propertymark

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

Response from Propertymark
October 2021

Background

Propertymark is the UK's leading professional body for estate and letting agents, inventory providers, commercial agents, auctioneers and valuers, comprising nearly 18,000 members. We are member-led with a Board which is made up of practicing agents and we work closely with our members to set professional standards through regulation, accredited and recognised qualifications, an industry-leading training programme and mandatory Continuing Professional Development.

Account Information Services Providers (AISPs) and Payment Initiation Service Providers (PISPs)

1: What, in your view, are the ML/TF risks presented by AISPs and PISPs? How do these risks compare to other payment services?

2: In your view, what is the impact of the obligations on relevant businesses, in both sectors, in direct compliance costs?

3: In your view, what is the impact of such obligations dissuading customers from using these services?

4: In your view, should AISPs or PISPs be exempt from the regulated sector?

Propertymark has no views on these providers.

Bill Payment Service Providers (BPSPs) and Telecoms, Digital and IT Payment Service Providers (TDITPSPs)

5: In your view, should BPSPs and TDITPSPs be taken out of scope of the MLRs?

6: In your view, if BPSPs and TDITPSPs were to be taken out of scope of the MLRs, what would the impact be on registered businesses, for example any direct costs? Are there other potential impacts?

7: Would the removal of the obligation for PSPs to register with HMRC for AML supervision, in your view, reduce the cost and administrative burden on both HMRC and registered business?

8: In your view, would there be any wider impacts on industry by making these changes?

Propertymark has no views on these providers.

Art Market Participants

9: In your view, what impact would the exemption of artists selling works of art, that they have created, over the EUR10,000 threshold have on the art sector, both in terms of direct costs and wider impacts? In your view is the ML risk associated with artists and if so, how significant is this risk?

Propertymark considers the risk of money laundering (ML) and terrorist financing (TF) as a consequence of the proposed amendment to Regulation 14 of the MLRs to be comparatively low. We believe this because of the present lack of evidence to support the assertion that ML and TF are

present in such transactions[1]. However, whilst the amendment removes a seemingly unnecessary administrative and financial burden from artists who would otherwise meet the definition of an Art Market Participant (AMP), the exemption does provide a potential weakness for those seeking to engage in ML or TF to manipulate. HM Treasury should therefore consider whether such transactions should be subject to regular review by HMRC. This might be done through scrutiny of accounts or tax returns of artists whose turnover meets the threshold for VAT registration. HM Treasury could also monitor the number of artists captured by the exemption as an indicator of possible ML or TF; any marked increase from HM Treasury's current upper estimate of 0.25% of artists selling directly their own artwork valued at more than €10,000 might suggest that the vulnerability was being exploited and that it should be reviewed.

10: As the AML supervisor for the art sector, what impact would this amendment have on the supervision of HMRC? Would the cost to HMRC of supervising the art sector decrease? Are there any other potential impacts?

The amendment to Regulation 14 would remove HMRC's need to supervise the small proportion of UK-based artists (estimated at 1,500)[2] who sell artwork valued at more than €10,000. Propertymark is not privy to the costs to HMRC in relation to supervision of these artists but assumes that they do not exceed the £450,000 that will be 'lost' in associated registration fees. As indicated in our response to Question 9, Propertymark feels that it will still be necessary for HMRC to monitor activity in transactions valued at more than €10,000 by the originating artist, but since these are estimated to make up an even smaller proportion of the sector, the costs should not outweigh the benefits of such an exercise.

Propertymark would also highlight the potential confusion and associated costs should the proposed AMP definition not be adopted in the MLRs. Given that HM Treasury confirmed earlier this year that artists were not intended to fall within the scope of the AMP definition, a failure to reaffirm this in the MLRs, as well as the sector guidance produced by the British Art Market Federation (BAMF), could perpetuate uncertainty amongst artists and lead to additional, unnecessary registrations which HMRC might then be required to reimburse.

11: In your view, does the proposed drafting for the amendment to the AMP definition in Regulation 14, Annex D, adequately cover the intention to clarify the exclusion of artists from the definition, where it relates to the sale and purchase of works of art?

Yes, Propertymark believes that the amendment adequately clarifies the exclusion of artists from the definition of AMP.

12: In your view, should further amendments be considered to bring into scope of the AMP definition those who trade in the sale and purchase of digital art? If so, what other amendments do you think should be considered?

Propertymark suggests that transactions involving digital art should be included in the AMP definition. We believe that the current definition of a work of art, which was originally adopted in the Value Added Tax Act 1994, may now be too narrow due to its focus on physical artwork. The increasing

[1] HM Treasury, 2021: Amendments to the MLRs 2017 Statutory Instrument 2022 Consultation: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1004603/210720_SI_Consultation_Document_final.pdf.
[2] Ibid.

interest in and value of digital works with associated non-fungible tokens (NFTs) is illustrative of a changing market, and HM Treasury should consider extending the AMP definition accordingly.

Suspicious Activity Reports

13: In your view, is access by AML/CTF supervisors to the content of the SARs of their supervised population necessary for the performance of their supervisory functions? If so, which functions and why?

Propertymark believes that a consistent approach is necessary to ensure that supervisory functions are carried out effectively and would, therefore, support any enhancement of clarity to ensure that supervisors operate in harmony. We feel that simply collecting information on the number of SARs submitted, whilst indicative of potential ML or TF activity, does not enable a supervisor to fully comprehend the nature and extent of ML and TF within a sector. Access to SARs has the potential to further understanding in this regard and enable a supervisor to build up a comprehensive picture of its sector. This might be particularly useful for supervisors such as HMRC, which supervises businesses across seven different sectors.

The ability to access SARs as part of its monitoring would enable HMRC, for example, to build up a clear understanding of practice, risk and severity of ML and TF within each sector to inform its own functioning, as well as disseminate sector-specific advice and technical guidance as appropriate to its supervised populations. As the supervisor for estate and letting agents, HMRC must ensure compliance with the MLRs and confirm that businesses have systems and procedures in place to prevent exploitation for the purposes of ML and TF. But the opportunities for and instances of ML and TF in the estate and lettings agency sectors are likely to differ from money service businesses, for instance. Having access to 'real time' reports of suspicious activity would enable HMRC to respond more swiftly to emerging trends and changes in risk and to update their advice to supervised populations accordingly.

14: In your view, is regulation 66 sufficient to allow supervisors to access the contents of SARs to the extent that they find them useful for the performance of their functions?

In Propertymark's view, regulation 66 provides the necessary legal mandate for supervisors to access SARs submitted by their supervised population. However, provided it is the intention of HM Treasury that supervisors can request access to such SARs as part of their monitoring, the apparent lack of certainty suggests that an amendment to the regulation, as well as improved guidance on the matter is necessary.

15: In your view, would allowing AML CTF supervisors access to the content of SARs help support their supervisory functions? If so, which functions and why?

Please refer to our response to question 13.

16: Do you agree with the proposed approach of introducing an explicit legal power in the MLRs to allow supervisors to access and view the content of the SARs submitted by their supervised population where it supports the performance of their supervisory functions under the MLRs (in the event a view is taken that a power doesn't currently exist)?

Propertymark agrees with the proposed approach of introducing an explicit legal power to permit supervisors to access SARs submitted by their supervised population. We believe that such an amendment would avoid misinterpretation, provide clarity and promote consistency in approach

across regulated sectors. Relevant guidance should also be amended to reaffirm the mandate and support understanding.

17: In your view, what impacts would the proposed change present for both supervisors and their supervised populations, in terms of costs and wider impacts?

As indicated in our response to Question 13, Propertymark considers SARs to have the potential to provide supervisors with information and evidence that could improve their resource allocation, budgeting processes and enhancement of supervisory strategies. The proposed amendment would confirm that supervisors are authorised to access SARs as part of their monitoring, and likely result in more widespread analysis of SARs' content. Such action has the potential to increase understanding of suspected ML and TF activity, from which learning can be passed on to supervised populations through better training, tailored advice and, ultimately, the advantages of association with a reliable and well-regulated sector.

18: Are there any concerns you have regarding AML/CFT supervisors accessing and viewing the content of their supervised populations' SARs? If so, what mitigations might be put in place to address these?

Propertymark considers the benefits of supervisors having access to SARs to outweigh any potential costs and does not consider access to SARs by a relevant supervisor to constitute an offence under the Proceeds of Crime Act 2002 (POCA). Supervisors should already have systems and processes in place to maintain confidentiality and prevent offences under regulation 52A of the MLRs, and as such any risks associated with accessing SARs should not be disproportionate. Nevertheless, HM Treasury should consider whether the MLRs and associated guidance provide sufficient safeguards to ensure that the content of SARs, as well as any other information gathered as part of a supervisor's monitoring activity, is dealt with in a manner that does not undermine or prejudice a potential investigation.

Credit and Financial Institutions (Regulation 10)

19: In your view, what are the merits of updating the activities that make a relevant person a financial institution, as per Regulation 10 of the MLRs, to align with FSMA?

20: In your view, would aligning the drafting of Regulation 10 of the MLRs with FSMA provide greater clarity in ensuring businesses are aware of whether they should adhere to the requirements of the MLRs?

21: Are you aware of any particular activities that do not have clarity on their inclusion within scope of the regulated sector?

22: In your view, what would be the impact of implementing this amendment on firms and relevant persons, both in terms of direct costs and wider impacts?

23: In your view, what would be the impact of implementing this amendment on the FCA, both in terms of direct costs and wider impacts?

24: In your view, would there be any unintended consequences of aligning Regulation 10 of the MLRs with FSMA, in terms of diverging from the EU position?

Propertymark has no views on the amendment to regulation 10.

Proliferation Financing Risk Assessment

25: Do you agree with the proposal to use the FATF definition of proliferation financing as the basis for the definition of the MLRs?

26: In your view, what impacts would the requirement to consider PF risks have on relevant persons, both in terms of costs and wider impacts?

27: Do relevant persons already consider PF risks when conducting ML and TF risk assessments?

28: In your view, what impact would this requirement have on the CDD obligations of relevant persons? Would relevant persons consider CDD to be covered by the obligation to understand and take effective action to mitigate PF risks?

29: In your view, what would be the role of supervisory authorities in ensuring that relevant persons are assessing PF risks and taking effective mitigating action? Would new powers be required?

30: In your view, does the proposed drafting for this amendment in Annex D adequately cover the intention of this change as set out?

Propertymark has no views on proliferation financing.

Extension of the terms 'Trust or Company Service Provider' and 'business relationship'

31: Do you agree that Regulation 12(2)(a) should be amended to include all forms of business arrangement which are required to register with Companies House, including LPs which are registered in England and Wales or Northern Ireland?

Propertymark agrees that regulation 12(2)(a) should extend to all forms of business, including any firm, as proposed and defined by regulation 3(1), in order to ensure consistency and remove any related weaknesses within the MLRs that might otherwise be subject to abuse.

32: Do you consider there to be any unintended consequences of making this change in the way described?

No, we can foresee no unintended consequences in amending regulation 12(2)(a) as described.

33: In your view, what impact would this amendment have on TCSPs, both in terms of costs and wider impacts?

Propertymark considers the proposed amendment to be proportionate, and thus any associated costs are not deemed to be prohibitive. Limited Partnerships (LPs) will need to ensure that they comply with the requirements of the MLRs and ensure sufficient resources are allocated to do so, however Propertymark believes that these costs should not be problematic for legitimate LPs and TCSPs.

34: In your view, what impact would this amendment have on business arrangements, including LPs which are registered in England and Wales or Northern Ireland, both in terms of costs and wider impacts?

We consider the proposed amendment to be a necessary intervention to deter ML and TF and would anticipate a reduction in the number of existing and newly registering LPs as a consequence, as seen following similar regulatory changes in Scotland in 2017.

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

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

TCSP's form an important role in the global economy acting as intermediaries, both as introducers of business to other institutions and as entities for handling and/or managing funds and assets and Propertymark agrees any business arrangement that requires registration with Companies House should be captured by the definition of 'business relationship'. Regulation 4(2) should be amended accordingly to ensure that the approach is consistent across all business arrangements.

36: Do you agree that Regulation 4(2) should be amended so that the term 'business relationship' includes a relationship where a TCSP is acting or arranging for another person to act as those listed in Regulation 12(2)(b) and (d)?

Yes, Propertymark agrees with this amendment.

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

Propertymark agrees that a limited partner's lack of involvement in management of a business should not therefore constitute a business relationship and such an appointment would therefore not be classified as a business relationship for the purposes of the regulations.

38: Do you consider there to be any unintended consequences of making these changes?

Propertymark can foresee no unintended consequences of the proposals.

39: In your view, what impact would this amendment have on TCSPs, both in terms of costs and wider impacts?

Please refer to our response to Question 33.

40: In your view, what impact would this amendment have on business arrangements, including LPs which are registered in England and Wales or Northern Ireland, both in terms of costs and wider impacts?

Propertymark believes implementation of the amendment is likely to result in a reduction of registered and newly registering LPs. We do not feel the amendment is disproportionate, and therefore the impact on legitimate LPs is not considered to be unduly negative.

Reporting of discrepancies: Expansion of Regulation 30A to introduce an ongoing requirement to report discrepancies in beneficial ownership information

41: Do you agree that the obligation to report discrepancies in beneficial ownership should be ongoing, so that there is a duty to report any discrepancy of which the relevant person becomes aware, or should reasonably have become aware of?

Propertymark agrees in principle with the proposal to make ongoing the requirement to report discrepancies in beneficial ownership. In cases where the risk of ML has been assessed as being low, a business relationship may have been entered into before a discrepancy in beneficial ownership becomes apparent. The proposed amendment would clarify the legal obligation to report such a discrepancy as soon as it became known, rather than limit it to the onboarding stage of a business relationship. Consideration might be given as to whether a reporting timeframe might be beneficial,

for instance that a report should be made to Companies House within 14 days of a discrepancy being identified, to provide clarity in situations where such a discrepancy is exposed but not reported.

42: Do you consider there to be any unintended consequences of making this change?

Propertymark considers the proposal to be a useful clarification, and one that is both likely to capture instances of potential ML and generate additional intelligence for Companies House. However, any amendment to the MLRs must not weaken the present requirement for a discrepancy in beneficial ownership to be reported prior to the establishment of a business relationship. Only if the risk of ML has been assessed as being low or it would interrupt the normal conduct of business should any customer due diligence (CDD) not be carried out prior to the creation of a business relationship, and an ongoing reporting responsibility should recognise these limited exceptions to ensure that CDD continues to be carried out within an appropriate timescale.

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

Property is a high-risk sector for money laundering because any foreign company can buy property in the UK without having a presence in the country. Criminal funds can be concealed and made to look legitimate through an untraceable 'company' and subsequently the purchasing of property. When agents try to determine the true, or 'beneficial' owners, they find only documents listing shell companies. The Pandora papers[3] have highlighted the true identity of owners can be hidden through the use of overseas shell companies. To maintain integrity in our housing market it is vital to know who the ultimate owner of a property is. Propertymark is calling for a public register of overseas beneficial owners and the UK Government should look to implement this immediately. It is imperative that the public register of overseas companies owning property in the UK is set up as soon as possible. The longer the UK waits for a register, the longer corrupt individuals will be able to use the UK property market to hide their wealth.

44: In your view, given this change would affect all relevant persons under the MLRs, what impact would this change have, both in terms of costs and benefits to business and wider impacts?

Propertymark recognises that an ongoing obligation to report discrepancies is likely to lead to additional reporting, and though we do not consider the change to have significant resourcing implications for our members, it is likely, across all sectors, to increase the caseload for Companies House, which will need to investigate and reconcile such reports.

Disclosure and Sharing

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

Propertymark can see no reason why BEIS should not be included on the list of relevant authorities for the purposes of Regulation 52.

46: Are there any other authorities which would benefit from the intelligence and information sharing gateway provided by Regulation 52?

Propertymark feels that the list of relevant authorities outlined in regulation 52(5) could be reviewed to more accurately reflect the present scope of the MLRs. In addition to BEIS, we feel that consideration should be given as to whether Companies House and the Department for Levelling Up,

[3] https://www.icij.org/investigations/pandora-papers/

Housing and Communities (DLUHC) as well as other Government departments involved in the regulation of particular sectors should be included on the list of relevant authorities. We feel that the potential benefits of information sharing between relevant and supervisory authorities could improve overall outcomes for countering ML and TF through implementation of better-targeted monitoring and supervisory practices.

47: In your view, should the Regulation 52 gateway be expanded to allow for reciprocal protected sharing from other relevant authorities to supervisors, where it supports their functions under the MLRs?

Propertymark considers the extension of regulation 52 to enable reciprocal protected information sharing to be helpful. As previously outlined, Propertymark supports such practice due to its potential to elevate standards and improve outcomes. However, the expansion must establish parameters for any limits to data sharing and clarify HM Treasury's expectations of the gateway to ensure that regulations are followed as intended.

48: In your view, what (if any) impact would the expansion of Regulation 52 have on relevant persons, both in terms of costs and wider impacts?

An expansion of regulation 52 that requires relevant authorities to provide data to supervisory authorities, if requested, is likely to have resourcing implications. Whilst Propertymark advocates such data sharing, it is critical that relevant authorities consider the budgetary ramifications to enable the gateway to be implemented as intended, and that funding is made available should any shortfall be identified.

49: In your view, what (if any) impact would the expansion of Regulation 52 have on supervisory authorities, both in terms of the costs and wider impacts of widening their supervisory powers?

As indicated in our response to Question 47, supervisory authorities will benefit from access to information and data which Propertymark believes can be used to better inform their supervisory functions. Supervisory authorities will already have mechanisms in place to convey information to their relevant authority, but the widening of their supervisory powers will require more resources to be allocated for the interpretation and synthesis of additional information received from a relevant authority.

50: Is the sharing power under Regulation 52A(6) currently used and for what purpose? Is it felt to be helpful or necessary for the purpose of fulfilling functions under the MLRs or otherwise and why?

Propertymark does not have sufficient expertise to respond to this question.

<u>Information Gathering</u>

51: What regulatory burden would the proposed changes present to Annex 1 financial institutions, above their existing obligations under the MLRs?

52: In your view, is it proportionate for the FCA to have similar powers across all the firms it supervises under the MLRs?

53: In your view, would the expansion of the FCA's supervisory powers in the ways described above Annex 1 firms allow the FCA to fulfil its supervisory duties under the MLRs more effectively?

54: In your view, what impacts would the expansion of the FCA's supervisory powers in the ways described above have on industry and the FCA's wider supervised population, both in terms of costs and wider impacts?

55: In your view, what impacts would the expansion of the FCA's supervisory powers in the ways described above have on the FCA, both in terms of costs and wider impacts?

Propertymark does not have sufficient proficiency to comment how the FCA supervises its firms.

The approach to implementation

56: Do you agree with the overarching approach of tailoring the provisions of the FTR to the cryptoasset sector?

Propertymark agrees that regulation 16 of the Financial Action Task Force (FATF) should be implemented consistently across all financial sectors and considers the provisions of the Funds Transfer Regulation (FTR) to be sufficiently applicable to extend the travel rule to cryptoassets.

57: In your view, what impacts would the implementation of the travel rule have on businesses, both in terms of costs and wider impacts?

Propertymark considers the implementation of the travel rule to be imperative to ensure that transactions of more than £1,000 using cryptoassets are traceable to an originator and beneficiary, particularly in light of the increase in risk level of ML and TF to 'medium' in the most recent National Risk Assessment.[4] Implementation of the travel rule will clearly involve costs for Virtual Asset Service Providers (VASPs) but we believe the benefits of increased regulation and supervision in terms of disruption to ML and TF to far outweigh the initial and ongoing costs associated with travel rule compliance.

58: Do you agree that a grace period to allow for the implementation of technological solutions is necessary and, if so, how long should it be for?

Propertymark feels that FATF's clarification in July 2019 that cryptoassets fall within the scope of regulation 16 signalled the impending implementation of the travel rule, and whilst businesses will not have infrastructure currently in place to comply with the regulation, there is an increasing number of options available to enable this. For this reason, Propertymark suggests that a transition period of eighteen months following amendment of the MLRs might be appropriate.

Use of provisions from the Funds Transfer Regulation

59: Do you agree that the above requirements, which replicate the relevant provisions of the FTR, are appropriate for the cryptoasset sector?

Yes, Propertymark considers the stated requirements to be appropriate for the cryptoasset sector.

Provisions specific to cryptoasset firms

60: Do you agree that £1,000 is the appropriate amount and denomination of the de minimis threshold?

Propertymark agrees that the proposed de minimis threshold of £1,000 is appropriate, given that multiple, linked transactions involving the same originator and beneficiary that reach this threshold will also need to be accompanied by full beneficiary and originator information. However, we note the Financial Crimes Enforcement Network (FinCEN) and Federal Reserve's intention to lower in the

[4] HM Treasury & Home Office, 2020: National Risk Assessment: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/945411/NRA_2020_v1.2_FOR_PUBLICATION.pdf.

United States the threshold for international transactions involving cryptoassets to US $250, and would suggest that UK Government should consider the impacts, costs and benefits of such an approach. The de minimis threshold, particularly for international transactions, should as a minimum be reviewed at regular intervals to ensure it remains appropriate.

61: Do you agree that transfers from the same originator to the same beneficiary that appear to be linked, including where comprised of both cryptoasset and fiat currency transfers, made from the same cryptoasset service provider should be included in the £1,000 threshold?

Yes, Propertymark supports the proposal for seemingly linked transactions between the same originator and beneficiary amounting to £1,000 or more to be subject to the information requirements for transactions over the de minimis threshold.

62: Do you agree that where a beneficiary's VASP receives a transfer from an unhosted wallet, it should obtain the required originator information, which it need not verify, from its own customer?

Yes, Propertymark agrees with the proposal.

63: Are there any other requirements, or areas where the requirements should differ from those in the FTR, that you believe would be helpful to the implementation of the travel rule?

Propertymark does not have sufficient expertise to respond to this question.