HM Treasury

Transposition of the Fifth Money Laundering Directive:

response to the consultation

January 2020

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Chapter 1
Introduction

1.1 The Treasury launched a consultation on 15 April 2019 entitled 'Transposition of the Fifth Money Laundering Directive'[1] ('the consultation'). It outlined how the government intended to implement the 5th Money Laundering Directive[2] ('5MLD' or 'the Directive'). The consultation closed on 10 June 2019, with the government receiving over 200 responses from supervisors, industry, civil society, academia and government departments. The government sought views and evidence on the steps it proposed to take to transpose 5MLD. This document summarises the responses and sets out the government's approach.

1.2 The overall objective of transposition is to ensure that the UK's anti-money laundering and counter terrorist financing (AML/CTF) regime is up-to-date, effective and proportionate. Transposition of the Directive ensures the UK's AML/CTF regime remains comprehensive, responsive to emerging threats, and in line with evolving international standards set by the Financial Action Task Force (FATF).

1.3 The UK is leaving the EU on 31 January 2020. The UK will be in an implementation period from this date during which EU law will continue to apply, including obligations under 5MLD. As a leading and founding member of the FATF, the UK will remain at the forefront of international standards and respond to new threats. The strength of the UK's AML/CTF regime was evidenced by the comprehensive assessment recently published by the FATF which placed the UK as the strongest overall regime of over 80 countries assessed to date. The government is committed to building on the progress already made in fighting economic crime and maintaining strong protections and standards against money laundering and terrorist financing.

1.4 The provisions in the Directive, including the final policy decisions outlined in this document, have been transposed into domestic law through secondary legislation entitled '*The Money Laundering and Terrorist Financing (Amendment) Regulations 2019*'. This legislation makes amendments to '*The Money Laundering, Terrorist Financing, Transfer of Funds (Information on the Payer) Regulations 2017*' (the 'MLRs'). The amended MLRs came into force on 10 January 2020. Sector-specific industry guidance will be updated to reflect the amended legislation.

[1] https://www.gov.uk/government/consultations/transposition-of-the-fifth-money-laundering-directive

[2] https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32018L0843

Chapter 2
New obliged entities

Box 2.A: Expanding the definition of 'tax advisor'

1 What additional activities should be caught within this amendment?

2 In your view, what will be the impact of expanding the definition of tax advisor? Please justify your answer and specify, where possible, the costs and benefits of this change.

2.1 Responses suggested that the expansion of the definition would not lead to a significant increase in regulated activities and there would consequently only be limited impact in increased costs of customer due diligence. The government has therefore expanded the definition in line with 5MLD requirements.

Box 2.B: Letting agents

3 What are your views on the ML/TF risks within the letting agents sector? What are your views on the risks in the private landlord sector, especially comparing landlord-tenant to agent-landlord-tenant relationships? Please explain your reasons and provide evidence where possible.

4 What other types of lettings activity exist? What activities do you think should be included or excluded in the definition of letting agency activity? Please explain your reasons and provide evidence where possible.

5 Should the government choose a monthly rent threshold lower than EUR 10,000 for letting agents? What would the impact be, including costs and benefits, of a lower threshold? Should the threshold be set in euros or sterling? Please explain your reasoning.

6 Do letting agents carry out CDD checks on both contracting parties (tenants and landlords) when acting as estate agents in a transaction?

7 The government would welcome views on whom CDD should be carried out and by what point? Should CDD be carried out before a relevant transaction takes place (if so, what transaction) or before a business relationship has been established? Please explain your reasoning.

8 The default supervisor of relevant letting agents will be HMRC, but professional bodies can apply to OPBAS to be a professional body supervisor. Are you a member of a professional body, and would this body be an appropriate supervisor? If this body would be an appropriate supervisor, please state which professional body you are referring to.

9 What do you see as the main monetary and non-monetary costs to your business of complying with the MLRs (e.g. carrying out CDD, training staff etc.)? Please provide figures (even if estimates) if possible.

10 Should the government extend approval checks under regulation 26 of the MLRs to letting agents? Should there be a "transition period" to give the supervisor and businesses time to complete approval checks of the appropriate existing persons (beneficial owners, managers and officers)?

11 Is there anything else that government should consider in relation to including letting agents under the MLRs?

The UK's new AML/CTF regime for letting agency businesses

2.2 The vast majority of responses were supportive of the extension of the scope of the MLRs to the letting agency sector. Responses provided a range of examples of situations where ML/TF risks would arise in agent-landlord-tenant relationships.

2.3 Some limited evidence was provided on the ML/TF risks in the private landlord sector, consisting of landlord-tenant relationships, without the involvement of an agency. Based on current evidence and risk assessments, the government does not assess that it would be proportionate to expand the ML/TF regime to bring the private landlord sector into scope of the MLRs.

2.4 Several responses provided views and suggestions on the definition of letting agency businesses. The government has defined letting agency work as work done in response to instructions received from a prospective landlord seeking to find another person to whom to let land or a prospective tenant seeking to find land to rent, and resulting in an agreement for the letting of land – for a term of a month or more and at a rent which during at least part of the term is, or is equivalent to, a monthly rent of 10,000 euros or more. This includes residential and commercial letting agents, including online businesses.

2.5 Many responses highlighted activities which they believed should not be in scope of the MLRs due to the lack of ML/TF risk. Having reviewed the evidence provided, the government will exclude the following from the scope of letting agency work: publishing advertisements or disseminating information, providing a

means by which tenants and landlords can make contact or communicate directly, or real estate work by legal professionals.

2.6 Some responses considered that the 10,000 euro monthly rent threshold specified in the Directive should be lower or removed altogether, in order to capture more potential illicit activity in the sector. Most responses were, however, in favour of the threshold and believed that this would be in accordance with a risk-based and proportionate approach to transposition. At this stage, the government has maintained the 10,000 euro threshold based on the current assessment of risk. This threshold may be revised and converted into Sterling in future updates to the MLRs.

2.7 There was a strong consensus among the responses that customer due diligence (CDD) measures, in Part 3 of the MLRs, should be conducted on all parties to a rental agreement. Letting agency businesses will be required to apply CDD measures in relation to both the tenant and landlord for rental agreements with a monthly rent of 10,000 euros or more. CDD measures must be completed before a business relationship is established with a landlord, and before a contract and agreement is signed with tenants (typically at the same time as right to rent checks are conducted). HMRC's specific guidance for letting agency businesses will provide further clarity on conducting CDD measures.

Supervision and approval of letting agency businesses

2.8 As outlined in the consultation, the government views HMRC as the appropriate AML/CTF supervisor for letting agents. Letting agency firms and sole practitioners within scope of the MLRs are therefore required to register with HMRC AML Supervision and ensure that beneficial owners, officers and managers have applied for approval before 10 January 2021. Businesses are encouraged to apply well in advance of this deadline and will need to comply with the MLRs irrespective of whether they have registered or applied to be registered. Estate agents, who also conduct in-scope letting agency work, will be required to indicate this when renewing their registration with HMRC. HMRC is well-placed to take on the supervision of letting agents, expanding its existing remit in the property sector. Action 35 of the Economic Crime Plan, published in July 2019, sets out HMRC's commitment to deliver an enhanced risk-based approach to its AML/CTF supervision by March 2021.

Guidance for letting agency businesses

2.9 HMRC will publish guidance to support letting agency businesses in complying with the MLRs, providing examples and a clear interpretation of how the MLRs should be implemented in practice in order to effectively combat money laundering and terrorist financing. This guidance will be approved by HM Treasury and published on GOV.UK by HMRC.

Box 2.C: Cryptoassets

12 5MLD defines virtual currencies as "a digital representation of value that is not issued or guaranteed by a central bank or a public authority, is not necessarily attached to a legally established currency and does not possess a legal status of currency or money, but is accepted by natural or legal persons as a means of exchange and

which can be transferred, stored and traded electronically." The government considers that all relevant activity involving exchange, security and utility tokens should be captured for the purposes of AML/CTF regulation, and seeks views on this approach. Is the 5MLD definition appropriate or does it need to be amended in order to capture these three types of cryptoassets (as set out in the Cryptoassets Taskforce's framework)? Further, are there assets likely to be considered a virtual currency or cryptoasset which falls within the 5MLD definition, but not within the Taskforce's framework?

13 5MLD defines a custodian wallet provider as "an entity that provides services to safeguard private cryptographic keys on behalf of its customers, to hold, store and transfer virtual currencies". The government considers that all relevant activity involving exchange, security and utility tokens should be captured for the purposes of AML/CTF regulation, and seeks views on this approach. Is the 5MLD definition appropriate or does it need to be amended in order to capture these three types of cryptoassets (as set out in the Cryptoassets Taskforce's framework)? Further, are there wallet services or service providers likely to be considered as such which fall outside the 5MLD definition, but should come within the UK's regime?

14 Should the FCA be assigned the role of supervisor of cryptoasset exchanges and custodian wallet providers? If not, then which organisation should be assigned this role?

15 The government would welcome views on the scale and extent of illicit activity risks around cryptoassets. Are there any additional sources of risks, or types of illicit activity, that this consultation has not identified?

16 The government would welcome views on whether cryptoasset ATMs should be required to fulfil AML/CTF obligations on their customers, as set out in the regulations. If so, at what point should they be required to do this? For example, before an 'occasional transaction' is carried out? Should there be a value threshold for conducting CDD checks? If so, what should this threshold be?

17 The government would welcome views on whether firms offering exchange services between cryptoassets (including value transactions, such as Bitcoin-to-Bitcoin exchange), in addition to those offering exchange services between cryptoassets and fiat currencies, should be required to fulfil AML/CTF obligations on their customers.

18 The government would welcome views on whether firms facilitating peer-to-peer exchange services should be required to fulfil AML/CTF obligations on their users, as set out in the regulations. If so, which kinds of peer-to-peer exchange services should be required to do so?

19 The government would welcome views on whether the publication of open-source software should be subject to CDD requirements. If

so, under which circumstances should these activities be subject to these requirements? If so, in what circumstances should the legislation deem software users be deemed a customer, or to be entering into a business relationship, with the publisher?

20 The government would welcome views on whether firms involved in the issuance of new cryptoassets through Initial Coin Offerings or other distribution mechanisms should be required to fulfil AML/CTF obligations on their customers (i.e. token purchasers), as set out in the regulations.

21 How much would it cost for cryptoasset service providers to implement these requirements (including carrying out CDD checks, training costs for staff, and risk assessment costs)? Would this differ for different sorts of providers?

22 To what extent are firms expected to be covered by the regulations already conducting due diligence in line with the new requirements that will apply to them? Where applicable, how are firms conducting these due diligence checks, ongoing monitoring processes, and conducting suspicious activity reporting?

23 How many firms providing cryptoasset exchange or custody services are based in the UK? How many firms provide a combination of some of these services?

24 The global, borderless nature of cryptoassets (and the associated services outlined above) raise various cross-border concerns regarding their illicit abuse, including around regulatory arbitrage itself. How concerned should the government be about these risks, and how could the government effectively address these risks?

25 What approach, if any, should the government take to addressing the risks posed by "privacy coins"? What is the scale and extent of the risks posed by privacy coins? Are they a high-risk factor in all cases? How should CDD obligations apply when a privacy coin is involved?

Size of UK cryptoasset market and AML risk

2.10 Responses provided only limited evidence on the number of cryptoasset exchanges or custody services based in the UK. The FCA's "Guidance on Cryptoassets: Consultation Paper", published in January 2019, suggested around 15 exchanges are currently headquartered in the UK out of a global market of 231. They appear to have a combined daily trading volume of close to $200 million USD, which accounts for close to 1% of the daily global trade in cryptoassets. Only 4 of these exchanges regularly post daily individual trading volumes above $30 million USD, which represents a low volume relative to the wider global market. The FCA, however, also noted that reliable and comprehensive data on the cryptoasset market is not yet available, given the market is still in its early stages and developing rapidly.

As of October 2019, the FCA assess there are around 80 potential applicant firms who may be in scope of the MLRs as a result of the approach set out below.

2.11 Many responses suggested that due to the cryptoasset market being relatively small, the scale and extent of money laundering shouldn't be overstated. Other stakeholders, however, suggested that the risks of the use of cryptoassets for illicit purposes are increasing. The third National Risk Assessment, due to be published by July 2020, will use the latest information at the government's disposal to consider the ML/TF threat from cryptoassets further.

The UK's new AML/CTF regime for cryptoassets

2.12 The government is committed to implementing the Financial Action Task Force (FATF) standards on Virtual Asset Service Providers (VASPs). While the consultation set out the option to transpose the 5MLD provisions alone, following an assessment of responses and further analysis, the government will transpose 5MLD alongside the latest FATF Standards on cryptoassets.

2.13 The fast-moving nature of the cryptoasset market and the corresponding understanding of the ML/TF risks within government has evolved considerably since 5MLD was finalised in 2018. The consultation noted that government intelligence reports suggest illicit activity is being carried out at various points of exchange, not just through the fiat-crypto exchange services or custodian wallet providers, which are captured by 5MLD. Responses suggested that 5MLD leaves clear loopholes for illicit actors to exploit other pieces of the infrastructure supporting the exchange of cryptoassets.

2.14 A large majority of responses agreed with the proposal that the FCA should be assigned the role of cryptoasset supervisor for AML/CTF purposes. The FCA's role was confirmed in the government's Economic Crime Plan. More information on the FCA's interim approach to the cryptoasset AML/CTF regime can be found on their web page.[1]

Cryptoasset activities to be brought into scope

2.15 The majority of responses agreed with the proposal that all relevant activity involving exchange, security and utility tokens should be captured for the purposes of AML/CTF regulation. Responses broadly concluded that the 5MLD definition of virtual currencies required amending to capture these three types of cryptoasset as set out in the Cryptoasset Taskforce's Framework. The government has legislated accordingly using, to the extent possible, the definition adopted by the Taskforce.

2.16 Nearly all responses agreed with the proposed definition of a custodian wallet provider, on the condition that the reference to virtual currencies in the definition was replaced with the broader definition created by the Cryptoasset Taskforce (consisting of the Treasury, the FCA and the Bank of England). The Directive does not capture non-custodian wallet (NCW) providers and a clear majority of responses agreed they should not be brought into scope of the MLRs. The government accepts this conclusion and has only brought custodian wallet providers into scope of the MLRs.

[1] https://www.fca.org.uk/firms/financial-crime/cryptoassets-aml-ctf-regime

2.17 A clear majority of responses agreed with the proposal that both firms offering exchange services between cryptoassets and fiat currency, as well as between cryptoassets should be brought into scope of the MLRs. The government has legislated accordingly.

2.18 A majority of responses agreed with the proposal that cryptoasset ATMs should also be brought into scope of the MLRs. The government has legislated accordingly. Responses differed over whether a value threshold should be specified for conducting CDD checks on customers who use cryptoasset ATMs. The government believes a zero-value threshold is appropriate in order to minimise the chance of repeat business narrowly below the threshold, a method commonly known as "smurfing." The government has legislated accordingly.

2.19 There was broad agreement with the proposal that firms involved in the issuance of new cryptoassets should be brought into scope of the MLRs.

2.20 Responses were divided on whether firms facilitating peer-to-peer exchange services should be brought into the scope of the MLRs. Many responses expressed reservations about the difficulty of doing so when the market has not fully matured. There was, however, some agreement that where the provider is a centralised entity that is completing, matching or authorising a transaction between two people, such entities could be brought into scope of the MLRs. It is the government's view that proceeding on this basis is proportionate to the risk as currently understood. The government will, however, remain open to reconsidering these regulations in the light of new evidence.

2.21 There was a lack of consensus on the definition of privacy coins. Many responses suggested the phrase was ambiguous, with the degree of privacy of such coins constantly changing. The government agrees with the majority of responses that stated that it should be the responsibility of the issuer or platform in which such privacy coins were issued or exchanged to comply with the MLRs. Privacy coins will therefore be regulated at the point at which a UK exchange deals in them.

Activities not to be brought into scope

2.22 A clear majority of responses agreed that the publication of open-source software should not be brought into scope of the MLRs. Responses emphasised that AML/CTF regulation should be carried out on an activities-basis only. The government accepts this conclusion and, on the basis of the assessment of the ML/TF risk, has not brought publishers of open-source software and, by extension, non-custodian wallet providers into scope of the MLRs.

Regulatory Arbitrage

2.23 A concern across responses was the risk of regulatory arbitrage; responses highlighted the risk of firms moving to jurisdictions where AML/CTF obligations appear less onerous in order to service UK customers. The government recognises it is imperative that there is international regulatory harmony to successfully counter the use of cryptoassets for illicit activity. The UK welcomes the incorporation of cryptoassets into the FATF standards. Countries are already being assessed by FATF against these new standards. The UK will continue to actively engage internationally through FATF to ensure that the illicit finance risks represented by cryptoassets are

mitigated at a global level, including by sharing best practice on how countries can meet the FATF standards.

Implementation Concerns

2.24 The government recognises the significant concern over the potential difficulty of compliance with the FATF standard requiring countries to ensure that firms obtain, hold and transmit required originator and beneficiary information, immediately and securely, when conducting cryptoasset transfers. The government notes the concern surrounding the time needed to comply with these requirements and will not be legislating for this obligation to form part of the UK's AML/CTF cryptoasset regulatory regime at this time. This delay is intended to provide time for firms to develop compliance solutions ahead of the introduction of the new obligations. Firms should consider solutions as soon as possible and should refer to section IV of FATF's June 2019 guidance on Virtual Assets and Virtual Asset Service Providers, which proposes several potential technologies to facilitate compliance. It is the government's intention to amend the MLRs to include this requirement as soon as it is clear there are globally recognised ways to comply.

Guidance for cryptoasset businesses and custodian wallet providers

2.25 The Joint-Money Laundering Steering Group (JMLSG) has developed guidance for the cryptoasset sector to support market participants in compliance with the MLRs. This guidance provides examples and clear interpretation of how the MLRs should be implemented in practice in order to effectively combat money laundering and terrorist financing. This guidance is approved by HM Treasury and will be published on JMLSG's website.

Box 2.D: Art intermediaries

26 What are your views on the current risks within the sector in relation to art intermediaries and free ports? Please explain your reasons and provide evidence where possible.

27 Who should be included within the scope of the term 'art intermediaries'?

28 How should a 'work of art' be legally defined, do you have views on whether the above definitions of 'works of art' would be appropriate for AML/CTF? Please provide your reasoning.

29 How should art intermediaries be brought into scope of the MLRs? On whom should CDD be done and at what point?

30 Given that in an auction, a contract for sale is generally considered to be created at the fall of the gavel, what are your views on how CDD can be carried out to ensure that it takes place before a sale is finalised? How should the government tackle the issue around timing of CDD given the unpredictability of the sale value, and linked transactions which result in the EUR 10,000 threshold being exceeded?

31 Should the government set a threshold lower than EUR 10,000 for including art intermediaries as obliged entities under the MLRs? Should the threshold be set in euros or sterling? Please explain your reasoning.

32 What constitutes 'a transaction or a series of linked transactions'? Please provide your reasoning.

33 What do you see as the main monetary and non-monetary costs to your business of complying with the MLRs (e.g. carrying out CDD, providing information to a supervisor, training staff etc.)? Please provide statistics (even if estimates) where possible.

34 What do you see as the main benefits for the sector and your business resulting from art intermediaries being regulated for the purposes of AML/CTF?

35 Should the government extend approval checks, under regulation 26, to art intermediaries? Should there be a "transition period" to give the supervisor and businesses time to complete relevant approval checks on the appropriate existing persons (beneficial owners, managers and officers)?

36 Is there anything else that government should consider in relation to including art intermediaries under the MLRs e.g. how reliance could be used when dealing with agents representing a buyer or seller.

The UK's new AML/CTF regime for the art sector

2.26 The vast majority of responses were supportive of the extension of the scope of the MLRs to the art sector for high value transactions. Responses provided a range of examples of situations where ML/TF risks would arise in the art sector.

2.27 Several responses suggested that the term 'art market participants' should be used to describe the obliged entities in the art sector subject to the MLRs. The government agrees that this is an appropriate term. Art market participants are defined as a firm or sole practitioner who by way of business trades in, or acts as an intermediary in, the sale or purchase of works of art and the value of the transaction, or series of linked transactions, amounts to 10,000 euros or more. The government will define 'work of art' in the MLRs in accordance with the views of the vast majority of responses in favour of the Value Added Tax Act 1994 definition of work of art in section 21(6) to 6(B) of that Act.

2.28 Nearly all responses considered that the transaction threshold for in-scope art transactions should not be lowered below the value specified in the Directive. The government has maintained the 10,000 euro threshold, ensuring a risk-based and proportionate approach to transposition. This threshold may be revised, depending on future risk assessments, and the value may be converted into Sterling in future updates to the MLRs.

2.29 Many responses provided useful explanations of the types of transactions, business relationships and business models that arise in the art sector. The

government appreciates the need for clarity and proportionality in the customer due diligence (CDD) requirements. In bringing the art sector within scope of the MLRs, the government's objective is to combat ML/TF risks effectively, whilst minimising the burdens on legitimate business. Art market participants involved in the trade of a work of art above the threshold have an obligation to carry out CDD on their customers and on any beneficial owners of their customers. CDD measures must be applied based on the assessment of risk of the client, for example, enhanced customer due diligence is required for high-risk clients. CDD measures must be completed before a business relationship is established or transaction takes place with a client. For example, where a dealer at an art fair makes a sale to a new customer, a transaction may be agreed ahead of carrying out all required CDD measures, but CDD measures are to be completed before release of the work of art to the customer. For auctions, it may not be possible to apply CDD measures to every bidder who registers to bid immediately prior to a sale, but CDD measures must be applied to the successful bidder prior to completion of the transaction. Further guidance on policies, controls, procedures and CDD measures required under the MLRs will be provided in sector-specific guidance.

Freeports

2.30 Freeport operators are also considered to be art market participants when works of art are stored, by way of business, in the freeport for a person, or series of linked persons, and the value of the works of art amounts to 10,000 euros or more. Freeports are areas designated as special zones for customs purposes, usually defined as a place to carry out business inside a country's land border but where different customs rules apply. There are currently no freeports in the UK, however, the Treasury has the power to designate freeports and is developing a comprehensive Freeports policy aimed at boosting trade, attracting inward investment and driving productivity across the UK. The government will ensure all the necessary safeguards are in place when developing Freeports and will continue to meet international standards and take best practice into account when considering the risks in a UK context. The UK is a world leader in customs and has a strong record on tackling illicit activity at the border.

Supervision and approval of art market participants

2.31 As outlined in the consultation, the Treasury has appointed HMRC as the supervisor for the art sector. Art market participants within scope of the MLRs are therefore required to register with HMRC and ensure that beneficial owners, officers and managers have applied for approval, before 10 January 2021. Businesses are encouraged to apply well in advance of this deadline and will need to comply with the MLRs irrespective of whether they have registered or applied to be registered.

2.32 HMRC is well-placed to take on the supervision of art market participants, building on current capacity and intelligence in the High Value Dealer sector. Action 35 of the Economic Crime Plan, published in July 2019, also sets out HMRC's commitment to deliver an enhanced risk-based approach to its AML/CTF supervision by March 2021.

Guidance for art market participants

2.33 The British Art Market Federation (BAMF) has developed guidance for the art sector to support art market participants in compliance with the MLRs. This

guidance provides examples and clear interpretation of how the MLRs should be implemented in practice in order to effectively combat money laundering and terrorist financing. This guidance is approved by HM Treasury and will be published by BAMF on its website and by HMRC on GOV.UK.

Chapter 3
Electronic money

Box 3.A: Electronic money

37 Should the government apply the CDD exemptions in 5MLD for electronic money (e-money)?

38 Should e-money products which do not meet the criteria for the CDD exemptions in Article 12 4MLD as amended be considered for SDD under Article 15?

39 Should the government exclude any e-money products from both the CDD exemptions in Article 12, and from eligibility for SDD in Article 15?

40 Please provide credible, cogent and open-source evidence of the risk posed by electronic money products, the efficacy of current monitoring systems to deal with risk and any other evidence demonstrating either high or low risk.

41 What kind of changes, if any, will financial institutions and credit institutions have to implement in order to detect whether anonymous card issuers located in non-EU equivalent states are subject to requirements in their national legislation which have an equivalent effect to the MLRs?

42 Should the government allow payments to be carried out in the UK using anonymous prepaid cards? If not, how should anonymous prepaid cards be defined?

43 The government welcomes views on the likely costs that may arise for the e-money sector in order to comply with 5MLD.

Customer due diligence (CDD) exemptions

3.1 Most responses agreed that the government should apply the CDD exemptions in 5MLD for electronic money (e-money). Most responses also agreed that e-money products which do not meet the criteria for the CDD exemptions should be considered for simplified customer due diligence (SDD). Nearly all responses stated that no e-money products should be excluded from both the CDD exemptions in Article 12 of 4MLD and from eligibility for SDD in Article 15 of 4MLD,

on the basis that such an approach would contradict the risk-based approach of the MLRs.

3.2 The government has transposed the 5MLD requirement to reduce the limit at which low risk e-money products are exempt from CDD to 150 Euros or less.

The Risk of E-Money Products

3.3 Most responses did not agree with 5MLD's permission for the banning of payments using anonymous pre-paid cards, as they did not consider that this would be proportionate. Some noted the sector's use of advanced "reg-tech" monitoring systems, enabling electronic footprints that can be used to track transactions and reduce the anonymity of pre-paid cards. Responses also pointed to the FCA's 2018 review of the ML/TF risk in the E-Money sector which found that the majority of E-Money Institutions (EMIs) had effective AML systems and controls to mitigate their ML/TF risk. The FCA generally observed a positive culture, a good awareness and understanding of their financial crime obligations and a low financial crime risk appetite. The FCA also judged transaction monitoring to be effective at most firms.

3.4 In the light of the evidence on the nature of risk and controls in place, the government has not legislated to ban payments in the UK carried out by anonymous prepaid cards.

Anonymous card issuers located in non-EU equivalent states

3.5 5MLD specifies that financial and credit institutions acting as acquirers operating in Member States can only accept payments carried out with anonymous pre-paid cards issued in non-EU countries where these countries impose requirements equivalent to those set out in 5MLD in relation to e-Money. This means anonymous card issuers located in non-EU equivalent states must be deemed by UK firms to be subject to requirements in their national legislation which have an equivalent effect to the UK MLRs.

3.6 Responses noted that whilst challenging, it would be possible to develop solutions for compliance with this measure. The government has implemented this 5MLD requirement.

Compliance costs

3.7 The government would like to thank those that responded to these questions which helped inform the analysis in the 5MLD impact assessment.

Chapter 4
Customer due diligence

Box 4.A: Electronic identification processes

44 Is there a need for additional clarification in the regulations as to what constitutes "secure" electronic identification processes, or can additional details be set out in guidance?

45 Do you agree that standards on an electronic identification process set out in Treasury-approved guidance would constitute implicit recognition, approval or acceptance by a national competent authority?

46 Is this change likely to encourage firms to make more use of electronic means of identification? If so, is this likely to lead to savings for financial institutions when compared to traditional customer onboarding? Are there any additional measures government could introduce to further encourage the use of electronic means of identification?

4.1 All responses agreed that additional clarification is needed on what constitutes secure electronic identification processes but there was no consensus on whether this clarification should be included in the MLRs themselves or in government-approved guidance. Some responses suggested that the inclusion of this information in the MLRs would provide greater certainty for industry and would apply to all sectors equally. Others considered that the details would be more appropriate in guidance, which would provide flexibility and could be promptly updated to keep pace with technological developments.

4.2 Responses agreed that increased regulatory clarity on the use of electronic identification processes would encourage firms to make more use of such processes and that this would have a positive economic impact. Several responses, however, referenced other issues that could hold back the widespread adoption of electronic identification – for example, difficulties in the areas of reliance and liability. The rules on liability originate from the FATF Standards intended to ensure that firms take responsibility for the accuracy of the CDD information of their customers. The government does not intend to make changes to the liability rules at this time. Firms are permitted to rely on CDD information from other regulated entities or to

outsource CDD processes to a service provider, but the relying firm retains ultimate liability for the CDD information.

4.3 Some responses mentioned the importance of aligning the UK's approach with the international guidance being produced by the FATF. The government shares this view and the UK is heavily engaged with the drafting of this guidance. The government anticipates that the FATF guidance will be consistent with the UK's legislative approach.

4.4 Some responses called for the establishment of a new regulator for the identity provider sector. We view this as beyond the scope of the 5MLD changes; the government interprets "relevant national authorities" in 5MLD as a reference to the supervisors for each sector. The government is exploring wider digital identity issues separately and Cabinet Office and DCMS have recently completed the Digital Identity Call for Evidence.

4.5 The government has taken a principles-based approach, in line with other legislation on CDD. In the same way that the MLRs do not currently specify what forms of identification firms should rely on when conducting CDD face-to-face, it would not be appropriate and would be overly restrictive for the MLRs to go into specifics on given technologies or processes that firms could use to fulfil their obligations when conducting CDD remotely. The regulations therefore permit the use of electronic identification processes where these are: independent of the person whose identity is being verified; secure from fraud and misuse; and capable of providing an appropriate level of assurance that the person claiming a particular identity is in fact the person with that identity. Further detail on the elements of secure electronic identification will be covered in the Treasury-approved guidance for each sector.

Box 4.B: Changes to regulation 28

47 To what extend would removing 'reasonable measures' from regulation 28(3)(b) and (4)(c) be a substantial change? If so, would it create any risks or have significant unintended consequences?

48 Do you have any views on extending CDD requirements to verify the identity of senior managing officials when the customer is a body corporate and the beneficial owner cannot be identified? What would be the impact of this additional requirement?

49 Do related ML/TF risks justify introducing an explicit CDD requirement for relevant persons to understand the ownership and control structure of customers? To what extent do you already gather this information as part of CDD obligations?

4.6 The majority of responses considered that the removal of 'reasonable measures' from Regulation 28(3)(b) and 4(c) would be a substantial change. They suggested that it would remove the risk-based approach taken by relevant persons and result in either disproportionate checks being undertaken or the exclusion of customers from services. Several responses considered the proposed change to be of limited value in preventing money laundering or terrorist financing. Following

assessment of the responses and further analysis, the government is not proceeding with this change at this time.

4.7 The majority of responses supported an amendment to Regulation 28(8), on the basis that an additional requirement to verify the identity of senior managing officials would not be onerous. The government has legislated to introduce this requirement.

4.8 On the issue of whether to introduce an explicit CDD requirement for relevant persons to understand the ownership and control structure of their customers, the majority of responses recognised that relevant persons already take measures to understand the ownership and control structure of their customers but several responses suggested that an explicit requirement is justified. Other responses stated that the existing requirements are adequate, with some suggesting that an explicit requirement would prove an additional burden. In accordance with FATF recommendation 10.8 and 22.1, the government has introduced an explicit CDD requirement on understanding the ownership and control structure of customers, with sufficient flexibility to enable a proportionate approach.

Box 4.C: Changes to regulation 31

50 Do respondents agree we should clarify that the requirements of regulation 31 extend to when the additional CDD measures in regulation 29 and the EDD measures in regulations 33-35 cannot be applied?

51 How do respondents believe extending regulation 31 to include when EDD measures cannot be applied could be reflected in the regulations?

52 Do respondents agree the requirements of regulation 31 should not be extended to the EDD measures which already have their own 'in-built' follow up actions?

4.9 The majority of responses did not object to an extension of Regulation 31 to include additional CDD measures in Regulation 29 and the enhanced due diligence (EDD) measures in Regulations 33-35. The government, however, received limited evidence on the benefits of extending Regulation 31 and will continue to explore the issue before making changes to the MLRs.

Chapter 5

Obliged entities: beneficial ownership requirements

Box 5.A: Checking registers when entering into a new business relationship

53 Do respondents agree with the envisaged approach for obliged entities checking registers, as set out in this chapter (for companies) and chapter 9 (for trusts)?

5.1 The majority of responses agreed with the proposed approach for obliged entities to check registers, including that the onus should be on the company to provide relevant evidence when requested by the obliged entity. The government has legislated in accordance with this approach, with the trusts requirement to follow with the Trust Registration Service legislation.

Box 5.B: Requirement for ongoing CDD where there is a duty to review beneficial ownership information

54 Do you have any views on the government's interpretation of the scope of 'legal duty'?

55 Do you have any comments regarding the envisaged approach on requiring ongoing CDD?

5.2 Most responses agreed with the government's interpretation of the scope of 'legal duty', although some suggested that this requirement of the Directive was not risk-based. The government has legislated so that when firms have a legal duty in the calendar year to contact an existing customer for the purpose of reviewing any information which is relevant to the risk assessment of that customer and relates to the beneficial ownership information of the customer, or when they have a duty under the International Tax Compliance Regulation 2015, a firm must apply CDD measures.

Chapter 6
Enhanced due diligence

Box 6.A: Enhanced due diligence

56 Are there any key issues that the government should consider when defining what constitutes a business relationship or transaction involving a high-risk third country?

57 Are there any other views that the government should consider when transposing these Enhanced Due Diligence measures to ensure that they are proportionate and effective in combatting money laundering and terrorist financing?

58 Do related ML/TF risks justify introducing 'beneficiary of a life insurance policy' as a relevant risk factor in regulation 33(6)? To what extent is greater clarity on relevant risk factors for applying EDD beneficial?

6.1 The majority of responses recognised the need to carefully define the terms 'involving' and 'business relationship or transaction' in the enhanced customer due diligence (EDD) section of the MLRs, believing that a very broad interpretation of Article 18a(1) of 4MLD as amended, would be disproportionate. Some responses were concerned that the risk-based approach could be weakened if flexibility were not given to the EDD requirements set out in the Directive. The government has legislated to define 'business relationships or transactions involving high-risk third countries' as:

- a business relationship with a person established in a high-risk third country; or
- a transaction where either of the parties to the transaction is established in a high-risk third country

6.2 The legislation includes only those transactions defined in Regulation 27(1)(b) of the MLRs, namely occasional transactions that amount to transfers of funds under Article 3.9 of the Funds Transfer Regulation and exceed EUR 1,000. The legislation has defined 'established in' as:

- for legal persons, being incorporated in or having its principal place of business in that country, or, in the case of a financial institution or a credit institution, having its principal regulatory authority in that country; and

- for individuals, being resident in that country, but not merely having been born in that country

6.3 The requirements under Article 18a(1) of 4MLD, as amended, have been transposed directly, providing relevant persons with flexibility to apply them in a risk-based manner. The government considers Articles 18a(2) and (3) of 4MLD, as amended, to already be transposed through the Counter Terrorism Act 2008.

6.4 Responses were split on the issue of including 'beneficiary of a life insurance policy' as a relevant risk factor for enhanced due diligence in Regulation 33(6). Several responses agreed with its inclusion while others disagreed on the basis that the risk of money laundering being carried out through a life insurance policy is low. The government has included 'beneficiary of a life insurance policy' as a relevant risk factor under Regulation 33(6). It should be noted that the presence of a relevant risk factor does not automatically require EDD to be carried out on a customer; it is merely a risk that must be taken into account when assessing the extent to which mitigating measures should be taken.

Chapter 7

Politically exposed persons: prominent public functions

Box 7.A: Politically exposed persons: prominent public functions

59 Do you agree that the UK functions identified in the FCA's existing guidance on PEPs, and restated above, are the UK functions that should be treated as prominent public functions?

60 Do you agree with the government's envisaged approach to requesting UK-headquartered intergovernmental organisations to issue and keep up to date a list of prominent public functions within their organisation?

7.1 The majority of responses agreed that the UK functions identified in the FCA's existing guidance on Politically Exposed Persons (PEPs) are appropriate.

7.2 Most responses agreed with the government's proposed approach to request UK-headquartered intergovernmental organisation to issue and keep up to date a list of prominent public functions within their organisations. The Foreign and Commonwealth Office already publishes a directorate of International Organisations as part of its London Diplomatic list, which is available online[1]. This is updated on an annual basis and includes the prominent functions and names of the directors and deputy directors of international organisations headquartered in the UK. The government has not therefore made any legislative changes in respect of the treatment of PEPs.

[1] https://www.gov.uk/government/publications/foreign-embassies-in-the-uk

Chapter 8

Mechanisms to report discrepancies in beneficial ownership information

Box 8.A: Mechanisms to report discrepancies in beneficial ownership information

61 Do you have any views on the proposal to require obliged entities to directly inform Companies House of any discrepancies between the beneficial ownership information they hold, and information held on the public register at Companies House?

62 Do you have any views on the proposal to require competent authorities to directly inform Companies House of any discrepancies between the beneficial ownership information they hold, and information held on the public register at Companies House?

63 How should discrepancies in beneficial ownership information be handled and resolved, and would a public warning on the register be appropriate? Could this create tipping off issues?

8.1 Most responses were in favour of the proposed approach to meeting the Directive's requirements, though some did raise concerns over the administrative burden. The government has legislated in accordance with this approach. The updated sector guidance will provide further detail on the process.

8.2 The majority of responses did not express a clear view as to whether to require competent authorities to inform Companies House of discrepancies. After assessment of the extent to which competent authorities are already able to do so, the government has decided to not introduce this requirement at this time.

8.3 There was no clear view expressed by responses on the creation of a public warning mechanism for the register. Given the highlighted risk of tipping off, Companies House will not at this time be creating a public warning mechanism for the register.

Chapter 9

Trust registration service

9.1 In early 2020, HMRC will publish a technical consultation in relation to changes required to the Trust Registration Service (TRS), including associated processes and definitions under 5MLD. HMRC will consult on changes to the regulations required to implement these changes.

Box 9.A: Definition of express trust

1 Do respondents have views on the UK's proposed approach to the definition of express trusts? If so, please explain your view, with reference to specific trust type. Please illustrate your answer with evidence, named examples and propose your preferred alternative approach if relevant.

2 Is the UK's proposed approach proportionate across the constituent parts of the UK? If not, please explain your view, with reference to specific trust types and their function in particular countries.

3 Do you have any comments on the government's proposed view that any obligation to register an acquisition of UK land or property should mirror existing registration criteria set by each of the UK's constituent parts?

4 Do you have views on the government's suggested definition of what constitutes a business relationship between a non-EU trust and a UK obliged entity?

5 Do you have any comments on the government's proposed view of an 'element of duration' within the definition of 'business relationship'?

9.2 The majority of responses suggested that the definition of express trusts should be more specific and proportionate to the risk of money laundering and financial crime. These responses noted that the use of trusts is more prevalent in the UK than in other member states and thus the impact of the register would be greater, despite the risks of money laundering and financial crime remaining low.

9.3 Responses gave examples of the types of express trusts that they consider to present a very low risk of money laundering or terrorist financing. Responses also noted that trusts in Scotland are generally expressly created and there may be a

greater impact on trusts in Scotland. The government will make reference to the land registers in Northern Ireland and Scotland as well as to the England and Wales register in the regulations to ensure that the legislation applies consistently across the constituent parts of the UK. The government has considered the comments received, and proposals for the scope will be set out in the technical consultation

9.4 Responses were generally concerned with the impact that the definition may have on legal and professional advisors and whether trusts will move to jurisdictions with lower standards of regulation.

9.5 The majority of responses regarding the element of duration within the definition of a business relationship generally stated that the government's proposal is reasonable, but that guidance will be required to identify when a business relationship has met the 12-month test. The government recognises these concerns and the need for guidance on the nature of the business relationship.

Box 9.B: Data collection

6 Is there any other information that you consider the government should collect above the minimum required by 5MLD? If so, please detail that information and give your rationale.

7 What is the impact of this requirement for trusts newly required to register? Will there be additional costs, for example paying agents to assist in the registration process, or will trustees experience other types of burdens? If so, please describe what these are and how the burden might affect you.

8 What are the implications of requiring registration of additional information to confirm the legal identity of individuals, such as National Insurance or passport numbers?

9.6 The majority of responses suggested that no information above the minimum required by 5MLD should be collected. A small number of responses suggested that either the Directive required more information to be collected than is necessary or conversely that additional information should be required, such as the purpose of the trust and a list of the ultimate beneficial owners for corporate bodies.

9.7 Several responses highlighted the privacy implications of collecting National Insurance or passport details and the increased risk of identity theft and fraud. Although a small number of responses agreed that collecting this information would help verify identities and the benefits of increased transparency would outweigh the risks, the majority view was that these details would be difficult to obtain (e.g. non-UK participants would not have them) and would result in a disproportionate administrative burden for lay trustees. More details on the data to be collected will be set out in the technical consultation.

Box 9.C: Registration deadlines

9 Does the proposed deadline for existing unregistered trusts of 31 March 2021 cause any unintended consequences for trustees or their agents? If so, please describe these, and suggest an alternative approach and reasons for it.

10 Does the proposed 30 day deadline for trusts created on or after 1 April 2020 cause any unintended consequences for trustees or their agents? If so, please describe these, and suggest an alternative approach and reasons for it.

11 Given the link with tax-based penalties is broken, do you agree a bespoke penalty regime is more appropriate? Do you have views on what a replacement penalty regime should look like?

9.8 A significant number of responses raised concerns that many lay trustees would not be aware of their obligation to register. The government will work with organisations in the trusts and finance sectors to reach as many affected individuals as possible, providing guidance and targeted communications.

9.9 The majority of responses agreed that a deadline of 31 March 2021 would be acceptable, providing that the process is fully operational, and guidance is in place.

9.10 Responses were evenly split on whether the 30-day limit to register new trusts and update the register with changes was appropriate. Some felt that there would be insufficient time for agents to become aware of changes and for new trusts to gather the required information. The government has considered these points and more detail will be set out in the technical consultation.

9.11 Almost all responses agreed that a penalty regime is needed and that this should be proportionate. Suggestions included waiving penalties for first offences for the first year and having an initial light-touch approach, with the penalty taking into account the amount of releasable funds. Some responses suggested basing a new system on either the Companies House or the Persons with Significant Control (PSC) penalty regime.

9.12 The government has considered these points and will consult further on the proposed penalty regime.

Box 9.D: Data sharing with obliged entities

12 Do you have any views on the best way for trustees to share the information with obliged entities? If you consider there are alternative options, please state what these are and the reasoning behind it.

Box 9.E: Data sharing for legitimate interest requests

13 Do you have any comments on the proposed definition of legitimate interest? Are there any further tests that should be applied to determine whether information can be shared?

Box 9.F: Data sharing on trusts owning non-EEA companies

14 Do the definitions of 'ownership or control' and 'corporate and other legal entity' cover all circumstances in which a trust can indirectly own assets through some kind of entity? If not, please set out the additional circumstances which you believe should be included, with rationale and evidence.

15 Do you have any views on possible definitions of 'other legal entity'? Should this be defined in legislation?

16 Does the proposed use of the PSC test for 'corporate and other legal entity', which are designed for corporate entities, present any difficulties when applied to non-corporate entities?

17 Do you see any risks or opportunities in the proposal that each trust makes a self-declaration of its status? If you prefer an alternative way of identifying such trusts, please say what this is and why.

18 The government is interested in your views on the proposal for sharing data. If you think there is a best way to share data, please state what this is and how it would work in practice.

9.13 The majority of responses agreed that the best way to share information with obliged entities is via a trustees' self-declaration. Trustees can then control who views their information and provide it to obliged entities when requested. The government will set out further details of the proposed process for sharing information with obliged entities in the technical consultation.

9.14 The government recognises that there remains a wide range of views on the nature and extent of data sharing with those who have a legitimate interest, balancing a beneficial owner's right to privacy against the need for greater transparency as a means of detecting and deterring financial crime.

9.15 The Directive's recitals make clear that a legitimate interest must be demonstrated. The government intends that the information held on the register will be kept private unless and until a legitimate interest is established. However, the Directive also envisages that those working to counter money laundering or terrorist financing will have access to this data to further their investigations. There is therefore a need to find a suitable balance between providing access to the beneficial ownership information on the register and the protection of the individual's data.

9.16 Responses agreed that it is important that legitimate interest be well defined and the general view expressed was that the definition as proposed in the consultation was difficult to understand. As part of the technical consultation the draft regulations will set out a proposed high-level definition for a legitimate interest, taking into account the comments received. The government will continue to work with stakeholders to determine the appropriate threshold for this access, and to ensure all parties are content with the robustness of the proposed process.

9.17 Responses were content that the definition of 'corporate and other legal entity' would cover all circumstances in which a trust can indirectly own assets, although clarification was requested on the definition of 'other legal entity'. The government expects to use the comparable definition of corporate and other legal entity as set out in the Draft Register of Overseas Entities Bill for TRS. This will closely align the types of entity required to register.

9.18 Responses were divided on what should constitute a 'controlling interest' where a trust has an interest in a non-EEA entity. Further details on this and the data sharing process will be set out in the technical consultation.

9.19 It is proposed that any request for beneficial ownership data will need to be made in writing and will be subject to review on a case-by-case basis. This is to ensure that the various conditions for data release are given careful consideration and that data is only released and used in line with the purposes of the Directive, as set out in the recital. Further details on this will be set out in the technical consultation.

9.20 Some responses were concerned that details of minors or vulnerable beneficial owners could be released to those requesting information. The Directive allows for exemptions to providing information in these instances. Further information on how it is proposed that these exemptions will be handled will be set out in the technical consultation.

Chapter 10

National register of bank account ownership

Box 10.A: National register of bank account ownership

19 Do you agree with, or have any comments upon, the envisaged minimum scope of application of the national register of bank account ownership?

20 Can you provide any evidence of the benefits to law enforcement authorities, or of the additional costs to firms, that would follow from credit cards and/or prepaid cards issued by e-money firms; and/or accounts issued by credit unions and building societies that are not identifiable by IBAN, being in scope of the national register of bank account ownership?

21 Do you agree with, or have any comments upon, the envisaged scope of information to be included on the national register of bank account ownership, across different categories of account/product?

22 Do you agree with, or have any comments upon, the envisaged approach to access to information included on the national register of bank account ownership?

23 Do you have any additional comments on the envisaged approach to establishing the national register of bank account ownership, including particularly on the likely costs of submitting information to the register, or of its benefits to law enforcement authorities?

24 Do you agree with, or have any comments upon, the envisaged frequency with which firms will be required to update information contained on the register? Do you have any comments on the advantages/disadvantages of the register being established via a 'submission' mechanism, rather than as a 'retrieval' mechanism?

10.1 5MLD requires the UK to establish a centralised automated mechanism which allows identification of natural and legal persons which hold or control bank accounts, payment accounts or safe-deposit boxes held by credit institutions.

10.2 Responses to the consultation highlighted a range of considerations related to the expected benefits of the Bank Account Portal (BAP), the mechanism, the accounts and data in scope, as well as data access and security.

10.3 Some responses suggested existing and future platforms as potential alternatives to the BAP. Among others, suggestions included Single Customer View, private credit reference agencies, CIFAS, the PSC register for beneficial ownership information and HMRC Common Reporting Standard reporting. While these platforms are not sufficient to deliver the benefits of the BAP or to meet the UK's obligations under 5MLD, the government will seek to learn lessons from them.

Mechanism

10.4 Article 32(a) of 5MLD suggests two potential models for the centralised, automated mechanism: a central registry or an electronic data retrieval mechanism.

10.5 Responses did not highlight a strong preference for one model over the other, but several factors were highlighted as key trade-offs:

- set up burden: building a retrieval mechanism would have a higher technological set up costs for the private sector, especially since different institutions have different IT systems
- ongoing administrative costs: a central registry would place a high burden on institutions to perform manual administration
- security risks: a registry would centralise a large volume of personal data. Rather than just ensuring access to the data, the government would be responsible for holding, maintaining and protecting that data

10.6 If the mechanism were to be along the lines of a centralised registry model, information would need to be uploaded and updated on a regular basis to remain relevant and useful to law enforcement. There was disagreement about the frequency of uploads, which must balance the importance of valid data with the onerousness of the obligation to upload. Proposals included monthly updates, weekly updates or updated with every substantive data change and no obligation to resubmit unchanged information.

10.7 Examples of both mechanisms (central register and retrieval) have or are being adopted in other countries, as well as a "hybrid" model. Government's priority is to deliver a secure, efficient and proportionate mechanism and the government will clarify its plans in due course.

Accounts in scope

10.8 Some responses suggested a narrow scope, on the grounds that it could be disproportionately burdensome to include low-risk accounts in the register. Others suggested that a wider scope is preferable, to minimise risk of displacement and to ensure fairness and consistency with a level playing field.

10.9 5MLD requires that that all accounts with an IBAN are in scope of the BAP, which includes all retail and wholesale accounts, as well as many building society accounts and some credit union accounts. The government has legislated to include these and all non-IBAN building society accounts in scope, in order to maintain a level playing field in the sector and to minimise the risk of displacement of illicit activity.

Data in scope

10.10 The Directive requires that the BAP must make data on the customer-account holder and the beneficial owner accessible. Various challenges were raised in relation to identifying beneficial owners and providing the right information on them and it was noted that some account holders, such as listed companies and government agencies, won't have ultimate beneficial owners while some beneficial owners are not individuals. Fewer concerns were flagged in relation to identifying the customer-account holder.

10.11 The Directive requires the name of both the customer-account holder and the beneficial owner, as well as their identification, either by a unique identification number, or the identification data required by Article 13(1)(a). Many responses flagged that obliged entities don't currently capture a unique identifier number. Identification requirements for CDD are flexible and risk-based, meaning that neither passports nor drivers' licences, nor national insurance numbers are used for all customers. Requiring one consistent type of identification could pose a risk to financial inclusion and would be a significant burden on businesses. Institutions are increasingly likely to make greater use of electronic ID and enforcing the collection of a single type of identification might restrict this.

10.12 5MLD includes the recommendation that member states consider "other information deemed essential for FIUs and competent authorities for fulfilling their obligations under this Directive", but it was suggested that this should be balanced with the need to minimise the data security risks. The government has legislated to take a flexible approach to this obligation, allowing businesses to submit the identification data collected in line with the Article 13(1)(a) requirement, where that identification data is machine readable.

Data access and security

10.13 Many of the responses called for the BAP to have robust controls and good data security. It was proposed that the "holder" of the BAP maintain full audit trails of access, with full visibility of the searches taking place. The government recognises the utmost importance of protecting sensitive data and is committed to considering this at every stage of development.

10.14 5MLD requires that the identification information is "directly accessible in an immediate and unfiltered manner to national FIUs", as well as accessible to national competent authorities for fulfilling their obligations under 5MLD. There were a range of views on who should have access to the data, with the majority focused on the role of the relevant organisations and the accreditation of the individuals.

10.15 The government intends to make the information on the BAP available to the FIU; Financial Conduct Authority; National Crime Agency; Serious Fraud Office; HMRC; the Gambling Commission; the 43 territorial police forces in England and Wales and the Police Services of Scotland and Northern Ireland. All requests must be for the purposes of criminal investigation under the objectives of the directive and should have senior officer sign-off.

Chapter 11

Requirement to publish an annual report

Box 11.A: Requirement to publish an annual report

25 Do you think it would still be useful for the Treasury to continue to publish its annual overarching report of the supervisory regime as required by regulation 51 (3)?

11.1 All responses agreed that Treasury should continue the publication of its annual report on the AML/CTF supervisory regime. The government will continue to publish the report on an annual basis. Given the new requirement introduced by Article 34(3) of 4MLD, as amended, that all professional body supervisors shall publish an annual report on their supervisory activity, the Treasury may review the format of the report.

Chapter 12

Other changes required by 5MLD

Box 12.A: Other changes required by 5MLD

26 Are you content that the existing powers for FIUs and competent authorities to access information on owners of real estate satisfies the requirements in Article 32b of 4MLD as amended?

27 Are you content that the government's existing approach to protecting whistle-blowers satisfies the requirements in Article 38 of 4MLD as amended?

12.1 Most responses were content that FIUs and competent authorities have sufficient access to information on owners of real estate through existing mechanisms, including consulting the Land Registry, cross-referencing government databases and the investigation powers provided to law enforcement through the Proceeds of Crime Act 2002 and the Police and Criminal Act 1984.

12.2 The vast majority of responses agreed that the government's existing approach to protecting whistle-blowers and the rights guaranteed under the Employment Rights Act 1996 and the Public Interest Disclosure Order 2014 satisfies the requirements of Article 38 of 4MLD as amended. The government has not made legislative changes in relation to these requirements.

Chapter 13
Pooled client accounts

Box 13.A: Pooled client accounts

28 Are there differences in the ML/TF risks posed by pooled client accounts held by different types of businesses?

29 What are the practical difficulties banks and their customers face in implementing the current framework for pooled client accounts? Which obligations pose the most difficulties?

30 If the framework for pooled client accounts was extended to non-MLR regulated businesses, what CDD obligations should be undertaken by the bank?

13.1 Responses did not identify a high ML/TF risk among non-MLR regulated firms using pooled client accounts (PCAs). A clear majority of responses considered that it would be proportionate and effective to extend the current framework to cover non-MLR regulated businesses, with firms assessed as low risk to be eligible for simplified customer due diligence. The Treasury is supporting the updating of guidance to achieve this.

Chapter 14

Additional technical amendments to the MLRs

Box 14.A: Enforcement powers

31 Do you agree with our proposed changes to enforcement powers under regulations 25 & 60?

32 Do you agree with our proposed amendment to the definition of "officer"?

14.1 Most responses welcomed the government's proposed changes to enforcement powers under Regulations 25 and 60 of the MLRs, noting it would contribute to transparency about penalties under the MLRs and may improve compliance with the MLRs. The government has proceeded with the proposed changes to Regulations 25 and 60.

14.2 The MLRs currently limit the individual against whom supervisors can take action under Regulations 76, 78, 92 to 'officers' controlling or directing companies (or the equivalents in partnership). The government proposed to expand this definition to include 'managers'. Some responses were supportive of the change. Others supported the change provided that the term was clearly defined or restricted to senior management. Several responses opposed the change on the basis that the term "manager" was too broad and it could lead junior managers to be unfairly blamed for the non-compliance of senior leadership. The government will seek further evidence on the impact of this change and consider legislative changes at a later stage.

Box 14.B: OPBAS information-sharing powers

33 Do you agree with our proposed changes to information-sharing powers of regulations 51,52?

14.3 The vast majority of responses agreed with the proposed changes to information-sharing powers of Regulations 51 and 52 of the MLRs. The government has proceeded with these to make it explicit that OPBAS and the Treasury can share relevant information for purposes connected with the exercise of the functions of the Treasury under the MLRs, or the functions of the FCA under the OPBAS Regulations.

Box 14.C: Requirement to cooperate

34 Do you have any views on this proposed new requirement to cooperate?

14.4 The government proposed to introduce a requirement for professional body supervisors to deal with OPBAS in an open and cooperative way, and to disclose to OPBAS anything relating to the professional body supervisor of which OPBAS would reasonably expect notice. Many responses expressed support for the requirement in principle' recognising the value of a cooperative relationship between professional body supervisors and OPBAS. Several responses, however, expressed concern about the broadness of the wording of the proposed requirement. The government supports the work of OPBAS, is committed to ensure it is able carry out its statutory duties as effectively as possible and recognises the need for professional body supervisors to deal with OPBAS in an open and collaborative way. The government will review the wording of the proposed requirement and has not brought this change forward at this time.

Box 14.D: Registration

35 Do you agree with our proposed changes to Regulations 56?

14.5 The vast majority of responses supported the proposed change to regulation 56 of the MLRs. The government has legislated to make this change. Consequently, Money Service Businesses (MSBs) and Trust and Company Service Providers (TCSPs) who have applied to register to trade after 10 January 2020 cannot practice until their application has been determined by HMRC.

Box 14.E: Complex network structures

36 Does your sector have networks of principals, agents and sub-agents?

37 Do complex structures result in those who deliver the business to customers not being subject to the training requirements under the MLRs?

38 Do complex network structures result in the principal only satisfying himself or herself about the fitness and propriety of the owners, officers and managers of his or her directly contracted agents, and not extending this to sub-agents delivering the business?

39 If you operate a network of agents, do you already provide the relevant training to employees? Do you ensure the agents who deliver the service of your regulated business are 'fit and proper'?

14.6 Most responses, except responses from the MSB sector, were unsure or did not think that their sector had networks of principals, agents and sub-agents. Representatives of the financial sector and the legal sector did not believe that their respective sectors have such structures. Responses from the accountancy sector indicated that accountancy firms may use sub-contractors but that these would already be supervised for AML purposes. Responses from the MSB sector indicated that their sector did have such complex network structures in place.

14.7 Responses from the MSB sector suggested that principals ensured that all agents were trained to undertake transactions but that these agents were responsible for oversight of their sub-agents. Responses from the accountancy sector suggest that it was possible that network structures in their sector results in some individuals not receiving appropriate training but that most would already be supervised.

14.8 Responses from the MSB sector suggested that principals ensured that all agents were trained to undertake transactions but there was limited evidence to suggest principals ensured that all relevant individuals in sub-agents were fit and proper and that relevant staff were trained. The government is clear that the intent of the MLRs is to ensure that the entity who delivers the obliged entity's business is 'fit and proper' and the employees delivering the obliged entity's business are in scope of the training requirements to counter ML/TF.

14.9 The government has amended Regulation 24 to require relevant persons to take appropriate measures to ensure that its agents and persons used for the purpose of its business are made aware of the law and receive training in how to recognise and deal with situations which may be linked to ML/TF.

Box 14.F: Criminality checks

40 Do the proposed requirements sufficiently mitigate the risk of criminals acting in regulated roles?

14.10 Some responses, including from several professional body supervisors, agreed with the proposed change and several pointed out that they already carried out such checks. Other professional body supervisors were concerned that the change could be a burden on supervisory authorities. The government is determined to ensure that the integrity of the UK's AML regime is not jeopardised by criminals acting in key roles within regulated firms. Given that several professional body supervisors already carry out such criminality checks, the government does not believe that that the proposed changes would be disproportionate to the threat. The government has therefore amended Regulation 26 so that applications must contain or be accompanied by sufficient information to enable a supervisory authority (if it is a self-regulatory organisation) to determine whether the person concerned has been convicted of a criminal offence and such other information as the supervisory authority may reasonably require.

Box 14.G: New technologies

41 Should regulation 19(4)(c) be amended to explicitly require financial institutions to undertake risk assessments prior to the launch or use of new products, new business practices and delivery mechanisms? Would this change impose any additional burdens?

14.11 Several responses noted that many regulated firms already routinely undertake risk assessments prior to the launch or use of new products and business practices (including new delivery mechanisms) as well as new technologies, in accordance with FATF Recommendation 15.2 and JMLSG guidance. Many responses were supportive of the proposed amendment to Regulation 19(4)(c) as it would ensure consistency across regulated firms. The government has legislated accordingly.

Box 14.H: Group policies

42 Should regulation 20(1)(b) be amended to specifically require relevant persons to have policies relating to the provision of customer, account and transaction information from branches and subsidiaries of financial groups? What additional benefits or costs would this entail?

14.12 Some responses, including representatives of the financial sector, were concerned that some branches operate in jurisdictions prohibiting the sharing of information on customer accounts and transactions with the head office. Others agreed with the change, on the basis that the scope of this information sharing is limited to AML/CTF purposes. A few responses also agreed that the change was desirable, while recognising that its implementation could be challenging for larger groups.

14.13 Regulation 20(4) specifies that where the law of a third country does not permit the application of equivalent measures by subsidiaries, the parent undertaking must inform its supervisory authority and take additional measures to handle the ML/TF risk. This would apply to group policies on the sharing of information on customer accounts and transactions. The government supports the intention of FATF recommendation 18.2 (b) and has ameneded Regulation 20 so that groups are required to have group-wide policies against ML/TF including when necessary for ML/TF purposes, the provision of customer account and transaction information.