

Summary of feedback received

February 2021

<p>Consultation title</p>	<p>Changes to the Sourcebook for professional body anti-money laundering supervisors – criminality checks (CP20/7)</p>
<p>Date of consultation</p>	<p>5 June 2020 to 31 July 2020</p>
<p>Summary of feedback received</p>	<p>We consulted on an addendum to the Sourcebook for professional body anti-money laundering supervisors (PBSs). This relates to the prohibition against a person being a beneficial owner, officer or manager of a relevant firm (BOOM), or a relevant sole practitioner (SP) unless this has been approved by a PBS. We received 19 responses and we are grateful to everyone who took the time to contact us.</p> <p>Key proposals we consulted on include our expectations about what is 'sufficient information' to enable a PBS to determine that an applicant has no relevant convictions, dealing with overseas applicants, and the monitoring of criminality checks. Most respondents supported the general expectation that an application must include a criminality check by a UK disclosure agency, flexibility with regard to this expectation when dealing with overseas applicants, and discretion in how criminality checks are obtained and monitored.</p> <p>A number of respondents considered that an application need not include evidence of UK residency for the previous 5 years, since this was already part of the disclosure agency process.</p> <p>Most respondents did not agree that a criminality check should be renewed every 5 years as a matter of good practice. Some respondents suggested that such 'ongoing monitoring' was not previously envisaged by the Treasury, that there was insufficient evidence to justify the requirement, and that the MLRs did not enable this as currently drafted. Many respondents commented on the administrative burden of ongoing monitoring, which would go beyond the factors outlined in the cost-benefit analysis in the consultation.</p>

Response to feedback received

Most respondents agreed that the requirements of Regulation 26 apply to those who were working as BOOMs and SPs prior to the provision coming into force, as well as to new entrants.

In respect to those members who were working as BOOMs and SPs and chose not to apply for approval, most respondents agreed that PBSs have a responsibility to ensure those members are not operating 'under the radar' in a seemingly more junior role. However, some respondents considered that this was an inherent aspect to risk-based supervision and did not merit specific reference in the Sourcebook.

Differing criminal law regimes (in relation to the time period for the expiration of convictions) were highlighted as a potential cause for uncertainty. One PBS proposed that the guidance should clarify that the appropriate UK disclosure agency is the agency within the jurisdiction where the regulated services are provided.

Respondents asked for clarity on specific points, or made specific suggestions, which we discuss below under the section 'Response to feedback received'.

We also received comments in the following areas some of which have broader application than the issues raised in this consultation:

- increased knowledge of relevant convictions could be achieved by further improvement in intelligence sharing between PBSs and law enforcement agencies
- clarity was sought as to the meaning of the words in Regulation 46(1)(b) of the MLRs 'whether or not the person making the application, or being approved, is a relevant person'.

In many cases, consultation responses endorsed our expectations and we have adopted these accordingly:

- We have maintained our general expectation that an application for approval to be a BOOM or SP must include a criminality check by a UK disclosure agency. Some PBSs requested clarity that the guidance would not preclude them from additionally seeking self-declaration, which we accept.
- In respect to ongoing monitoring of criminality checks, the guidance will not set out specific expectations at this time. However, we consider it good practice for PBSs to consider approaches to facilitate their awareness of a member having been convicted of a relevant offence following approval as a BOOM or SP. This means the ongoing monitoring costs for

renewing criminality checks (as assessed in the cost-benefit analysis) are no longer applicable. Overall costs of compliance will therefore be significantly lower.

- In respect to overseas applicants, we have maintained the flexibility proposed for PBSs in determining whether they have sufficient information for the absence of relevant convictions. Some PBSs highlighted that this discretion is associated with risk, which we recognise. However, we consider that PBSs can, and should, manage such risk.
- We have maintained the discretion for PBSs, which was welcomed, in terms of who oversees the process of obtaining criminality checks (eg a firm or the PBS), and the use, as a minimum, of risk-based sample checking.
- We have maintained our expectation that the requirements of Regulation 26 be applied to those who were working as BOOMs and SPs prior to the provision coming into force, as well as to new entrants.
- We have maintained our expectation that PBSs should factor into their supervision the possibility of a BOOM/SP operating 'under the radar' in a seemingly more junior role.

We have made a number of changes to our proposals in response to feedback and where respondents asked for clarity on specific points, or made specific suggestions. These are listed in the section 'Changes made to the proposals as a result of feedback received'.

We also received some comments and suggestions for additional guidance that we have not taken forward. In part, this takes into account the existence of forums for PBSs to share information and good practice. For example:

- To specify that the proposals do not extend to broader fit and proper requirements. Although we do not consider this necessary, we have taken this into account in deciding the location and presentation of the new guidance in the Sourcebook.
- Providing examples and guidance to show how PBSs should factor into their supervision the risk that an individual is operating 'under the radar' without BOOM/SP approval. Many PBSs responded that they already have information-gathering procedures that would prevent this, and some considered it an inherent aspect to risk-based supervision.
- Allowing transition time for compliance given amendments to Regulations 26 and 46 came into force in January 2020. We expect PBSs to meet their obligations under the MLRs at all times.

Changes made to the proposals as a result of feedback received

Some matters raised by respondents are outside of our control. This includes the proposal that changes in requirements for PBSs should also apply to statutory supervisors to ensure consistency of approach to AML supervision.

A revised Sourcebook including amendments to address points raised by respondents can be found **here**.

We agree with many of the suggestions made by respondents and have made the changes below. These are cross referenced to the relevant paragraph numbers in the addendum guidance.

- Changing reference to the term 'sufficient information' from 'excluding acceptance of a self-declaration' to excluding 'self-declaration *alone*'. -1
- Removing the expectation that an application includes evidence of UK residency within the previous 5 years. This is replaced with an expectation that a PBS satisfies itself that a disclosure agency check from the UK (as opposed to a different country) is appropriate, including by considering the applicant's residential history. - 4
- Clarifying that where it is relevant to an application that there are differing criminal law regimes across the UK (in relation to the time period for the expiration of convictions), the applicable regime is the one within the jurisdiction where the regulated services are to be provided. - 5
- Clarifying that for a current application, a PBS may accept a criminality check submitted to a different PBS in respect of a previous application, provided it was obtained from the disclosure agency appropriate for the current application. - 6
- Simplifying our expectations around applications from those residing or who have resided overseas. We have also removed reference to 'statutory declarations' and replaced this with 'professional references that are independently verified' in 'exceptional circumstances'. - 8