

**EXPLANATORY MEMORANDUM TO
THE MONEY LAUNDERING (AMENDMENT) REGULATIONS 2012**

2012 No. 2298

**THE TERRORISM ACT 2000 AND PROCEEDS OF CRIME ACT 2002 (BUSINESS IN
THE REGULATED SECTOR) (No. 2) ORDER 2012**

2012 No. 2299

1. This explanatory memorandum has been prepared by the Treasury and is laid before Parliament by Command of Her Majesty.
2. **Purpose of the instruments**
 - 2.1 The Regulations make various amendments to the Money Laundering Regulations 2007 (S.I. 2007/2156) ('the 2007 Regulations'). The amendments are made following the Treasury's review of the 2007 Regulations. The Order makes a related amendment to the definition of 'regulated sector' in Schedule 3A to the Terrorism Act 2000 (c.11) ('the 2000 Act') and in Schedule 9 to the Proceeds of Crime Act 2002 (c.29) ('the 2002 Act').
3. **Matters of special interest to the Joint Committee on Statutory Instruments**
 - 3.1 None
4. **Legislative Context**
 - 4.1 The 2007 Regulations (with Part 3 of the 2000 Act and Part 7 of the 2002 Act) implement Directive 2005/60/EC on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing ('the Third Money Laundering Directive').
 - 4.2 The Treasury gave a commitment to conduct a post-implementation review of the 2007 Regulations two years after they came into force. Following the review, the Government consulted on proposed changes to the 2007 Regulations. These Regulations make a number of changes to the 2007 Regulations, described in paragraph 7 below.
 - 4.3 The changes to the 2007 Regulations necessitate a change to the definition of 'regulated sector' in the 2000 Act and the 2002 Act. The Order makes that change to the two Acts.
5. **Territorial Extent and Application**
 - 5.1 The instruments apply to all of the United Kingdom.

6. European Convention on Human Rights

6.1 [The Commercial Secretary to the Treasury] has made the following statement regarding Human Rights:

In my view the provisions of the Terrorism Act 2000 and Proceeds of Crime Act 2002 (Business in the Regulated Sector) (No.2) Order 2012 are compatible with the Convention rights.

6.2 As the Regulations are subject to negative resolution procedure and do not amend primary legislation, no statement is required in relation to them.

7. Policy background

7.1 The 2007 Regulations provide for various steps to be taken by the financial services sector and other persons to detect, deter and prevent money laundering and terrorist financing. The Regulations aim to allow businesses flexibility in the measures they take to protect themselves from the risks posed by money laundering and terrorist financing and also to encourage them to focus their resources in an effective and proportionate way, commensurate to the risks they face, as opposed to taking a tick-box based approach to compliance.

7.2 The Treasury has carried out a review of the 2007 Regulations and of the regulatory burden placed on firms. The review focused on whether the Regulations were effective and proportionate in practice, identifying where they were working well and where there was room for improvement. Following the review, a further consultation was conducted on 17 proposals for amending the 2007 Regulations. The Treasury is now taking forward amendments to the 2007 Regulations to reflect the outcome of the review and the subsequent consultation.

7.3 The measures being taken forward include:

- Extending the use of reliance, a mechanism by which a firm can rely on the customer due diligence carried out by a third party, to minimise the duplication of checks.
- Exempting from the scope of the 2007 Regulations credit institutions that offer time to pay for non-refundable services but do not lend or advance money.
- Bringing UK estate agents selling overseas property within the scope of the 2007 Regulations.
- Amending the fit and proper persons test applied by Her Majesty's Revenue and Customs (HMRC) to decide whether a person is suitable to run a Money Service Business.
- Clarifying the right of an individual to appeal against a HMRC decision that he or she is not a fit and proper person.

- Amending the enforcement powers of the Office of Fair Trading, HMRC and the Financial Services Authority to ensure compliance with the Regulations.

7.4 The Order amends the definition of ‘business in the regulated sector’ in the 2000 Act and the 2002 Act, to include UK estate agents acting in respect of overseas property.

- Consolidation

7.5 There are currently no plans to consolidate the relevant legislation, although further amendments are likely to be necessary as a result of the Commission’s proposals for a new Money Laundering Directive, which may result in consolidation of the amendments to the 2007 Regulations.

8. Consultation outcome

8.1 The Treasury consulted stakeholders during the review of the 2007 Regulations, which included a call for evidence, meetings, conferences and interviews. Following the review, the Treasury consulted on its proposed changes to the 2007 Regulations, between 2010 and 2011. Responses to that consultation have been taken into account in making these changes to the 2007 Regulations. Details of the consultation and responses received are available on the Treasury’s website at http://www.hm-treasury.gov.uk/fin_review_laundering_regs.htm.

9. Guidance

9.1 Guidance to businesses affected by the 2007 Regulations is published by supervisors and trade bodies, and approved by the Treasury. Compliance with that guidance is taken into account in determining whether a breach of the 2007 Regulations has been committed. The Treasury is working with supervisors and regulatory authorities to ensure that guidance reflects the amendments to the Regulations.

10. Impact

10.1 The impact on business is deregulatory overall. The Government has sought to minimise the impact on businesses by making changes that either reduce regulatory burden or address minor but significant vulnerabilities within the scope of Regulations.. The impact on charities or voluntary bodies is minimal, since they do not fall within the scope of the 2007 Regulations.

10.2 The impact on the public sector is minimal. It includes those Government Departments that are designated supervisors under the 2007 Regulations, including HM Revenue & Customs and the Office of Fair Trading. Supervisory bodies, whether they be professional bodies or Government Departments are required to be self-funding and recover costs through fees paid by regulated businesses.

10.3 An Impact Assessment is attached to this memorandum and will be published alongside the Explanatory Memorandum on www.legislation.gov.uk.

11. Regulating small business

11.1 The legislation applies to small business.

11.2 To minimise the impact of the requirements on firms employing up to 20 people, the approach taken is to encourage regulated businesses to adopt a risk-based approach to ensure the measures they put in place to protect themselves from money laundering and terrorist finance are proportionate to the risks they assess exist. This is in accordance with the EU Directive and global standards set by the Financial Action Task Force which do not allow for exemptions based on size.

12. Monitoring & review

12.1 The European Commission is in the process of reviewing the Third Money Laundering Directive and publishing proposals for a new Directive.

12.2 The Treasury will review the requirements of these Regulations and the Order and publish a report within five years of the date the Regulations and Order come into force, and at intervals not exceeding five years thereafter.

13. Contact

Amy Rhodes at the Treasury Tel: 020 7270 4551 or email: aml@hmtreasury.gsi.gov.uk can answer any queries regarding the instrument.