

SCHEDULES

SCHEDULE 2

Section 49

MONEY LAUNDERING AND TERRORIST FINANCING ETC

Regulations under section 49

- 1 Without prejudice to the generality of section 49, regulations under that section may do any thing mentioned in paragraphs 2 to 17.
- 2 (1) Require—
 - (a) the Secretary of State or the Treasury, or both of them acting jointly,
 - (b) supervisory authorities (within the meaning given by paragraph 24), and
 - (c) such persons carrying on relevant business (within the meaning given by that paragraph) as are prescribed for the purposes of this paragraph,to identify and assess risks relating to money laundering, terrorist financing or other threats to the integrity of the international financial system.
- (2) Make provision about factors to be taken into account in the assessment of such risks.
- 3 Require any person carrying on relevant business who is of a description prescribed for the purposes of this paragraph (“a relevant person”) to have policies, controls and procedures which—
 - (a) are policies, controls and procedures for mitigating and managing risks relating to money laundering, terrorist financing or other threats to the integrity of the international financial system,
 - (b) are of prescribed kinds, and
 - (c) are appropriate having regard to the size and nature of the business that the person carries on.
- 4 Require relevant persons to take prescribed measures in relation to their customers in prescribed circumstances.
- 5 Make provision for and in connection with—
 - (a) the provision of information by prescribed persons, and
 - (b) the disclosure of information, including provision about—
 - (i) the purposes for which information held in connection with anything done under the regulations may be used, and
 - (ii) the persons to whom any such information may be disclosed.
- 6 Make provision for and in connection with the creation, production and retention of—
 - (a) registers, and
 - (b) records,including registers of people with significant control and registers and records relating to the beneficial ownership of prescribed entities, trusts or other arrangements.

Status: This is the original version (as it was originally enacted).

- 7 (1) Confer supervisory functions on the Financial Conduct Authority, the Commissioners for Her Majesty's Revenue and Customs and such other bodies as may be prescribed ("supervisory authorities") in relation to relevant persons, including powers or duties to—
- (a) collect information,
 - (b) give directions,
 - (c) issue guidance,
 - (d) approve individuals in their capacity as relevant persons or as owner of, or in positions of control over or responsibility in, relevant persons that are not individuals, and
 - (e) cooperate with other supervisory authorities or other prescribed persons.
- (2) Make provision about the exercise of functions conferred on supervisory authorities under sub-paragraph (1).
- 8 (1) Confer supervisory functions on a prescribed body (an "oversight body") in relation to bodies prescribed as, or seeking to be prescribed as, supervisory authorities, including powers or duties to—
- (a) collect information,
 - (b) give directions,
 - (c) issue guidance, and
 - (d) give recommendations as to whether bodies should be, or should cease to be, prescribed as supervisory authorities.
- (2) Make provision about the exercise of functions conferred on an oversight body under sub-paragraph (1).
- 9 Make provision for and in connection with the registration of relevant persons by supervisory authorities, including—
- (a) provision which prohibits a person from carrying on a business of a prescribed description unless registered, and
 - (b) provision about the suspension or cancellation of a person's registration.
- 10 Make provision enabling supervisory authorities to enter into arrangements with other bodies for the purposes of the enforcement of the regulations.
- 11 (1) Confer investigatory powers on—
- (a) supervisory authorities, and
 - (b) prescribed enforcement partners within the meaning given by paragraph 24.
- (2) Make provision about the exercise of investigatory powers.
- (3) Make provision enabling investigatory powers to be exercised by a supervisory authority in relation to persons supervised by another supervisory authority.
- (4) In this paragraph "investigatory powers" includes powers of entry, search, inspection, seizure of documents or information and retention of documents or information.
- 12 (1) Authorise supervisory authorities to impose charges on persons supervised by them in respect of expenses incurred for the purposes of the regulations.
- (2) Make provision in connection with any charges for which provision is made under sub-paragraph (1), including provision for charges to meet expenses incurred by enforcement partners for the purposes of the regulations.

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- (3) Where provision is made by virtue of paragraph 11(3), authorise supervisory authorities to impose charges on other supervisory authorities in respect of expenses incurred in relation to the exercise of powers in accordance with such provision.
- (4) Authorise an oversight body to impose charges on supervisory authorities or persons seeking to be prescribed as supervisory authorities in respect of the exercise by the oversight body of functions conferred on it by the regulations.
- (5) Make provision in connection with any charges for which provision is made under sub-paragraph (3) or (4).
- 13 (1) Authorise the Financial Conduct Authority and the Commissioners for Her Majesty's Revenue and Customs to impose civil monetary penalties in relation to the contravention of prescribed requirements.
- (2) Authorise supervisory authorities to impose civil penalties (other than monetary penalties) in relation to the contravention of prescribed requirements, including—
- (a) the publication of statements of censure,
 - (b) the suspension or revocation of, or restrictions on, any permission or authorisation granted by a supervisory authority,
 - (c) the suspension or cancellation of, or restrictions on, a person's registration as mentioned in paragraph 9, and
 - (d) restrictions on the holding of management responsibilities.
- (3) Authorise an oversight body to—
- (a) impose civil monetary penalties, and
 - (b) publish statements of censure,
- in relation to the contravention of prescribed requirements by supervisory authorities.
- (4) Make provision in connection with any civil penalties for which provision is made under sub-paragraph (1), (2) or (3), including provision for publishing details of persons who have incurred penalties.
- 14 Make provision for and in connection with the grant of injunctions (or, in Scotland, interdicts) and other orders by prescribed courts in relation to the contravention of prescribed requirements.
- 15 Make provision—
- (a) creating criminal offences for the purposes of the enforcement of requirements imposed by or under regulations under section 49, and
 - (b) dealing with matters relating to any offences created for such purposes by regulations under section 49,
- but see paragraphs 18 and 19.
- 16 Make provision for and in connection with reviews of, and appeals against, decisions of—
- (a) prescribed supervisory authorities, and
 - (b) an oversight body.
- 17 Make provision exempting prescribed persons from prescribed requirements, generally or in prescribed circumstances.

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Criminal offences: restrictions and relationship with civil penalties

- 18 Regulations under section 49 may not provide for an offence created by such regulations to be punishable with imprisonment for a period exceeding—
- (a) in the case of conviction on indictment, 2 years;
 - (b) in the case of summary conviction, 3 months.
- 19 Regulations under section 49 may provide for the creation of a criminal offence only if the regulations also provide for either or both of the following in relation to the offence—
- (a) a mental element necessary for its commission;
 - (b) a defence to it (for example, a defence grounded on a person’s knowledge or belief, or a defence that a person took all reasonable steps and exercised all due diligence).
- 20 Regulations under section 49 which confer a power to impose a civil monetary penalty must provide that a person is not liable to such a penalty in respect of acts or omissions for which the person has been convicted of a criminal offence created by such regulations.

Criminal offences: report in respect of offences in regulations

- 21 (1) In this paragraph “relevant regulations” means regulations under section 49 which create any offence for the purposes of the enforcement of any requirements imposed by or under regulations under section 49.
- (2) The appropriate Minister making any relevant regulations (“the Minister”) must at the required time lay before Parliament a report which—
- (a) specifies the offences created by the regulations, indicating the requirements to which those offences relate,
 - (b) states that the Minister considers that there are good reasons for those requirements to be enforceable by criminal proceedings and explains why the Minister is of that opinion, and
 - (c) in the case of any of those offences which are punishable with imprisonment—
 - (i) states the maximum terms of imprisonment that apply to those offences,
 - (ii) states that the Minister considers that there are good reasons for those maximum terms, and
 - (iii) explains why the Minister is of that opinion.
- (3) Sub-paragraph (4) applies where an offence created by the regulations relates to particular requirements and the Minister considers that a good reason—
- (a) for those requirements to be enforceable by criminal proceedings, or
 - (b) for a particular maximum term of imprisonment to apply to that offence,
- is consistency with another enactment relating to the enforcement of similar requirements.
- (4) The report must identify that other enactment.
- (5) In sub-paragraph (3) “another enactment” means any provision of or made under an Act, other than a provision of the regulations to which the report relates.

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- (6) In sub-paragraph (2) “the required time” means the same time as the draft of the statutory instrument containing the regulations is laid before Parliament.
- (7) This paragraph applies to regulations which amend other regulations under section 49 so as to create an offence as it applies to regulations which otherwise create an offence.

Extra-territorial application

- 22 (1) Regulations under section 49 may impose requirements in relation to conduct outside the United Kingdom by a United Kingdom person.
- (2) In sub-paragraph (1) “United Kingdom person” means—
- (a) a United Kingdom national,
 - (b) a body incorporated or constituted under the law of any part of the United Kingdom, or
 - (c) a body within paragraph (3) or (4) of regulation 9 of the Money Laundering Regulations 2017 (bodies to be regarded for the purposes of those Regulations as carrying on business in the United Kingdom), as that regulation has effect immediately before it is saved by section 2 of the European Union (Withdrawal) Act 2018.
- (3) For this purpose a United Kingdom national is an individual who is—
- (a) a British citizen, a British overseas territories citizen, a British National (Overseas) or a British Overseas citizen,
 - (b) a person who under the British Nationality Act 1981 is a British subject, or
 - (c) a British protected person within the meaning of that Act.
- (4) In this paragraph “conduct” includes acts and omissions.

Money Laundering Regulations 2017

- 23 (1) Without prejudice to anything in section 49, paragraphs 1 to 22 or section 54(2), regulations under section 49 may—
- (a) subject to any modifications the appropriate Minister making those regulations considers appropriate, make provision corresponding or similar to any provision of retained money laundering Regulations as those Regulations have effect immediately after being saved by section 2 or 3 of the European Union (Withdrawal) Act 2018;
 - (b) amend or revoke any retained money laundering Regulations.
- (2) In sub-paragraph (1) “retained money laundering Regulations” means—
- (a) the Money Laundering Regulations 2017;
 - (b) Regulation (EU) 2015/847 of the European Parliament and of the Council of 20 May 2015 on information accompanying transfers of funds;
 - (c) any provision made under Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing by virtue of Article 290 or 291(2) of the Treaty on the Functioning of the European Union.

Status: This is the original version (as it was originally enacted).

- (3) In paragraph 15 (offences), any reference to regulations under section 49 includes the Money Laundering Regulations 2017.
- (4) In paragraph 21 (report in respect of offences)—
- (a) the reference in sub-paragraph (1) to requirements imposed by or under regulations under section 49 includes requirements imposed by or under the Money Laundering Regulations 2017, and
 - (b) the reference in sub-paragraph (7) to other regulations under section 49 includes the Money Laundering Regulations 2017.

Interpretation

24 In this Schedule—

“enforcement partners” means bodies with which supervisory authorities enter into arrangements for the purposes of the enforcement of regulations under section 49;

“money laundering” has the meaning given by section 49;

“Money Laundering Regulations 2017” means the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (S.I. 2017/692);

“oversight body” means a body on which functions are conferred under paragraph 8(1);

“relevant business” means business of a kind which entails risks relating to money laundering, terrorist financing or other threats to the integrity of the financial system;

“relevant person” means a person on whom requirements are imposed under paragraph 3;

“requirements” includes prohibitions;

“supervisory authority” means the Financial Conduct Authority, the Commissioners for Her Majesty’s Revenue and Customs or any other body on which functions are conferred under paragraph 7(1);

“terrorist financing” has the meaning given by section 49.