

2020 No. 991

EXITING THE EUROPEAN UNION

FINANCIAL SERVICES

**The Money Laundering and Terrorist Financing (Amendment)
(EU Exit) Regulations 2020**

Sift requirements satisfied 11th September 2020

Made - - - - 14th September 2020

Laid before Parliament 15th September 2020

Coming into force in accordance with regulation 1

The Treasury are designated^(a) for the purposes of section 2(2) of the European Communities Act 1972^(b) in relation to the prevention of money laundering and terrorist financing.

The Treasury, in exercise of the powers conferred by section 2(2) of that Act, and by section 8(1) of the European Union (Withdrawal) Act 2018^(c), make the following Regulations.

The requirements of paragraph 3(2) of Schedule 7 to the European Union (Withdrawal) Act 2018 (relating to the appropriate Parliamentary procedure for these Regulations) have been satisfied.

PART 1

Introduction

Citation and commencement

1.—(1) These Regulations may be cited as the Money Laundering and Terrorist Financing (Amendment) (EU Exit) Regulations 2020.

(a) S.I. 2007/2133.

(b) 1972 c. 68. The European Communities Act 1972 was repealed by section 1 of the European Union (Withdrawal) Act 2018 (c. 16) with effect from exit day, but saved with modifications until IP completion day by section 1A of that Act (as inserted by section 1 of the European Union (Withdrawal Agreement) Act 2020 (c. 1)). Section 2(2) was amended by section 27 of the Legislative and Regulatory Reform Act 2006 (c. 51) and by section 3 of, and the Schedule to, the European Union (Amendment) Act 2008 (c. 7). By virtue of the amendment of section 1(2) by section 1 of the European Economic Area Act 1993 (c. 51), an order may be made under section 2(2) of the European Communities Act 1972 to implement obligations of the United Kingdom created or arising by or under the Agreement on the European Economic Area signed at Oporto on 2nd May 1992 (Cm 2073) and the Protocol adjusting the Agreement signed in Brussels on 17th March 1993 (Cm 2183).

(c) 2018 c. 16.

(2) Parts 1 to 3 come into force 21 days after the day on which they are laid, except as specified in paragraphs (3) and (4).

(3) Regulation 7(2)(a) (substitution of paragraph (3) of regulation 45: register of beneficial ownership information) comes into force on 6th April 2021.

(4) Regulation 5 (substitution of regulation 30A: reporting discrepancies: trusts) and regulation 7(4) (insertion of new regulation 45ZB: access to information on the register) come into force on 10th March 2022.

(5) Part 4 comes into force on IP completion day.

PART 2

Implementation of EU law

Amendment of the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017

2. The Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017(a) are amended in accordance with regulations 3 to 12.

Customer due diligence measures

3. In regulation 28 (customer due diligence measures)(b)—

- (a) in paragraph (5), after “Paragraphs (3)(b)” insert “, (3A)”;
- (b) in paragraph (19)(b), for the words “an appropriate level of assurance” to the end, substitute “assurance that the person claiming a particular identity is in fact the person with that identity, to a degree that is necessary for effectively managing and mitigating any risks of money laundering and terrorist financing”.

Reporting discrepancies: general

4.—(1) In regulation 30A(2)(b) (requirement to report discrepancies in registers)(c), after “carrying out its duties under these Regulations” insert “when establishing a business relationship with the customer”.

(2) In regulation 37(2)(a) (simplified due diligence)—

- (a) for “regulation 28” substitute “regulations 28 and 30A”;
- (b) for “that regulation” substitute “regulation 28”.

(3) In regulation 39 (reliance)—

- (a) in paragraph (1), after “regulation 28(2) to (6) and (10)” insert “, or to carry out any of the measures required by regulation 30A,”;
- (b) in paragraph (2)—
 - (i) after “apply customer due diligence measures” insert “or carry out any of the measures required by regulation 30A”;
 - (ii) in sub-paragraph (a), after “regulation 28(2) to (6) and (10)” insert “and regulation 30A”;
- (c) in paragraph (7), after “applying customer due diligence measures” insert “, or carrying out any of the measures required by regulation 30A,”.

(a) S.I. 2017/692.

(b) Paragraphs (3A) and (19) were inserted by S.I. 2019/1511.

(c) Regulation 30A was inserted by S.I. 2019/1511.

(4) In regulation 40(2)(a) (record keeping), after “regulations 28, 29 and 33 to 37” insert “and the requirements of regulation 30A”.

Reporting discrepancies: trusts

5. For regulation 30A (requirement to report discrepancies in registers) substitute—

“Requirement to report discrepancies in registers

30A.—(1) Before establishing a business relationship with—

- (a) a company which is subject to the requirements of Part 21A of the Companies Act 2006 (information about people with significant control)(a);
- (b) an unregistered company which is subject to the requirements of the Unregistered Companies Regulations 2009(b);
- (c) a limited liability partnership which is subject to the requirements of the Limited Liability Partnerships (Application of Companies Act 2006) Regulations 2009(c);
- (d) an eligible Scottish partnership which is subject to the requirements of the Scottish Partnerships (Register of People with Significant Control) Regulations 2017(d), or
- (e) a trust which is subject to registration under Part 5 of these Regulations,

a relevant person must collect proof of registration or an excerpt of the register from the company, the unregistered company, the limited liability partnership or the trust (as the case may be) or from the registrar (in the case of an eligible Scottish partnership).

(2) The relevant person must report to the person mentioned in paragraph (3) any discrepancy the relevant person finds between information relating to the beneficial ownership of the customer—

- (a) which the relevant person collects under paragraph (1), and
- (b) which otherwise becomes available to the relevant person in the course of carrying out its duties under these Regulations when establishing a business relationship with the customer.

(3) The discrepancy must be reported—

- (a) if it relates to a company, an unregistered company, a limited liability partnership or an eligible Scottish partnership, to the registrar; or
- (b) if it relates to a trust, to the Commissioners.

(4) The relevant person is not required under paragraph (2) to report information which that person would be entitled to refuse to provide on grounds of legal professional privilege in the High Court (or in Scotland, on the ground of confidentiality of communications in the Court of Session).

(5) The person to whom the discrepancy is reported must take such action as that person considers appropriate to investigate and, if necessary, resolve the discrepancy in a timely manner.

(6) A discrepancy which is reported to the registrar under paragraph (3) is material excluded from public inspection for the purposes of section 1087 of the Companies Act 2006 (material not available for public inspection), including for the purposes of that section as applied—

- (a) to unregistered companies by paragraph 20 of Schedule 1 to the Unregistered Companies Regulations 2009;

(a) 2006 c. 46. Part 21A was inserted by Schedule 3 to the Small Business, Enterprise and Employment Act 2015 (c. 26).

(b) S.I. 2009/2436, amended by S.I. 2017/1212. There are other amendments but none are relevant.

(c) S.I. 2009/1804, amended by S.I. 2016/340. There are other amendments but none are relevant.

(d) S.I. 2017/694, to which there are amendments not relevant to these Regulations.

- (b) to limited liability partnerships by regulation 66 of the Limited Liability Partnerships (Application of Companies Act 2006) Regulations 2009; and
- (c) to eligible Scottish partnerships by regulation 61 of the Scottish Partnerships (Register of People with Significant Control) Regulations 2017.

(7) A reference to the registrar in this regulation is to the registrar of companies within the meaning of section 1060(3) of the Companies Act 2006.”.

Enhanced due diligence

6.—(1) In regulation 33 (obligation to apply enhanced customer due diligence)(a), for paragraph (4A) substitute—

“(4A) Where a relevant person provides a life insurance policy, the relevant person must consider the nature and identity of the beneficiary of the policy when assessing whether there is a high risk of money laundering or terrorist financing, and the extent of the measures which should be taken to manage and mitigate that risk.

(4B) Where the beneficiary of a life insurance policy provided by a relevant person—

- (a) is a legal person or a legal arrangement, and
- (b) presents a high risk of money laundering or terrorist financing,

the relevant person must take reasonable measures to identify and verify the identity of the beneficial owner of that beneficiary before any payment is made under the policy.”.

(2) In regulation 34(1) (enhanced due diligence: credit institutions, financial institutions and correspondent relationships), after “correspondent relationship” insert “involving the execution of payments”.

Beneficial ownership information

7.—(1) In regulation 42 (application of Part 5)—

(a) in paragraph (2)—

- (i) at the end of sub-paragraph (b)(i), omit “or”;
- (ii) after “one or more of the taxes referred to in regulation 45(14);”, insert—

“or

- (iii) any other non-UK trust which is an express trust, is not a trust listed in Schedule 3A (excluded trusts) and whose trustees (in their capacity as such)—
 - (aa) acquire an interest in land in the United Kingdom; or
 - (bb) enter into a business relationship with a relevant person, where at least one of those trustees is resident in the United Kingdom and the trust is not an EEA registered trust;”;

(b) after paragraph (3), insert—

“(4) For the purposes of this Part, an “EEA registered trust” is a trust whose beneficial ownership information is required, by Article 31.3a of the fourth money laundering directive, to be held in a central register set up by an EEA state other than the United Kingdom.

(5) For the purposes of this Part, the trustees acquire an interest in land in the United Kingdom where at least one of the trustees becomes registered—

- (a) in the register of title kept under the Land Registration Act 2002(b) as the proprietor of—
 - (i) a freehold estate in land; or

(a) Paragraph (4A) was inserted by S.I. 2019/1511.

(b) 2002 c. 9.

- (ii) a leasehold estate in land granted for a term of more than 7 years from the date of the grant;
 - (b) in the Land Register of Scotland as the proprietor or as the tenant under a lease (“lease” and “proprietor” having the meanings given by section 113(1) of the Land Registration etc. (Scotland) Act 2012^(a)); or
 - (c) in the register kept under the Land Registration Act (Northern Ireland) 1970^(b) as the owner of—
 - (i) a freehold estate in land; or
 - (ii) a leasehold estate in land granted for a term of more than 21 years from the date of the grant.
- (6) For the purposes of this Part—
- (a) the trustees have a controlling interest in a third country entity if they meet any of the specified conditions in paragraphs 2 to 5 of Schedule 1A to the Companies Act 2006 (people with significant control over a company)^(c) where that Schedule is read with the following modifications—
 - (i) references to X having or holding a share in or a right in relation to, or exercising significant influence or control over, company Y are to be read as references to the trustees (in their capacity as such) having or holding a share in or a right in relation to, or exercising significant influence or control over, the third country entity;
 - (ii) for “25%” wherever it occurs in each of paragraphs 2 (ownership of shares), 3 (voting rights), 13 (calculating shareholdings), and 14 (voting rights), read “50%”; and
 - (b) “third country entity” means a body corporate, partnership or other entity that is governed by the law of a country or territory outside the EEA and (in each case) is a legal person under that law.”.
- (2) In regulation 45 (register of beneficial ownership)^(d)—
- (a) for paragraph (3) substitute—

“(3) The information required under paragraph (2) must, apart from any information already provided to the Commissioners under regulation 45ZA (at a time when the trust was not a taxable relevant trust), be provided—

 - (a) on or before 31st January after the tax year in which the trustees were first liable to pay any of the taxes referred to in paragraph (14) (“UK taxes”), in the case of a trust which is set up before 6th April 2021;
 - (b) on or before 10th March 2022, in the case of a trust which is set up after 5th April 2021 where the trustees become liable to pay UK taxes before 9th February 2022;
 - (c) within 30 days of the trustees becoming liable to pay UK taxes, in any other case.”;
 - (b) in paragraph (4), for “paragraph (2)” substitute “paragraphs (2) and (9)”;
 - (c) for paragraph (10) substitute—

“(10) The register must contain the information referred to in—

 - (a) regulation 44(2)(b) and (5)(b), in relation to taxable relevant trusts;
 - (b) regulation 44(2)(b) and (5)(b) and paragraphs (10E) to (10G), in relation to the types of taxable relevant trust mentioned in paragraphs (10A) to (10C);
 - (c) regulation 45ZA(3) and (4), in relation to the types of trust mentioned in regulation 45ZA(1).”;

(a) 2012 asp. 5.

(b) 1970 c. 18 (N.I.).

(c) 2006 c. 46. Schedule 1A was inserted by Schedule 3 to the Small Business, Enterprise and Employment Act 2015 (c. 26).

(d) Regulation 45 was amended by S.I. 2018/1237.

(d) after paragraph (10) insert—

“(10A) The trustees of a taxable relevant trust which is a UK trust, and is not an EEA registered trust or a trust listed in Schedule 3A, must provide the Commissioners with the information specified in paragraph (10E), apart from any information already provided to the Commissioners under regulation 45ZA (at a time when the trust was not a taxable relevant trust)—

- (a) on or before 10th March 2022, where the trustees become liable to pay UK taxes before 9th February 2022;
- (b) within 30 days of the trustees becoming liable to pay UK taxes, in any other case.

(10B) This paragraph applies to the trustees of a taxable relevant trust which is a non-UK trust, has at least one trustee resident in the United Kingdom and is not an EEA registered trust or a trust falling within Schedule 3A, where the trustees of that trust, in their capacity as such—

- (a) enter into a business relationship with a relevant person; or
- (b) acquire an interest in land in the United Kingdom.

(10C) This paragraph applies to the trustees of a taxable relevant trust which is a non-UK trust and is not a trust listed in Schedule 3A, where none of the trustees are resident in the United Kingdom and those trustees, in their capacity as such, acquire an interest in land in the United Kingdom.

(10D) Where paragraph (10B) or (10C) applies, the trustees must provide the Commissioners with the information specified in paragraph (10E), apart from any information already provided to the Commissioners under regulation 45ZA (at a time when the trust was not a taxable relevant trust)—

- (a) on or before 10th March 2022, where the trustees become liable to pay UK taxes before 9th February 2022;
- (b) otherwise, within 30 days of the trustees acquiring the land or (where paragraph (10B)(a) applies) entering into the business relationship.

(10E) The trustees must provide the Commissioners with the following information in relation to each of the beneficial owners of the trust who is an individual, and in relation to any other individual referred to as a potential beneficiary in a document from the settlor relating to the trust such as a letter of wishes—

- (a) the individual’s country of residence;
- (b) the individual’s nationality;
- (c) the nature and extent of the individual’s beneficial interest,

but if paragraph (10F) applies, this information does not need to be provided in relation to the beneficiaries of the trust.

(10F) Where the beneficial owners include a class of beneficiaries, not all of whom have been determined, the information to be provided under paragraph (10E) is a description of the class of persons who are beneficiaries or potential beneficiaries under the trust.

(10G) The trustees of a trust to which paragraph (10A) or (10B) applies must—

- (a) if they have a controlling interest in a third country entity, provide the Commissioners with the following information, apart from any information already provided under regulation 45ZA(4), at the same time as providing the information under paragraph (10E)—
 - (i) the third country entity’s corporate or firm name;
 - (ii) the country or territory by whose law the third country entity is governed;
 - (iii) the registered or principal office of the third country entity;
- (b) if they acquire an interest in a third country entity after providing the information under paragraph (10E), provide the Commissioners with the information specified in this paragraph within 30 days of the date on which they acquired that interest.

(10H) The trustees of a taxable relevant trust to which paragraph (10A), (10B) or (10C) applies must, if the trustee becomes aware that any of the information provided to the Commissioners under paragraphs (10E) to (10G) has changed, notify the Commissioners of the change and the date on which it occurred within 30 days of the trustee becoming aware of the change.

(10I) The information required under paragraphs (10E) to (10H) must be provided in such form as the Commissioners reasonably require.

(10J) The Commissioners must keep the information referred to in paragraph (10) on the register for at least five years, and no more than 10 years, after the trust to which it relates has ceased to exist or has ceased to be a type of trust referred to in paragraph (10).”;

(e) in paragraph (13), after “regulation 44(2)(b) and (5)(b)” insert “, paragraphs (10E) to (10G) and regulation 45ZA(3) and (4)”.

(3) In Part 5, after regulation 45 insert—

“Register of beneficial ownership: additional types of trust

45ZA.—(1) In relation to trusts which are—

- (a) type A trusts, other than taxable relevant trusts;
- (b) type B trusts, other than taxable relevant trusts;
- (c) type C trusts, other than taxable relevant trusts,

the information to be contained in the register maintained under this Part is the information referred to in paragraphs (3) and (4), and in this paragraph, “taxable relevant trust” has the meaning given in regulation 45.

(2) For the purposes of this regulation—

- (a) a “type A trust” is a UK trust which is an express trust and is not an EEA registered trust or a trust listed in Schedule 3A;
- (b) a “type B trust” is a non-UK trust which has at least one trustee resident in the United Kingdom, is an express trust and is not an EEA registered trust or a trust listed in Schedule 3A, where the trustees of that trust, in their capacity as such—
 - (i) enter into a business relationship with a relevant person; or
 - (ii) acquire an interest in land in the United Kingdom;
- (c) a “type C trust” is a non-UK trust which is an express trust and is not a trust listed in Schedule 3A, where none of the trustees are resident in the United Kingdom and those trustees, in their capacity as such, acquire an interest in land in the United Kingdom.

(3) The trustees of a trust to which paragraph (1) applies must, within the time specified in paragraph (5), provide the Commissioners with the following information, apart from any information already provided to the Commissioners under regulation 45 (at a time when the trust was a taxable relevant trust within the meaning of that regulation)—

- (a) the information specified in paragraphs (i) to (v) in relation to each of the beneficial owners of the trust who is an individual, and in relation to any other individual referred to as a potential beneficiary in a document from the settlor relating to the trust such as a letter of wishes—
 - (i) the individual’s full name;
 - (ii) the individual’s month and year of birth;
 - (iii) the individual’s country of residence;
 - (iv) the individual’s nationality;
 - (v) the nature and extent of the individual’s beneficial interest,

but if sub-paragraph (b) applies, this information does not need to be provided in relation to the beneficiaries of the trust;

- (b) where the beneficial owners include a class of beneficiaries, not all of whom have been determined, a description of the class of persons who are beneficiaries or potential beneficiaries under the trust;
 - (c) the information specified in paragraphs (i) to (iii) in relation to each of the beneficial owners of the trust who is a legal entity—
 - (i) the legal entity’s corporate or firm name;
 - (ii) the registered or principal office of the legal entity;
 - (iii) the nature of the entity’s role in relation to the trust.
- (4) The trustees of a trust to which paragraph (1)(a) or (b) applies must—
- (a) if they have a controlling interest in a third country entity, provide the Commissioners with the following information, apart from any information already provided under regulation 45(10G), at the same time as providing the information under paragraph (3)—
 - (i) the third country entity’s corporate or firm name;
 - (ii) the country or territory by whose law the third country entity is governed;
 - (iii) the registered or principal office of the third country entity;
 - (b) if they acquire an interest in a third country entity after providing the information under paragraph (3), provide the Commissioners with the information specified in this paragraph within 30 days of the date on which they acquired that interest.
- (5) The information required under paragraph (3) must be provided—
- (a) on or before 10th March 2022, in the case of a trust which first falls within paragraph (1)(a), (b) or (c) before 9th February 2022;
 - (b) in any other case, within 30 days of the trust being set up, or, if later, within 30 days of the trust first falling within paragraph (1)(a), (b) or (c).
- (6) If a trustee becomes aware that any of the information provided to the Commissioners under paragraph (3) or (4) has changed, the trustee must notify the Commissioners of the change within 30 days of the trustee becoming aware of the change.
- (7) The information required under paragraphs (3), (4) and (6) must be provided in such form as the Commissioners reasonably require. ”.
- (4) In Part 5, after regulation 45ZA (as inserted by regulation 7(3)) insert—

“Access to information on the register

45ZB.—(1) The Commissioners must make the accessible information available to a person who demonstrates to the Commissioners a legitimate interest in the beneficial ownership of a trust, where that person so requests.

(2) The Commissioners must make available to a trustee, on a request by that trustee, such information as the trustee reasonably requires in order to enable a relevant person to meet the relevant person’s obligations under Part 3, where that relevant person proposes to—

- (a) form a business relationship with the trust; or
- (b) enter into a transaction with the trust in relation to which the relevant person is required to apply customer due diligence measures under regulation 27.

(3) The Commissioners must make the accessible information available to a person who makes a written request about a type A trust or a type B trust (within the meaning given in regulation 45ZA(2)), where the trustees of that trust have a controlling interest in a third country entity.

(4) The Commissioners may—

- (a) charge a fee to any person making a request for accessible information under paragraph (1) or (3), which must not exceed such amount as the Commissioners

consider will enable them to meet any expenses reasonably incurred by them in dealing with such requests, including expenses incurred in maintaining the register;

- (b) require the person to submit the request in such a manner as the Commissioners may reasonably require, including by requiring the person to register in a manner specified by the Commissioners; and
- (c) require the person to provide such information to support the request as the Commissioners may specify.

(5) Paragraphs (1) and (3) do not apply to the accessible information in a case where, and to the extent that, the Commissioners consider that the information should be exempt because—

- (a) the Commissioners consider that making the information available would expose the beneficial owner to a disproportionate risk of fraud, kidnapping, blackmail, extortion, harassment, violence or intimidation;
- (b) the beneficial owner is under the age of 18; or
- (c) the beneficial owner—
 - (i) lacks capacity within the meaning of section 2 of the Mental Capacity Act 2005(a);
 - (ii) is incapable within the meaning of section 1 of the Adults with Incapacity (Scotland) Act 2000(b); or
 - (iii) is incapable by reason of mental disorder within the meaning of Article 3(1) of the Mental Health (Northern Ireland) Order 1986(c),

and in this paragraph, references to the beneficial owner include references to any other individual referred to as a potential beneficiary in a document from the settlor relating to the trust such as a letter of wishes.

(6) Where the Commissioners decide to exempt any of the accessible information in accordance with paragraph (5), the Commissioners must inform the person requesting the information of the decision, explain that the person is entitled to seek a review, and specify the period in which the person must inform the Commissioners that the person wishes to seek a review (which must not be less than 30 days beginning with the day on which the person is informed of the decision).

(7) If the person seeks a review, the Commissioners may decide to—

- (a) uphold the decision to exempt the information;
- (b) make the information available; or
- (c) exempt less of the requested information and make more of the requested information available,

and must inform the person who made the request of their decision.

(8) For the purposes of this regulation, the “accessible information” means the details specified in paragraph (9) or (10) which are held on the register in relation to a beneficial owner of a type A trust or a type B trust (within the meaning given in regulation 45ZA(2)), or in relation to an individual referred to as a potential beneficiary in a document from the settlor relating to the trust such as a letter of wishes.

(9) The details are, in relation to an individual—

- (a) the individual’s full name;
- (b) the individual’s month and year of birth;
- (c) the individual’s country of residence;

(a) 2005 c. 9.

(b) 2000 asp. 4. Section 1 was amended by S.S.I. 2005/465.

(c) 1986 No. 595 (N.I. 4).

- (d) the individual’s nationality;
 - (e) the nature and extent of the individual’s beneficial interest.
- (10) The details are, in relation to a legal entity—
- (a) the legal entity’s corporate or firm name;
 - (b) the registered or principal office of the legal entity;
 - (c) the nature of the entity’s role in relation to the trust.
- (11) For the purposes of this regulation, the Commissioners must take account of the following when determining whether a person has a legitimate interest in the beneficial ownership of a trust—
- (a) whether the person is involved in an investigation into money laundering or terrorist financing;
 - (b) whether the person is making the request for accessible information in order to further an investigation into a specified suspected instance of money laundering or terrorist financing;
 - (c) whether the disclosure of the information to that person would be likely to prejudice—
 - (i) any criminal investigation or criminal proceedings;
 - (ii) any other investigation mentioned in section 342(1) of the Proceeds of Crime Act 2002 (offences of prejudicing investigation)(a); or
 - (iii) any investigation by an appropriate officer (within the meaning given in regulation 87(10)) into a potential contravention of a relevant requirement, which is or are being, or is or are about to be, conducted;
 - (d) whether, having regard to the information produced by the person making the request, it is reasonable for that person to suspect that the trust is being used for money laundering or terrorist financing.”.

Obligation of confidentiality

8. In regulation 52A (obligation of confidentiality)(b), in paragraph (3), after sub-paragraph (c) insert—

“(d) where the Commissioners are the supervisory authority, in accordance with sections 17 and 18 of the Commissioners for Revenue and Customs Act 2005(c).”.

Requirement for registration

9. In regulation 56 (requirement to be registered)(d)—

- (a) in paragraph (5)—
 - (i) after sub-paragraph (a) omit “or”;
 - (ii) after sub-paragraph (b) insert—
 - “or
 - (c) that person is an art market participant or a letting agent.”;
- (b) after paragraph (5) insert—

“(6) An art market participant or a letting agent—

(a) 2002 c. 29. Section 342(1) was amended by section 77 of the Serious Crime Act 2007 (c. 27), section 169 of the Coroners and Justice Act 2009 (c. 25) and section 53 of the Criminal Finances Act 2017 (c. 22).

(b) Regulation 52A was inserted by S.I. 2019/1511.

(c) 2005 c 11. Sections 17 and 18 were amended by section 7 of the Wales Act 2014 (c. 29). Section 18 was amended by section 24 of the Scotland Act 2012 (c. 11), section 16 of the Scotland Act 2016 (c. 11) and section 9 of the Childcare Funding (Wales) Act 2019 (anaw.1). There are other amendments to section 18 but none are relevant.

(d) Paragraph (5) was amended by S.I. 2019/1511.

- (a) must apply for registration in the register before 10th June 2021;
- (b) must not carry on that business or profession on or after 10th June 2021 unless—
 - (i) that person is included in the register, or
 - (ii) that person has applied for registration in the register, but the application has not yet been determined.”.

Directions: cryptoasset businesses

10. In regulation 74C(1) (directions: cryptoasset businesses)(a), for “impose a direction in writing on” substitute “exercise its powers of direction under paragraph (5) or (6) in writing in relation to”.

New Schedule 3A: excluded trusts

11. After Schedule 3 (relevant offences) insert—

“SCHEDULE 3A
Excluded Trusts

Regulation 42

Legislative Trusts

1. A trust imposed or required by an enactment.

Trusts imposed by court order

2. A trust created by, or in order to satisfy the terms of, an order of a court or tribunal.

Pension scheme trusts

3. A trust holding sums or assets of a pension scheme which is a registered pension scheme for the purposes of Part 4 of the Finance Act 2004(b).

Trusts of insurance policies

4. A trust of a life policy or retirement policy paying out only—
- (a) on the death, terminal or critical illness or permanent disablement of the person assured; or
 - (b) to meet the cost of healthcare services provided to the person assured.

Charitable trusts

5. A trust for charitable purposes which—
- (a) in Scotland or Northern Ireland, is registered as a charity; or
 - (b) in England and Wales, is registered as a charity or not required to register by virtue of section 30(2)(a) to (d) of the Charities Act 2011(c).

(a) Regulation 74C was inserted by S.I. 2019/1511.
 (b) 2004 c. 12.
 (c) 2011 c. 25. Section 30(2)(c) was amended by S.I. 2016/997.

Pilot trusts

6. A trust which—

- (a) holds property with a value not exceeding £100, and
- (b) was created before the date on which regulation 42(2)(iii) of these Regulations comes into force.

Trusts having effect on death

7.—(1) A trust effected by will where—

- (a) the trust is holding only the property comprised in a person's estate on death, and
- (b) less than two years has passed since that person's death.

(2) In this paragraph, a person's "estate" means the aggregate of all the property to which that person is beneficially entitled.

8. A trust where—

- (a) the trust is holding only benefits received on the death of the person assured under a policy within paragraph 4, and
- (b) less than two years has passed since that person's death.

Co-ownership

9. A trust of jointly held property where the trustees and the beneficiaries are the same persons.

Financial markets infrastructure

10.—(1) A trust—

- (a) created under, or for the purpose of, the default arrangements of a designated system or of the default rules of a recognised body, or for the purpose of any action or proceedings taken by or for such a system or body under such arrangements or rules;
- (b) relating to the creation of a beneficial interest in securities belonging to a person whose name and address are maintained on a register of securities (within the meaning of regulation 3(1) of the Uncertificated Securities Regulations 2001^(a)); or
- (c) created by or for a segregating entity—
 - (i) for the purpose of protecting sums or assets belonging to the segregating entity's clients; or
 - (ii) for the purpose of complying with a legal obligation to safeguard and segregate sums or assets belonging to the segregating entity's clients or to keep separate client records and accounts.

(2) In this paragraph—

"clearing member" and "default rules" have the meanings given, respectively, in sections 190(1) and 188 of the Companies Act 1989^(b);

^(a) S.I. 2001/3755.

^(b) 1989 c. 40. Section 190(1) was amended by S.I. 2013/504. There are other amendments which are not relevant to these Regulations. Section 188 was amended by S.I. 2009/853, 2013/504, 2013/1908, 2017/1064 and 2017/1247.

“default arrangements”, “designated system” and “participant” have the meanings given in regulation 2(1) of the Financial Markets and Insolvency (Settlement Finality) Regulations 1999(a);

“recognised body” and “recognised central counterparty” have the meanings given in section 313 of FSMA(b);

“segregating entity” means—

- (a) an authorised person;
- (b) a clearing member of a recognised central counterparty;
- (c) a participant in a designated system;
- (d) a designated system; or
- (e) a recognised body.

Professional services

11. A trust created for the purpose of enabling or facilitating the holding of sums, assets or (in the case of sub-paragraph (c)), documents, belonging to a person other than the trustee, in connection with which sums, assets or documents the trustee is—

- (a) carrying on by way of business the activity specified in article 40 (safeguarding and administering investments) of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001(c);
- (b) acting by way of business as the trustee of an authorised unit trust scheme (and for this purpose “trustee” and “authorised unit trust scheme” have the meanings given in section 237 of FSMA); or
- (c) acting by way of business as an agent holding sums, assets or documents in escrow until the performance of a contractual condition agreed between two or more other persons, including the person for whom the sums, assets or documents are being held.

Client money etc.

12. A trust created by a relevant supervised person for the purpose of holding client money, securities or other assets, where that trust is incidental to the carrying on of business by the relevant supervised person.

Capital markets etc.

13. A trust created for the purpose of enabling or facilitating an activity listed in points 2, 3, 6, 7 or 8 of Annex 1 to the capital requirements directive as set out in Schedule 2, or for protecting or enforcing rights relating to that activity, where—

- (a) one or more of the participants in that activity is a relevant supervised person, and
- (b) the use of the trust is incidental to the principal purpose of that activity.

Commercial transactions

14. A trust created for the purpose of—

- (a) enabling or facilitating a transaction effected for genuine commercial reasons; or

(a) S.I. 1999/2979. The definition of “default arrangements” was amended by S.I. 2006/50, 2010/2993 and 2013/504; “designated system” by S.I. 2019/341 (with effect from IP completion day) and “participant” by S.I. 2010/2993.

(b) 2000 c. 8. Section 313 was amended by S.I. 2017/1064 and 2013/504. There are other amendments which are not relevant to these Regulations.

(c) S.I. 2001/544.

(b) protecting or enforcing rights relating to such a transaction,
where the use of the trust is incidental to the principal purpose of the transaction.

Registration of assets

15. A trust created on the transfer or disposal of an asset where the purpose of the trust is to hold the legal title to the asset on trust for the person to whom the transfer or disposal is being made until the time when the procedure required by law to effect the transfer or disposal of legal title is completed.

Trusts meeting legislative requirements

16. A trust holding property to which section 71A or 71D of the Inheritance Tax Act 1984(a) applies.

17. A trust of property in respect of which a direction under paragraph 1 of Schedule 4 to the Inheritance Tax Act 1984(b) has effect.

18. A trust of funds derived from a payment—

- (a) made for the benefit of a person in consequence of a personal injury to that person, and
- (b) disregarded from capital under regulation 46(2) of, and paragraph 12 of Schedule 10 to, the Income Support (General) Regulations 1987(c).

19. A trust holding tenants' contributions for the purposes of section 42 of the Landlord and Tenant Act 1987(d).

20. The plan trust of a share incentive plan which meets the requirements of Part 9 of Schedule 2 to the Income Tax (Earnings and Pensions) Act 2003(e).

21. A trust created under a share option scheme that meets the requirements of Parts 2 to 7 of Schedule 3 to the Income Tax (Earnings and Pensions) Act 2003.

22. A trust holding property for a beneficiary who is a disabled person within the meaning given by Schedule 1A to the Finance Act 2005(f).

Public authorities

23. A trust created for the purposes of enabling or assisting—

-
- (a) 1984 c. 51. Sections 71A and 71D were inserted by section 156 of, and Schedule 20 to, the Finance Act 2006 (c. 25). Both sections were amended by section 48 of, and Schedule 2 to, the Crime and Security Act 2010 (c. 17) and section 216 of, and Schedule 44 to, the Finance Act 2013 (c. 29).
 - (b) Schedule 4 was amended by section 94 of, and Schedule 26 to, the Finance Act 1985 (c. 54); section 59 of, and Schedule 9 to, the Finance Act 1987 (c. 16); section 142 of, and Schedule 25 to, the Finance Act 1998 (c. 36), and section 12 of the Finance (No. 2) Act 2015 (c. 33). There are other amendments to Schedule 4 but none are relevant to these regulations.
 - (c) S.I. 1987/1967. Paragraph 12 of Schedule 10 was substituted by S.I. 1990/1776 and amended by S.I. 2006/2378.
 - (d) 1987 c. 31. Section 42 was amended by section 157 of, and Schedule 10 to, the Commonhold and Leasehold Reform Act 2002 (c. 15).
 - (e) 2003 c. 1. Part 9 of Schedule 2 was amended by section 139 of, and Schedule 21 to, the Finance Act 2003 (c. 14); section 882 of, and Schedule 1 to, the Income Tax (Trading and Other Income) Act 2005 (c. 5); section 1177 of, and Schedule 1 to, the Corporation Tax Act 2010 (c. 4); section 14 of, and Schedule 2 to, the Finance Act 2013 (c. 29), and section 51 of, and Schedule 8 to, the Finance Act 2014 (c. 26).
 - (f) 2005 c. 7. Schedule 1A was inserted by section 216 of, and Schedule 44 to, the Finance Act 2013. It was relevantly amended by section 291 of the Finance Act 2014.

- (a) a public authority, within the meaning of section 3(1) of the Freedom of Information Act 2000(a), or a body specified in section 80(2) of that Act;
- (b) a Scottish public authority, within the meaning of section 3(1) of the Freedom of Information (Scotland) Act 2002(b);
- (c) the Security Service, the Secret Intelligence Service, the Government Communications Headquarters or the National Crime Agency; or
- (d) the Welsh Assembly Government,

to carry out its functions, including any functions as a court or tribunal and, in the case of the Bank of England, any of its functions as a monetary authority within the meaning of section 244(2)(c) of the Banking Act 2009(c).

Interpretation

24. In this Schedule, “relevant supervised person” means—

- (a) a relevant person; or
- (b) a person who is subject to requirements in national legislation having an equivalent effect to those laid down in the fourth money laundering directive on an obliged entity (within the meaning of that directive) and supervised for compliance with those requirements in a manner equivalent to section 2 of Chapter VI of the fourth money laundering directive.”.

Relevant requirements

12. In paragraph 9 of Schedule 6 (meaning of “relevant requirement”)—

- (a) in sub-paragraph (c), for “and (9)” substitute “, (9) and (10A) to (10I)”;
- (b) after sub-paragraph (c) insert—
 - “(d) regulation 45ZA(3) to (7) (register of beneficial ownership: additional types of trust).”.

PART 3

Review

Review

13.—(1) The Treasury must from time to time—

- (a) carry out a review of the regulatory provisions contained in these Regulations, and
- (b) publish a report setting out the conclusions of the review.

(2) The first report must be published before 26th June 2022.

(3) Subsequent reports must be published at intervals not exceeding 5 years.

(4) Section 30(4) of the Small Business, Enterprise and Employment Act 2015(d) requires that a report published under this regulation must, in particular—

- (a) set out the objectives intended to be achieved by the regulatory provisions referred to in paragraph (1)(a),

(a) 2000 c. 36.

(b) 2002 asp. 13.

(c) 2009 c. 1. Section 244 was amended by section 5 of, and Schedule 2 to, the Financial Services Act 2012 (c. 21) and by S.I. 2014/3329 and 2018/1115.

(d) 2015 c. 26.

- (b) assess the extent to which those objectives are achieved,
- (c) assess whether those objectives remain appropriate, and
- (d) if those objectives remain appropriate, assess the extent to which they could be achieved in another way which involves less onerous regulatory provision.

PART 4

EU exit amendments

EU exit amendments

14.—(1) The Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 are amended as follows.

(2) In regulation 42—

(a) for paragraph (4) substitute—

“(4) For the purposes of this Part, an “EEA registered trust” is a trust established in a country or territory other than the United Kingdom where national legislation applies having a broadly equivalent effect to the requirements laid down in the fourth money laundering directive.”;

(b) for paragraph (6)(b) substitute—

“(b) “third country entity” means a body corporate, partnership or other entity that—

- (i) is governed by the law of a country or territory other than the United Kingdom and (in each case) is a legal person under that law, and
- (ii) is not subject to national legislation having a broadly equivalent effect to the requirements laid down in Article 30 of the fourth money laundering directive.”.

James Morris
Maggie Throup

14th September 2020

Two of the Lords Commissioners of Her Majesty’s Treasury

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (S.I. 2017/692) (“the MLRs”). The provisions are mainly—

- in regulation 7, to transpose amendments made to Article 31 of Directive 2015/849/EU of the European Parliament and of the Council of 20th May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing by Directive 2018/843/EU of the European Parliament and of the Council of 30th May 2018;
- in regulation 14, made in exercise of the powers in section 8(1) of the European Union (Withdrawal) Act 2018 in order to address failures of retained EU law to operate effectively and other deficiencies arising from the withdrawal of the United Kingdom from the European Union (and in particular the deficiencies referred to in paragraphs (a) and (g) of subsection (2)).

Regulation 3 amends regulation 28 of the MLRs to exclude customers that are publicly listed companies from the duty to take measures to understand a customer’s ownership structure and to clarify the provision confirming that identity can be verified electronically.

Regulation 4 amends regulations 30A, 37, 39 and 40 of the MLRs to refine the scope of the duty to report discrepancies in beneficial ownership registers and link it to other provisions in the MLRs.

Regulation 5 substitutes regulation 30A of the MLRs, from 10th March 2022, so that it covers express trusts as well as companies.

Regulation 6 amends regulations 33 and 34 of the MLRs to specify the duties on insurance firms in relation to beneficiaries of life insurance policies and provides that firms must apply certain measures to correspondent banking relationships only if they involve the execution of payments.

Regulation 7 amends Part 5 of the MLRs in relation to the register of trusts, providing for additional trusts to be included on the register under new regulation 45ZA and for certain information on that register to be accessible to certain persons under new regulation 45ZB. Regulation 11 inserts a new Schedule 3A to the MLRs of trusts falling outside those provisions.

Regulation 8 amends regulation 52A of the MLRs, which limits uses of confidential information, to allow information to be used by Her Majesty’s Revenue and Customs to carry out tax functions.

Regulation 9 amends regulation 56 of the MLRs to extend by 5 months, until 9th June 2021, the time for which art market participants and letting agents can operate before applying to register.

Regulation 10 amends regulation 74C of the MLRs to clarify that the Financial Conduct Authority (“FCA”) may impose a direction on a cryptoasset business either on the FCA’s own initiative or at the business’s request.

Regulation 12 amends Schedule 6 to the MLRs, which sets out which provisions of the MLRs are “relevant requirements” for the purposes of enforcement action under Part 9.

Regulation 13 requires the Treasury to carry out a review.

A full impact assessment of the effect of the previous provisions to transpose Directive 2018/843/EU on the costs of business, the voluntary sector and the public sector is available from HM Treasury at 1 Horse Guards Road, London SW1A 2HQ. A full impact assessment has not been produced for this instrument as no significant further impact on the private, voluntary or public sector is foreseen.

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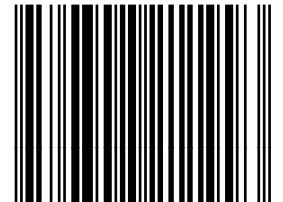
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