
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”).

Regulation 3 is a minor consequential provision to remove an outdated reference to certain provisions of the Terrorist Asset-Freezing etc. Act 2010 (c. 38).

Regulation 4 widens the meaning of a trust or company service provider (“TCSP”) by amending regulation 12 of the MLRs so that it covers the formation of all forms of business arrangement, not just companies and other legal persons. By extending this to the formation of a ‘firm’, which is defined in regulation 3 of the MLRs, this will also now cover limited partnerships which are registered in England and Wales or Northern Ireland. A related change is made to regulation 4 of the MLRs so that TCSPs conduct customer due diligence when they are providing the services outlined in regulation 12(2)(a), (b) or (d).

Regulation 5 implements, in respect of cryptoasset transfers, a recommendation of the Financial Action Task Force and inserts a new Part 7A (cryptoasset transfers) into the MLRs. Regulation 64C of Part 7A (information accompanying an inter-cryptoasset business transfer) requires a cryptoasset business to include with the transfer of a cryptoasset to another cryptoasset business, specified information about the originator and beneficiary of the transfer. Regulation 64D (missing or non-corresponding information: the cryptoasset business of a beneficiary) includes obligations on the cryptoasset business of a beneficiary in such a transfer if required information is missing or does not correspond with information it verified as part of the customer due diligence duties. Regulation 64E (missing information: intermediaries) imposes similar obligations on an intermediary cryptoasset business in receipt of a cryptoasset transfer containing missing information.

Under regulation 64F (retention of information with an inter-cryptoasset business transfer: intermediaries) an intermediary cryptoasset business must ensure required information is retained with an onward transfer by it.

Regulation 64G (requesting information: unhosted wallet transfers and cryptoasset businesses) requires a cryptoasset business involved in an unhosted wallet transfer to consider whether to request from its customer certain information in relation to the originator and the beneficiary, and provides that, should the business not receive requested information, it must not make the cryptoasset available to the beneficiary.

Chapter 4 (provision of information to law enforcement authorities) obliges cryptoasset businesses to respond fully and without delay to a written request by a law enforcement authority for any information held under Part 7A reasonably required in connection with the authority’s function; and makes a change to regulation 74A of the MLRs (reporting requirements: cryptoasset businesses) such that a cryptoasset business will be required to provide to the Financial Conduct Authority (“FCA”) requested information about its compliance with Part 7A. An amendment to Schedule 6 (relevant requirements) makes the requirements of Part 7A “relevant requirements”, contravention of which is an offence and may lead to a civil penalty.

Regulation 6 implements a recommendation of the Financial Action Task Force. The Treasury is required to make arrangements to assess the risks of proliferation financing affecting the United Kingdom and relevant persons have associated obligations to undertake their own assessments of proliferation financing risk and maintain policies, controls and procedures to mitigate such risk. The

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provisions broadly align with existing provisions of the MLRs in relation to money laundering and terrorist financing risks.

Regulation 7 makes provision to clarify that the definition of art market participant in the MLRs does not apply to artists who sell their own works of art over the EUR 10,000 threshold.

Regulation 8 is an amendment to ensure alignment between the categories of relevant persons in regulation 8 of the MLRs and the extent of exclusions in regulation 15.

Regulation 9 amends regulation 30A of the MLRs to extend the obligation on relevant persons to report discrepancies to the registrar of companies between information they hold on the beneficial ownership of a customer and information on the register. The obligation to report is an ongoing one in line with the duty in the MLRs to undertake customer due diligence and ongoing monitoring. The provision also limits the duty to report to 'material' discrepancies, not just any discrepancy. Regulations 16 and 17 are consequential changes to primary legislation to update the law to align with new regulation 30A and give the registrar clear powers to deal with a material discrepancy in the register.

Regulation 10 removes from the MLRs the requirements in Part 5A for a centralised automated mechanism to identify persons holding or controlling bank accounts or safe deposit boxes through a bank account portal.

Regulation 11 makes provision to widen information and intelligence sharing gateways, to make provision as to the powers of certain authorities, including enforcement authorities, and to cover certain functions undertaken by the Department for Business, Energy and Industrial Strategy and Companies House within the meaning of 'relevant authority' for the purposes of regulation 52 of the MLRs.

Regulation 12 adds a new regulation 60B of, and Schedule 6B to, the MLRs to allow the FCA to object to an acquisition or change in control of a registered cryptoasset business before the acquisition takes place, and to publish notices relating to such objection. The regulation also makes provision for the FCA and HMRC to publish notices of refusals to register applicants for registration.

Regulation 13 amends regulation 66 of, and Schedule 4 to, the MLRs to make clear that supervisory authorities can request suspicious activity reports from their members, to assist in meeting their supervisory functions.

Regulation 14 applies regulations 74A to 74C of the MLRs (with appropriate modification) to Annex 1 financial institutions. This extends the FCA's powers to get reports, for example, about compliance by Annex 1 institutions with requirements imposed under the MLRs.

Regulation 15 removes account information service providers (or AISPs) from the scope of the MLRs.

An impact assessment of the effect that this instrument will have 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.