



Brexit Q&A

Anti-Money Laundering

In another of our Brexit Q&A series, Graham Mackenzie, Head of Anti-Money Laundering here at the Society, answers some questions you might have about what impact the end of the transition period on 31 December 2020 will have on anti-money laundering regulation.

Q: Hi Graham. Thank you for answering our questions. First of all, will there be any immediate impact on the area of AML regulation?

A: I think the short answer is no - we do not expect to see any immediate change to the UK AML framework.

The EU's 5th Money Laundering Directive has already been implemented into UK law via [the Money Laundering and Terrorist Financing \(Amendment\) Regulations 2019](#) and the government has not announced any proposal to deviate from those standards/requirements as of 1 January 2021.

Further, the [Money Laundering and Transfer of Funds \(Information\) \(Amendment\) \(EU Exit\) Regulations 2019](#) (part of the "UK Exit Regulations"), were also brought into law earlier this year. These ensure that, post-Brexit, the UK's AML regime will broadly mirror that of the EUs, while at the same time removing references to the EU and its institutions.

Q: What changes will firms need to consider in the shorter term?

A: One change I'd like to bring attention to is that under the exit regulations, the definition of a 'third country' becomes a country outside the UK, as opposed to outside the EEA. EU nationals/clients will consequently become third-country entities for the purposes of AML compliance.

Transactions and business relationships involving EU nationals/clients will then be subject to third country considerations and criteria as included in [the Money Laundering Regulations 2017](#).

Furthermore, regulation 33 of the Money Laundering Regulations requires a relevant person to apply enhanced due diligence in any business relationship with a person established in a high-risk third country or in relation to any relevant transaction where either of the parties to the transaction is established in a high-risk third country.

Regulation 33.3.a defines a "high risk third country" as a country listed by the EU by Delegated Act pursuant to the EU's powers under the 4th Anti Money Laundering Directive. Under Schedule 8 of the EU Withdrawal Act any changes to the EU's list will cease to have effect in the UK once the Transition Period has ended. This in effect means that the EU's list becomes frozen in time in the UK and as a result creates a new autonomous list that replicates the EU's list as of the final day of the Transition Period.

HM Treasury will issue the first update to the new autonomous list following the February Plenary of the Financial Action Task Force. This will be done using the powers under s.49 of the Sanctions and Anti Money Laundering Act (2018)

Q: What about in the longer term, assuming we won't be implementing the 6th AML Directive (6MLD)? Will we see greater divergence at that point?



The UK has indeed opted out of transposing the 6th EU Directive, which was due to be implemented by 3rd December 2020. That said, many of the changes brought in by 6MLD are already in UK law, and in some instances, the UK already goes further than the 6MLD. For example, UK law currently includes a broader “all-crimes” provision relating to predicate offences than the 22 specified crimes that qualify as predicate offences set out in 6AMLD.

A key exception to this relates to a new offence created by 6MLD - “*Corporate Liability for the Failure to Prevent Money Laundering*”. This will ascribe criminal liability to organisations, such as companies and partnerships, where an individual or a group of individuals act for the benefit of the organisation and where the individual(s) has the power of representation of the organisation, can take decisions on behalf of the organisation or can control the organisation.

Before deciding whether to implement what would be a significant and fundamental change, the UK has ordered [a secondary review by the Law Commission](#) .

At a more fundamental level, the UK will continue membership of the Financial Action Task Force (FATF) – a global, intergovernmental organization which sets the foundations for international AML law through 40 standards or “recommendations”, which all members are expected to adhere to.

Q: Where should I look for further advice and information?

A: The fundamental AML controls - which must be in place at all firms in-scope of the Money Laundering Regulations - will remain fundamental in a post-Brexit world.

Further advice, support and guidance on how to help prevent your firm handling the proceeds of crime is available via our [dedicated AML webpages](#).

We will continue to update our website with any specific changes as and when they arise.