have been appealed. HMRC have confirmed that they will not increase supervisory fees to cover any additional costs incurred.

BENEFITS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	**0**		0	**0**
High	**0**	0	0	**0**
Best Estimate	0		0	**0**

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

Other key non-monetised benefits by 'main affected groups'		
The benefits of a right to appeal are to strengthen individuals' rights in a situation where they feel they have been inappropriately classified by HMRC as unfit or improper.		
Key assumptions/sensitivities/risks	**Discount rate (%)**	N/A

BUSINESS ASSESSMENT

Direct impact on business (Equivalent Annual) £m:			**In scope of OIOO?**	**Measure qualifies as**
Costs: 0	**Benefits: 0**	**Net: 0**	No	

Regulatory enforcement measures

Description: these measures support OFT and HMRC as supervisors in taking action to ensure compliance with the Regulations, including being able to levy appropriate fines for failure to provide information or pay fees, and to enable them to conduct enquiries with persons who are not registered but who they consider should be.

Price Base Year 2011	**PV Base Year** 2011	**Time Period Years 10**	**Net Benefit (Present Value (PV)) (£m)**		
			Low: 0	**High: 0**	**Best Estimate: 1.13**

COSTS (£m)	**Total Transition** (Constant Price)	Years	**Average Annual** (excl. Transition) (Constant Price)	**Total Cost** (Present Value)
Low	**0**	0	0	**0**
High	**0**		0	**0**
Best Estimate	0		0	**0**

Description and scale of key monetised costs by 'main affected groups'
Other key non-monetised costs by 'main affected groups'
Non-compliant businesses will have to pay fines for failing to comply with the regulations. These are non-monetised as this impact assessment looks at costs and benefits to compliant, rather than non-compliant, businesses.

BENEFITS (£m)	**Total Transition** (Constant Price)	Years	**Average Annual** (excl. Transition) (Constant Price)	**Total Benefit** (Present Value)
Low	**0**	0	0	**0**
High	**0**		0	**0**
Best Estimate	0		0.1	**1.1**

Description and scale of key monetised benefits by 'main affected groups'
These measures will help to ensure businesses pay their fees, and OFT estimates that this could result in a 10% increase in fees paid. For OFT this could amount to approximately £100,000. For HMRC, debt management procedures are currently employed for businesses which do not pay their fees. HMRC spent £36,000 on this last year, which would be a saving to them if the penalty for non-payment of fees was introduced. They would not save anything on additional fees paid as these are currently usually recovered by debt management.
Description and scale of key non-monetised benefits. HMRC and OFT will be able to take appropriate action to ensure compliance with the regulations, thereby reducing the risk of businesses being used for money laundering and terrorist finance.

Key assumptions/sensitivities/risks	**Discount rate (%)**	3.5%

BUSINESS ASSESSMENT

Direct impact on business (Equivalent Annual) £m:			In scope of OIOO?	Measure qualifies as
Costs: 0	**Benefits: 0**	**Net: 0**	No	

PROBLEM UNDER CONSIDERATION – GENERAL BACKGROUND

The Money Laundering Regulations 2007 (the 'Regulations') transpose part of the EU Third Money Laundering Directive 2006 (the 'EU Directive) in the UK. The Government undertook an extensive review of the Regulations and published the outcome of this in June 2011. While the review found that the implementation of the Regulations was broadly effective and proportionate in complying with global standards and the EU Directive, it identified opportunities for improvement, including but not limited to changes to the Regulations. This document assesses the impact of these proposals. It updates the 2011 pre-consultation impact assessment HMT-0846 and will be published in conjunction with the Government Response to the Consultation.

Wherever possible alternative solutions to changes to the Regulations have and are being pursued. These include working with the global standard-setting body, the Financial Action Task Force (FATF) to make standards more risk-based and to resist proposals for greater prescriptive requirements on businesses that the UK considers not to be effective or to be disproportionate the risks. The UK has been successful in this approach with the new global standards published in February 2012 reflecting these objectives. The review identified opportunities to seek changes to the EU Directive and the UK is working with the European Commission and other Member States to pursue these. They include allowing self-regulation for estate agents and for the revision of the EU Directive to be compliant with the new global standards that are more risk-based. Other opportunities were identified to change and improve industry guidance written by industry and approved by the Treasury and for a change of practice by supervisors to ensure their approach is sufficiently risk-based and does not encourage an unthinking tick box approach to regulatory compliance by businesses. Changes to the Regulations have only been proposed where no alternative has been identified and where these proposals have the general support of regulated businesses as well as Government and UK Law Enforcement Agencies.

This Impact Assessment provides the estimated costs and benefits of changes to the Money Laundering Regulations 2007 (The 'Regulations') as a result of a post-implementation review and consultation. The Government response to the post-implementation review was published in June 2011 and contained a consultation on specific proposals to change the Regulations. The Government response to the Review and Consultation can be found at:

http://www.hm-treasury.gov.uk/d/consult_money_launder_regs2007_gov_response.pdf

In November 2011, the Government published a Summary of Responses to the Consultation which is available at

http://www.hm-treasury.gov.uk/d/condoc_responses_changes_money_laundering_regulations2007.pdf

This document should be read in conjunction with the Government Response to the Consultation on Proposed Changes to the Money Laundering Regulations 2007.

As a result of the consultation three proposals have been discounted. The reasons for this are set out in this section. The three proposals discounted are:

1. **Partly or wholly removing criminal sanctions for breaches of the regulations**
2. **Introducing a de-minimis exclusion based on the size of the business**
3. **Creating new civil penalties for businesses misrepresenting their relationships with HMRC**

The remainder of this section provides further detail on the changes to Regulations the Government intends to make. The order used is the same as in the Government response in order to facilitate cross-referencing.

4. **Extending the use of reliance – removing the distinction between Part 1 and Part 2 bodies**
5. **Extending the use of reliance - allowing OFT-supervised debt purchasers to rely on Customer Due Diligence (CDD) previously performed by debt seller.**
6. **Exempting non-lending credit institutions**
7. **Regulating estate agents for overseas properties**
8. **Clarifying the definition of safe custody services**

9. **Clarifying the application of the Fit and Proper Test by HMRC**
10. **Introducing an explicit right to appeal for the HMRC Fit and Proper Test**
11. **Clarifying supervisory powers -** given that they seek to achieve the same objective, measures to support supervisors in taking action to ensure compliance with the Regulations are grouped under one similar heading and their impact assessed as a whole.

GOVERNMENT DECISIONS and IMPACT of NEW MEASURES

1. Extending use of reliance

Description: The Government will extend the use of reliance, a mechanism by which firms can rely on the customer due diligence (CDD) carried out by others, in order to minimise the duplication of checks by the regulated sector and the burden it places upon customers. The Government will allow firms to rely on CDD carried out by firms and practitioners supervised by professional bodies contained in Part 2 of Schedule 3 of the Money Laundering Regulations 2007 and OFT-supervised debt purchasers to rely on CDD carried out by non-FSA authorised debt sellers. The evidence base discusses these two extensions of reliance separately, and only the second has monetised benefits (neither have monetised costs).

OIOO

The EU Directive allows Member States to decide which firms can be relied upon by others to reduce duplication of customer identity checks. In transposing the EU Directive the UK did not make full use of this measure and therefore 'gold-plated' the EU Directive. The Government proposes to apply this derogation fully. For this reason the change proposed qualifies as an 'out' under Government guidelines.

a. Removing the distinction between Part 1 and Part 2 bodies

Problem under consideration

The Regulations allow regulated businesses to rely on the customer due diligence carried out by certain regulated third parties, provided certain conditions are met. The purpose this is to reduce the need for repetitive checks on the same customer.

For the checks by businesses to be relied upon by other businesses they must be supervised by certain UK professional bodies. The list of professional body supervisors is currently divided into two parts for this purpose and only businesses supervised by those in the first part can be relied upon currently. Those supervisors introduced in 2007 are in the second part of the list and the businesses they supervise cannot be relied on at present.

Government decision

The Government will remove the distinction between Part 1 and Part 2 supervisors to allow all supervised businesses to be relied on.

Costs

There are no costs associated with this measure.

Non-monetised benefits

The benefits for this measure are only non-monetised, and therefore do not contribute to the figures for extending reliance in the summary tables.

Savings will accrue to firms that can rely upon those businesses currently in Part 2, and to their customers. Savings are contingent on the extent of the use of reliance as a result and the costs otherwise incurred by relying businesses and their customers if reliance were not in place. Businesses have been consistently unable to provide an indication of these costs, particularly as the systems and controls they use for this purpose also serve other purposes including compliance with UN and EU sanctions, anti-fraud measures and their own due diligence for commercial reasons.

Although there is agreement that the change will save both businesses' and customers' time, no reliable figures have been provided, either in the review of the Regulations or the subsequent consultation.

Supervisors estimated in the consultation that customer due diligence (CDD) can cost anywhere from £20 to £150 depending on the extent and nature of the checks.

10 professional bodies are listed as Part 2 Bodies. Based on information from Supervisors in 2011, active membership is estimated as follows:

- Association of Accounting Technicians - supervises 187 firms and 2,844 individual members
- Association of International Accountants - supervises 267 individuals
- Chartered Institute of Management Accountants– supervises approximately 1,400 members
- Chartered Institute of Public Finance and Accountancy - supervises 341 individual members
- Chartered Institute of Taxation – supervises 651 firms
- Faculty Office of the Archbishop of Canterbury – supervises approximately 170 practitioners
- Insolvency Practitioners Association – supervises 505 licensed practitioners
- Institute of Certified Bookkeepers- supervises 3,587 practices
- Institute of Financial Accountants – supervises approximately 1,800 members and affiliates.

The total number of new businesses/practitioners businesses which firms will now be able to rely upon is estimated to be around **12,000.**

Risk and assumptions

In 2007 the Government considered that newly appointed supervisors were required to identify the businesses to be supervised, raise awareness with these businesses of their obligations and allow these businesses sufficient time to put in place effective systems and controls to comply with the Regulations.

These businesses have had sufficient time to do this and the supervisors newly appointed in 2007 have had sufficient opportunity to develop an effective approach to ensuring compliance with the Regulations by these businesses.

Implementation

The Regulations will be amended to be effective from 1st October 2012.

b. Extending use of reliance - allowing OFT-supervised debt purchasers to rely on customer due diligence (CDD) previously performed by debt sellers

Problem under Consideration

Debt purchasers may seek to rely on the CDD checks carried out by the initial lenders from which they buy debts. Currently these businesses can only legally rely on CDD carried out by an FSA-authorised firm such as a bank. However, they also purchase debt from finance companies that are not FSA-authorised firms and in these circumstances the debt purchaser must carry out its own CDD, duplicating the checks already carried out by the seller. Debt purchasers find it very difficult to carry out CDD on their customers as debtors often refuse requests to confirm their identity. There is no incentive for the customer to provide identification in these circumstances.

The Government proposed and consulted on making the use of reliance available for OFT-supervised debt purchasers where the normal reliance conditions cannot otherwise be met.

Government Decision

The Government will allow debt purchasers to rely on CDD carried out by the seller.

Costs

There are no costs associated with this measure.

Monetised Benefits

46 OFT-supervised debt purchasers are registered with the Credit Services Association (CSA - the National Association in the UK for companies active in relation to unpaid credit accounts; debt recovery agencies, tracing and allied professional services). They account for 100% of the debt purchaser market.

The average number of accounts they purchased from February 2010 to September 2011 (over 19 months) is 31 million individual accounts. Assuming an even spread this equates to approximately 20 million accounts over a 12 month period. According to the CSA the most basic form of CDD check amounts to around £1 per individual account. A more sophisticated check could cost more. This assessment is based on a saving of £1 per account to minimise the possibility of over-estimating the savings that could result from this measure.

High estimate: 20m accounts at £1 per account = £20m per year

16,971,453 accounts were traded in 2011-12. The total saving from the use of reliance could be up to £16,971,453. Some debts are sold in bundles (portfolios with more than one individual on the account) thereby reducing the number of checks required. The CSA estimate that savings will be at least £2 million per year.

Low estimate: 2m accounts at £1 per account = £2m per year

Best estimate: The CSA estimate of £2m p.a. is used as the best as well as the low estimate as no information is available on which to estimate the number of businesses or volume of trade which the measure will benefit. The CSA estimates that at least 2m accounts traded will use reliance, and therefore the measure will have a benefit of at least a £2m saving. Although the saving could be higher, we have also used £2m as a best estimate to be conservative.

NB. the pre-consultation impact assessment did not include estimates. This estimate is based on information received from industry (CSA) following the consultation.

Non-Monetised Benefits

Customers will not be subject to requests from debt-purchasers to confirm/prove their identity. CSA reports cases of significant frustration when debtors are being chased four years from their initial loan for customer due diligence purposes. In addition, the CSA reports operational delays for debt purchasers when customers fail to provide identification documents, without which the account cannot be used, and the cost of the diminishing asset which has been purchased during this time. Without a great deal more time and investment, they are unable to provide figures for these cost savings.

The CSA represents 100% of the debt purchasing market supervised by OFT and strongly supports the measure. It is of the view that reliance will be widely used by the sector with significant savings generated as a result.

Risk and Assumption

The CSA issue guidance on good practice that includes the recommendation for purchasers to confirm in writing that they have carried out CDD or had sight and confirmation of CDD by the previous seller
The OFT have confirmed they will update their guidance to reflect this and help mitigate the risks that UK Law Enforcement have identified that can result from extended chains of buying and selling debts.

Wider impacts

The Department for Business, Innovation and Skills (BIS) have consulted on changes to the OFT. These are not expected before April 2013. This measure will be part of the ‘package’ of requirements and supervisory duties that OFT may have to transfer to a new supervisory authority at a later date.

Implementation

The Regulations will be amended to be effective from 1st October 2012. The OFT will update its guidance to reflect the change and the introduction of best practice.

2. Exempting non-lending credit institutions

Description: Only businesses that lend and advance money should be subject to the Regulations. The Regulations will be amended to exempt credit institutions that offer time to pay for non-refundable services, such as annual membership for health and golf clubs, dental work etc. Such businesses were subject to the Regulations in 2007 by reference to businesses required to register with the OFT under the Consumer Credit Act. The Government does not consider that such businesses present a high risk of money laundering and terrorist financing or that the global standards and EU Directive require such businesses to be regulated.

OIOO

The EU Directive requires businesses that lend money to be regulated but does not require Member States to regulate businesses that allow customers time to pay for goods and services. These businesses were inadvertently regulated by reference to the Consumer Credit Act in the regulations meaning that the UK gold-plated the EU Directive. The Government proposes to amend the regulations to exempt these businesses. For this reason the change proposed qualifies as an 'out' under Government guidelines.

Problem under consideration

Consumer credit financial institutions (CCFIs) are subject to the Regulations and supervised for this purpose by the Office of Fair Trading. CCFIs are defined by reference to businesses with a consumer credit licence, although many of these will fall to FSA or HMRC supervision in practice. The arrangements for the issue of credit licences are complex. Accordingly some organisations hold Category A licences to provide consumer credit because they allow time to pay rather than because they make loans (advance monies). As a result, organisations like sports clubs or gyms that allow users to pay annual subscriptions in monthly instalments may have registered with the OFT under the Regulations. These businesses are referred to in this assessment as 'non-lending credit institutions'. The intention of the global standards and EU Directive is to regulate businesses that make loans, not these businesses. In addition to being identified in the review of the Regulations this problem was also raised on the 'Your Freedom' website in 2010.

Government decision

There was general support from the consultation for this proposal. The Government will amend the Regulations to exempt businesses which do not advance monies but offer time to pay for non-refundable services for up to a year.

Risk and Assumptions

Whilst there is a general consensus over the low risk they represent, for such institutions law enforcement has highlighted previous cases of criminals using certain types of non-lending credit institutions (e.g. gyms) to launder money via monthly payments from non-existent members. However such businesses have not been identified as presenting a high risk of money laundering by the global standard setting body, FATF, or the EU Directive.

Costs

There are no costs associated with this measure.

Monetised benefits

The OFT is not able to provide reliable estimate of the numbers of businesses which will benefit from this measure. However, the OFT has determined that the new exempt CCFIs will fall within different categories of consumer licence and has provided estimates for each of these.

Around 5,560 CCFIs are registered with the OFT under the Money Laundering Regulations and hold a Category A licence (which are granted to firms who, as part of their business, lend money, offer credit or give people time to pay for goods and services). 13,400 - 23,100 businesses holding a consumer credit licence on the consumer credit licencing database may be CCFIs. Businesses are not required by the OFT to identify themselves on registration as either

- retailer 'non-lending credit institutions' as the target of this measure and third party 'non-lending credit institutions';
- or as providing time to pay on goods and services;

As such OFT are not able to provide reliable estimate of the number of these businesses that provide time to pay over a 12 month period.

Of the registered CCFIs the OFT estimates that 2,850 (52%) could be 'non-lending credit institutions' and exempted under this measure. This figure is arrived at from an analysis of the different combinations of business activity given by CCFIs on registration.

The OFT's estimate of the cost of compliance is £200 to £1000 per business per year. The OFT set out that the estimates include the cost of OFT registration of £74 per premises (capped at 20 premises) and the costs of compliance (e.g. customer due diligence, record keeping).

These estimates were not challenged in responses to the consultation and no estimates have been provided by businesses either in response the consultation or the previous review of the Regulations. The range of £200-£1000 is intentionally wide because the OFT and businesses were unable to provide a better indication of costs.

On this basis the measure could save approximately between **£570,000** and **£2,850,000** annually (based on a low estimate of 2,850 businesses saving £200 per year and a high estimate of the same number of businesses saving £1,000 per year.

Given the difficulties in narrowing this range, the assessment uses the median as the best estimate, i.e. **£1,710,000**

Non-Monetised benefit

There are businesses which the OFT has identified should have registered but not have not yet done so. Using the 52% as a guide for the other category, the OFT estimates that between another 7,000 and 12,000 licences could fall into 'non-lending credit institutions' with the remainder being 'true lenders'. These businesses would also benefit from the measure, however we have included this in the non-monetised section as in reality these businesses would not now register, to be exempted a short while later.

Implementation

The Regulations will be amended to be effective from 1st October 2012. The OFT will manage the de-registration process as applicable.

3. Regulating estate agents for overseas properties

Description: Global standards and the EU Directive require the regulation of estate agents as businesses at high risk of money laundering. Estate agents selling overseas properties will be regulated at present if they also sell properties in the UK. The measure will ensure that estate agents that only sell properties overseas are also regulated. Estate agents dealing exclusively in overseas properties were not subject to the Regulations in 2007 by reference to the Estate Agency Act 1979. UK Law Enforcement Agencies routinely identify UK criminals using the proceeds of crime to purchase property overseas and the global standards and EU Directive does not provide an exemption for these businesses. The Regulations will be amended accordingly.

Problem under consideration

The UK is required to regulate estate agents under the global standards and EU Directive as businesses at high risk of money laundering. Because of the definition of estate agency used in the Regulations, UK-based agents dealing in overseas property are not currently regulated in the UK (estate agency activity in the Regulations is defined by reference to the Estate Agency Act 1979. That in turn only captures estate agency in the UK, as the definitions use UK land law terms). UK-based agents dealing in overseas property are therefore, inadvertently, not regulated. These businesses should be regulated, to ensure the UK is fully legally compliant with international and EU Directive and appropriately mitigate the risks of money laundering in this sector. (A UK-based estate agent dealing in overseas property is unlikely to be regulated for AML compliance in an overseas jurisdiction).

Government Decision

All responses to the consultation supported this proposal unanimously for the Government to amend the Regulations to capture these businesses. The respondents included estate agents, other businesses, industry bodies, supervisors and law enforcement agencies who confirm that real estate continue to be one asset continuously used by criminals to launder money and that “complex or overseas property portfolio is often encountered as a way to try and frustrate asset recovery in the UK”.

Costs

The measure imposes direct costs on those businesses that will become subject to Regulation. The OFT estimate that about 200 businesses could be affected and this estimate was not challenged in responses to the consultation that included the professional and industry bodies for this sector.

Registration charges with the OFT are £74 per premises (capped at 20 premises).

Annual fees are £53 per premises (capped at 20 premises).

Estate agents have, on average, 1.9 premises.

Businesses will face start-up and recurring costs for introducing and maintaining procedures to comply with the requirements of the Regulations such as customer due diligence, staff training and monitoring. Industry bodies have said that it is not possible to estimate the costs of this.

To avoid assuming a zero cost for this measure and for the purpose of this assessment the following costs have been used

Start up costs may include

- Writing policy and procedures at £1000-£2000

Ongoing costs may include

- Customer due diligence (CDD), e.g. £1 per customer (using the estimate provided by CSA for debt purchasers carrying out the same checks)
  Assuming an average affected business sells 5 properties per week to different individual customers, the total number of customer checks required per year would be 260

  Ongoing costs for CDD based on 260 customers per year and £1 per check = £260

- Staff training
  Assuming an average affected business has 5 full time staff and training takes 1 day per year, annual training costs may be 5 days per year at £100 per day = £500

  Total ongoing costs = £760

Based on the above the range for this assessment is £500-£1000 per year

Responses to the consultation did not challenge estimates provided in the pre-consultation impact assessment or provide further information to inform these estimates.

In total, therefore, businesses will face start-up costs of Registration fees + setting up compliance, and recurring costs of annual fees + ongoing compliance. Estimated ranges for these costs are below, and to be conservative, we have taken the higher of both start-up and recurring costs.

Start-up: LOW: (£74x1.9x200) + (£1000x200) = £228,120
Start-up: HIGH: (£74x1.9x200) + (£2000x200) = £428,120

Recurring: LOW: (£53x1.9x200) + (£500x200) = £120,140
Recurring: HIGH: (£53x1.9x200) + (£1000x200) = £220,140

The OFT will also have to supervise additional businesses and therefore face an increase in their operational costs. They have been unable to provide figures on this cost, but said the fee levied on businesses will cover operational costs related to this.

Non-Monetised benefits

This measure will reduce the risk of money laundering through helping to prevent and detect UK criminals using the proceeds of crime to purchase property overseas. It will ensure the UK complies with global standards and the EU Directive.

All responses to the consultation supported this proposal, including estate agents and other businesses, industry bodies, supervisors and law enforcement agencies.

Implementation

The Regulations will be amended to be effective from 1st October 2012.

4. Clarifying the Definition of Safe custody Services

This change was previously included but has now been taken out as the clarification of the definition is being taken forward solely by the FSA, the supervisor of the sector, rather than through a change to the Regulations.

5. Clarifying the Application of the Fit and Proper Test by HMRC

Description: The EU Directive requires that individuals who own or direct money service businesses (MSBs) are fit and proper. The Regulations will be amended to provide greater clarity for HMRC to apply the fit and proper test in a manner consistent with the intention of the global standards and the EU Directive and the fit and proper test under by the FSA under the Payment Services Regulations. HMRC's application of the fit and proper test will be improved to help ensure that "unfit" or "improper" individuals are not controlling businesses at high risk of money laundering and terrorist financing.

Problem under consideration

The EU Directive requires that individuals who own or direct money service businesses (MSBs) are fit and proper. The application of the fit and proper test by HMRC currently falls short of what the global standards and EU Directive require in order to effectively mitigate the risk of money laundering and terrorist financing. This is evidenced by UK Law Enforcement Agencies, including HMRC, investigating money service businesses for money laundering. In addition some MSBs registered with HMRC also need to register with the FSA for a different purpose as payment service providers under the Payment Service Regulations. HMRC and the FSA have reported instances where firms may succeed in registering with HMRC but fail the fit and proper test by the FSA. Aligning the HMRC and FSA tests will help ensure compliance with the Regulations for those businesses required to be supervised by both.

Government decision
The Government will amend the Regulations to provide greater clarity for HMRC to apply the fit and proper test in a manner consistent with the global standards and the EU Directive and the fit and proper test by the FSA under the Payment Services Regulations.

Not all businesses supervised by HMRC are also supervised by FSA. The FSA test is a requirement under different legislation for a different purpose i.e. for businesses supervised as Payment Institutions under the Payment Services Regulations.

Monetised Costs

HMRC has identified 223 people that, when they passed the fit and proper test, were pending criminal prosecution. HMRC will review their fit and proper status following amendments to the Regulations. They assume that these people would be the most likely to become "unfit" or "improper" as a result of this measure. Some of these businesses may need different individuals to reapply to HMRC at a cost of £50 per person.

The cost of 223 applications would be £11,150. HMRC do not expect that all people on this list would fail the test and therefore have to re-apply. Those who do not fail will not incur any additional costs as a result of being re-tested, as this will be done by HMRC.

There is no robust basis for extrapolating how many of the total number of people currently deemed fit and proper might no longer meet this test.

Non-monetised benefits
This measure will ensure consistent application of the fit and proper test by HMRC in order to prevent unfit or improper individuals from running businesses with a high risk of money laundering, terrorist financing and proliferation financing

Summary and implementation plan

The Government will amend the Regulations to be effective from 1st October 2012. The amendment will ensure greater consistency of application with the FSA fit and proper test for payment service providers under the Payment Service Regulations.

6. Introducing a Right to Appeal for HMRC Fit and Proper Test Decisions

Description: The Government will clarify the right to appeal, to ensure that individuals have easy and economic access to a fair hearing if they believe they have been unfairly classified as unfit or improper by HMRC.

Problem under consideration

There is no formal right to appeal against such decisions made under the fit and proper test in the Regulations although HMRC consider de facto appeals, and appellants can seek a remedy through judicial review.

Government decision

The Government will introduce an explicit right to appeal to protect the interests of potential appellants and minimise costs related to judiciary reviews. The objective of the proposed change is to ensure individuals have easy and economic access to a fair hearing if they believe they have been unfairly classified as unfit or improper. Legislation is needed to strengthen the rights of individuals in this situation.

Description of options considered

OPTION 1 – Preferred. To introduce additional individual protections.

OPTION 2 – Do nothing. This means that there would be no explicit right to appeal; those who felt they had been dealt with wrongly would only have recourse to more expensive and complex remedies.

Government Decision
The Government will introduce an explicit right of appeal for individuals who have not passed the Fit and Proper Test.

Monetised Costs
No monetised costs are implied

Non-monetised Costs

HMRC estimates that the new fit and proper test rule set out in the proposal above this one will lead to more appeals as they will be removing more businesses/individuals from the register as they consider more conduct. Of the 23 known cases since 2007 where HMRC has removed the fit and proper status from individuals because they were not deemed fit and proper under the current Regulations, HMRC has received three appeals, none of which have gone to tribunal. Two were decided on internal review in the Money Laundering Unit or withdrawn and one was decided by the HMRC Appeals Unit.

HMRC have confirmed that they will not increase supervisory fees to cover any additional costs incurred.

HMRC will allow businesses to continue to operate until the appeal decision has been processed in order to avoid firms/individuals losing business until a final decision is reached.

Monetised Benefits
There are no monetised benefits

Non-monetised Benefits

The benefits of a right to appeal are to strengthen individuals' rights where they feel they have been incorrectly deemed unfit or improper by HMRC.

Risks and assumptions
No significant risks are foreseen. The Government believes that businesses should have the opportunity to appeal against such important decisions.

A net benefit or zero cost is assumed for businesses appealing in future on the basis that they would be unlikely to appeal otherwise.

Wider impacts
None expected. As HMRC's previous experience demonstrates, the appeal has no impact on the wider judicial system.

Implementation
The Government will amend the Regulations to be effective as of 1st October 2012.

7. Regulatory enforcement measures

Description: these measures support OFT and HMRC as supervisors in taking action to ensure compliance with the Regulations, including being able to levy appropriate fines for failure to provide information or pay fees, and to enable them to conduct enquiries with persons who are not registered but who they consider should be.

Problem under consideration

The OFT and HMRC are currently limited in the extent to which they can take effective action to ensure compliance with the Regulations as supervisors. This includes

- Not being able to penalise the unreasonable refusal to admit a supervisor to business premises;
- Not being able to obtain information in all cases;
- Not being able to compel the payment of fees or charges, which means that a business can continue to be regulated without making the same financial contribution as its competitors, where a business cannot be de-registered for non-payment of those fees
- Uncertainty over the ability to de-register a business that obtained its initial registration on the basis of misleading information, or where, for other reasons, a registration is no longer in the public interest; and
- Uncertainty about the ability to conduct enquiries with persons who are not registered but reasonably appear to be relevant persons.

Options Considered

OPTION 1 – Preferred. To amend the Regulations to support HMRC and OFT to take appropriate and proportionate action to ensure compliance with the Regulations.

OPTION 2 – To seek to remove uncertainty by taking cases to court. This could be expensive and slow and the outcomes uncertain.

OPTION 3 - Do nothing

Government Decision

Following consultation and widespread support for these proposals, the Government will amend the Regulations with the exception of introducing a penalty for the unreasonable refusal to admit a supervisor to the business premises. This will be reviewed as part of the Government's wider review of powers of entry under the Protection of Freedoms Bill, scheduled for late 2012. OFT and HMRC will be able to issue fines for the non payment of fees and to de-register a business where there is sustained non-payment. They will be able to enforce the provision of information and conduct enquiries with persons who are not registered but appear to be relevant persons.

Monetised Costs
The impact on compliant businesses is zero.

Non-monetised Costs
Only non-compliant businesses will be impacted by this measure.

HMRC will use fixed penalties, in the region of around £500, to cover costs of wasted time and discourage non-compliance. They expect to use the penalties sparingly.

This IA is concerned with the costs and benefits of complying with the Regulations. As such, impacts on non-compliant businesses are not counted as costs and benefits.

Monetised Benefits
These measures will help to ensure businesses pay their fees and OFT estimates that this could result in a 10% increase in fees paid. For OFT this could amount to approximately £100,000. HMRC takes a more robust approach to debt management and currently incur costs as result to ensure payment accounting for approximately 10% of the annual fees paid. They usually recover these fees, so the measure would not indicate any savings for HMRC in that respect, but would mean savings due to not having to invoke debt management proceedings. Last year, this cost them £36,000.

Non-monetised Benefits
These measures will help HMRC and OFT take appropriate and proportionate action to ensure compliance with the Regulations.

Implementation

The Government will amend the Regulations to be effective as of 1st October 2012.

Micro-business impact

There are no measures in this assessment which qualify as ‘Ins’. However, the global standards and EU Directive do not allow for the exemption of micro-businesses or any exemptions based on size. Money laundering and terrorist finance risks do not vary by size of business and experience shows that criminals often target smaller businesses.

For the two measures which are ‘Outs’, the Government will seek a waiver from the moratorium preventing new Regulations from impacting on micro-businesses, so that micro-businesses can benefit from these measures.

Equalities Impact

We have considered the proposed reforms in relation to its public sector equality duties under the Sex Discrimination Act 1975, the Race Relations Act 1976, the Disability Discrimination Act 1995 and section 75 of the Northern Ireland Act 1998 and have concluded that no relevant issues arise. The Government also considers that the proposed reforms would not be relevant in relation to any additional requirements that take effect from April 2011 under the Equality Act 2010.

GOVERNMENT DECISIONS – PROPOSALS ABANDONED

1. Partially or wholly remove criminal penalties for breaches of the regulations

Problem under consideration

There are criminal penalties under the Regulations including for failure to register with a supervising authority and failing to comply with the requirements on customer due diligence and record keeping. These offences are separate to the main money laundering or terrorist financing offences under criminal law. In the post-implementation review of the Regulations, some respondents argued that (misplaced) fears of prosecution for these offences may cause some practitioners to adopt a tick-box approach to compliance and reluctant to make judgements as part of an effective risk-based approach.

Government decision

As a result of the consultation the Government does not propose to remove the criminal penalties from the Regulations. The consultation confirmed that many stakeholders including regulated businesses were concerned that this could be misinterpreted and undermine the importance that firms should place on taking effective and proportionate measures to prevent and detect money laundering and terrorist financing. The balance of responses to the consultation indicates that 'over-compliance' is influenced by other factors that would not be addressed by removing the penalties. For example businesses may adopt a tick-box approach if it is more cost-effective for them to do so, in order to prevent fraud or in order to comply with other legislation including financial sanctions.

Non-monetised benefits

Responses to the consultation confirmed that there are other non-monetised benefits derived from the maintenance of the sanctions in that they are a key enforcement and supervision tool which ensure that adequate important is attached to effective compliance with the Regulations. Law enforcement agencies and supervisors stressed the importance of not making this change as investigations into regulatory breaches often lead to the identification and prosecution for money laundering.

Risks and assumptions

The risk from the decision to retain the criminal sanctions is that some businesses continue to incur higher than necessary costs of compliance for fear of criminal prosecution. However the Government is yet to establish conclusive evidence of this and that it would not otherwise result from the other factors identified above. To address the concerns of those opposed to the criminal penalties, the Government encourages Supervisors to work with law enforcement agencies to improve the awareness and understanding by businesses of where prosecution action may be taken. In its response to the consultation, the government reiterates the point made by the Crown Prosecution Service in its response to the consultation: that it would not be in the public interest to prosecute compliance staff at firms for minor, procedural or accidental regulatory failures.

2. Introducing a de-minimis exclusion based on the size of the business

Problem under consideration

If a person is in business to carry out a regulated activity they are required to be supervised by an appropriate body. There are some regulated businesses with an extremely low turnover for whom a significant part of their income is paid in supervisory fees. In the most extreme cases accountants who have retired from regular business but still receive a few hundred pounds in fees for accountancy services to local voluntary groups and similar bodies may pay a quarter of that income in registration fees. It was proposed that businesses below a certain threshold should not be considered businesses for the purpose of the Regulations.

Government decision

As a result of the consultation the Government has discounted this proposal. Most respondents argued that introducing an exemption based on the size of business would introduce new risks and increase the risk of money laundering and terrorist financing. The global standards and EU Directive do not provide for or allow the exemption of businesses based on size and there is evidence that small businesses are targeted for such purposes.

Risks and assumptions

The Government understands the ongoing issues faced by some exceptionally small businesses in relation to the costs of compliance and supervision. Supervisors are required to take a risk-based approach to supervision and ensuring compliance with the Regulations. The new global standards introduced in February 2012 strengthen this further. The Government has introduced a voluntary annual reporting regime for supervisors in order to improve accountability, transparency and consistency of supervision. This will help ensure that supervisors take such an approach and do not place unnecessary or disproportionate burdens on businesses, including where appropriate those with a very small annual turnover. This can include varying the fee payable by businesses as appropriate.

3. Granting Supervisors powers to limit or prescribe the language used by regulated businesses to describe their relationship with their AML Supervisor

Problem under consideration

Concerns were expressed that some businesses might misleadingly imply that HMRC acted as a Supervisor of professional competence by describing themselves as “supervised by HM Revenue and Customs”. HMRC is not a competency Supervisor. There are already general prohibitions on misleading behaviour, advertising or other business communications that may be relevant in these circumstances; but they may not provide the most certain or straightforward remedy.

Some Supervisors (such as the FSA) already control how the businesses they supervise can refer to that supervision, to ensure that disclosure is clear and appropriate.

Government decision

As a result of the consultation most Supervisors confirmed that this issue is already addressed in their by-laws and clearly communicated to their members. However, they recognise the gap in powers for some Supervisors and support efforts to enhance their capacity in this area. HMRC have also confirmed that if the logotype with the Crown is used, then HMRC has the power to invoke copyrights issues. In other cases, HMRC confirmed that they contacted businesses misusing its name and successfully asked for inappropriate language to be removed. HMRC will continue with this approach. At this stage, there is insufficient evidence that a change of law is justified, given the scale of the problem and HMRC’s current successful approach to mitigating it.