



Bar Council response to the Money Laundering Regulations 2017 Consultation

1. This is the response of the General Council of the Bar of England and Wales (the Bar Council) to HM Treasury's consultation paper entitled "Money Laundering Regulations 2017: consultation"¹.
2. The Bar Council represents over 15,000 barristers in England and Wales. It promotes the Bar's high quality specialist advocacy and advisory services; fair access to justice for all; the highest standards of ethics, equality and diversity across the profession; and the development of business opportunities for barristers at home and abroad.
3. A strong and independent Bar exists to serve the public and is crucial to the administration of justice. As specialist, independent advocates, barristers enable people to uphold their legal rights and duties, often acting on behalf of the most vulnerable members of society. The Bar makes a vital contribution to the efficient operation of criminal and civil courts. It provides a pool of talented men and women from increasingly diverse backgrounds from which a significant proportion of the judiciary is drawn, on whose independence the Rule of Law and our democratic way of life depend. The Bar Council is the Approved Regulator for the Bar of England and Wales. It discharges its regulatory functions through the independent Bar Standards Board (BSB).

Overview

4. The Bar Council is the Supervisory Authority under the Money Laundering Regulations 2007. Along with the regulatory functions described above, the supervision for anti-money laundering/counter-terrorist financing is discharged to the BSB, which acts independently from the Bar Council.
5. The Bar Council has responded to those questions in the consultation which are of relevance to the Bar, and has accordingly not responded to questions 3.2 and 3.4.

¹ Available here: <https://www.gov.uk/government/consultations/money-laundering-regulations-2017/money-laundering-regulations-2017>

Due Diligence Requirements and Reliance

3.5 Reliance on Third Parties

The government would welcome views on whether the reference to “at the latest within two working days” should be included and if not, how long third parties should be given to provide this information.

6. In its response² to HM Treasury’s 2016 Consultation on the Transposition of the Fourth Money Laundering Directive³ the Bar Council supported change to the existing regime for reliance on third parties for the completion of Customer Due Diligence by an obliged person. Further to this the Bar Council’s response proposed that the ‘consent’ requirement within the reliance provisions of the 2007 Regulations should not be continued in the 2017 Regulations. The response noted that a denial of consent introduced a duplication of effort, regulatory inefficiencies and a lack of co-operation within the regulated sector. It frustrated the achievement of the Directive’s aims. The Bar Council proposed that, in place of a ‘consent-based’ system the obliged entity should be entitled to seek, and when received rely upon, a positive assertion by a third party operating within the regulated sector, that the required CDD obligations have been met.

7. Accordingly, the Bar Council welcomes the changes in the reliance regime set out in draft regulation 38. The Bar Council agrees that the relevant information should be supplied to the relevant person “immediately on request (or at the latest within two working days)”.

8. The proposed regulation will promote reliance, reduce duplication of effort and promote better co-operation between regulated entities in the fight against money laundering and terrorist financing. The appropriately limited time-frame will also promote efficient retention and filing of identification and verification data and other documentation on the identity of customers and beneficial owners; itself an aim of the Directive.

² Available here:

http://www.barcouncil.org.uk/media/501997/bar_council_s_response_to_the_transpositon_of_the_4ml_d_consultation.pdf

³ Available here:

<https://www.gov.uk/government/consultations/anti-money-laundering-and-counter-terrorist-finance-legislative-proposals>.

Supervision of Obligated Entities

11.7 Information

The government would welcome views from the sector on the requirement for the policies, controls and procedures to be documented.

9. The Bar Council acknowledges that this is a requirement set out in the Directive, and has no objections to its proposed transposition into the UK's Money Laundering Regulations.

**Bar Council
April 2017⁴**

For further information please contact:

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⁴ Prepared for the Bar Council by its Anti-Money Laundering Working Group.