

Legal Sector Affinity Group
Anti-Money Laundering Guidance for the Legal Sector
2021

Part 2c
Specific Guidance for Notaries

Introductory note to Part 2c

This is one of three “Part 2” sections of the Legal Sector Affinity Group (LSAG) anti- money laundering guidance for the legal sector in the UK.

These Part 2 sections are intended to provide more tailored AML guidance for specific types of legal practices or practitioners or those providing certain services. 2b and 2c are to be read alongside Part 1 of the guidance. 2a is designed to be read independently of Part 1.

- Part 2a – Barristers/Advocates
- Part 2b – Trust and Company Service Providers (TCSP)
- Part 2c – Notaries

Intended Audience

Legal practices and practitioners who do not undertake notarial work should refer to LSAG Guidance Part 1 (along with Parts 2a & 2b should they work as a Barrister, Advocate or Trust or Company Service Provider).

Part 2c is only relevant to notaries (including in Scotland and Northern Ireland solicitor appointed as notaries acting in a notarial capacity).

Should it be determined that (upon reading this section) the notarial work undertaken falls within the scope of the Money Laundering Regulations 2017, they should refer to relevant sections of LSAG guidance Part 1

Where a practice undertakes some work or provides some services which are supported by Part 2 guidance (e.g. a firm of solicitors in Scotland or Northern Ireland providing notarial services along with undertaking other work such as residential conveyancing), they should have regard to this section solely in respect of the notarial services undertaken.

Readers looking for guidance relating to all other activities in-scope of the Money Laundering Regulations 2017 should refer to LSAG Guidance Part 1.

The Status of this Guidance

This draft guidance replaces previous guidance and good practice information on complying with AML/CTF obligations.

This guidance is issued by the Legal Sector Affinity Group, which comprises the AML Supervisors for the legal sector.

The authors will aim to keep this guidance up to date with new legislation as it comes into force, but this guidance cannot be regarded as a definitive statement of the law or of the effect of the law, and does not comprise, and should not be relied on as giving, legal advice. It has been prepared in good faith, but neither the Legal Sector Supervisors nor any of the individuals responsible for or involved in its preparation accept any legal responsibility or liability for anything done in reliance on it.

Notaries (including in Scotland and Northern Ireland solicitors appointed as notaries acting solely in a notarial capacity) are not required to follow this guidance, however relevant AML supervisors will consider whether a notary has complied with this guidance when undertaking their role as regulators of professional conduct, and as supervisory authorities for the purposes of the Regulations. You may be asked by your regulatory body to justify a decision to deviate from this guidance.

This guidance has been submitted to HMT for approval. In accordance with sections 330(8) and 331(7) of the Proceeds of Crime Act 2002, section 21A(6) of the Terrorism Act 2000, and Regulation 86(2)(b) of the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017, the court is required to consider compliance with this guidance in assessing whether a person committed an offence or took all reasonable steps and exercised all due diligence to avoid committing the offence.

Deciding whether notarial work is within scope of the Money Laundering Regulations 2017

Whilst a notary (being a firm or sole practitioner who by way of business provides legal or notarial services to other persons or a solicitor in Scotland or Northern Ireland appointed as a notary acting solely in a notarial capacity) may, when participating in certain financial or real property transactions fall within the definition of an independent legal professional under the Regulations, the Regulations do not apply to work undertaken by a notary acting solely as a public certifying officer where they have no substantive role in the underlying transaction.

As such, the Regulations do not apply to many aspects of a notary's practice including, for example, the taking of affidavits and declarations, protests, translating, certifying the execution of documents and authentication work in general.

Although the Regulations will not apply to work of this nature, notaries are still subject to the professional obligation (in England and Wales under the Notaries Practice Rules 2019 and Code of Practice) positively to identify appearing parties and keep records of the means of identification employed.

Regardless of the nature of the work undertaken, notaries must be alert to offences under the Proceeds of Crime Act 2002 (POCA) and the Terrorism Act 2000 (TACT):

The money laundering offences under POCA are:

- concealing, disguising, converting or transferring the proceeds of crime or removing the proceeds of crime from the jurisdiction,
- entering into or becoming concerned in an arrangement that facilitates the acquisition, retention, use or control of criminal property,
- the acquisition, use and possession of criminal property, and
- making an unauthorised disclosure or taking an action or causing an action to be taken that is likely to prejudice an investigation.

The terrorist financing offences under TACT are:

- Fund-raising for terrorism,
- Use or possession of property for terrorism,
- Entering into or becoming concerned in an arrangement that makes property available for the purposes of terrorism,
- Entering into or becoming concerned in an arrangement that facilitates the retention or control of terrorist property, and
- Failing to disclose a suspicion obtained in the course of a trade, profession or business of the commission of a terrorist financing offence.

An independent legal professional is considered to be participating in a transaction by assisting in the planning or execution of the transaction or otherwise acting for or on behalf of a client in the transaction. In considering whether a notary is participating or otherwise having a substantive role in the underlying transaction, a notary must have proper regard to the nature of their involvement. For example, if a notary is certifying the execution of, or authenticating, a Power of Attorney which may facilitate the:

- buying and selling of real property or business entities
- managing of client money, securities or other assets
- opening or management of bank, savings or securities accounts
- organisation of contributions necessary for the creation, operation or management of companies
- creation, operation or management of trusts, companies, foundations or similar structures

and which has been prepared by another legal professional unconnected with their firm, either in the United Kingdom or overseas, a notary can advise on the nature and effect of the document in order to satisfy themselves that the appearer understands the document and this would not amount to a substantive role in the underlying transaction.

However, the provision of more detailed legal advice on the terms of the document or transaction, or the preparation or material amendment of the Power of Attorney would amount to a substantive role and the Regulations would apply. In such instances, notaries should refer to the relevant sections of LSAG Guidance Part 1.

In all cases where the Regulations apply, notaries must take note of the requirements in Part 1, s.12.6 in relation to reporting discrepancies (r30A(3)) between information collected from the relevant register, and information collated whilst undertaking due diligence, enhanced due diligence or ongoing monitoring for a corporate client by whom the notary is engaged to undertake legal or notarial work in relation to the activities set out in this section.