

**TECH 27/05**

**MONEY LAUNDERING**

**CONSULTATION ON DRAFT GUIDANCE FOR THE FINANCIAL  
SERVICES SECTOR**

*Memorandum of Comment issued in June 2005 by the Institute of Chartered Accountants in England and Wales, in response to the consultation draft of revised guidance on the prevention of Money Laundering/Combating the Financing of Terrorism, issued by the Joint Money Laundering Steering Group in March 2005. This response takes into account comments made by the other members of the Consultative Committee of Accountancy Bodies.*

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## Introduction and Main Points

1. The Institute welcomes the work done by the JMLSG, in this fundamental revision of their guidance. The guidance has been much improved in both structure and content. In particular, we welcome the more risk based approach taken to the requirements and the introduction of the sector specific guidance.
2. We outline our main comments in this section of our response, enlarged upon below. We have not reviewed the sectoral guidance in detail, though we include comments where points have come to our attention. We look forward to seeing the sectoral guidance addressed to Independent Financial Advisers, when this is available.
3. The Guidance has been drafted in accordance with the law before the implementation of the money laundering provisions of the Serious Organised Crime and Police Act (SOCA). We would hope that changes in respect of any of these provisions which are implemented in the near future will be able to be inserted without full due process having to be completed again, but with limited consultation.
4. The guidance is still drafted, in places, in ways that seem better suited to larger more sophisticated organisations, with sufficient resources for dedicated and specialist anti-money laundering staff to be employed. A “think small first” approach to the drafting of guidance could be more consistent with the stated Government policies of reducing burdens on business and encouraging an entrepreneurial economy. We appreciate the problems in drafting a document intended to be used across such a wide cross-section of organisations, but suggest some changes that could be made, in Appendix 2. We also suggest that Chapter 1 “Legal and Regulatory Overview” might best be relegated to an Appendix – while it is important, we do not consider it is best placed here. We also suggest that a comprehensive index would be helpful and the inclusion of definitions of key words used in the text, including “MLRO”, “Non –UK Trusts” and “Monitoring”.
5. The audience to which the guidance (or particular elements of the guidance) is addressed is insufficiently clear, for an official document which may be taken into account by the Courts, in judging whether a criminal offence has taken place. For example:
  - Paragraph 2.16 notes that mortgage brokers and insurance intermediaries are not within the scope of the Regulations or the FSA’s ML Sourcebook, but in many places guidance is addressed to “FSA authorised firms” without distinguishing out these categories, even where the guidance deals specifically with ML requirements.
  - In many places, the guidance refers to “FSA authorised firms”, implying that non-FSA authorised firms do not need to take account of that guidance, but that they do need to take account of other elements of the guidance.

We note that the guidance is addressed to “financial services firms” from paragraph 7 of the Preface, though the term “industry” and “industry guidance” (which are not defined) are also used. “Financial services business” is defined in the glossary as including all business that is covered in Regulation 2(2)(a) – (e) of the Money Laundering Regulations, which includes money service businesses and certain activities listed in the Annex to the Banking Consolidation Directive. These may not be FSA regulated businesses. We understand that these are not intended to be included within the scope of the guidance, and suggest that this should be made much clearer in the Preface. In addition, the guidance could be made simpler and easier to read by clearly excluding both mortgage brokers and insurance intermediaries as well as all non-FSA regulated entities from the scope of the guidance, enabling deletion of all material seeking to distinguish readers who are covered by the FSA requirements from those that are not – all of them will be. We do not think that this would significantly damage the status of the guidance as a source of reference for entities outside its scope – we do not think it likely that unsophisticated persons would seek guidance from such a substantial tome, and the more sophisticated reader will be able to make their own judgement on applicability.

6. We welcome the clarification of the status of specific elements of the guidance, set out in paragraph 15, which notes that the word “must” indicates a legal requirement, which is therefore mandatory, and that “should” indicates an indicator of acceptable practice, where alternative means of compliance are possible. We suggest that this explanatory material be extended to explain the status of other indicative language used in the guidance such as “Firms will need to ...”, which might also be read to indicate mandatory requirements. The word “may” is also used in a way that in some cases could be ambiguous, sometimes indicating permission to take a certain course of action and sometimes indicating a circumstance that might or might not occur.
7. There is at least one place where an interpretation of the law has been taken which differs from the Institute’s understanding of the legal requirements. It would be helpful to the regulated sector as a whole, and to law enforcement, if a consistent approach to these could be taken. We would welcome the assistance of the JMLSG and of MLAC, in resolving differences, and any others that are identified. We have outlined this in paragraph 38 below.
8. Comments on the requirements for verification of identity are given in paragraphs 15 to 28 below. In this section, we would like to draw particular attention to the fact that the good practice indicators in the guidance (“firms should ...”) appear stricter and more rigorous for individuals than they are for legal persons. Given that money launderers will prefer to disguise their identity by the introduction of an additional layer such as the adoption of a legal persona, we find this strange. Comments on particular instances where we would suggest that this is inappropriate are given below.
9. We suggest that the material relating to risk-related application of the requirements would be clarified by a more explicit analysis of types of risk. There are at least three inter-related elements of risk, in the context of anti-money laundering, which could influence the appropriate actions of regulated persons. These are:

- The risk that a customer is not the person identified;
- The risk that a customer (regardless of their identity) is dishonest, to the extent that they would commit a money laundering offence, if given the opportunity; and
- The risk that a particular financial service or product can be used for money laundering purposes.

Only the first of these aspects of a business relationship is reflected in the legislation, but we agree that all three should be taken into account in considering the adequacy of identification procedures, as is implicit in the guidance given. An example of the inter-play between the three is the financially excluded, who may find it difficult to provide evidence of their identity, and whose probity may be doubted, but where they can be drawn into the formal economy (albeit by the provision of bank accounts and savings products with a very low risk of being used for laundering purposes) it makes it less likely that they will become either the victims or the perpetrators of crime. There are other examples of situations where a high risk in one aspect of the relationship can be mitigated by a low risk in the others.

- 10 In both the section on the training of relevant staff and in the section on suspicion reporting, we were struck by the lack of emphasis on the fact that individual staff members risk criminal penalties for failure to carry out their reporting responsibilities, and even more severely if they allow themselves to intentionally involve themselves or their firm in money laundering activities. It could make training far more effective, if the real and personal risks to individual staff members are made clear.

#### **Chapters 1 to 4 – Substantive Points**

- 11 In paragraph 1.31, a source of further advice on US requirements and their extra-territorial effect, would be particularly valuable.
12. The procedures outlined in paragraph 2.14 could appear daunting and unnecessarily burdensome, for a small organisation with management of the business carried out by the same person(s) as those providing the financial services. We suggest that if this is retained, that either the JMLSG provides simple pro-forma examples of suitable policy statements for different classes of small regulated entities, or encourages appropriate trade bodies to do so. This also applies, to a lesser extent, to the requirements of paragraph 3.31.
13. Paragraphs 2.17-2.20 addresses the issue of operational activities undertaken overseas. The key message should be that the outsourced activities are to be conducted to the standards currently prevailing in the UK. Outsourcing overseas also raises data protection issues, which may inter-relate with the AML requirements. We suggest that this matter is addressed in more detail.
14. Annex 4-1 lists specific risk indicators. We suggest the lists could be improved in the following respects:

- High risk customers are likely to include all those seeking a product for which there is no legitimate commercial rationale, not just those from over-seas.
- Cash businesses also present a high risk of being in a position to consolidate and bank the proceeds of crime.
- All customers with a regular source of income from a known and trusted source, which support the activity undertaken, can be classified as lower risk, not just those whose income is employment based. This applies equally (or even more) to pensioners or to housewives whose income originates from their partners' employment.
- A long term and active business relationship with the customer could also be an indicator of lower risk, which could be taken into account where a new account or other trigger event is proposed, with appropriate controls.
- It is unclear why execution-only transactions represent a lower risk of money laundering. Because execution-only transactions are likely to be subject to less scrutiny from financial service providers, they would appear to be preferred by launderers.
- Child trust funds, and other products designed for and reserved to children, could be added to the lower risk products;
- Life assurance products are only at low risk of money laundering if they cannot be taken out and then cancelled, with refund of premiums. In particular, single premium life products have been known to be used for laundering purposes.

## **Chapter 5 – Customer Due Diligence**

15. The opening sections of this chapter provide the context in which the rest will be interpreted, so clarity is vital. It is also the place where the fundamental rationale for the requirements are given, and so gives the opportunity to explain the reasoning behind it and an opportunity for communication of purpose. We are not sure that this has been achieved. For example:
- The sequence of thought could be clarified in paragraph 5.0.1. Identification of customers makes it more difficult for the financial services to be used for money laundering only if appropriate follow up action is taken by financial institutions.
  - The first sentence of paragraph 5.0.2 gives emphasis to fraud, over and above commission of the main money laundering offences. The main money laundering offences include the possession of the proceeds of fraud, and any other acquisitive crime, so the two cannot be clearly distinguished. Fraud is effectively a sub-set of money laundering.
  - Paragraph 5.1.7 downplays the emphasis on terrorist financing, by mentioning it without any reference to the relevant underlying legislation, and by then going on to define money laundering offences in terms of POCA only.
  - Paragraphs 5.2.1 and 5.2.2 raise queries over the term “applicant for business” without clearly resolving them. It would be preferable for the clarity given in paragraph 5.2.7 to be placed earlier in this section, and the reasoning extended to personal customers using a nominee relationship.
  - The principles set out in paragraph 5.2.7 are also undermined by paragraph 5.4.6, which omits to mention the need to identify key personnel in relation

to a non-personal applicant for business, and gives only a low priority to verifying their identity in higher risk cases.

16. Paragraph 5.1.4 refers to a regulated financial services firm in a comparable jurisdiction. Guidance should be given on how to identify such countries and be certain that their domestic legislation is adequate to allow reliance to be placed.
17. It would be appropriate to point out in paragraph 5.2.25 that, where a customer has an existing relationship with a firm, there is often a wealth of formal and informal evidence of identity already available. The reputation of the financial services industries in the UK has sometimes been undermined by a bureaucratic insistence on formal identification of customers already known to the firm or its personnel. However, we are also aware of the need for the maintenance of formal procedures, which cannot easily be avoided or circumvented by staff or customers. Even informal evidence needs to be recorded and verifiable.
18. The references to electronic checks would be considerably more useful if a list of suitable suppliers could be given. References to sources with closed user groups in paragraph 5.4.12 could be particularly frustrating to smaller organisations.
19. The verification procedures set out in paragraphs 5.5.11 to 5.5.16 come over as unnecessarily prescriptive, using the word “should” throughout, even though different standards are permitted for the financially excluded (paragraph 5.5.14 – and who may in any case not have a permanent address), where source of funds is used as an identifier (paragraph 5.5.26), accounts for dependant relatives (paragraph 5.5.38), home visits (paragraph 5.5.40) and so on. The principles set out in Paragraph 5.5.39 should be given greater prominence in this section, and should be extended to basic savings products, as well as banking facilities.
20. Paragraph 5.5.36 should state that compliance with a firm’s written policy will only provide evidence of compliance with the requirements where that policy is up to date and adequate.
21. It would be helpful if paragraph 5.5.39 gave a more reasoned and principled explanation of which persons are suitable to sign a letter of introduction for a customer otherwise unable to supply evidence of identity. As currently drafted, this might be thought to exclude such reputable professionals as Chartered Accountants and Chartered Surveyors. Practicing members of these professions normally work in the regulated sector, and so would be likely to provide particularly valuable evidence, from their position of knowledge of the requirements of the legislation.
22. Paragraph 5.5.47 appears to ignore the fact that some over-seas independent electronic databases could be equally useful and reliable in providing evidence of identity, as part of a risk based procedure.
23. Paragraph 5.5.55 appears inconsistent in emphasis and intent from paragraph 5.2.7. It should be clarified that the “controlling mind” of a non-personal

customer is a vital part of its identity, which requires verification in any circumstances where the risk is not low. The identity of a non-personal customer also involves the reasons why it was established and its owners or beneficiaries (who may or may not need to be separately identified or have their identities verified, depending on circumstances) as well as its formal constitutional documents. The detailed guidance later in this section generally indicates that this is the case, but this should not be undermined at the start of this section of the guidance.

24. It might be helpful to note in paragraph 5.5.61 that public information which is available for smaller private companies will not necessarily have been verified in any way prior to filing at companies house. Companies with apparent balance sheet and turnover limits below the audit exemption limit may be used to disguise much larger movements of illicit funds. The use of a corporate structure does not necessarily indicate the presence of more than one effective controller either.
25. Paragraph 5.5.66 should add that this guidance is subject to a risk based approach. Even public companies, particularly where they are small, and with only a minority of their shares listed on a foreign exchange, could be at risk of being used for criminal purposes.
26. Paragraph 5.5.102 should note that firms will need to establish not only that other firms are actually regulated, but also that the applicant for business does truly represent that other firm.
27. In the circumstances outlined in paragraph 5.6.2, many firms may find it convenient for the introducer to carry out formal identification procedures and pass on certified copies of identification documentation. It could be helpful to point this out.
28. The section on monitoring customer activity, in section 5.8, is not clear, in its purpose or intent. The term “monitoring” is not defined in the glossary – if it is intended that all firms should have a system of ex-post monitoring of all transactions and activities, as might appear to be the case from paragraph 5.8.1, then this should be clarified. However, for small firms with a very close business relationship with its clients and low risk clientele, this may not always be necessary. The staff alertness noted in paragraph 5.8.5 is much more important, and should be given emphasis by inclusion at the start of the section.

## **Chapters 6 – Staff Training and Awareness**

29. Paragraph 6.13 appears to be wrong. Individuals (other than nominated officers) outside the regulated sector do not have a responsibility to report money laundering suspicions under Section 330 of POCA, though they may need to do so, to provide a defence against a charge of money laundering under sections 327-329 of POCA.
30. Little emphasis is put on the personal risks to individuals of non-compliance with the AML requirements, though this must be a key element in ensuring that staff appreciate the gravity and importance of what they are being taught.

This is particularly apparent in paragraphs 6.7, the last bullet point of which could be read to indicate the effect on employees as a whole, rather than the personal consequences to each individual staff member. The existence of a criminal liability for staff members would also strengthen paragraph 7.4.

31. There appears to be no mention of training in the need to avoid tipping off.
32. In paragraph 6.21, It is unnecessarily prescriptive to indicate that staff *should* be made aware of NCIS threat assessments – this will be at most an indirect, not a direct requirement, and the threat assessments may not relate to a staff member’s particular role.
33. It might be helpful to note in the last paragraph, that a useful control could be to require staff to formally acknowledge that they have received training – this will help to bring home to them the importance of this matter, as well as the risk to the firm that staff members failing to comply with the requirements will claim lack of training as their reason.

## **Chapter 7 – Suspicious Activities, Reporting and Data Protection**

34. Paragraph 7.22 notes that the FSA recognises that firms may wish to set up systems, allowing staff to consult with their line managers, before sending a suspicion report to the MLRO. We suggest that this possibility should be raised earlier, as one of the matters that staff may consider, in order to conclude whether or not they are suspicious. If staff concerns are resolved by discussion with their line management or an internal or external advisory service, then no further action need be taken. If staff concerns are not resolved by such discussion, then the existence of any internal system does not absolve them from their statutory duty to report to the MLRO.
35. Paragraph 7.20 is misleading, in that a report to any person other than the MLRO does not comply with the statutory requirements on the staff member. In large organisations, assistants to the MLRO may have access to the reports made to him, but it should not be implied that reports are not made directly to the MLRO.
36. Paragraph 7.21 is unnecessarily prescriptive, particularly for smaller organisations where all staff members will know the MLRO personally. Providing that the full information is obtained and passed to NCIS, it does not really matter whether it was contained in the initial report to the MLRO. Back up information, such as details of the suspect, may often be as easily stored on client files.
37. It is not our understanding that membership of the Money-Web community is NCIS’s preferred route for suspicion reports from infrequent reporters, and to suggest so may lead to unnecessary work on behalf of both firms and NCIS. The word “should” should be substituted for “must” in the last line, as it is not yet a statutory requirement to use NCIS’s standard forms, no matter how desirable.
38. In paragraph 7.44 it is stated that attempted crimes (other than attempted money laundering) need not be reported, in advance of there being criminal

proceeds to launder. This does not conform with our understanding of the requirements of the Proceeds of Crime Act. Money laundering is defined in Section 340(11) of the Act as including “an act ... which constitutes an attempt, conspiracy or incitement to commit an offence ... under section 327,328 or 329”. Section 329 includes an offence of acquiring criminal property, and hence attempting to acquire criminal property is an offence. Attempting or conspiring to commit a fraud (say) necessarily involves attempting to acquire the proceeds of that fraud and so a person involved in such behaviour is already involved in committing a money laundering offence. We do not dispute that the interpretation taken by the JMLSG provides an appropriate boundary to reporting, on a common sense basis, but merely that we cannot reconcile this with our understanding of the law. This represents a matter where consistent guidance across the whole regulated sector is needed, and Treasury approval should not be given until a consistent position has been agreed. The lack of clarity is confirmed by the last bullet of the “core objectives” under the heading to chapter 7, which suggests that this is the subject of a “carve out” authorisation, rather than being a position under the law.

39. We were surprised to see that names and contact details of specific members of staff at the Financial Ombudsman Service were given in paragraph 7.51, in the context of money laundering suspicions. Would it be preferable for a general e-mail contact address and telephone number to be given?

FJB  
29/6/05

**Responses to Queries in Consultation Document**

*Q1 Does the proposed guidance offer firms the comfort they expect in relation to their obligations under the Money Laundering Regulations and the Proceeds of Crime Act? If not, why not?*

In general, the guidance gives the necessary comfort to those within its scope, though we have made some comments about improvements in emphasis that could be made, in the body of our response.

*Q2 Is the scope of the proposed guidance right? If not, where should this be changed?*

The scope of the population to which the guidance is addressed should be clarified. The tone and level of guidance is acceptable, but would benefit from a careful review to ensure that the drafting and mandatory requirements are suitable for application across the whole range of the FSA regulated sector.

*Q3 Is there likely to be a serious, adverse impact (whether in terms of cost or otherwise) of the changes proposed? If so, please explain why, and, if possible, quantify this impact.*

We do not foresee any adverse impact from the introduction of the guidance.

*Q4 What issues do you see in getting senior management buy-in to the risk-based approach?*

Ensuring appropriate compliance with a risk based approach must necessarily be a more complex and difficult question than compliance with a rules based approach. On the other hand, bank staff are inevitably motivated to bend the rules, when a prescriptive approach comes up with inappropriate answers, which is in itself undesirable. We believe that the risk based approach is the right way to go, and removes the most serious anomalies. However, senior managements' approach will depend on circumstances and a range of possible levels of involvement of them, and degree to which risk is taken into account, should be accommodated.

*Q5 A risk-based approach carries an inherent risk that it may lead to inconsistencies of approaches across firms, and therefore to an unlevel playing field. Are there grounds for introducing more prescription, to reduce this risk?*

Firms which are unsure of their ability to keep to an appropriate risk based approach, and justify decisions made under it, must continue to have an option of a (modified) rules based approach. Some inconsistency is inevitable, but this is justified in view of the advantages of at least an element of risk-modification being included in any system. The FSA will be responsible for ensuring that it is not abused.

*Q6 Would you wish there to be further practical guidance, in addition to that in Part I and the relevant sectoral guidance in Part II, on how a risk-based approach should be put in place? If so, what form would this take?*

A range of informal guidance will undoubtedly arise, in response to market demand. We do not consider that the formal, Treasury approved, guidance should be extended further.

*Q7 Do you support the separation of the requirements to obtain specific information from a potential customer from the requirements to verify some of this information?*

Yes. This division helps to clarify the operation of risk based elements of the customer due-diligence approach from the basic information that needs to be obtained in all cases.

*Q8 Do you support the introduction of a requirement to obtain a customer's date of birth and nationality? If not, why not?*

Yes, but if this is not available, it should not prevent access to products, on a risk based approach.

*Q9 Do you agree with the proposal to restrict the listing of acceptable documents to a few representative examples? If not, why not?*

Yes, supported as they are by general categories of documents.

*Q10 Do you support the proposed greater use of electronic verification? If not, why not? Are there additional conditions that should be placed on the use of electronic verification? If so, please say what these should be, and why.*

Yes. Electronic verification provides a wealth of corroborating evidence, linking a person with an address and previous financial history. However, it is less good at ensuring that an applicant for business is indeed the person whose details are being verified. Over use of this method could result in further spread of identity theft, for money laundering or other criminal purposes.

*Q11 Do you support the proposals for using the verification work carried out by other regulated firms? If not, why not?*

A more flexible approach to the sharing of evidence on the verification of identity is very welcome, though final responsibility should rest with each financial institution covered by the requirements.

*Q12 Do you find the proposed sectoral guidance approach helpful and understandable? Do you have comments on the detail of any of the sectoral guidance?*

Yes. However, we have not reviewed the sectoral guidance in detail.

*Q13 Are there any sectors not included in Part II that you believe merit inclusion?*

We look forward to seeing the sectoral guidance addressed to IFAs.

*Q14 What are your views on the timing of the introduction of the new guidance? How do you see the withdrawal of the 2003 Guidance Notes being effected?*

Reform of the AML requirements are not going to cease in the near term. The introduction of the new guidance should not be delayed for the implementation of the 3<sup>rd</sup> Directive, or any other reason. So far as possible, guidance on the implementation

of the reforms to the regime included in the Serious Organised Crime and Police Act should be included in this edition. To assist the regulated sector, the 2003 guidance notes should be allowed to run in parallel with the new version, for a generous period of time.

*Q15 What are your views on the need for a Helpdesk, and how it should be financed?*

A Helpdesk would be extremely valuable service, and should be made widely available. Charges might be raised on all users or to non-JMLSG members, at a break even level or to provide a surplus for further development of guidance. A premium charge telephone line would be one option for levying payment.

*Q16 Having seen the web-based version of this consultation draft, do you find it helpful, and would you use it? If not, why not?*

The web based version of the consultation paper has been useful, and we and our members would undoubtedly make use of a web based edition of the final guidance.

## Appendix 2

### DRAFTING COMMENTS

- a) The boxes at the head of each chapter can be daunting in size, and by their nature are duplicative. We suggest that it would be better to delete all the boxes marked “Actions required to be kept under regular review”. These are not present under every chapter heading and do not include actions relating to all the core objectives – though we suggest that all the core objectives do need regular actions to ensure compliance. Where actions are present, they are either rather obvious, or duplicative of the core objectives.
- b) We also suggest that the boxes marked “Relevant law and regulation” are unnecessary or misplaced, especially given the clear cross references to legislation given in the left hand margin of the text. If it is decided that these should be retained, then we suggest that they are placed in an Appendix at the end of each Chapter.
- c) “Money Laundering” is defined in the Regulations as including both an act which falls within section 340(11) of the Proceeds of Crime Act (POCA) and an offence under section 18 of the Terrorism Act 2000. It is therefore unnecessary to distinguish money laundering or AML in the guidance from terrorist financing or CFT. Although we agree that it is appropriate to mention terrorist financing specifically in the Preface, as an area of great importance and difficulty, it should not be separated out in a way that suggests that it can necessarily be distinguished in ways that are not appropriate. The Treasury’s AML Strategy notes the importance of the regime in depriving ordinary criminals of funds, as well as terrorists, though this is not the impression given by paragraphs 4 and 7 of the preface. Similarly, some types of serious crime (for instance paedophilia) do not necessarily require or produce large quantities of funds, unlike the suggestion given by paragraph 5 of the preface. Later in the Guidance, the term AML is used, in places, without the addition of CFT. In our view, it would be clearer that the entire guidance applies to both terrorist funds and the proceeds of crime, if there were not the occasional (and apparently random) reference to AML/CFT.
- d) In a number of places the word “proof” is used where “evidence” would be more suitable and indicative of the actual requirements. Firms are not required to prove the identity of their customers.
- e) The term “due diligence” is used in chapter 5 and elsewhere to indicate the processes of customer identification, verification, and the monitoring of the transaction or business relationship. This term is used in a different way, in other areas of business and commerce, frequently being used to refer to detailed financial investigation, at a level higher than can be undertaken in an AML context. If the term is retained, it should be defined.
- f) The word “freeze” is used in various places in the guidance to indicate ceasing to carry out a transaction which might otherwise be money laundering, and in other places to indicate the freezing of an entire account(s). We suggest it

would be clearer to distinguish these two situations, and to define the terms used for each, in the glossary. Examples are present in “core obligations” under the heading of chapter 7, and in paragraphs 7.60, 7.65.

- g) Throughout the guidance, the term “customer” is generally used, when describing the relationship between the parties providing and receiving financial service products. The change to the use of the term “client” in relation to the financially excluded appears unnecessarily divisive.
- h) Paragraph 18 of the preface might be made clearer with the use of bullet points.
- i) Paragraph 1.8 is chronologically confused. POCA and the Terrorism Act preceded the ML Regulations, and so cannot have widened their scope. It is right to emphasis the wide definition of “money laundering” under the UK law, but this might come over more clearly without comment on the order in which reforms took place.
- j) Paragraph 1.14 will require amendment, when the AML provisions of SOCA come into force.
- k) In paragraph 1.17, the use of the term “may not deal” might suggest that this is optional. We suggest it is replaced with “must not deal”.
- l) The drafting of paragraph 2.12 might be amended, to clarify that the ML Regulations also define money laundering to include a range of “involvement” with any criminal or terrorist property, not just the primary statutes.
- m) Chapter 3, under core obligations and elsewhere, states that nominated officers must make external reports, and separately that this is the responsibility of the MLRO. We appreciate that this has been done because of the differential drafting of the requirements, but we suggest that it cannot have been intended that NCIS is to receive two reports from separate people, so these must necessarily represent a single person, differently designated in different places. We suggest that the guidance explain this, and settles on a single term for this key person. This duplication of terms is also general in chapter 7.
- n) It is unclear why child trust funds are mentioned specifically, in paragraph 4.19. We suggest that the text is kept general, and that these, together with other savings products designed and reserved solely for children, be listed with other low risk products in Annex 4-1.
- o) In the heading above Paragraph 5.2.8, “may not” should be replaced with “must not”. This should also be done in the first line of paragraph 5.2.16.
- p) Paragraphs 5.2.7, 5.2.9 and 5.3.2 include strong indicators of expected practice, but nevertheless avoid the word “should”. We suggest that this detracts from the clarity of these paragraphs.
- q) Paragraph 5.4.2 is worded ambiguously, in that “generally” can be used to indicate “usually” as well as “in general terms”.

- r) In paragraph 5.4.3, “family name” is missing from the short list of basic aspects of identification.
- s) In paragraph 5.5.52, “country of incorporation” should be replaced with “country of incorporation/establishment” as not all non-personal customers are incorporated.
- t) Paragraph 5.5 89 should also refer to the new Office of the Scottish Charity Regulator (“OSCR”).
- u) In paragraph 7.26, “In respect of FSA-regulated firms” should be deleted. An MLRO in non-regulated firms also commits a criminal offence if he fails to report what he believes to be valid money laundering suspicions, which came as a result of an internal report.
- v) “Regulated Sector” is defined in the glossary in terms of relevant business, as defined in the ML Regulations. It would be helpful to include a reference to the Statutory Instrument which amended the relevant Schedule of POCA, to conform the two terms.
- w) In the Sectoral Guidance section on corporate finance:
  - In para. 11.6, line 2, “applicant” should be “applicants”, and
  - In para. 11.18, line5, there is an unnecessary space after “procedures”.