
Consultation on the transposition of the Fourth Money Laundering Directive

Bar Council – Consultation Response

Introduction

1. The Bar Council is the representative body of the Bar of Northern Ireland. Members of the Bar specialise in the provision of expert independent legal advice and courtroom advocacy. Access to training, experience, continual professional development, research technology and modern facilities within the Bar Library enhance the expertise of individual barristers and ensure the highest quality of service to clients and the court. The Bar Council is continually expanding the range of services offered to the community through negotiation, tribunal advocacy and alternative dispute resolution.
2. The Bar Council welcomes the opportunity to contribute to the consultation on the transposition of the Fourth Money Laundering Directive.

Consultation Questions

The Bar of Northern Ireland has sought to provide a response to questions of most relevance to our practice and jurisdiction.

Question 1: Do you agree with the proposed turnover threshold of financial activity being set at £100,000 as one of the criteria to comply with in order to be exempt from the directive? Please provide credible, cogent and open-source evidence (where necessary) to support your response.

Agree. This does not apply to individual barristers as they do not qualify to other criteria for exemption from the directive.

Question 2: The government would welcome views on whether a maximum transaction threshold per customer and single transaction should remain at £836 (EUR 1,000). Please provide credible, cogent and open-source evidence (where necessary) to support your response.

Agree. This does not apply to individual barristers as they do not qualify to other criteria for exemption from the directive and this relates to one of the exemption criterion.

Question 3: When do you think CDD measures should apply to existing customers while using a risk-based approach?

Consultation on the transposition of the Fourth Money Laundering Directive

Bar Council – Consultation Response

In the legal context, the relationship with existing clients is managed by the instructing solicitor. In respect of inactive customers or dormant accounts, customer due diligence measures could be applied when next, the client presents for advice or legal services.

Question 4: What changes to circumstances do you think should warrant obliged entities applying CDD measures to their existing customers? E.g. name, address, vocation, marital status etc.

In the legal context, the most relevant change in circumstance would be when the client presents again to their solicitor (and then potentially barrister). Ideally, this is when all of the information or the background held on record should be verified and CDD measures could form part of this.

Question 5: How much does it cost your business to carry out CDD checks? Please provide credible, cogent and open-source evidence to support your response.

The Bar of Northern Ireland, as the representative and professional body, does not hold the necessary practice data to respond to this.

Question 6: We welcome responses setting out how you have converted the Euro thresholds into GBP under the existing Money Laundering Regulations, for example, is the currency exchange the subject of a set policy? We would also welcome your views on what would be helpful to you when dealing with a conversion from Euro to GBP.

The Bar of Northern Ireland agrees with continued conversion to pounds sterling based on the standard conversion rate at the time of writing.

Question 7: Do you agree that the government should remove the list of products subject to SDD as currently set out in Article 13 of the Money Laundering Regulations (2007)? If not, which products would you include in the list? Please provide credible, cogent and opensource evidence to support inclusion. What are the advantages and disadvantages of retaining this list?

We have no express views. This matter would be of more relevance to Law Society of Northern Ireland and solicitors as Article 13 refers to ‘pooled accounts’.

Consultation on the transposition of the Fourth Money Laundering Directive

Bar Council – Consultation Response

Question 8: What are the money laundering and terrorist financing risks related to pooled client accounts and what mitigating actions might you take? Please provide credible, cogent and open-source evidence to support your response.

This is not applicable to the Bar of Northern Ireland as barristers in independent practice do not hold or manage client accounts.

Question 9: What would be the effect of the removal of SDD measures on pooled client accounts? Please provide credible, cogent and open-source evidence to support your response.

This is not applicable to the Bar of Northern Ireland as barristers in independent practice do not hold or manage client accounts.

Question 10: What are your views on the retention of SDD measures on pooled client accounts? Please provide credible, cogent and open-source evidence to support your response.

This is not applicable to the Bar of Northern Ireland as barristers in independent practice do not hold or manage client accounts.

Question 11: What are your views on the situations described by the ESAs where SDD may be appropriate on pooled client accounts? Please provide credible, cogent and open-source evidence to support your answer.

This is not applicable to the Bar of Northern Ireland as barristers in independent practice do not hold or manage client accounts. This would be of more relevance to Law Society of Northern Ireland and solicitors.

Question 12: Are there any other factors and types of evidence of potentially lower risk situations, aside from those listed in Annex II of the directive, that you think should be considered when deciding to apply SDD? Please provide credible, cogent and open-source evidence to support your response.

We have nothing further to add.

Question 13: Are there any other products, factors and types of evidence of potentially higher risk situations, aside from those listed in Annex III of the

Consultation on the transposition of the Fourth Money Laundering Directive

Bar Council – Consultation Response

directive, which you think should be considered when assessing ML/TF risks in respect of EDD? Please support your response with credible, cogent and open-source evidence where possible.

We have nothing further to add.

Question 14: Are there any high-risk products from sectors other than the Financial Services sector that you think should be included in the Regulations?

This is not applicable to the Bar of Northern Ireland.

Question 15: What EDD measures do you currently apply to clients operating in high-risk third countries, including those on FATF's black, dark grey and grey lists?

The Bar of Northern Ireland, as the representative and regulatory body, does not hold the necessary practice data to respond to this.

Question 16: How much does it cost your business to apply EDD measures? Please provide credible, cogent and open-source evidence to support your response.

The Bar of Northern Ireland, as the representative and regulatory body, does not hold the necessary practice data to respond to this.

Question 17: What are your views on the meaning of a 'member organisation'? Please provide evidence in support of your answer.

In the legal context, it is difficult to identify any potential groupings which would fall under this definition.

Question 18: What are your views on the meaning of 'federation'? Please provide evidence in support of your answer.

In the legal context, it is difficult to identify any potential groupings which would fall under this definition.

Consultation on the transposition of the Fourth Money Laundering Directive

Bar Council – Consultation Response

Question 19: If you are a financial institution, are there any additional institutions or persons situated in a Member State or third country that you think could be relied upon in order to help reduce the regulatory burden on businesses - e.g. the third party applies due diligence and record-keeping requirements and are also appropriately supervised in accordance with the directive?

This is not applicable to the Bar of Northern Ireland.

Question 20: Do you rely on third parties to meet some CDD requirements? How much does this cost your business? Please provide credible, cogent and open-source evidence to support your answer.

Individual practising barristers will rely on their instructing professional client, usually a solicitor and an obligated party, to conduct customer due diligence.

Question 21: Should the government set a threshold of the size and nature of the business for the appointment of a compliance officer and employee screening? If so, what should the government take into account?

We agree. In the context of the Bar, our members are sole traders operating on referral and instruction from another obligated party under the Directive.

Question 22: What should be taken into account when screening an employee?

This is not applicable to the Bar of Northern Ireland.

Question 23: Should the government set a threshold for the size and nature of the business that requires an independent audit function? If so, what should the government take into account?

We agree. In the context of the Bar, our members are sole traders operating on referral and instruction from another obligated party under the Directive. An audit function would not be a proportionate measure.

Question 24: What do you think constitutes an “independent audit function”?

An externally appointed expert to review case records, supporting AML data and policies.

Consultation on the transposition of the Fourth Money Laundering Directive

Bar Council – Consultation Response

Question 25: How many of the controls listed at paragraph 4.34 are you already carrying out and what is your assessment of the likely costs of these procedures?

At present, we do not carry out these controls.

Question 68: Do you think that where registration is a requirement, the supervisor should be given an express power to refuse to register or to cancel an existing registration?

We agree. Potentially where the practice in the UK is considerably at variance to the Regulations so as to render them inapplicable or rendered irrelevant.

Question 69: The government welcomes views on the reasons for a supervisor to refuse a registration or to cancel an existing registration. Are there any other reasons you think should be captured? Do you foresee any problems with the conditions identified?

We have nothing further to add.

Question 70: The government welcomes views on whether a supervisor should have the power to add conditions to a registration or whether they should have the power to suspend an existing registration.

We agree. In our context, the condition would be the limitation on the access to data from our member practices.

Question 71: The government welcomes views on the test that should be applied by a supervisor when seeking to refuse to register, cancel an existing registration, add conditions to a registration or suspend an existing registration (see 12.8).

Nothing further to add.

Question 72: Where there is more than one supervisor, we welcome views on preventing the resubmission of an application for registration with another supervisor.

Consultation on the transposition of the Fourth Money Laundering Directive

Bar Council – Consultation Response

This is not applicable to the Bar of Northern Ireland.

Question 73: Do you agree with the government’s approach to a "person who holds a management function" in paragraph 12.13 - namely those who make decisions about a significant part of the entity’s activities or the actual managing or organising of a significant part of those activities? Do you think it will encompass all individuals that should be subject to a fit and proper test?

We agree.

Question 74: Should the government extend the fit and proper test to agents of MSB’s? Please explain your response and provide credible, cogent and open-source evidence where possible.

This is not applicable to the Bar of Northern Ireland.

Question 75: What are your views on the meaning of “criminals convicted in relevant areas”?

We concur with the government interpretation.

Question 76: What are your views on the meaning of “associates”?

We are unsure how this could be justified if interpreted as a preclusion on family members.

Question 77: Do you agree the criminality test should be extended to High Value Dealers?

This is not applicable to the Bar of Northern Ireland.

Question 78: What are your views on spent convictions and cautions being taken into account for those new sectors in paragraph 12.18, in particular estate agents, lettings agents, accountants and, if there is to be an extension, HVD’s? How would the disclosure of spent convictions and cautions maintain public protection and mitigate risks to the public?

Consultation on the transposition of the Fourth Money Laundering Directive

Bar Council – Consultation Response

This is not applicable to the Bar of Northern Ireland as unprotected spent convictions and cautions can be requested currently on application for admission to the Inn of Court.

Question 79: Are there any specific offences you consider relevant in relation to the risk of money laundering and terrorist financing?

We agree with the government stipulation.

Question 80: Should the government extend the criminality test to other entities covered by the directive? Please provide evidence to support your response.

We recognise that this may prove unworkable in other sectors, but it is worthy of consideration.

Question 81: Do you think that a transitional period is needed to complete the criminality tests?

We agree with the need for a transitional period.

Question 82: Do you think a transitional period of two years affords sufficient time to complete the criminality test on the appropriate existing persons who are already on the supervisors' registers?

We believe this to be sufficient. This test is satisfied as part of the admission process and call to the Inn of Court of Northern Ireland.

Question 83: What are the expected transitioning and ongoing costs in your sector/business for applying a criminality test?

We believe these are unlikely to be significant as largely undertaken at present.

Question 84: What are your views on there being no upper limit on the imposition of an administrative pecuniary sanction?

We have no issue with no upper limit.

Consultation on the transposition of the Fourth Money Laundering Directive

Bar Council – Consultation Response

Question 85: Should the government consider whether additional sanctions and measures should be made available to those set out in 13.4 and 13.5?

The sanctions listed are considerable and wide ranging, which should afford the government with adequate recourse.