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STATUTORY INSTRUMENTS

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**2017 No. 692**

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

**PART 1**

**Introduction**

**Citation and commencement**

**1.—**(1) These Regulations may be cited as the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017.

(2) These Regulations come into force on 26th June 2017.

**Prescribed regulations**

**2.** These Regulations are prescribed for the purposes of sections 168(4)(b) (appointment of persons to carry out investigations in particular cases) and 402(1)(b) (power of the FCA to institute proceedings for certain other offences) of the Financial Services and Markets Act 2000(1).

**General interpretation**

**3.—**(1) In these Regulations—

“Annex 1 financial institution” has the meaning given by regulation 55(2);

“appropriate body” means any body which regulates or is representative of any trade, profession, business or employment carried on by a relevant person;

“auction platform” has the meaning given by regulation 14(1)(c);

“auditor” (except in regulation 31(4)) has the meaning given by regulation 11(a);

“authorised person” means a person who is authorised for the purposes of FSMA;

“the FCA” means the Financial Conduct Authority;

“beneficial owner”—

(a) in the case of a body corporate or partnership, has the meaning given by regulation 5;

(b) in the case of a trust or similar arrangement, or the estate of a deceased person in the course of administration, has the meaning given by regulation 6;

(c) in any other case, has the meaning given by regulation 6(9);

“body corporate”—

(a) includes—

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(1) 2000 c.8. Section 168(4)(b) was amended by Part 1 of Schedule 12 to the Financial Services Act 2012 (c.21); and section 402(1) was amended by Parts 1 and 7 of Schedule 9 to the Financial Services Act 2012.

- (i) a body corporate incorporated under the laws of the United Kingdom or any part of the United Kingdom, and
- (ii) a body corporate constituted under the law of a country or territory outside the United Kingdom;
- (b) but does not include—
  - (i) a corporation sole, or
  - (ii) a partnership that, whether or not a legal person, is not regarded as a body corporate under the law by which it is governed;

“bill payment service provider” means an undertaking which provides a payment service enabling the payment of utility and other household bills;

“branch”, except where the context otherwise requires, means a place of business that forms a legally dependent part of the entity in question and conducts directly all or some of the operations inherent in its business;

“business relationship” has the meaning given by regulation 4;

“the capital requirements directive” means [Directive 2013/36/EU](#) of the European Parliament and of the Council of 26th June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending [Directive 2002/87/EC](#) and repealing Directives [2006/48/EC](#) and [2006/49/EC](#)(2);

“the capital requirements regulation” means Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26th June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012(3);

“cash” means notes, coins or travellers’ cheques, in any currency;

“casino” has the meaning given by regulation 14(1)(b);

“the Commissioners” means the Commissioners for Her Majesty’s Revenue and Customs;

“contract of long-term insurance” means any contract falling within Part 2 of Schedule 1 to the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001(4);

“correspondent relationship” has the meaning given by regulation 34(4);

“credit institution” has the meaning given by regulation 10(1);

“customer due diligence measures” means the measures required by regulation 28, and where relevant, those required by regulations 29 and 33 to 37;

“Department for the Economy” means the Department for the Economy in Northern Ireland;

“designated supervisory authority” has the meaning given by regulation 76(8);

“document” means anything in which information of any description is recorded;

“electronic money” has the meaning given by regulation 2(1) of the Electronic Money Regulations 2011(5);

“electronic money institution” has the meaning given by regulation 2(1) of the Electronic Money Regulations 2011;

“electronic money issuer” has the meaning given in regulation 2(1) of the Electronic Money Regulations 2011;

(2) OJ L 176, 27.6.2013, p.338.

(3) OJ L 176, 27.6.2013, p.1.

(4) S.I. 2001/544. Part 2 of Schedule 1 was amended by [S.I. 2005/2114](#) and [2015/575](#).

(5) [S.I. 2011/99](#).

“eligible Scottish partnership” has the meaning given in regulation 3 of the Scottish Partnerships (Register of People with Significant Control) Regulations 2017 (key terms)(6);

“the emission allowance auctioning regulation” means [Commission Regulation \(EU\) No 1031/2010](#) of 12th November 2010 on the timing, administration and other aspects of auctioning of greenhouse gas emission allowances pursuant to [Directive 2003/87/EC](#) of the European Parliament and of the Council establishing a scheme for greenhouse gas emission allowances trading within the Community(7);

“enactment” includes—

- (a) an enactment contained in subordinate legislation;
- (b) an enactment contained in, or in an instrument made under, an Act of the Scottish Parliament;
- (c) an enactment contained in, or in an instrument made under, a Measure or Act of the National Assembly for Wales; and
- (d) an enactment contained in, or in an instrument made under, Northern Ireland legislation;

“enhanced customer due diligence measures” means the customer due diligence measures required under regulations [33](#) to [35](#);

“estate agent” has the meaning given by regulation [13\(1\)](#);

“European Supervisory Authorities” means—

- (a) the European Securities and Markets Authority;
- (b) the European Banking Authority;
- (c) the European Insurance and Occupational Pensions Authority;

“external accountant” (except in regulation [31\(4\)](#)) has the meaning given by regulation [11\(c\)](#);

“financial institution” has the meaning given by regulation [10\(2\)](#);

“firm” means any entity that, whether or not a legal person, is not an individual and includes a body corporate and a partnership or other unincorporated association;

“fourth money laundering directive” means [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(8);

“FSMA” means the Financial Services and Markets Act 2000(9);

“funds transfer regulation” means Regulation 2015/847/EU of the European Parliament and of the Council of 20th May 2015 on information accompanying transfers of funds(10);

“group” has the meaning given by section 421 (group) of FSMA(11);

“high value dealer” has the meaning given by regulation [14\(1\)\(a\)](#);

“independent legal professional” has the meaning given by regulation [12\(1\)](#);

“insolvency practitioner” has the meaning given by regulation [11\(b\)](#);

“law enforcement authority” has the meaning given by regulation [44\(10\)](#);

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(6) [S.I. 2017/694](#).

(7) OJ L 302, 18.11.2010, p.1.

(8) OJ L 141, 05.06.15, p. 73.

(9) [2000 c.8](#).

(10) OJ L 141, 05.06.2015, p.1.

(11) Section 421 was amended by [S.I. 2008/948](#).

“local weights and measures authority” has the meaning given by section 69 of the Weights and Measures Act 1985 (local weights and measures authorities)(12);

“manager”, in relation to a firm, means a person who has control, authority or responsibility for managing the business of that firm, and includes a nominated officer;

“markets in financial instruments directive” means Directive 2014/65/EU of the European Parliament and of the Council of 15th May 2014 on markets in financial instruments(13);

“money laundering” has the meaning given by section 340(11) of the Proceeds of Crime Act 2002(14);

“money service business” means an undertaking which by way of business operates a currency exchange office, transmits money (or any representation of monetary value) by any means or cashes cheques which are made payable to customers;

“the NCA” means the National Crime Agency;

“nominated officer” means a person who is nominated to receive disclosures under Part 3 (terrorist property) of the Terrorism Act 2000(15) or Part 7 (money laundering) of the Proceeds of Crime Act 2002;

“notice” means a notice in writing;

“occasional transaction” means a transaction which is not carried out as part of a business relationship;

“officer”, except in Part 8 and Schedule 5—

(a) in relation to a body corporate, means—

- (i) a director, secretary, chief executive, member of the committee of management, or a person purporting to act in such a capacity, or
- (ii) an individual who is a controller of the body, or a person purporting to act as a controller;

(b) in relation to an unincorporated association, means any officer of the association or any member of its governing body, or a person purporting to act in such a capacity; and

(c) in relation to a partnership, means a partner, and any manager, secretary or similar officer of the partnership, or a person purporting to act in such a capacity;

“ongoing monitoring” (except where the context otherwise requires) means at least the measures described in regulation 28(11);

“payment services” has the meaning given by regulation 2(1) of the Payment Services Regulations 2009(16);

“payment service provider” has the meaning given in regulation 2(1) of the Payment Services Regulations 2009;

“politically exposed person” or “PEP” has the meaning given by regulation 35(12);

“the PRA” means the Prudential Regulation Authority;

“PRA-authorised person” has the meaning given by section 2B(5) of FSMA(17);

“regulated market”—

(12) 1985 c.72. Section 69 was amended by Part 4 of Schedule 1 to the Statute Law (Repeals) Act 1989 (c. 43); paragraph 75 of Schedule 16 to the Local Government (Wales) Act 1994 (c. 19) and paragraph 144 of Schedule 13 to the Local Government etc (Scotland) Act 1994 (c.39).

(13) OJ L 173, 12.06.2014, p.349.

(14) 2002 c. 29.

(15) 2000 c. 11.

(16) S.I. 2009/209, to which there are amendments not relevant to these Regulations.

(17) Section 2B was substituted, with the rest of Part 1A of the Financial Services and Markets Act 2000 (c.8) for the original Part 1 of that Act by section 6(1) of the Financial Services Act 2012 (c.21).

- (a) within the EEA, has the meaning given by Article 4.1(21) of the markets in financial instruments directive; and
- (b) outside the EEA, means a regulated financial market which subjects companies whose securities are admitted to trading to disclosure obligations which are equivalent to the specified disclosure obligations;

“relevant parent undertaking” means a relevant person which is a parent undertaking;

“relevant person” means a person to whom, in accordance with regulation 8, Parts 1 to 6 and 8 to 11 of these Regulations apply;

“relevant requirement” has the meaning given by regulation 75;

“self-regulatory organisation” means one of the professional bodies listed in Schedule 1 to these Regulations;

“senior management” means an officer or employee of the relevant person with sufficient knowledge of the relevant person’s money laundering and terrorist financing risk exposure, and of sufficient authority, to take decisions affecting its risk exposure;

“the Solvency 2 Directive” means [Directive 2009/138/EC](#) of the European Parliament and of the Council of 25th November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II)(**18**);

“specified disclosure obligations” means—

- (a) disclosure obligations set out in Articles 17 and 19 of Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16th April 2014 on market abuse(**19**);
- (b) disclosure obligations consistent with Articles 3, 5, 7, 8, 10, 14 and 16 of [Directive 2003/71/EC](#) of the European Parliament and of the Council of 4th November 2003 on the prospectuses to be published when securities are offered to the public or admitted to trading(**20**);
- (c) disclosure obligations consistent with Articles 4 to 6, 14, 16 to 19 and 30 of [Directive 2004/109/EC](#) of the European Parliament and of the Council of 15th December 2004 on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market(**21**); and
- (d) disclosure requirements consistent with EU legislation made under the provisions mentioned in sub-paragraphs (a) to (c);

“supervisory authority” in relation to—

- (a) any relevant person, means the supervisory authority specified for such a person by regulation 7;
- (b) any payment service provider, means the transfer of funds supervisory authority;

“supervisory functions” means the functions given to a supervisory authority under these Regulations;

“tax adviser” (except in regulation [31\(4\)](#)) has the meaning given by regulation [11\(d\)](#);

“telecommunication, digital and IT payment service provider” has the meaning given by regulation 53;

“terrorist financing” means (except where the context otherwise requires) an act which constitutes an offence under—

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(18) OJ L 138, 23.05.2014, p.1.

(19) OJ L 173, 12.6.2014, p.1.

(20) OJ L 345, 31.12.2003, p.64.

(21) OJ L 390, 31.12.2004, p.38.

- (a) section 15 (fund-raising), 16 (use and possession), 17 (funding arrangements), 18 (money laundering) or 63 (terrorist finance: jurisdiction) of the Terrorism Act 2000<sup>(22)</sup>;
- (b) paragraph 7(2) or (3) of Schedule 3 (freezing orders: offences) to the Anti-terrorism, Crime and Security Act 2001<sup>(23)</sup>;
- (c) regulation 10 (contravention and circumvention of prohibitions) of the ISIL (Da'esh) and Al-Qaida (Asset-Freezing) Regulations 2011<sup>(24)</sup>; or
- (d) section 11 (freezing of funds and economic resources), 12 (making funds or financial services available to designated person), 13 (making funds or financial services available for benefit of designated person), 14 (making economic resources available to designated person), 15 (making economic resources available for benefit of designated person) or 18 (circumventing prohibitions etc) of the Terrorist Asset-Freezing etc Act 2010<sup>(25)</sup>;

“third country” means a state other than an EEA state;

“transfer of funds supervisory authority” means the supervisory authority specified for payment service providers in regulation 62;

“trust or company service provider” has the meaning given in regulation 12(2).

(2) In these Regulations—

- (a) references to an amount in euros includes reference to an equivalent amount in any currency;
- (b) the equivalent in sterling (or any other currency) on a particular day of a sum expressed in euros is determined by converting the sum in euros into its equivalent in sterling or that other currency using the London closing exchange rate for the euro and the relevant currency for the previous working day;
- (c) references to “real property” include, in relation to Scotland, references to heritable property;
- (d) references to business being carried on in the United Kingdom, or a person carrying on business in the United Kingdom, are to be read in accordance with regulation 9;
- (e) references to a person having a “qualifying relationship” with a PRA-authorized person, or with an authorised person are to be read in accordance with section 415B(4) of FSMA<sup>(26)</sup>;
- (f) “parent undertaking” and “subsidiary undertaking” have the same meaning as in the Companies Acts (see section 1162 of and Schedule 7 to, the Companies Act 2006 (parent and subsidiary undertaking)<sup>(27)</sup>).

### Meaning of business relationship

4.—(1) For the purpose of these Regulations, “business relationship” means a business, professional or commercial relationship between a relevant person and a customer, which—

- (a) arises out of the business of the relevant person, and
- (b) is expected by the relevant person, at the time when contact is established, to have an element of duration.

(2) A relationship where the relevant person is asked to form a company for its customer is to be treated as a business relationship for the purpose of these Regulations, whether or not the formation of the company is the only transaction carried out for that customer.

(22) 2000 c.11.

(23) 2001 c.24.

(24) S.I. 2011/2742. The title of the instrument was amended by S.I. 2016/937.

(25) 2010 c.38.

(26) Section 415B was inserted by paragraph 41 of Schedule 9 to the Financial Services Act 2012 (c.21).

(27) 2006 c.46.

(3) For the purposes of these Regulations, an estate agent is to be treated as entering into a business relationship with a purchaser (as well as with a seller), at the point when the purchaser's offer is accepted by the seller.

### **Meaning of beneficial owner: bodies corporate or partnership**

**5.—**(1) In these Regulations, “beneficial owner”, in relation to a body corporate which is not a company whose securities are listed on a regulated market, means—

- (a) any individual who exercises ultimate control over the management of the body corporate;
- (b) any individual who ultimately owns or controls (in each case whether directly or indirectly), including through bearer share holdings or by other means, more than 25% of the shares or voting rights in the body corporate; or
- (c) an individual who controls the body corporate.

(2) For the purposes of paragraph (1)(c), an individual controls a body corporate if—

- (a) the body corporate is a company or a limited liability partnership and that individual satisfies one or more of the conditions set out in Part 1 of Schedule 1A to the Companies Act 2006 (people with significant control over a company)(**28**); or
- (b) the body corporate would be a subsidiary undertaking of the individual (if the individual was an undertaking) under section 1162 (parent and subsidiary undertakings) of the Companies Act 2006 read with Schedule 7 to that Act.

(3) In these Regulations, “beneficial owner”, in relation to a partnership (other than a limited liability partnership), means any individual who—

- (a) ultimately is entitled to or controls (in each case whether directly or indirectly) more than 25% share of the capital or profits of the partnership or more than 25% of the voting rights in the partnership;
- (b) satisfies one or more the conditions set out in Part 1 of Schedule 1 to the Scottish Partnerships (Register of People with Significant Control) Regulations 2017 (references to people with significant control over an eligible Scottish partnership)(**29**); or
- (c) otherwise exercises ultimate control over the management of the partnership.

(4) In this regulation “limited liability partnership” has the meaning given by the Limited Liability Partnerships Act 2000(**30**).

### **Meaning of beneficial owner: trusts, similar arrangements and others**

**6.—**(1) In these Regulations, “beneficial owner”, in relation to a trust, means each of the following—

- (a) the settlor;
- (b) the trustees;
- (c) the beneficiaries;
- (d) where the individuals (or some of the individuals) benefiting from the trust have not been determined, the class of persons in whose main interest the trust is set up, or operates;
- (e) any individual who has control over the trust.

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(28) Schedule 1A was inserted by paragraph 2 of Schedule 3 to the Small Business, Enterprise and Employment Act 2015 (c.26), and applied to limited liability partnerships with modifications by S.I. 2009/1804.

(29) S.I. 2017/694.

(30) 2000 c.12.



(2) In paragraph (1)(e), “control” means a power (whether exercisable alone, jointly with another person or with the consent of another person) under the trust instrument or by law to—

- (a) dispose of, advance, lend, invest, pay or apply trust property;
- (b) vary or terminate the trust;
- (c) add or remove a person as a beneficiary or to or from a class of beneficiaries;
- (d) appoint or remove trustees or give another individual control over the trust;
- (e) direct, withhold consent to or veto the exercise of a power mentioned in sub-paragraphs (a) to (d).

(3) In these Regulations, “beneficial owner”, in relation to a foundation or other legal arrangement similar to a trust, means those individuals who hold equivalent or similar positions to those set out in paragraph (1).

(4) For the purposes of paragraph (1)—

- (a) where an individual is the beneficial owner of a body corporate which is entitled to a specified interest in the capital of the trust property or which has control over the trust, the individual is to be regarded as entitled to the interest or having control over the trust; and
- (b) an individual (“P”) does not have control solely as a result of—
  - (i) P’s consent being required in accordance with section 32(1)(c) (power of advancement) of the Trustee Act 1925<sup>(31)</sup>;
  - (ii) any discretion delegated to P under section 34 (power of investment and delegation) of the Pensions Act 1995<sup>(32)</sup>;
  - (iii) the power to give a direction conferred on P by section 19(2) (appointment and retirement of trustee at instance of beneficiaries) of the Trusts of Land and Appointment of Trustees Act 1996<sup>(33)</sup>; or
  - (iv) the power exercisable collectively at common law to vary or extinguish a trust where the beneficiaries under the trust are of full age and capacity and (taken together) absolutely entitled to the property subject to the trust (or, in Scotland, have a full and unqualified right to the fee).

(5) For the purposes of paragraph (4), “specified interest” means a vested interest which is—

- (a) in possession or in remainder or reversion (or in Scotland, in fee); and
- (b) defeasible or indefeasible.

(6) In these Regulations, “beneficial owner”, in relation to an estate of a deceased person in the course of administration, means—

- (a) in England and Wales and Northern Ireland, the executor, original or by representation, or administrator for the time being of a deceased person;
- (b) in Scotland, the executor for the purposes of the Executors (Scotland) Act 1900<sup>(34)</sup>.

(7) In these Regulations, “beneficial owner”, in relation to a legal entity or legal arrangement which does not fall within regulation 5 or paragraphs (1), (3) or (6) of this regulation, means—

- (a) any individual who benefits from the property of the entity or arrangement;
- (b) where the individuals who benefit from the entity or arrangement have yet to be determined, the class of persons in whose main interest the entity or arrangement is set up or operates;

(31) 1925 (c.19). Section 32(1) was amended by section 9 of the Inheritance and Trustees’ Powers Act 2014 (c.16).

(32) 1995 (c.26). Section 34 was amended by paragraph 49 of Schedule 12 to the Pensions Act 2004 (c.35); section 5(3) of the Trustee Delegation Act 1999 (c.15) and S.I. 2001/3649.

(33) 1996 c.47.

(34) 1900 c.55.



(c) any individual who exercises control over the property of the entity or arrangement.

(8) For the purposes of paragraph (7), where an individual is the beneficial owner of a body corporate which benefits from or exercises control over the property of the entity or arrangement, the individual is to be regarded as benefiting from or exercising control over the property of the entity or arrangement.

(9) In these Regulations, “beneficial owner”, in any other case, means the individual who ultimately owns or controls the entity or arrangement or on whose behalf a transaction is being conducted.

### **Supervisory authorities**

7.—(1) Subject to paragraph (2), the following bodies are supervisory authorities in relation to relevant persons—

- (a) the FCA is the supervisory authority for—
  - (i) credit and financial institutions (including money service businesses) which are authorised persons but not excluded money service businesses;
  - (ii) trust or company service providers which are authorised persons;
  - (iii) Annex 1 financial institutions;
  - (iv) electronic money institutions;
  - (v) auction platforms;
  - (vi) credit unions in Northern Ireland;
  - (vii) recognised investment exchanges within the meaning of section 285 of FSMA<sup>(35)</sup> (exemption for recognised investment exchanges and clearing houses);
- (b) each of the professional bodies listed in Schedule 1 is the supervisory authority for relevant persons who are members of it, or regulated or supervised by it;
- (c) the Commissioners are the supervisory authority for—
  - (i) high value dealers;
  - (ii) money service businesses which are not supervised by the FCA;
  - (iii) trust or company service providers which are not supervised by the FCA or one of the professional bodies listed in Schedule 1;
  - (iv) auditors, external accountants and tax advisers who are not supervised by one of the professional bodies listed in Schedule 1;
  - (v) bill payment service providers which are not supervised by the FCA;
  - (vi) telecommunication, digital and IT payment service providers which are not supervised by the FCA;
  - (vii) estate agents which are not supervised by one of the professional bodies listed in Schedule 1;
- (d) the Gambling Commission is the supervisory authority for casinos.

(2) Where under paragraph (1), there is more than one supervisory authority for a relevant person, the supervisory authorities may agree that one of them will act as the supervisory authority for that person.

(3) Where there has been an agreement under paragraph (2), the authority which has agreed to act as the supervisory authority must notify the relevant person or publish the agreement in such manner as it considers appropriate.

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<sup>(35)</sup> Section 285 was amended by section 28 of the Financial Services and Markets Act 2000 (c.8); and S.I. 2013/504.

(4) Where there has not been an agreement under paragraph (2), the supervisory authorities for a relevant person must co-operate in the performance of their functions under these Regulations.

(5) For the purposes of paragraph (1)(a)(i), a money service business is an “excluded money service business” if it is an authorised person who has permission under FSMA which relates to or is connected with a contract of the kind mentioned in paragraph 23 or 23B of Schedule 2(36) to that Act (credit agreements and contracts for hire of goods) but does not have permission to carry on any other kind of regulated activity.

(6) Paragraph (5) must be read with—

- (a) section 22 of FSMA (regulated activities)(37);
- (b) any relevant order under that section; and
- (c) Schedule 2 to that Act.

(7) For the purposes of paragraph (1), a credit union in Northern Ireland is a credit union which is—

- (a) registered under regulation 3 of the Credit Unions (Northern Ireland) Order 1985(38) (registration) and it is an authorised person; or
- (b) registered under Part 2 of the Industrial and Provident Societies Act (Northern Ireland) 1969(39) (registered societies) as a credit union and it is an authorised person.

## PART 2

### Money Laundering and Terrorist Financing

#### CHAPTER 1

##### Application

##### Application

**8.**—(1) Parts 1 to 6 and 8 to 11 apply to the persons (“relevant persons”) acting in the course of business carried on by them in the United Kingdom, who—

- (a) are listed in paragraph (2); and
- (b) do not come within the exclusions set out in regulation 15.

(2) The persons listed in this paragraph are—

- (a) credit institutions;
- (b) financial institutions;
- (c) auditors, insolvency practitioners, external accountants and tax advisers;
- (d) independent legal professionals;
- (e) trust or company service providers;
- (f) estate agents;
- (g) high value dealers;
- (h) casinos.

(36) Paragraph 23 was substituted, and paragraph 23B was inserted, by section 7 of the Financial Services Act 2012 (c.21).

(37) Section 22 was amended by section 7 of the Financial Services Act 2012.

(38) S.I. 1985/1205 (N.I. 12). Article 3 was amended by S.I. 2011/2832 and 2013/496.

(39) 1969 c.24. Part 2 was amended, but the amendments are not relevant to these Regulations.

(3) Regulations 3, 7, 9, 15, 17 to 21, 24, 25, 46, 47, 50 to 52, 65 to 82, 84, 86 to 93, 101, 102 and 106 apply to an auction platform acting in the course of business carried on by it in the United Kingdom, and such an auction platform is a relevant person for the purposes of those provisions.

(4) The definitions in regulations 10 to 14 apply for the purposes of this regulation.

### **Carrying on business in the United Kingdom**

9.—(1) For the purposes of these Regulations, a relevant person (“A”) is to be regarded as carrying on business in the United Kingdom in the cases described in this regulation even if A would not otherwise be regarded as doing so.

(2) The first case is where—

- (a) A’s registered office (or if A does not have a registered office, A’s head office) is in the United Kingdom;
- (b) A is entitled to exercise rights under a single market directive as a UK firm (within the meaning of paragraph 10 of Schedule 3 to FSMA (EEA passport rights)); and
- (c) A is carrying on business in an EEA state other than the United Kingdom in the exercise of those rights.

(3) The second case is where—

- (a) A’s registered office (or if A does not have a registered office, A’s head office) is in the United Kingdom; and
- (b) the day-to-day management of the carrying on of A’s business is the responsibility of—
  - (i) that office, or
  - (ii) another establishment maintained by A in the United Kingdom.

(4) The third case is where—

- (a) A is a casino which provides facilities for remote gambling (within the meaning of section 4 of the Gambling Act 2005 (remote gambling)(<sup>(40)</sup>) and—
- (b) either—
  - (i) at least one piece of remote gambling equipment (within the meaning of section 36(4) of the Gambling Act 2005 (territorial application)) is situated in Great Britain, or
  - (ii) no such equipment is situated in Great Britain but the facilities provided by A are used there.

(5) For the purposes of paragraphs (2) and (3)—

- (a) “single market directive” means—
  - (i) a directive referred to in paragraph 1 of Schedule 3 to FSMA(<sup>(41)</sup>);
  - (ii) Directive 2009/110/EC of the European Parliament and of the Council of 16th September 2009 on the taking up, pursuit and prudential supervision of the business of electronic money institutions(<sup>(42)</sup>);
  - (iii) Directive 2015/2366/EU of the European Parliament and of the Council of 25th November 2015 on payment services in the internal market(<sup>(43)</sup>);
- (b) it is irrelevant where the person with whom the business is carried on is situated.

(40) 2005 c.19.

(41) Paragraph 1 of Schedule 3 was amended by S.I. 2000/2952; 2003/1473; 2003/2066; 2007/126; 2013/1773; 2013/3115; 2015/575 and 2015/910.

(42) OJ L 267, 10.10.2009, p.7.

(43) OJ L 337, 23.12.2015, p.35.

**Credit institutions and financial institutions**

10.—(1) In these Regulations, “credit institution” means—

- (a) a credit institution as defined in Article 4.1(1) of the capital requirements regulation; or
- (b) a branch (as defined by Article 4.1(17) of that regulation) located in an EEA state of an institution falling within sub-paragraph (a) (or an equivalent institution whose head office is located in a third country) wherever the institution’s head office is located,

when it accepts deposits or other repayable funds from the public or grants credits for its own account (within the meaning of the capital requirements regulation), or when it bids directly in auctions in accordance with the emission allowance auctioning regulation on behalf of its clients.

(2) In these Regulations, “financial institution” means—

- (a) an undertaking, including a money service business, other than an institution referred to in paragraph (3), when the undertaking carries out one or more listed activity;
- (b) an insurance undertaking duly authorised in accordance with the Solvency 2 Directive, when it carries out any activities or operations referred to in Article 2.3 of that Directive;
- (c) a person (other than a person falling within Article 2 of the markets in financial instruments directive), whose regular occupation or business is the provision to other persons of an investment service or the performance of an investment activity on a professional basis, when—
  - (i) providing investment services or performing investment activities (within the meaning of that directive); or
  - (ii) bidding directly in auctions in accordance with the emission allowance auctioning regulation on behalf of its clients;
- (d) a person falling within Article 2.1(j) of the markets in financial instruments directive, when bidding directly in auctions in accordance with the emission allowance auctioning regulation on behalf of clients of the person’s main business;
- (e) a collective investment undertaking, when marketing or otherwise offering its units or shares;
- (f) an insurance intermediary as defined in Article 2.5 of [Directive 2002/92/EC](#) of the European Parliament and of the Council of 9th December 2002 on insurance mediation<sup>(44)</sup>, with the exception of a tied insurance intermediary as mentioned in Article 2.7 of that Directive, when it acts in respect of contracts of long-term insurance;
- (g) a branch located in an EEA state of a person referred to in sub-paragraphs (a) to (f) (or an equivalent person whose head office is located in a third country), wherever the person’s head office is located, when carrying out any activity mentioned in sub-paragraphs (a) to (f);
- (h) the National Savings Bank;
- (i) the Director of Savings, when money is raised under the auspices of the Director under the National Loans Act 1968<sup>(45)</sup>.

(3) For the purposes of paragraph (2)(a), the institutions referred to are—

- (a) a credit institution;
- (b) an undertaking whose only listed activity is as a creditor under an agreement which—
  - (i) falls within section 12(a) of the Consumer Credit Act 1974<sup>(46)</sup> (debtor-creditor-supplier agreements);

<sup>(44)</sup> OJ L 9, 15.01.2003, p.3.

<sup>(45)</sup> 1968 c.13.

<sup>(46)</sup> 1974 c.39.

- (ii) provides fixed sum credit (within the meaning given in section 10(1)(b) of the Consumer Credit Act 1974 (running-account credit and fixed-sum credit)) in relation to the provision of services; and
  - (iii) provides financial accommodation by way of deferred payment or payment by instalments over a period not exceeding 12 months;
  - (c) an undertaking whose only listed activity is trading for its own account in one or more of the products listed in point 7 of Annex 1 to the capital requirements directive where the undertaking does not have a customer (and, for this purpose, “customer” means a person other than the undertaking which is not a member of the same group as the undertaking).
- (4) For the purposes of this regulation, a “listed activity” means an activity listed in points 2 to 12, 14 and 15 of Annex 1 to the capital requirements directive (the relevant text of which is set out in Schedule 2).

### **Auditors and others**

#### **11. In these Regulations—**

- (a) “auditor” means any firm or individual who is—
  - (i) a statutory auditor within the meaning of Part 42 of the Companies Act 2006<sup>(47)</sup> (statutory auditors), when carrying out statutory audit work within the meaning of section 1210 of that Act (meaning of statutory auditor), or
  - (ii) a local auditor within the meaning of section 4(1) of the Local Audit and Accountability Act 2014 (general requirements for audit)<sup>(48)</sup>, when carrying out an audit required by that Act.
- (b) “insolvency practitioner” means any firm or individual who acts as an insolvency practitioner within the meaning of section 388 of the Insolvency Act 1986<sup>(49)</sup> or article 3 of the Insolvency (Northern Ireland) Order 1989<sup>(50)</sup> (meaning of “act as insolvency practitioner”).
- (c) “external accountant” means a firm or sole practitioner who by way of business provides accountancy services to other persons, when providing such services.
- (d) “tax adviser” means a firm or sole practitioner who by way of business provides advice about the tax affairs of other persons, when providing such services.

### **Independent legal professionals and trust or company service providers**

**12.—**(1) In these Regulations, “independent legal professional” means a firm or sole practitioner who by way of business provides legal or notarial services to other persons, when participating in financial or real property transactions concerning—

- (a) the buying and selling of real property or business entities;
- (b) the managing of client money, securities or other assets;
- (c) the opening or management of bank, savings or securities accounts;
- (d) the organisation of contributions necessary for the creation, operation or management of companies; or

<sup>(47)</sup> 2006 c.46. Section 1210 was amended by S.I. 2008/565; 2008/567; 2008/1950; 2012/1809 and 2013/3115.

<sup>(48)</sup> 2014 c.2.

<sup>(49)</sup> 1986 c.45. Section 388 was amended by section 11(1) of the Bankruptcy (Scotland) Act 1993 (c.6); section 4(2) of the Insolvency Act 2000 (c.39); paragraph 2(11) of Schedule 6 to the Deregulation Act 2015 (c.20) and by S.I. 1994/2421; 2002/1240; 2002/2708; 2009/1941 and 2016/1034.

<sup>(50)</sup> S.I. 1989/2405 (N.I. 19). Article 3 was amended by Schedule 4 to the Insolvency (Amendment) Act (Northern Ireland) 2016 (c.2) (N.I.) and by S.R. 1995/225, 2002/334, 2003/550 and by S.I. 2002/3152 (N.I. 6) and 2009/1941.

- (e) the creation, operation or management of trusts, companies, foundations or similar structures,

and, for this purpose, a person participates 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.

(2) In these Regulations, “trust or company service provider” means a firm or sole practitioner who by way of business provides any of the following services to other persons, when that firm or practitioner is providing such services—

- (a) forming companies or other legal persons;
- (b) acting, or arranging for another person to act—
  - (i) as a director or secretary of a company;
  - (ii) as a partner of a partnership; or
  - (iii) in a similar capacity in relation to other legal persons;
- (c) providing a registered office, business address, correspondence or administrative address or other related services for a company, partnership or any other legal person or legal arrangement;
- (d) acting, or arranging for another person to act, as—
  - (i) a trustee of an express trust or similar legal arrangement; or
  - (ii) a nominee shareholder for a person other than a company whose securities are listed on a regulated market.

### **Estate agents**

**13.—**(1) In these Regulations, “estate agent” means a firm or a sole practitioner, who, or whose employees, carry out estate agency work, when the work is being carried out.

(2) For the purposes of paragraph (1) “estate agency work” is to be read in accordance with section 1 of the Estate Agents Act 1979<sup>(51)</sup> (estate agency work), but for those purposes references in that section to disposing of or acquiring an interest in land are (despite anything in section 2 of that Act) to be taken to include references to disposing of or acquiring an estate or interest in land outside the United Kingdom where that estate or interest is capable of being owned or held as a separate interest.

### **High value dealers, casinos and auction platforms**

**14.—**(1) In these Regulations—

- (a) “high value dealer” means a firm or sole trader who by way of business trades in goods (including an auctioneer dealing in goods), when the trader makes or receives, in respect of any transaction, a payment or payments in cash of at least 10,000 euros in total, whether the transaction is executed in a single operation or in several operations which appear to be linked;
- (b) “casino” means the holder of a casino operating licence and, for this purpose, a “casino operating licence” has the meaning given by section 65(2)(a) of the Gambling Act 2005<sup>(52)</sup> (nature of licence);

<sup>(51)</sup> 1979 c.38. Section 1 was amended by paragraph 40 of Schedule 1 to the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c.73); paragraph 42 of Schedule 2 to the Planning (Consequential Provisions) Act 1990 (c.11); paragraph 28 of Schedule 2 to the Planning (Consequential Provisions) (Scotland) Act 1997 (c.11); section 70 of the Enterprise and Regulatory Reform Act 2013 (c.24) and S.I. 2001/1283.

<sup>(52)</sup> 2005 c.19.

- (c) “auction platform” means a platform which auctions two-day spot or five-day futures, within the meanings given by Article 3.4 and 3.5 of the emission allowance auctioning regulation, when it carries out activities covered by that regulation.
- (2) A payment does not cease to be a “payment in cash” for the purposes of paragraph (1)(a) if cash is paid by or on behalf of the person making the payment—
  - (a) to a person other than the other party to the transaction for the benefit of the other party, or
  - (b) into a bank account for the benefit of the other party to the transaction.

## Exclusions

**15.—**(1) Parts 1 to 4, 6 and 8 to 11 do not apply to the following persons when carrying on any of the following activities—

- (a) a registered society within the meaning of section 1 of the Co-operative and Community Benefit Societies Act 2014 (meaning of “registered society”)(**53**), when it—
  - (i) issues withdrawable share capital within the limit set by section 24 of that Act (maximum shareholding in society); or
  - (ii) accepts deposits from the public within the limit set by section 67(2) of that Act (carrying on of banking by societies);
- (b) a society registered under the Industrial and Provident Societies Act (Northern Ireland) 1969(**54**), when it—
  - (i) issues withdrawable share capital within the limit set by section 6(**55**) of that Act (maximum shareholding in society); or
  - (ii) accepts deposits from the public within the limit set by section 7(3) of that Act (carrying on of banking by societies);
- (c) a person who is (or falls within a class of persons) specified in any of paragraphs 2 to 23, 26 to 38 or 40 to 49 of the Schedule to the Financial Services and Markets Act 2000 (Exemption) Order 2001(**56**), when carrying out any activity in respect of which that person is exempt;
- (d) a local authority within the meaning given in article 3(1) of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001(**57**), when carrying on an activity which would be a regulated activity for the purposes of FSMA but for article 72G of that Order(**58**);
- (e) a person who was an exempted person for the purposes of section 45 of the Financial Services Act 1986(**59**) (miscellaneous exemptions) immediately before its repeal, when exercising the functions specified in that section;

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(53) 2014 c.14.

(54) 1969 c.24.

(55) Section 6 was amended by section 10 of the Credit Unions and Co-operative and Community Benefit Societies Act (Northern Ireland) 2016 (c.16) (N.I.) and by S.R. 1991/375.

(56) S.I. 2001/1201. Paragraph 15A was inserted by S.I. 2003/47; paragraph 15B was inserted by S.I. 2009/118; paragraph 19 was revoked by S.I. 2014/366; paragraphs 21 and 27 were substituted by S.I. 2002/1310 and 2003/1675 respectively; paragraph 30 was revoked by S.I. 2003/3225; paragraph 31 was substituted by paragraph 10 of Schedule 2 to the Tourist Boards (Scotland) Act 2006 (asp 15) and amended by S.I. 2007/1103; paragraph 33A was inserted by S.I. 2007/1821; paragraphs 34A, 34B and 34C were inserted by S.I. 2005/592, 2008/682 and 2012/763 respectively; paragraph 36 was revoked by S.I. 2007/125; paragraph 40 was amended by S.I. 2013/1881; paragraph 41 was amended by S.I. 2010/86; paragraph 42 was amended by S.I. 2007/125; paragraph 44 was amended by S.I. 2014/506; paragraph 45 was amended by S.I. 2013/1773; paragraph 47 was revoked by S.I. 2014/366; paragraph 48 was substituted by S.I. 2003/1673 and paragraph 49 was inserted by S.I. 2001/3623

(57) S.I. 2001/544. Article 3(1) was amended, but the amendments are not relevant to these Regulations.

(58) Article 72G was inserted by S.I. 2014/366, and amended by S.I. 2015/910 and 2016/392.

(59) 1986 c.60. Section 45 was repealed by S.I. 2001/3649.



- (f) a person whose main activity is that of a high value dealer, when engaging in financial activity on an occasional or very limited basis as set out in paragraph (3); or
- (g) a person preparing a home report, which for these purposes means the documents prescribed for the purposes of section 98, 99(1) or 101(2) of the Housing (Scotland) Act 2006 (duties: information and others)(60).

(2) These Regulations do not apply to a person who falls within regulation 8 solely as a result of that person engaging in financial activity on an occasional or very limited basis as set out in paragraph (3).

(3) For the purposes of paragraphs (1)(f) and (2), a person is to be considered as engaging in financial activity on an occasional or very limited basis if all the following conditions are met—

- (a) the person's total annual turnover in respect of the financial activity does not exceed £100,000;
  - (b) the financial activity is limited in relation to any customer to no more than one transaction exceeding 1,000 euros, whether the transaction is carried out in a single operation, or a series of operations which appear to be linked;
  - (c) the financial activity does not exceed 5% of the person's total annual turnover;
  - (d) the financial activity is ancillary and directly related to the person's main activity;
  - (e) the financial activity is not the transmission or remittance of money (or any representation of monetary value) by any means;
  - (f) the person's main activity is not that of a person falling within regulation 8(2)(a) to (f) or (h);
  - (g) the financial activity is provided only to customers of the main activity of the person and is not offered to the public.
- (4) Chapters 2 and 3 of Part 2, and Parts 3 to 9, do not apply to—
- (a) the Auditor General for Scotland;
  - (b) the Auditor General for Wales;
  - (c) the Bank of England;
  - (d) the Comptroller and Auditor General;
  - (e) the Comptroller and Auditor General for Northern Ireland;
  - (f) the Official Solicitor to the Supreme Court, when acting as trustee in his or her official capacity;
  - (g) the Treasury Solicitor.

## CHAPTER 2

### Risk assessment and controls

#### **Risk assessment by the Treasury and Home Office**

**16.**—(1) The Treasury and the Home Office must make arrangements before 26th June 2018 for a risk assessment to be undertaken to identify, assess, understand and mitigate the risks of money laundering and terrorist financing affecting the United Kingdom (“the risk assessment”).

(2) The risk assessment must, among other things—

- (a) identify any areas where relevant persons should apply enhanced customer due diligence measures, and where appropriate, specify the measures to be taken;

(60) 2006 asp.1.

- (b) identify, where appropriate, the sectors or areas of lower and greater risk of money laundering and terrorist financing;
  - (c) consider whether any rules on money laundering and terrorist financing made by a supervisory authority applying in relation to the sector it supervises are appropriate in the light of the risks of money laundering and terrorist financing applying to that sector;
  - (d) provide the information and analysis necessary to enable it to be used for the purposes set out in paragraph (3).
- (3) The Treasury and the Home Office must ensure that the risk assessment is used to—
- (a) consider the appropriate allocation and prioritisation of resources to counter money laundering and terrorist financing;
  - (b) consider whether the exclusions provided for in regulation 15 are being abused;
  - (c) consider whether providers of gambling services other than casinos should continue to be excluded from the requirements of these Regulations.
- (4) For the purpose of paragraph (3)(c), a “provider of gambling services” means a person who by way of business provides facilities for gambling within the meaning of section 5 of the Gambling Act 2005 (facilities for gambling)(61).
- (5) In undertaking the risk assessment, the Treasury and the Home Office must take account of the reports made by the Commission under Article 6.1 of the fourth money laundering directive.
- (6) The Treasury and the Home Office must prepare a joint report setting out, as appropriate, the findings of the risk assessment as soon as reasonably practicable after the risk assessment is completed.
- (7) A copy of that report must be laid before Parliament, and sent to—
- (a) the PRA;
  - (b) the supervisory authorities;
  - (c) the European Commission;
  - (d) the European Supervisory Authorities; and
  - (e) each of the other EEA states.
- (8) If information from the risk assessment would assist the supervisory authorities in carrying out their own money laundering and terrorist financing risk assessment, the Treasury and the Home Office must, where appropriate, make that information available to those supervisory authorities, unless to do so would not be compatible with restrictions on sharing information imposed by or under the Data Protection Act 1998(62) or any other enactment.
- (9) The Treasury and the Home Office must take appropriate steps to ensure that the risk assessment is kept up-to-date.

### **Risk assessment by supervisory authorities**

17.—(1) Each supervisory authority must identify and assess the international and domestic risks of money laundering and terrorist financing to which those relevant persons for which it is the supervisory authority (“its own sector”) are subject.

(2) In carrying out the risk assessment required under paragraph (1), the supervisory authority must take into account—

- (a) reports published by the Commission under Article 6.1 of the fourth money laundering directive;

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(61) 2005 c.19.

(62) 1998 c.29.

- (b) guidelines issued by the European Supervisory Authorities under Articles 17, 18.4 and 48.10 of the fourth money laundering directive;
  - (c) the report prepared by the Treasury and the Home Office under regulation 16(6); and
  - (d) information made available by the Treasury and the Home Office under regulation 16(8).
- (3) A supervisory authority must keep an up-to-date record in writing of all the steps it has taken under paragraph (1).
- (4) Each supervisory authority must develop and record in writing risk profiles for each relevant person in its own sector.
- (5) A supervisory authority may prepare a single risk profile under paragraph (4) in relation to two or more relevant persons in its sector, if—
- (a) the relevant persons share similar characteristics; and
  - (b) the risks of money laundering and terrorist financing affecting those relevant persons do not differ significantly.
- (6) Where a supervisory authority has prepared a single risk profile for two or more relevant persons in its sector (a “cluster”), the supervisory authority must keep under review whether an individual risk profile should be prepared in relation to any relevant person in the cluster because sub-paragraph (a) or (b) (or both sub-paragraphs) of paragraph (5) are no longer satisfied in relation to that person.
- (7) In developing the risk profiles referred to in paragraph (4), the supervisory authority must take full account of the risks that relevant persons in its own sector will not take appropriate action to identify, understand and mitigate money laundering and terrorist financing risks.
- (8) Each supervisory authority must review the risk profiles developed under paragraph (4) at regular intervals and following any significant event or developments which might affect the risks to which its own sector is subject, such as—
- (a) significant external events that change the nature of the money laundering or terrorist financing risks;
  - (b) emerging money laundering or terrorist financing risks;
  - (c) any findings resulting from measures taken by other supervisory authorities;
  - (d) any changes in the way in which its own sector is operated;
  - (e) significant changes in regulation.
- (9) If information from the risk assessment carried out under paragraph (1), or from information provided to the supervisory authority under regulation 16(8), would assist relevant persons in carrying out their own money laundering and terrorist financing risk assessment, the supervisory authority must, where appropriate, make that information available to those persons, unless to do so would not be compatible with restrictions on sharing information imposed by or under the Data Protection Act 1998(63) or any other enactment.

### **Risk assessment by relevant persons**

- 18.—(1) A relevant person must take appropriate steps to identify and assess the risks of money laundering and terrorist financing to which its business is subject.
- (2) In carrying out the risk assessment required under paragraph (1), a relevant person must take into account—
- (a) information made available to them by the supervisory authority under regulations 17(9) and 47, and

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(63) 1998 c.29.

- (b) risk factors including factors relating to—
  - (i) its customers;
  - (ii) the countries or geographic areas in which it operates;
  - (iii) its products or services;
  - (iv) its transactions; and
  - (v) its delivery channels.

(3) In deciding what steps are appropriate under paragraph (1), the relevant person must take into account the size and nature of its business.

(4) A relevant person must keep an up-to-date record in writing of all the steps it has taken under paragraph (1), unless its supervisory authority notifies it in writing that such a record is not required.

(5) A supervisory authority may not give the notification referred to in paragraph (4) unless it considers that the risks of money laundering and terrorist financing applicable to the sector in which the relevant person operates are clear and understood.

(6) A relevant person must provide the risk assessment it has prepared under paragraph (1), the information on which that risk assessment was based and any record required to be kept under paragraph (4), to its supervisory authority on request.

### **Policies, controls and procedures**

**19.—**(1) A relevant person must—

- (a) establish and maintain policies, controls and procedures to mitigate and manage effectively the risks of money laundering and terrorist financing identified in any risk assessment undertaken by the relevant person under regulation 18(1);
- (b) regularly review and update the policies, controls and procedures established under sub-paragraph (a);
- (c) maintain a record in writing of—
  - (i) the policies, controls and procedures established under sub-paragraph (a);
  - (ii) any changes to those policies, controls and procedures made as a result of the review and update required by sub-paragraph (b); and
  - (iii) the steps taken to communicate those policies, controls and procedures, or any changes to them, within the relevant person's business.

(2) The policies, controls and procedures adopted by a relevant person under paragraph (1) must be—

- (a) proportionate with regard to the size and nature of the relevant person's business, and
- (b) approved by its senior management.

(3) The policies, controls and procedures referred to in paragraph (1) must include—

- (a) risk management practices;
- (b) internal controls (see regulations 21 to 24);
- (c) customer due diligence (see regulations 27 to 38);
- (d) reliance and record keeping (see regulations 39 to 40);
- (e) the monitoring and management of compliance with, and the internal communication of, such policies, controls and procedures.

(4) The policies, controls and procedures referred to in paragraph (1) must include policies, controls and procedures—

- (a) which provide for the identification and scrutiny of—
    - (i) any case where—
      - (aa) a transaction is complex and unusually large, or there is an unusual pattern of transactions, and
      - (bb) the transaction or transactions have no apparent economic or legal purpose, and
    - (ii) any other activity or situation which the relevant person regards as particularly likely by its nature to be related to money laundering or terrorist financing;
  - (b) which specify the taking of additional measures, where appropriate, to prevent the use for money laundering or terrorist financing of products and transactions which might favour anonymity;
  - (c) which ensure that when new technology is adopted by the relevant person, appropriate measures are taken in preparation for, and during, the adoption of such technology to assess and if necessary mitigate any money laundering or terrorist financing risks this new technology may cause;
  - (d) under which anyone in the relevant person's organisation who knows or suspects (or has reasonable grounds for knowing or suspecting) that a person is engaged in money laundering or terrorist financing as a result of information received in the course of the business or otherwise through carrying on that business is required to comply with—
    - (i) Part 3 of the Terrorism Act 2000<sup>(64)</sup>; or
    - (ii) Part 7 of the Proceeds of Crime Act 2002<sup>(65)</sup>;
  - (e) which, in the case of a money service business that uses agents for the purpose of its business, ensure that appropriate measures are taken by the business to assess—
    - (i) whether an agent used by the business would satisfy the fit and proper test provided for in regulation 58; and
    - (ii) the extent of the risk that the agent may be used for money laundering or terrorist financing.
- (5) In determining what is appropriate or proportionate with regard to the size and nature of its business, a relevant person may take into account any guidance which has been—
- (a) issued by the FCA; or
  - (b) issued by any other supervisory authority or appropriate body and approved by the Treasury.
- (6) A relevant person must, where relevant, communicate the policies, controls and procedures which it establishes and maintains in accordance with this regulation to its branches and subsidiary undertakings which are located outside the United Kingdom.

#### **Policies, controls and procedures: group level**

**20.—**(1) A relevant parent undertaking must—

- (a) ensure that the policies, controls and procedures referred to in regulation 19(1) apply—
  - (i) to all its subsidiary undertakings, including subsidiary undertakings located outside the United Kingdom; and
  - (ii) to any branches it has established outside the United Kingdom;

<sup>(64)</sup> 2000 c.11.

<sup>(65)</sup> 2002 c. 29.

which is carrying out any activity in respect of which the relevant person is subject to these Regulations;

- (b) establish and maintain throughout its group the policies, controls and procedures for data protection and sharing information for the purposes of preventing money laundering and terrorist financing with other members of the group;
- (c) regularly review and update the policies, controls and procedures applied and established under sub-paragraphs (a) and (b);
- (d) maintain a record in writing of—
  - (i) the policies, controls and procedures established under sub-paragraphs (a) and (b);
  - (ii) any changes to those policies, controls and procedures made as a result of the review and update required by sub-paragraph (c); and
  - (iii) the steps taken to communicate those policies, controls and procedures, or any changes to them, to its subsidiary undertakings and branches.

(2) A relevant parent undertaking must ensure that those of its subsidiary undertakings and branches which are established in an EEA state follow the law of that EEA state that implements the fourth money laundering directive.

(3) If any of the subsidiary undertakings or branches of a relevant parent undertaking are established in a third country which does not impose requirements to counter money laundering and terrorist financing as strict as those of the United Kingdom, the relevant parent undertaking must ensure that those subsidiary undertakings and branches apply measures equivalent to those required by these Regulations, as far as permitted under the law of the third country.

(4) Where the law of a third country does not permit the application of such equivalent measures by the subsidiary undertaking or branch established in that country, the relevant parent undertaking must—

- (a) inform its supervisory authority accordingly; and
- (b) take additional measures to handle the risk of money laundering and terrorist financing effectively.

(5) A relevant parent undertaking must ensure that information relevant to the prevention of money laundering and terrorist financing is shared as appropriate between members of its group, subject to any restrictions on sharing information imposed by or under any enactment or otherwise.

### **Internal controls**

**21.—**(1) Where appropriate with regard to the size and nature of its business, a relevant person must—

- (a) appoint one individual who is a member of the board of directors (or if there is no board, of its equivalent management body) or of its senior management as the officer responsible for the relevant person's compliance with these Regulations;
- (b) carry out screening of relevant employees appointed by the relevant person, both before the appointment is made and during the course of the appointment;
- (c) establish an independent audit function with the responsibility—
  - (i) to examine and evaluate the adequacy and effectiveness of the policies, controls and procedures adopted by the relevant person to comply with the requirements of these Regulations;
  - (ii) to make recommendations in relation to those policies, controls and procedures; and
  - (iii) to monitor the relevant person's compliance with those recommendations.

- (2) For the purposes of paragraph (1)(b)—
- (a) “screening” means an assessment of—
    - (i) the skills, knowledge and expertise of the individual to carry out their functions effectively;
    - (ii) the conduct and integrity of the individual;
  - (b) a relevant employee is an employee whose work is—
    - (i) relevant to the relevant person’s compliance with any requirement in these Regulations, or
    - (ii) otherwise capable of contributing to the—
      - (aa) identification or mitigation of the risks of money laundering and terrorist financing to which the relevant person’s business is subject, or
      - (bb) prevention or detection of money laundering and terrorist financing in relation to the relevant person’s business.
- (3) An individual in the relevant person’s firm must be appointed as a nominated officer.
- (4) A relevant person must, within 14 days of the appointment, inform its supervisory authority of—
- (a) the identity of the individual first appointed under paragraph (1)(a);
  - (b) the identity of the individual first appointed under paragraph (3); and
  - (c) of any subsequent appointment to either of those positions.
- (5) Where a disclosure is made to the nominated officer, that officer must consider it in the light of any relevant information which is available to the relevant person and determine whether it gives rise to knowledge or suspicion or reasonable grounds for knowledge or suspicion that a person is engaged in money laundering or terrorist financing.
- (6) Paragraphs (1) and (3) do not apply where the relevant person is an individual who neither employs nor acts in association with any other person.
- (7) A relevant person who is an electronic money issuer or a payment service provider must appoint an individual to monitor and manage compliance with, and the internal communication of, the policies, controls and procedures adopted by the relevant person under regulation 19(1), and in particular to—
- (a) identify any situations of higher risk of money laundering or terrorist financing;
  - (b) maintain a record of its policies, controls and procedures, risk assessment and risk management including the application of such policies and procedures;
  - (c) apply measures to ensure that its policies, controls and procedures are taken into account in all relevant functions including in the development of new products, dealing with new customers and in changes to business activities; and
  - (d) provide information to senior management about the operation and effectiveness of its policies, controls and procedures whenever appropriate and at least annually.
- (8) A relevant person must establish and maintain systems which enable it to respond fully and rapidly to enquiries from any person specified in paragraph (9) as to—
- (a) whether it maintains, or has maintained during the previous five years, a business relationship with any person; and
  - (b) the nature of that relationship.
- (9) The persons specified in this paragraph are—



- (a) financial investigators accredited under section 3 of the Proceeds of Crime Act 2002 (accreditation and training)(66);
  - (b) persons acting on behalf of the Scottish Ministers in their capacity as an enforcement authority under that Act; and
  - (c) constables or equivalent officers of any law enforcement authority.
- (10) In determining what is appropriate with regard to the size and nature of its business, a relevant person—
- (a) must take into account its risk assessment under regulation 18(1); and
  - (b) may take into account any guidance which has been—
    - (i) issued by the FCA; or
    - (ii) issued by any other supervisory authority or appropriate body and approved by the Treasury.

#### **Central contact points: electronic money issuers and payment service providers**

**22.**—(1) An electronic money issuer or a payment service provider to which paragraph (2) applies must, if requested by its supervisory authority, appoint a person to act as a central contact point in the United Kingdom for its supervisory authority on any issue relating to the prevention of money laundering or terrorist financing.

- (2) This paragraph applies to any electronic money issuer or payment service provider which—
- (a) is established in the United Kingdom otherwise than by a branch; and
  - (b) has its head office in an EEA state other than the United Kingdom.

#### **Requirement on authorised person to inform the FCA**

**23.**—(1) An authorised person whose supervisory authority is the FCA must, before acting as a money service business or a trust or company service provider or within 28 days of so doing, inform the FCA that it intends, or has begun, to act as such.

- (2) Paragraph (1) does not apply to an authorised person which—
- (a) immediately before the day on which these Regulations come into force (“the relevant date”) was acting as a money service business or a trust or company service provider and continues to act as such after that date; and
  - (b) informs the FCA that it is acting as such within 30 days of the relevant date.

(3) Where an authorised person whose supervisory authority is the FCA ceases to act as a money service business or a trust or company service provider, it must within 28 days inform the FCA.

(4) Any requirement imposed by this regulation is to be treated as if it were a requirement imposed by or under FSMA.

(5) Any information to be provided to the FCA under this regulation must be in such form or verified in such manner as it may specify.

#### **Training**

- 24.**—(1) A relevant person must—
- (a) take appropriate measures to ensure that its relevant employees are—

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(66) 2002 c. 29. Section 3 was amended by paragraph 111 of Schedule 8 to the Crime and Courts Act 2013 (c. 22), and by paragraph 120 of Schedule 8 and paragraph 1 of Schedule 14 to the Serious Crime Act 2007 (c. 27).

- (i) made aware of the law relating to money laundering and terrorist financing, and to the requirements of data protection, which are relevant to the implementation of these Regulations; and
  - (ii) regularly given training in how to recognise and deal with transactions and other activities or situations which may be related to money laundering or terrorist financing;
- (b) maintain a record in writing of the measures taken under sub-paragraph (a), and in particular, of the training given to its relevant employees.
- (2) For the purposes of paragraph (1), a relevant employee is an employee whose work is—
  - (a) relevant to the relevant person's compliance with any requirement in these Regulations, or
  - (b) otherwise capable of contributing to the—
    - (i) identification or mitigation of the risk of money laundering and terrorist financing to which the relevant person's business is subject; or
    - (ii) prevention or detection of money laundering and terrorist financing in relation to the relevant person's business.
- (3) In determining what measures are appropriate under paragraph (1), a relevant person—
  - (a) must take account of—
    - (i) the nature of its business;
    - (ii) its size;
    - (iii) the nature and extent of the risks of money laundering and terrorist financing to which its business is subject; and
  - (b) may take into account any guidance which has been—
    - (i) issued by the FCA; or
    - (ii) issued by any other supervisory authority or appropriate body and approved by the Treasury.

### **Supervisory action**

**25.—**(1) The supervisory authority must determine whether the additional measures taken under regulation 20(4) by a relevant parent undertaking which is an authorised person or a qualifying parent undertaking (as defined by section 192B of FSMA(67)) are sufficient to handle the risk of money laundering and terrorist financing effectively.

(2) If the supervisory authority does not consider the measures referred to in paragraph (1) to be sufficient, it must consider whether to direct the relevant parent undertaking—

- (a) not to enter into a business relationship with a specified person;
- (b) not to undertake transactions of a specified description with a specified person;
- (c) to terminate an existing business relationship with a specified person;
- (d) to cease any operations in the third country.
- (e) to ensure that its subsidiary undertaking—
  - (i) does not enter into a business relationship with a specified person;
  - (ii) terminates an existing business relationship with a specified person; or
  - (iii) does not undertake transactions of a specified description with a specified person, or ceases any operations in the third country.

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(67) Section 192B was inserted, with the rest of Part 12A, by section 27 of the Financial Services Act 2012 (c.21).

- (3) A direction issued under paragraph (2) takes effect—
- (a) immediately, if the notice given under paragraph (6) states that that is the case;
  - (b) on such date as may be specified in the notice; or
  - (c) if no such date is specified in the notice, when the matter to which the notice relates is no longer open to review.
- (4) For the purposes of paragraph (3), a matter to which a notice relates is still open to review if—
- (a) the period during which any person may refer the matter to the appropriate tribunal is still running;
  - (b) the matter has been referred to the appropriate tribunal but has not been dealt with;
  - (c) the matter has been referred to the appropriate tribunal and dealt with but the period during which an appeal may be brought against the appropriate tribunal's decision is still running; or
  - (d) such an appeal has been brought but has not been determined.
- (5) Where the FCA proposes to issue a direction under paragraph (2) to a PRA-authorised person or to a person who has a qualifying relationship with a PRA-authorised person, it must consult the PRA.
- (6) If the supervisory authority issues a direction under paragraph (2) it must give the relevant parent undertaking ("A") a notice in writing.
- (7) The notice must—
- (a) give details of the direction;
  - (b) state the supervisory authority's reasons for issuing the direction;
  - (c) inform A that A may make representations to the supervisory authority within such period as may be specified in the notice (whether or not A has referred the matter to the appropriate tribunal);
  - (d) inform A of when the direction takes effect; and
  - (e) inform A of A's right to refer the matter to the appropriate tribunal.
- (8) The supervisory authority may extend the period allowed under the notice for making representations.
- (9) If, having considered any representations made by A, the supervisory authority decides—
- (a) to issue the direction, or
  - (b) if the direction has been issued, not to rescind the direction,
- it must give A notice in writing.
- (10) If, having considered any representations made by A, the supervisory authority decides—
- (a) not to issue the direction,
  - (b) to issue a different direction, or
  - (c) to rescind a direction which has effect,
- it must give A notice in writing.
- (11) A notice under paragraph (9) must inform A of A's right to refer the matter to the appropriate tribunal.
- (12) A notice under paragraph (10)(b) must comply with paragraph (7).
- (13) If a notice informs A of A's right to refer a matter to the appropriate tribunal, it must give an indication of the procedure on such a reference.
- (14) For the purpose of this regulation—

- (a) “appropriate tribunal” means—
  - (i) the Upper Tribunal, in the case of a direction issued by the FCA;
  - (ii) the First-tier or Upper Tribunal, as provided for in regulation 99, in the case of a direction issued by the Commissioners;
- (b) “specified” means specified in the direction.

## CHAPTER 3

### Ownership and Management Restrictions

#### Prohibitions and approvals

**26.**—(1) No person may be the beneficial owner, officer or manager of a firm within paragraph (2) (“a relevant firm”), or a sole practitioner within paragraph (2) (“a relevant sole practitioner”), unless that person has been approved as a beneficial owner, officer or manager of the firm or as a sole practitioner by the supervisory authority of the firm or sole practitioner.

(2) The firms and sole practitioners within this paragraph are—

- (a) auditors, insolvency practitioners, external accountants and tax advisors;
- (b) independent legal professionals;
- (c) estate agents;
- (d) high value dealers.

(3) A person does not breach the prohibition in paragraph (1) if that person has before 26th June 2018 applied to the supervisory authority for approval under paragraph (6) and that application has not yet been determined.

(4) A relevant firm must take reasonable care to ensure that no-one is appointed, or continues to act, as an officer or manager of the firm unless—

- (a) that person has been approved by the supervisory authority, and the supervisory authority’s approval of that person has not ceased to be valid; or
- (b) that person has applied for approval of the supervisory authority under paragraph (6) and the application has not yet been determined.

(5) A relevant sole practitioner must not act, or continue to act, as a sole practitioner unless—

- (a) that person has been approved by the supervisory authority, and the supervisory authority’s approval of that person has not ceased to be valid; or
- (b) that person has applied for approval of the supervisory authority under paragraph (6) and the application has not yet been determined.

(6) An application for the approval of the supervisory authority under paragraph (1) may be made by or on behalf of the person concerned.

(7) The application must—

- (a) be made in such manner as the supervisory authority may direct;
- (b) contain, or be accompanied by, such information as the supervisory authority may reasonably require.

(8) The supervisory authority—

- (a) must grant an application for approval under paragraph (6) unless the applicant has been convicted of a relevant offence;
- (b) may grant an application so as to give approval only for a limited period.

(9) An approval given by a supervisory authority under paragraph (8)—

- (a) is not valid if the person approved under paragraph (1) (the “approved person”) has been convicted of a relevant offence;
  - (b) ceases to be valid if the approved person is subsequently convicted of a relevant offence.
- (10) If an approved person (“P”) is convicted of a relevant offence—
- (a) P must inform the supervisory authority which approved P of the conviction within 30 days of the day on which P was convicted;
  - (b) the relevant firm for which P was approved must inform its supervisory authority of the conviction within 30 days of the date on which the firm became aware of P’s conviction.
- (11) If the beneficial owner of a relevant firm is convicted of a relevant offence, the High Court (or in Scotland the Court of Session) may, on the application of the supervisory authority, order the sale of the beneficial owner’s interest in that firm.
- (12) A person who, in breach of the prohibition in paragraph (1)—
- (a) acts as a manager or officer of a relevant firm or as a relevant sole practitioner; or
  - (b) is knowingly a beneficial owner of a relevant firm,
- is guilty of a criminal offence.
- (13) A person who is guilty of a criminal offence under paragraph (12) is liable—
- (a) on summary conviction—
    - (i) in England and Wales, to imprisonment for a term not exceeding three months, to a fine or to both;
    - (ii) in Scotland or Northern Ireland, to imprisonment for a term not exceeding three months, to a fine not exceeding the statutory maximum or to both;
  - (b) on conviction on indictment, to imprisonment for a term not exceeding two years, to a fine or to both.
- (14) The offences listed in Schedule 3 are relevant offences for the purposes of this regulation.

## PART 3

### Customer Due Diligence

#### CHAPTER 1

##### Customer due diligence: general

##### **Customer due diligence**

- 27.—**(1) A relevant person must apply customer due diligence measures if the person—
- (a) establishes a business relationship;
  - (b) carries out an occasional transaction that amounts to a transfer of funds within the meaning of Article 3.9 of the funds transfer regulation exceeding 1,000 euros;
  - (c) suspects money laundering or terrorist financing; or
  - (d) doubts the veracity or adequacy of documents or information previously obtained for the purposes of identification or verification.
- (2) A relevant person who is not a high value dealer or a casino must also apply customer due diligence measures if the person carries out an occasional transaction that amounts to 15,000 euros or more, whether the transaction is executed in a single operation or in several operations which appear to be linked.

(3) A high value dealer must also apply customer due diligence measures if that dealer carries out an occasional transaction in cash that amounts to 10,000 euros or more, whether the transaction is executed in a single operation or in several operations which appear to be linked.

(4) A transaction does not cease to be a “transaction in cash” for the purposes of paragraph (3) if cash is paid by or on behalf of a party to the transaction—

- (a) to a person other than the other party to the transaction for the benefit of the other party, or
- (b) into a bank account for the benefit of the other party to the transaction.

(5) A casino must also apply customer due diligence measures in relation to any transaction within paragraph (6) that amounts to 2,000 euros or more, whether the transaction is executed in a single operation or in several operations which appear to be linked.

(6) A transaction is within this paragraph if it consists of—

- (a) the wagering of a stake, including—
  - (i) the purchase from, or exchange with, the casino of tokens for use in gambling at the casino;
  - (ii) payment for use of gaming machines (within the meaning of section 235 of the Gambling Act 2005<sup>(68)</sup>); and
  - (iii) the deposit of funds required to take part in remote gambling; or
- (b) the collection of winnings, including the withdrawal of funds deposited to take part in remote gambling (within the meaning of section 4 of the Gambling Act 2005) or winnings arising from the staking of such funds.

(7) In determining whether a transaction amounts to 2,000 euros or more for the purposes of paragraph (5), no account is to be taken of winnings from a previous transaction which had not been collected from the casino, gaming machine or remote gambling, but are being re-used in the transaction in question.

(8) A relevant person must also apply customer due diligence measures—

- (a) at other appropriate times to existing customers on a risk based approach;
- (b) when the relevant person becomes aware that the circumstances of an existing customer relevant to its risk assessment for that customer have changed.

(9) For the purposes of paragraph (8), in determining when it is appropriate to take customer due diligence measures in relation to existing customers, a relevant person must take into account, among other things—

- (a) any indication that the identity of the customer, or of the customer’s beneficial owner, has changed;
- (b) any transactions which are not reasonably consistent with the relevant person’s knowledge of the customer;
- (c) any change in the purpose or intended nature of the relevant person’s relationship with the customer;
- (d) any other matter which might affect the relevant person’s assessment of the money laundering or terrorist financing risk in relation to the customer.

### **Customer due diligence measures**

**28.—**(1) This regulation applies when a relevant person is required by regulation 27 to apply customer due diligence measures.

(68) 2005 c.19.

- (2) The relevant person must—
- (a) identify the customer unless the identity of that customer is known to, and has been verified by, the relevant person;
  - (b) verify the customer's identity unless the customer's identity has already been verified by the relevant person; and
  - (c) assess, and where appropriate obtain information on, the purpose and intended nature of the business relationship or occasional transaction.
- (3) Where the customer is a body corporate—
- (a) the relevant person must obtain and verify—
    - (i) the name of the body corporate;
    - (ii) its company number or other registration number;
    - (iii) the address of its registered office, and if different, its principal place of business;
  - (b) subject to paragraph (5), the relevant person must take reasonable measures to determine and verify—
    - (i) the law to which the body corporate is subject, and its constitution (whether set out in its articles of association or other governing documents);
    - (ii) the full names of the board of directors (or if there is no board, the members of the equivalent management body) and the senior persons responsible for the operations of the body corporate.
- (4) Subject to paragraph (5), where the customer is beneficially owned by another person, the relevant person must—
- (a) identify the beneficial owner;
  - (b) take reasonable measures to verify the identity of the beneficial owner so that the relevant person is satisfied that it knows who the beneficial owner is; and
  - (c) if the beneficial owner is a legal person, trust, company, foundation or similar legal arrangement take reasonable measures to understand the ownership and control structure of that legal person, trust, company, foundation or similar legal arrangement.
- (5) Paragraphs (3)(b) and (4) do not apply where the customer is a company which is listed on a regulated market.
- (6) If the customer is a body corporate, and paragraph (7) applies, the relevant person may treat the senior person in that body corporate responsible for managing it as its beneficial owner.
- (7) This paragraph applies if (and only if) the relevant person has exhausted all possible means of identifying the beneficial owner of the body corporate and—
- (a) has not succeeded in doing so, or
  - (b) is not satisfied that the individual identified is in fact the beneficial owner.
- (8) If paragraph (7) applies, the relevant person must keep records in writing of all the actions it has taken to identify the beneficial owner of the body corporate.
- (9) Relevant persons do not satisfy their requirements under paragraph (4) by relying solely on the information—
- (a) contained in—
    - (i) the register of people with significant control kept by a company under section 790M of the Companies Act 2006 (duty to keep register)(69);

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(69) 2006 c.46. Section 790M was inserted, with the rest of Part 21A, by paragraph 1 of Schedule 3 to the Small Business, Enterprise and Employment Act 2015 (c.26).



- (ii) the register of people with significant control kept by a limited liability partnership under section 790M of the Companies Act 2006 as modified by regulation 31E of the Limited Liability Partnerships (Application of Companies Act 2006) Regulations 2009<sup>(70)</sup>; or
- (iii) the register of people with significant control kept by a European Public Limited-Liability Company (within the meaning of the Council Regulation 2157/2001/EC of 8 October 2001 on the Statute for a European Company which is to be, or is, registered in the United Kingdom) under section 790M of the Companies Act 2006 as modified by regulation 5 of the European Public Limited Liability Company (Register of People with Significant Control) Regulations 2016<sup>(71)</sup>;
- (b) referred to in sub-paragraph (a) and delivered to the registrar of companies (within the meaning of section 1060(3) of the Companies Act 2006 (the registrar)) under any enactment; or
- (c) contained in required particulars in relation to eligible Scottish partnerships delivered to the registrar of companies under regulation 19 of the Scottish Partnerships (Register of People with Significant Control) Regulations 2017<sup>(72)</sup>.
- (10) Where a person (“A”) purports to act on behalf of the customer, the relevant person must—
  - (a) verify that A is authorised to act on the customer’s behalf;
  - (b) identify A; and
  - (c) verify A’s identity on the basis of documents or information in either case obtained from a reliable source which is independent of both A and the customer.
- (11) The relevant person must conduct ongoing monitoring of a business relationship, including—
  - (a) scrutiny of transactions undertaken throughout the course of the relationship (including, where necessary, the source of funds) to ensure that the transactions are consistent with the relevant person’s knowledge of the customer, the customer’s business and risk profile;
  - (b) undertaking reviews of existing records and keeping the documents or information obtained for the purpose of applying customer due diligence measures up-to-date.
- (12) The ways in which a relevant person complies with the requirement to take customer due diligence measures, and the extent of the measures taken—
  - (a) must reflect—
    - (i) the risk assessment carried out by the relevant person under regulation 18<sup>(1)</sup>;
    - (ii) its assessment of the level of risk arising in any particular case;
  - (b) may differ from case to case.
- (13) In assessing the level of risk in a particular case, the relevant person must take account of factors including, among other things—
  - (a) the purpose of an account, transaction or business relationship;
  - (b) the level of assets to be deposited by a customer or the size of the transactions undertaken by the customer;
  - (c) the regularity and duration of the business relationship.
- (14) If paragraph (15) applies, a relevant person is not required to continue to apply customer due diligence measures under paragraph (2) or (10) in respect of a customer.

<sup>(70)</sup> S.I. 2009/1804. Regulation 31E was inserted by S.I. 2016/340.

<sup>(71)</sup> S.I. 2016/375.

<sup>(72)</sup> S.I. 2017/694.

- (15) This paragraph applies if all the following conditions are met—
- (a) a relevant person has taken customer due diligence measures in relation to a customer;
  - (b) the relevant person makes a disclosure required by—
    - (i) Part 3 of the Terrorism Act 2000<sup>(73)</sup>, or
    - (ii) Part 7 of the Proceeds of Crime Act 2002<sup>(74)</sup>; and
  - (c) continuing to apply customer due diligence measures in relation to that customer would result in the commission of an offence by the relevant person under—
    - (i) section 21D of the Terrorism Act 2000 (tipping off: regulated sector)<sup>(75)</sup>; or
    - (ii) section 333A of the Proceeds of Crime Act 2002 (tipping off: regulated sector)<sup>(76)</sup>.
- (16) The relevant person must be able to demonstrate to its supervisory authority that the extent of the measures it has taken to satisfy its requirements under this regulation are appropriate in view of the risks of money laundering and terrorist financing, including risks—
- (a) identified by the risk assessment carried out by the relevant person under regulation 18(1);
  - (b) identified by its supervisory authority and in information made available to the relevant person under regulations 17(9) and 47.
- (17) Paragraph (16) does not apply to the National Savings Bank or the Director of Savings.
- (18) For the purposes of this regulation—
- (a) except in paragraph (10), “verify” means verify on the basis of documents or information in either case obtained from a reliable source which is independent of the person whose identity is being verified;
  - (b) documents issued or made available by an official body are to be regarded as being independent of a person even if they are provided or made available to the relevant person by or on behalf of that person.

#### **Additional customer due diligence measures: credit institutions and financial institutions**

**29.**—(1) This regulation applies in addition to regulation 28 where a relevant person is a credit institution or a financial institution.

(2) Paragraphs (3) to (5) apply if the relevant person is providing a customer with a contract of long-term insurance (“the insurance policy”).

(3) As soon as the beneficiaries of the insurance policy are identified or designated, the relevant person must—

- (a) if the beneficiary is a named person or legal arrangement, take the full name of the person or arrangement; or
- (b) if the beneficiaries are designated by specified characteristics, as a class or in any other way, obtain sufficient information about the beneficiaries to satisfy itself that it will be able to establish the identity of the beneficiary before any payment is made under the insurance policy.

(4) The relevant person must verify the identity of the beneficiaries (on the basis of documents or information in either case obtained from a reliable source which is independent of the customer and the beneficiaries, and regulation 28(18)(b) applies for the purpose of determining whether a source satisfies this requirement) before any payment is made under the insurance policy.

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<sup>(73)</sup> 2000 c.11.

<sup>(74)</sup> 2002 c.29.

<sup>(75)</sup> Section 21D was inserted by S.I. 2007/3398.

<sup>(76)</sup> Section 333A was inserted by S.I. 2007/3398.

(5) When the relevant person becomes aware that all or part of the rights under the insurance policy are being, or have been, assigned to an individual, body corporate, trust or other legal arrangement which is receiving the value or part of the value of the insurance policy for its own benefit (“the new beneficiary”), the relevant person must identify the new beneficiary as soon as possible after becoming aware of the assignment, and in any case before a payment is made under the policy.

(6) The relevant person must not set up an anonymous account or an anonymous passbook for any new or existing customer.

(7) The relevant person must apply customer due diligence measures to all anonymous accounts and passbooks in existence on the date on which these Regulations come into force, and in any event before such accounts or passbooks are used in any way.

(8) A relevant person which—

(a) is an open-ended investment company within the meaning of regulation 2(1) of the Open-Ended Investment Companies Regulations 2001<sup>(77)</sup>; and

(b) is authorised on or after the date on which these Regulations come into force,

may not issue shares evidenced by a share certificate (or any other documentary evidence) indicating that the holder of the certificate or document is entitled to the shares specified in it.

(9) Paragraph (8) does not apply to an open-ended investment company if—

(a) an application for an authorisation order under regulation 12 of the Open-ended Investment Companies Regulations 2001 was made in relation to that open-ended investment company before the date on which these Regulations come into force; and

(b) that application was not determined until a date on or after the date on which these Regulations come into force.

### Timing of verification

**30.**—(1) This regulation applies when a relevant person is required to take any measures under regulation 27, 28 or 29.

(2) Subject to paragraph (3) or (4), a relevant person must comply with the requirement to verify the identity of the customer, any person purporting to act on behalf of the customer and any beneficial owner of the customer before the establishment of a business relationship or the carrying out of the transaction.

(3) Provided that the verification is completed as soon as practicable after contact is first established, the verification of the customer, any person purporting to act on behalf of the customer and the customer’s beneficial owner, may be completed during the establishment of a business relationship if—

(a) this is necessary not to interrupt the normal conduct of business; and

(b) there is little risk of money laundering and terrorist financing.

(4) The verification by a credit institution or a financial institution of the identity of a customer opening an account, any person purporting to act on behalf of the customer and any beneficial owner of the customer, may take place after the account has been opened provided that there are adequate safeguards in place to ensure that no transactions are carried out by or on behalf of the customer before verification has been completed.

(5) For the purposes of paragraph (4) “account” includes an account which permits transactions in transferable securities.

(6) Paragraph (7) applies if—

(77) S.I. 2001/1228.

- (a) the relevant person is required to apply customer due diligence measures in the case of a trust, a legal entity (other than a body corporate) or a legal arrangement (other than a trust); and
  - (b) the beneficiaries of that trust, entity or arrangement are designated as a class, or by reference to particular characteristics.
- (7) If this paragraph applies, the relevant person must establish and verify the identity of any beneficiary before—
- (a) any payment is made to the beneficiary; or
  - (b) the beneficiary exercises its vested rights in the trust, legal entity or legal arrangement.

### **Requirement to cease transactions etc**

**31.**—(1) Where, in relation to any customer, a relevant person is unable to apply customer due diligence measures as required by regulation 28, that person—

- (a) must not carry out any transaction through a bank account with the customer or on behalf of the customer;
- (b) must not establish a business relationship or carry out a transaction with the customer otherwise than through a bank account;
- (c) must terminate any existing business relationship with the customer;
- (d) must consider whether the relevant person is required to make a disclosure (or to make further disclosure) by—
  - (i) Part 3 of the Terrorism Act 2000<sup>(78)</sup>; or
  - (ii) Part 7 of the Proceeds of Crime Act 2002<sup>(79)</sup>.

(2) Paragraph (1)(a) does not prevent money deposited in an account being repaid to the person who deposited it, provided that, in any case where a disclosure is required by the legislation referred in paragraph (1)(d), the relevant person has—

- (a) consent (within the meaning of section 21ZA of the Terrorism Act 2000 (arrangements with prior consent))<sup>(80)</sup> to the transaction, or
- (b) the appropriate consent (within the meaning of section 335 of the Proceeds of Crime Act 2002 (appropriate consent)) to the transaction.

(3) Paragraph (1) does not apply where an independent legal professional or other professional adviser is in the course of ascertaining the legal position for a client or performing the task of defending or representing that client in, or concerning, legal proceedings, including giving advice on the institution or avoidance of proceedings.

(4) In paragraph (3), “other professional adviser” means an auditor, external accountant or tax adviser who is a member of a professional body which is established for any such persons and which makes provision for—

- (a) testing the competence of those seeking admission to membership of such a body as a condition for such admission; and
- (b) imposing and maintaining professional and ethical standards for its members, as well as imposing sanctions for non-compliance with those standards.

(5) Paragraph (1)(a) to (c) does not apply where an insolvency practitioner has been appointed by the court as administrator or liquidator of a company, provided that—

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<sup>(78)</sup> 2000 c.11.

<sup>(79)</sup> 2002 c. 29.

<sup>(80)</sup> Section 21ZA was inserted by S.I. 2007/3398.

- (a) the insolvency practitioner has taken all reasonable steps to satisfy the requirements set out in regulation 28(2) and (10), and
- (b) the resignation of the insolvency practitioner would be prejudicial to the interests of the creditors of the company.

### **Exception for trustees of debt issues**

**32.**—(1) A relevant person—

- (a) who is appointed by the issuer of instruments or securities specified in paragraph (2) as trustee of an issue of such instruments or securities; or
- (b) whose customer is a trustee of an issue of such instruments or securities,

is not required to apply the customer due diligence measure referred to in regulation 28(3) and (4) in respect of the holders of such instruments or securities.

(2) The specified instruments and securities are—

- (a) instruments which fall within article 77 or 77A of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001(81); and
- (b) securities which fall within article 78 of that Order(82).

## **CHAPTER 2**

### **Enhanced customer due diligence**

#### **Obligation to apply enhanced customer due diligence**

**33.**—(1) A relevant person must apply enhanced customer due diligence measures and enhanced ongoing monitoring, in addition to the customer due diligence measures required under regulation 28 and, if applicable, regulation 29, to manage and mitigate the risks arising—

- (a) in any case identified as one where there is a high risk of money laundering or terrorist financing—
  - (i) by the relevant person under regulation 18(1), or
  - (ii) in information made available to the relevant person under regulations 17(9) and 47;
- (b) in any business relationship or transaction with a person established in a high-risk third country;
- (c) in relation to correspondent relationships with a credit institution or a financial institution (in accordance with regulation 34);
- (d) if a relevant person has determined that a customer or potential customer is a PEP, or a family member or known close associate of a PEP (in accordance with regulation 35);
- (e) in any case where the relevant person discovers that a customer has provided false or stolen identification documentation or information and the relevant person proposes to continue to deal with that customer;
- (f) in any case where—
  - (i) a transaction is complex and unusually large, or there is an unusual pattern of transactions, and
  - (ii) the transaction or transactions have no apparent economic or legal purpose, and

(81) S.I. 2001/544. Article 77 was amended by S.I. 2010/86, 2011/133. Article 77A was inserted by S.I. 2010/86 and amended by S.I. 2011/133.

(82) Article 78 was amended by S.I. 2010/86.

- (g) in any other case which by its nature can present a higher risk of money laundering or terrorist financing.

(2) Paragraph (1)(b) does not apply when the customer is a branch or majority owned subsidiary undertaking of an entity which is established in an EEA state if all the following conditions are satisfied—

- (a) the entity is—
  - (i) subject to the requirements in national legislation implementing the fourth money laundering directive as an obliged entity (within the meaning of that directive), and
  - (ii) supervised for compliance with those requirements in accordance with section 2 of Chapter VI of the fourth money laundering directive;
- (b) the branch or subsidiary complies fully with procedures and policies established for the group under Article 45 of the fourth money laundering directive; and
- (c) the relevant person, applying a risk-based approach, does not consider that it is necessary to apply enhanced customer due diligence measures.

(3) For the purposes of paragraph (1)(b), a “high-risk third country” means a country which has been identified by the European Commission in delegated acts adopted under Article 9.2 of the fourth money laundering directive as a high-risk third country.

(4) The enhanced customer due diligence measures taken by a relevant person for the purpose of paragraph (1)(f) must include—

- (a) as far as reasonably possible, examining the background and purpose of the transaction, and
- (b) increasing the degree and nature of monitoring of the business relationship in which the transaction is made to determine whether that transaction or that relationship appear to be suspicious.

(5) Depending on the requirements of the case, the enhanced customer due diligence measures required under paragraph (1) may also include, among other things—

- (a) seeking additional independent, reliable sources to verify information provided or made available to the relevant person;
- (b) taking additional measures to understand better the background, ownership and financial situation of the customer, and other parties to the transaction;
- (c) taking further steps to be satisfied that the transaction is consistent with the purpose and intended nature of the business relationship;
- (d) increasing the monitoring of the business relationship, including greater scrutiny of transactions.

(6) When assessing whether there is a high risk of money laundering or terrorist financing in a particular situation, and the extent of the measures which should be taken to manage and mitigate that risk, relevant persons must take account of risk factors including, among other things—

- (a) customer risk factors, including whether—
  - (i) the business relationship is conducted in unusual circumstances;
  - (ii) the customer is resident in a geographical area of high risk (see sub-paragraph (c));
  - (iii) the customer is a legal person or legal arrangement that is a vehicle for holding personal assets;
  - (iv) the customer is a company that has nominee shareholders or shares in bearer form;
  - (v) the customer is a business that is cash intensive;

- (vi) the corporate structure of the customer is unusual or excessively complex given the nature of the company's business;
  - (b) product, service, transaction or delivery channel risk factors, including whether—
    - (i) the product involves private banking;
    - (ii) the product or transaction is one which might favour anonymity;
    - (iii) the situation involves non-face-to-face business relationships or transactions, without certain safeguards, such as electronic signatures;
    - (iv) payments will be received from unknown or unassociated third parties;
    - (v) new products and new business practices are involved, including new delivery mechanisms, and the use of new or developing technologies for both new and pre-existing products;
    - (vi) the service involves the provision of nominee directors, nominee shareholders or shadow directors, or the formation of companies in a third country;
  - (c) geographical risk factors, including—
    - (i) countries identified by credible sources, such as mutual evaluations, detailed assessment reports or published follow-up reports, as not having effective systems to counter money laundering or terrorist financing;
    - (ii) countries identified by credible sources as having significant levels of corruption or other criminal activity, such as terrorism (within the meaning of section 1 of the Terrorism Act 2000<sup>(83)</sup>), money laundering, and the production and supply of illicit drugs;
    - (iii) countries subject to sanctions, embargos or similar measures issued by, for example, the European Union or the United Nations;
    - (iv) countries providing funding or support for terrorism;
    - (v) countries that have organisations operating within their territory which have been designated—
      - (aa) by the government of the United Kingdom as proscribed organisations under Schedule 2 to the Terrorism Act 2000<sup>(84)</sup>, or
      - (bb) by other countries, international organisations or the European Union as terrorist organisations;
    - (vi) countries identified by credible sources, such as evaluations, detailed assessment reports or published follow-up reports published by the Financial Action Task Force, the International Monetary Fund, the World Bank, the Organisation for Economic Co-operation and Development or other international bodies or non-governmental organisations as not implementing requirements to counter money laundering and terrorist financing that are consistent with the recommendations published by the Financial Action Task Force in February 2012 and updated in October 2016.
- (7) In making the assessment referred to in paragraph (6), relevant persons must bear in mind that the presence of one or more risk factors may not always indicate that there is a high risk of money laundering or terrorist financing in a particular situation.
- (8) In determining what measures to take when paragraph (1) applies, and what the extent of those measures should be, credit institutions and financial institutions must also take account of any

(83) 2000 c.11. Section 1 was amended by section 34(a) of the Terrorism Act 2006 (c.11), and section 75(1) of the Counter-Terrorism Act 2008 (c.28).

(84) Schedule 2 was amended by S.I. 2001/1261; 2002/2724; 2005/2892; 2006/2016; 2007/2184; 2008/1645; 2008/1931; 2010/611; 2011/108; 2012/1771; 2012/2937; 2013/3172; 2014/927; 2014/1624; 2014/3189; 2015/55; 2015/959; 2016/391; 2016/770; 2016/1238.



guidelines issued by the European Supervisory Authorities under Article 18.4 of the fourth money laundering directive.

**Enhanced customer due diligence: credit institutions, financial institutions and correspondent relationships**

**34.—**(1) A credit institution or financial institution (the “correspondent”) which has or proposes to have a correspondent relationship with another such institution (the “respondent”) from a third country must, in addition to the measures required by regulation 33—

- (a) gather sufficient information about the respondent to understand fully the nature of its business;
- (b) determine from publicly-available information from credible sources the reputation of the respondent and the quality of the supervision to which the respondent is subject;
- (c) assess the respondent’s controls to counter money laundering and terrorist financing;
- (d) obtain approval from senior management before establishing a new correspondent relationship;
- (e) document the responsibilities of the respondent and correspondent in the correspondent relationship; and
- (f) be satisfied that, in respect of those of the respondent’s customers who have direct access to accounts with the correspondent, the respondent—
  - (i) has verified the identity of, and conducts ongoing customer due diligence measures in relation to, such customers; and
  - (ii) is able to provide to the correspondent, upon request, the documents or information obtained when applying such customer due diligence measures.

(2) Credit institutions and financial institutions must not enter into, or continue, a correspondent relationship with a shell bank.

(3) Credit institutions and financial institutions must take appropriate enhanced measures to ensure that they do not enter into, or continue, a correspondent relationship with a credit institution or financial institution which is known to allow its accounts to be used by a shell bank.

(4) For the purposes of this regulation—

- (a) “correspondent relationship” means—
  - (i) the provision of banking services by a correspondent to a respondent including providing a current or other liability account and related services, such as cash management, international funds transfers, cheque clearing, providing customers of the respondent with direct access to accounts with the correspondent (and vice versa) and providing foreign exchange services; or
  - (ii) the relationship between and among credit institutions and financial institutions including where similar services are provided by a correspondent to a respondent, and including relationships established for securities transactions or funds transfers;
- (b) a “shell bank” means a credit institution or financial institution, or an institution engaged in equivalent activities to those carried out by credit institutions or financial institutions, incorporated in a jurisdiction in which it has no physical presence involving meaningful decision-making and management, and which is not part of a financial conglomerate or third-country financial conglomerate;

- (c) in sub-paragraph (b), “financial conglomerate” and “third-country financial conglomerate” have the meanings given by regulations 1(2) and 7(1) respectively of the Financial Conglomerates and Other Financial Groups Regulations 2004<sup>(85)</sup>.

### **Enhanced customer due diligence: politically exposed persons**

**35.—**(1) A relevant person must have in place appropriate risk-management systems and procedures to determine whether a customer or the beneficial owner of a customer is—

- (a) a politically exposed person (a “PEP”); or
- (b) a family member or a known close associate of a PEP,

and to manage the enhanced risks arising from the relevant person’s business relationship or transactions with such a customer.

(2) In determining what risk-management systems and procedures are appropriate under paragraph (1), the relevant person must take account of—

- (a) the risk assessment it carried out under regulation 18(1);
- (b) the level of risk of money laundering and terrorist financing inherent in its business;
- (c) the extent to which that risk would be increased by its business relationship or transactions with a PEP, or a family member or known close associate of a PEP, and
- (d) any relevant information made available to the relevant person under regulations 17(9) and 47.

(3) If a relevant person has determined that a customer or a potential customer is a PEP, or a family member or known close associate of a PEP, the relevant person must assess—

- (a) the level of risk associated with that customer, and
- (b) the extent of the enhanced customer due diligence measures to be applied in relation to that customer.

(4) In assessing the extent of the enhanced customer due diligence measures to be taken in relation to any particular person (which may differ from case to case), a relevant person—

- (a) must take account of any relevant information made available to the relevant person under regulations 17(9) and 47; and
- (b) may take into account any guidance which has been—
  - (i) issued by the FCA; or
  - (ii) issued by any other supervisory authority or appropriate body and approved by the Treasury.

(5) A relevant person who proposes to have, or to continue, a business relationship with a PEP, or a family member or a known close associate of a PEP, must, in addition to the measures required by regulation 33—

- (a) have approval from senior management for establishing or continuing the business relationship with that person;
- (b) take adequate measures to establish the source of wealth and source of funds which are involved in the proposed business relationship or transactions with that person; and
- (c) where the business relationship is entered into, conduct enhanced ongoing monitoring of the business relationship with that person.

(6) A relevant person which is providing a customer with a contract of long-term insurance (an “insurance policy”) must take reasonable measures to determine whether one or more of the

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<sup>(85)</sup> S.I. 2004/1862, to which there are amendments not relevant to these Regulations.

beneficiaries of the insurance policy or the beneficial owner of a beneficiary of such an insurance policy are—

- (a) PEPs, or
  - (b) family members or known close associates of PEPs.
- (7) The measures required under paragraph (6) must be taken before—
- (a) any payment is made under the insurance policy, or
  - (b) the benefit of the insurance policy is assigned in whole or in part to another person.
- (8) A relevant person must, in addition to the measures required by regulation 33, ensure that—
- (a) its senior management is informed before it pays out any sums under an insurance policy the beneficiary of which is a PEP or a person who comes within paragraph (6)(b) in relation to a PEP, and
  - (b) its entire business relationship with the holder of the insurance policy (“the policy holder”) is scrutinised on an ongoing basis in accordance with enhanced procedures, whether or not the policy holder is a PEP or a family member or known close associate of a PEP.
- (9) Where a person who was a PEP is no longer entrusted with a prominent public function, a relevant person must continue to apply the requirements in paragraphs (5) and (8) in relation to that person—
- (a) for a period of at least 12 months after the date on which that person ceased to be entrusted with that public function; or
  - (b) for such longer period as the relevant person considers appropriate to address risks of money laundering or terrorist financing in relation to that person.
- (10) Paragraph (9) does not apply in relation to a person who—
- (a) was not a politically exposed person within the meaning of regulation 14(5) of the Money Laundering Regulations 2007<sup>(86)</sup>, when those Regulations were in force; and
  - (b) ceased to be entrusted with a prominent public function before the date on which these Regulations come into force.
- (11) When a person who was a PEP is no longer entrusted with a prominent public function, the relevant person is no longer required to apply the requirements in paragraphs (5) and (8) in relation to a family member or known close associate of that PEP (whether or not the period referred to in paragraph (9) has expired).
- (12) In this regulation—
- (a) “politically exposed person” or “PEP” means an individual who is entrusted with prominent public functions, other than as a middle-ranking or more junior official;
  - (b) “family member” of a politically exposed person includes—
    - (i) a spouse or civil partner of the PEP;
    - (ii) children of the PEP and the spouses or civil partners of the PEP’s children;
    - (iii) parents of the PEP;
  - (c) “known close associate” of a PEP means—
    - (i) an individual known to have joint beneficial ownership of a legal entity or a legal arrangement or any other close business relations with a PEP;
    - (ii) an individual who has sole beneficial ownership of a legal entity or a legal arrangement which is known to have been set up for the benefit of a PEP.

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(86) S.I. 2007/2157.

(13) For the purposes of paragraph (5), a reference to a business relationship with an individual includes a reference to a business relationship with a person of which the individual is a beneficial owner.

(14) For the purposes of paragraphs (9), (11) and (12)(a), individuals entrusted with prominent public functions include—

- (a) heads of state, heads of government, ministers and deputy or assistant ministers;
- (b) members of parliament or of similar legislative bodies;
- (c) members of the governing bodies of political parties;
- (d) members of supreme courts, of constitutional courts or of any judicial body the decisions of which are not subject to further appeal except in exceptional circumstances;
- (e) members of courts of auditors or of the boards of central banks;
- (f) ambassadors, charges d'affaires and high-ranking officers in the armed forces;
- (g) members of the administrative, management or supervisory bodies of State-owned enterprises;
- (h) directors, deputy directors and members of the board or equivalent function of an international organisation.

(15) For the purpose of deciding whether a person is a known close associate of a politically exposed person, a relevant person need only have regard to information which is in its possession, or to credible information which is publicly available.

#### **Politically exposed persons: other duties**

**36.**—(1) The duty under section 30(1) of the Bank of England and Financial Services Act 2016 (duty to ensure that regulations or orders implementing the fourth money laundering directive comply with paragraphs (a) to (d) of that subsection)(87) does not apply if, and to the extent that, the duty is otherwise satisfied as a result of any provision contained in these Regulations, or any guidance issued by the FCA under these Regulations.

(2) The duty under section 333U(1) and (2) of FSMA (duty to issue guidance in connection with politically exposed persons)(88) does not apply if, and to the extent that, the duty is otherwise satisfied as a result of guidance issued by the FCA under these Regulations.

### **CHAPTER 3**

#### **Simplified customer due diligence**

##### **Application of simplified customer due diligence**

**37.**—(1) A relevant person may apply simplified customer due diligence measures in relation to a particular business relationship or transaction if it determines that the business relationship or transaction presents a low degree of risk of money laundering and terrorist financing, having taken into account—

- (a) the risk assessment it carried out under regulation 18(1);
- (b) relevant information made available to it under regulations 17(9) and 47; and
- (c) the risk factors referred to in paragraph (3).

(2) Where a relevant person applies simplified customer due diligence measures, it must—

(87) 2016 c. 14.

(88) Section 333U was inserted by the Bank of England and Financial Services Act 2016, s.30.

- (a) continue to comply with the requirements in regulation 28, but it may adjust the extent, timing or type of the measures it undertakes under that regulation to reflect its determination under paragraph (1); and
  - (b) carry out sufficient monitoring of any business relationships or transactions which are subject to those measures to enable it to detect any unusual or suspicious transactions.
- (3) When assessing whether there is a low degree of risk of money laundering and terrorist financing in a particular situation, and the extent to which it is appropriate to apply simplified customer due diligence measures in that situation, the relevant person must take account of risk factors including, among other things—
- (a) customer risk factors, including whether the customer—
    - (i) is a public administration, or a publicly owned enterprise;
    - (ii) is an individual resident in a geographical area of lower risk (see sub-paragraph (c));
    - (iii) is a credit institution or a financial institution which is—
      - (aa) subject to the requirements in national legislation implementing the fourth money laundering directive as an obliged entity (within the meaning of that directive), and
      - (bb) supervised for compliance with those requirements in accordance with section 2 of Chapter VI of the fourth money laundering directive;
    - (iv) is a company whose securities are listed on a regulated market, and the location of the regulated market;
  - (b) product, service, transaction or delivery channel risk factors, including whether the product or service is—
    - (i) a life insurance policy for which the premium is low;
    - (ii) an insurance policy for a pension scheme which does not provide for an early surrender option, and cannot be used as collateral;
    - (iii) a pension, superannuation or similar scheme which satisfies the following conditions—
      - (aa) the scheme provides retirement benefits to employees;
      - (bb) contributions to the scheme are made by way of deductions from wages; and
      - (cc) the scheme rules do not permit the assignment of a member's interest under the scheme;
    - (iv) a financial product or service that provides appropriately defined and limited services to certain types of customers to increase access for financial inclusion purposes in an EEA state;
    - (v) a product where the risks of money laundering and terrorist financing are managed by other factors such as purse limits or transparency of ownership;
    - (vi) a child trust fund within the meaning given by section 1(2) of the Child Trust Funds Act 2004<sup>(89)</sup>;
    - (vii) a junior ISA within the meaning given by regulation 2B of the Individual Savings Account Regulations 1998<sup>(90)</sup>;
  - (c) geographical risk factors, including whether the country where the customer is resident, established or registered or in which it operates is—
    - (i) an EEA state;

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<sup>(89)</sup> 2004 c.6.

<sup>(90)</sup> S.I. 1998/1870. Regulation 2B was inserted by S.I. 2011/1780.

- (ii) a third country which has effective systems to counter money laundering and terrorist financing;
- (iii) a third country identified by credible sources as having a low level of corruption or other criminal activity, such as terrorism (within the meaning of section 1 of the Terrorism Act 2000<sup>(91)</sup>), money laundering, and the production and supply of illicit drugs;
- (iv) a third country which, on the basis of credible sources, such as evaluations, detailed assessment reports or published follow-up reports published by the Financial Action Task Force, the International Monetary Fund, the World Bank, the Organisation for Economic Co-operation and Development or other international bodies or non-governmental organisations—
  - (aa) has requirements to counter money laundering and terrorist financing that are consistent with the revised Recommendations published by the Financial Action Task Force in February 2012 and updated in October 2016; and
  - (bb) effectively implements those Recommendations.

(4) In making the assessment referred to in paragraph (3), relevant persons must bear in mind that the presence of one or more risk factors may not always indicate that there is a low risk of money laundering and terrorist financing in a particular situation.

(5) A relevant person may apply simplified customer due diligence measures where the customer is a person to whom paragraph (6) applies and the product is an account into which monies are pooled (the “pooled account”), provided that—

- (a) the business relationship with the holder of the pooled account presents a low degree of risk of money laundering and terrorist financing; and
- (b) information on the identity of the persons on whose behalf monies are held in the pooled account is available, on request to the relevant person where the pooled account is held.

(6) This paragraph applies to—

- (a) a relevant person who is subject to these Regulations under regulation 8;
- (b) a person who carries on business in an EEA state other than the United Kingdom who is—
  - (i) subject to the requirements in national legislation implementing the fourth money laundering directive as an obliged entity (within the meaning of that directive), and
  - (ii) supervised for compliance with those requirements in accordance with section 2 of Chapter VI of the fourth money laundering directive.

(7) In determining what simplified customer due diligence measures to take, and the extent of those measures, when paragraph (1) applies, credit institutions and financial institutions must also take account of any guidelines issued by the European Supervisory Authorities under Article 17 of the fourth money laundering directive.

(8) A relevant person must not continue to apply simplified customer due diligence measures under paragraph (1)—

- (a) if it doubts the veracity or accuracy of any documents or information previously obtained for the purposes of identification or verification;
- (b) if its risk assessment changes and it no longer considers that there is a low degree of risk of money laundering and terrorist financing;
- (c) if it suspects money laundering or terrorist financing; or

(91) 2000 c.11.

- (d) if any of the conditions set out in regulation 33(1) apply.

### **Electronic money**

**38.**—(1) Subject to paragraph (3), a relevant person is not required to apply customer due diligence measures in relation to electronic money, and regulations 27, 28, 30 and 33 to 37 do not apply provided that—

- (a) the maximum amount which can be stored electronically is 250 euros, or (if the amount stored can only be used in the United Kingdom), 500 euros;
- (b) the payment instrument used in connection with the electronic money (“the relevant payment instrument”) is—
  - (i) not reloadable; or
  - (ii) is subject to a maximum limit on monthly payment transactions of 250 euros which can only be used in the United Kingdom;
- (c) the relevant payment instrument is used exclusively to purchase goods or services;
- (d) anonymous electronic money cannot be used to fund the relevant payment instrument.

(2) Paragraph (1) does not apply to any transaction which consists of the redemption in cash, or a cash withdrawal, of the monetary value of the electronic money, where the amount redeemed exceeds 100 euros.

(3) The issuer of the relevant payment instrument must carry out sufficient monitoring of its business relationship with the users of electronic money and of transactions made using the relevant payment instrument to enable it to detect any unusual or suspicious transactions.

(4) A relevant person is not prevented from applying simplified customer due diligence measures in relation to electronic money because the conditions set out in paragraph (1) are not satisfied, provided that such measures are permitted under regulation 37.

(5) For the purposes of this regulation “payment instrument” has the meaning given by regulation 2(1) of the Electronic Money Regulations 2011(92).

## **PART 4**

### **Reliance and Record-keeping**

#### **Reliance**

**39.**—(1) A relevant person may rely on a person who falls within paragraph (3) (“the third party”) to apply any of the customer due diligence measures required by regulation 28(2) to (6) and (10) but, notwithstanding the relevant person’s reliance on the third party, the relevant person remains liable for any failure to apply such measures.

(2) When a relevant person relies on the third party to apply customer due diligence measures under paragraph (1) it—

- (a) must immediately obtain from the third party all the information needed to satisfy the requirements of regulation 28(2) to (6) and (10) in relation to the customer, customer’s beneficial owner, or any person acting on behalf of the customer;
- (b) must enter into arrangements with the third party which—

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(92) S.I. 2011/99.



- (i) enable the relevant person to obtain from the third party immediately on request copies of any identification and verification data and any other relevant documentation on the identity of the customer, customer's beneficial owner, or any person acting on behalf of the customer;
  - (ii) require the third party to retain copies of the data and documents referred to in paragraph (i) for the period referred to in regulation 40.
- (3) The persons within this paragraph are—
  - (a) another relevant person who is subject to these Regulations under regulation 8;
  - (b) a person who carries on business in an EEA state other than the United Kingdom who is—
    - (i) subject to the requirements in national legislation implementing the fourth money laundering directive as an obliged entity (within the meaning of that directive), and
    - (ii) supervised for compliance with those requirements in accordance with section 2 of Chapter VI of the fourth money laundering directive; or
  - (c) a person who carries on business in a third country who is—
    - (i) subject to requirements in relation to customer due diligence and record keeping which are equivalent to those laid down in the fourth money laundering directive; and
    - (ii) supervised for compliance with those requirements in a manner equivalent to section 2 of Chapter VI of the fourth money laundering directive;
  - (d) organisations whose members consist of persons within sub-paragraph (a), (b) or (c).
- (4) A relevant person may not rely on a third party established in a country which has been identified by the European Commission as a high-risk third country in delegated acts adopted under Article 9.2 of the fourth money laundering directive, and for these purposes "high-risk third country" has the meaning given in regulation 33(3).
- (5) Paragraph (4) does not apply to a branch or majority owned subsidiary of an entity established in an EEA state if all the following conditions are met—
  - (a) the entity is—
    - (i) subject to requirements in national legislation implementing the fourth money laundering directive as an obliged entity (within the meaning of that directive); and
    - (ii) supervised for compliance with those requirements in accordance with section 2 of Chapter VI of the fourth money laundering directive;
  - (b) the branch or subsidiary complies fully with procedures and policies established for the group under Article 45 of the fourth money laundering directive.
- (6) A relevant person is to be treated by a supervisory authority as having complied with the requirements of paragraph (2) if—
  - (a) the relevant person is relying on information provided by a third party which is a member of the same group as the relevant person;
  - (b) that group applies customer due diligence measures, rules on record keeping and programmes against money laundering and terrorist financing in accordance with these Regulations, the fourth money laundering directive or rules having equivalent effect; and
  - (c) the effective implementation of the requirements referred to in sub-paragraph (b) is supervised at group level by—
    - (i) an authority of an EEA state other than the United Kingdom with responsibility for the functions provided for in the fourth money laundering directive; or
    - (ii) an equivalent authority of a third country.

(7) Nothing in this regulation prevents a relevant person applying customer due diligence measures by means of an agent or an outsourcing service provider provided that the arrangements between the relevant person and the agent or outsourcing service provider provide for the relevant person to remain liable for any failure to apply such measures.

(8) For the purposes of paragraph (7), an “outsourcing service provider” means a person who—

- (a) performs a process, a service or an activity that would otherwise be undertaken by the relevant person, and
- (b) is not an employee of the relevant person.

### **Record-keeping**

**40.**—(1) Subject to paragraph (5), a relevant person must keep the records specified in paragraph (2) for at least the period specified in paragraph (3).

(2) The records are—

- (a) a copy of any documents and information obtained by the relevant person to satisfy the customer due diligence requirements in regulations 28, 29 and 33 to 37;
- (b) sufficient supporting records (consisting of the original documents or copies) in respect of a transaction (whether or not the transaction is an occasional transaction) which is the subject of customer due diligence measures or ongoing monitoring to enable the transaction to be reconstructed.

(3) Subject to paragraph (4), the period is five years beginning on the date on which the relevant person knows, or has reasonable grounds to believe—

- (a) that the transaction is complete, for records relating to an occasional transaction; or
- (b) that the business relationship has come to an end for records relating to—
  - (i) any transaction which occurs as part of a business relationship, or
  - (ii) customer due diligence measures taken in connection with that relationship.

(4) A relevant person is not required to keep the records referred to in paragraph (3)(b)(i) for more than 10 years.

(5) Once the period referred to in paragraph (3), or if applicable paragraph (4), has expired, the relevant person must delete any personal data obtained for the purposes of these Regulations unless—

- (a) the relevant person is required to retain records containing personal data—
  - (i) by or under any enactment, or
  - (ii) for the purposes of any court proceedings;
- (b) the data subject has given consent to the retention of that data; or
- (c) the relevant person has reasonable grounds for believing that records containing the personal data need to be retained for the purpose of legal proceedings.

(6) A relevant person who is relied on by another person must keep the records specified in paragraph (2) for the period referred to in paragraph (3) or, if applicable, paragraph (4).

(7) A person referred to in regulation 39(3) (“A”) who is relied on by a relevant person (“B”) must, if requested by B within the period referred to in paragraph (3) or, if applicable, paragraph (4), immediately—

- (a) make available to B any information about the customer, any person purporting to act on behalf of the customer and any beneficial owner of the customer, which A obtained when applying customer due diligence measures; and

- (b) forward to B copies of any identification and verification data and other relevant documents on the identity of the customer, any person purporting to act on behalf of the customer and any beneficial owner of the customer, which A obtained when applying those measures.
- (8) Paragraph (7) does not apply where a relevant person applies customer due diligence measures by means of an agent or an outsourcing service provider (within the meaning of regulation 39(8)).
- (9) For the purposes of this regulation—
  - (a) B relies on A where B does so in accordance with regulation 39(1);
  - (b) “copy” means a copy of the original document which would be admissible as evidence of the original document in court proceedings;
  - (c) “personal data” and “data subject” have the meanings given in section 1 of the Data Protection Act 1998(93).

## **Data Protection**

- 41.—**(1) Any personal data obtained by relevant persons for the purposes of these Regulations may only be processed for the purposes of preventing money laundering or terrorist financing.
- (2) Processing personal data for the purposes of preventing money laundering or terrorist financing is to be considered to be necessary for the exercise of—
- (a) a function of a public nature in the public interest for the purposes of paragraph 5(d) of Schedule 2 to the Data Protection Act 1998 (conditions relevant for processing personal data)(94); and
  - (b) a function conferred by or under an enactment for the purposes of paragraph 7(1)(b) of Schedule 3 to the Data Protection Act 1998 (conditions relevant for processing sensitive personal data)(95).
- (3) No other use may be made of personal data referred to in paragraph (1), unless—
- (a) use of the data is permitted by or under an enactment other than these Regulations; or
  - (b) the relevant person has obtained the consent of the data subject to the proposed use of the data.
- (4) Relevant persons must provide new customers with the following information before establishing a business relationship or entering into an occasional transaction with the customer—
- (a) the information specified in paragraph 2(3) in Part 2 of Schedule 1 to the Data Protection Act 1998 (interpretation of data protection principles);
  - (b) a statement that any personal data received from the customer will be processed only for the purposes of preventing money laundering or terrorist financing, or as permitted under paragraph (3).
- (5) For the purposes of this regulation, “personal data”, “processing” and “data subject” have the meanings given in section 1 of the Data Protection Act 1998 (basic interpretative provisions).

(93) 1998 c.29. Section 1 was amended by section 68 of and Part 3 of Schedule 8 to the Freedom of Information Act 2000 (c.36), and by S.I. 2004/3089.

(94) Paragraph 5 of Schedule 2 was amended by paragraph 4 of Schedule 6 to the Freedom of Information Act 2000.

(95) Paragraph 7 of Schedule 5 was amended by paragraph 5 of Schedule 6 to the Freedom of Information Act 2000 and S.I. 2003/1887.

## PART 5

### Beneficial Ownership Information

#### Application of this Part

- 42.**—(1) This Part applies to UK bodies corporate and relevant trusts.
- (2) For the purposes of this Part—
- (a) a “UK body corporate” is a body corporate which is incorporated under the law of the United Kingdom or any part of the United Kingdom, and includes an eligible Scottish partnership;
  - (b) a “relevant trust” is—
    - (i) a UK trust which is an express trust; or
    - (ii) a non-UK trust which is an express trust; and
      - (aa) receives income from a source in the United Kingdom; or
      - (bb) has assets in the United Kingdom,on which it is liable to pay one or more of the taxes referred to in regulation [45\(14\)](#);
  - (c) a trust is a “UK trust” if—
    - (i) all the trustees are resident in the United Kingdom; or
    - (ii) sub-paragraph (d) applies;
  - (d) this sub-paragraph applies if—
    - (i) at least one trustee is resident in the United Kingdom, and
    - (ii) the settlor was resident and domiciled in the United Kingdom at the time when—
      - (aa) the trust was set up, or
      - (bb) the settlor added funds to the trust;
  - (e) a trust is a “non-UK trust” if it is not a UK trust;
  - (f) a “collective investment scheme” has the meaning given in regulation 12H of the International Tax Compliance Regulations 2015(**96**).
- (3) A trustee or settlor is resident in the United Kingdom—
- (a) in the case of a body corporate, if it is a UK body corporate;
  - (b) in the case of an individual, if the individual is resident in the United Kingdom for the purposes of one or more of the taxes referred to in regulation [45\(14\)](#).

#### Corporate bodies: obligations

**43.**—(1) When a UK body corporate which is not listed on a regulated market enters into a relevant transaction with a relevant person, or forms a business relationship with a relevant person, the body corporate must on request from the relevant person provide the relevant person with—

- (a) information identifying—
  - (i) its name, registered number, registered office and principal place of business;
  - (ii) its board of directors, or if there is no board, the members of the equivalent management body;
  - (iii) the senior persons responsible for its operations;

- (iv) the law to which it is subject;
- (v) its legal owners;
- (vi) its beneficial owners; and

(b) its articles of association or other governing documents.

(2) For the purposes of paragraph (1)(a)(v) and (vi), references to the legal owners and beneficial owners of a UK body corporate include a reference to the legal owners and beneficial owners of any body corporate or trust which is directly or indirectly a legal owner or beneficial owner of that body corporate.

(3) Paragraph (1)(a)(vi) does not apply if no person qualifies as a beneficial owner (within the meaning of regulation 5(1)) of—

- (a) the UK body corporate; or
- (b) any body corporate which is directly or indirectly the owner of that UK body corporate.

(4) If, during the course of a business relationship, there is any change in the identity of the individuals or information falling within paragraph (1), the UK body corporate referred to in paragraph (1) must notify the relevant person of the change and the date on which it occurred within fourteen days from the date on which the body corporate becomes aware of the change.

(5) The UK body corporate must on request provide all or part of the information referred to in paragraph (1) to a law enforcement authority.

(6) Information requested under paragraph (5), must be provided before the end of such reasonable period as may be specified by the law enforcement authority.

(7) The provision of information in accordance with this regulation is not to be taken to breach any restriction, however imposed, on the disclosure of information.

(8) Where a disclosure is made in good faith in accordance with this regulation no civil liability arises in respect of the disclosure on the part of the UK body corporate.

(9) For the purposes of this regulation, a “relevant transaction” means a transaction in relation to which the relevant person is required to apply customer due diligence measures under regulation 27.

### **Trustee obligations**

**44.—**(1) The trustees of a relevant trust must maintain accurate and up-to-date records in writing of all the beneficial owners of the trust, and of any potential beneficiaries referred to in paragraph (5) (b), containing the information required by regulation 45(2)(b) to (d) and (5)(f) and (g).

(2) When a trustee of a relevant trust, acting as trustee, enters into a relevant transaction with a relevant person, or forms a business relationship with a relevant person, the trustee must—

- (a) inform the relevant person that it is acting as trustee; and
- (b) on request from the relevant person, provide the relevant person with information identifying all the beneficial owners of the trust (which, in the case of a class of beneficiaries, may be done by describing the class of persons who are beneficiaries or potential beneficiaries under the trust).

(3) If, during the course of a business relationship, there is any change in the information provided under paragraph (2), the trustees must notify the relevant person of the change and the date on which it occurred within fourteen days from the date on which any one of the trustees became aware of the change.

(4) For the purposes of this regulation, a “relevant transaction” means a transaction in relation to which the relevant person is required to apply customer due diligence measures under regulation 27.

(5) The trustees of a relevant trust must on request provide information to any law enforcement authority—

- (a) about the beneficial owners of the trust; and
- (b) about 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) Information requested under paragraph (5) must be provided before the end of such reasonable period as may be specified by the law enforcement authority.

(7) The provision of information in accordance with this regulation is not to be taken to breach any restriction, however imposed, on the disclosure of information.

(8) Where a disclosure is made in good faith in accordance with this regulation no civil liability arises in respect of the disclosure on the part of the trustees of a relevant trust.

(9) If the trustees of a relevant trust are relevant persons who are being paid to act as trustees of that trust, they must—

- (a) retain the records referred to in paragraph (1) for a period of five years after the date on which the final distribution is made under the trust;
- (b) make arrangements for those records to be deleted at the end of that period, unless—
  - (i) the trustees are required to retain them by or under any enactment or for the purpose of court proceedings;
  - (ii) any person to whom information in a record relates consents to the retention of that information; or
  - (iii) the trustees have reasonable grounds for believing that records containing the personal data need to be retained for the purpose of legal proceedings.

(10) For the purposes of this regulation, any of the following authorities is a law enforcement authority—

- (a) the Commissioners;
- (b) the FCA;
- (c) the NCA;
- (d) police forces maintained under section 2 of the Police Act 1996<sup>(97)</sup>;
- (e) the Police of the Metropolis;
- (f) the Police for the City of London;
- (g) the Police Service of Scotland;
- (h) the Police Service of Northern Ireland;
- (i) the Serious Fraud Office.

(11) For the purposes of this regulation, in the case of a relevant trust which is a collective investment scheme, a reference to the trustees of a relevant trust includes a reference to the manager or operator of the collective investment scheme.

### **Register of beneficial ownership**

**45.—**(1) The Commissioners must maintain a register (“the register”) of—

- (a) beneficial owners of taxable relevant trusts; and
- (b) potential beneficiaries (referred to in regulation 44(5)(b)) of taxable relevant trusts.

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<sup>(97)</sup> 1996 c.16. Section 2 was amended by paragraphs 3 and 4 of Schedule 16 to the Police Reform and Social Responsibility Act 2011 (c.13).

(2) The trustees of a taxable relevant trust must within the time specified in paragraph (3) provide the Commissioners with—

- (a) the information specified in paragraph (5) in relation to the trust;
- (b) the information specified in paragraph (6) in relation to each of the individuals referred to in regulation 44(2)(b) and (5)(b) (but if sub-paragraph (d) applies, this information does not need to be provided in relation to the beneficiaries of the trust);
- (c) the information specified in paragraph (7) in relation to each of the legal entities referred to in regulation 44(2)(b);
- (d) the information specified in paragraph (8), where the beneficial owners include a class of beneficiaries, not all of whom have been determined.

(3) The information required under paragraph (2) must be provided on or before—

- (a) 31st January 2018;
- (b) 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”).

(4) The information required under paragraph (2) must be provided in such form as the Commissioners reasonably require.

(5) The information specified in this paragraph is—

- (a) the full name of the trust;
- (b) the date on which the trust was set up;
- (c) a statement of accounts for the trust, describing the trust assets and identifying the value of each category of the trust assets at the date on which the information is first provided to the Commissioners (including the address of any property held by the trust);
- (d) the country where the trust is considered to be resident for tax purposes;
- (e) the place where the trust is administered;
- (f) a contact address for the trustees;
- (g) the full name of any advisers who are being paid to provide legal, financial or tax advice to the trustees in relation to the trust.

(6) The information specified in this paragraph is—

- (a) the individual’s full name;
- (b) the individual’s national insurance number or unique taxpayer reference, if any;
- (c) if the individual does not have a national insurance number or unique taxpayer reference, the individual’s usual residential address;
- (d) if the address provided under sub-paragraph (c) is not in the United Kingdom—
  - (i) the individual’s passport number or identification card number, with the country of issue and the expiry date of the passport or identification card; or
  - (ii) if the individual does not have a passport or identification card, the number, country of issue and expiry date of any equivalent form of identification;
- (e) the individual’s date of birth;
- (f) the nature of the individual’s role in relation to the trust.

(7) The information specified in this paragraph is—

- (a) the legal entity’s corporate or firm name;
- (b) the legal entity’s unique taxpayer reference, if any;
- (c) the registered or principal office of the legal entity;



- (d) the legal form of the legal entity and the law by which it is governed;
  - (e) if applicable, the name of the register of companies in which the legal entity is entered (including details of the EEA state or third country in which it is registered), and its registration number in that register;
  - (f) the nature of the entity's role in relation to the trust.
- (8) The information specified in this paragraph is a description of the class of persons who are beneficiaries or potential beneficiaries under the trust.
- (9) The trustees of a taxable relevant trust must—
- (a) if a trustee becomes aware that any of the information provided to the Commissioners under paragraph (2) (other than information provided in relation to the value of the trust assets under paragraph (5)(c)) has changed, notify the Commissioners of the change and the date on which it occurred on or before 31st January—
    - (i) after the tax year in which the change occurred; or
    - (ii) if the trustees are not liable to pay any UK taxes in that year, after the tax year in which the trustees are liable to pay any UK taxes; or
  - (b) if the trustees are not aware of any change to any of the information provided under paragraph (2), confirm that fact to the Commissioners on or before 31st January after the tax year in which the trustees are liable to pay any UK taxes.
- (10) The register must contain the information referred to in regulation 44(2)(b) and (5)(b) in relation to taxable relevant trusts.
- (11) The Commissioners may keep the register in any form they think fit.
- (12) The Commissioners must ensure that the information on the register may be inspected by any law enforcement authority.
- (13) The Commissioners must make arrangements to ensure that the NCA are able to use information on the register to respond promptly to a request for information about the persons referred to in regulation 44(2)(b) and (5)(b) made by—
- (a) an authority responsible for functions provided for in the fourth money laundering directive in an EEA state other than the United Kingdom, or
  - (b) a financial intelligence unit of an EEA state other than the United Kingdom.
- (14) For the purposes of this regulation, a taxable relevant trust is a relevant trust in any year in which its trustees are liable to pay any of the following taxes in the United Kingdom in relation to assets or income of the trust—
- (a) income tax;
  - (b) capital gains tax;
  - (c) inheritance tax;
  - (d) stamp duty land tax (within the meaning of section 42 of the Finance Act 2003<sup>(98)</sup>);
  - (e) land and buildings transaction tax (within the meaning of section 1 of the Land and Buildings Transaction Tax (Scotland) Act 2013<sup>(99)</sup>);
  - (f) stamp duty reserve tax.
- (15) For the purpose of this regulation, in the case of a taxable relevant trust which is a collective investment scheme, a reference to the trustees of a taxable relevant trust includes a reference to the manager or operator of the collective investment scheme.

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<sup>(98)</sup> 2003 c.14.

<sup>(99)</sup> 2013 asp 11.

## PART 6

### Money Laundering and Terrorist Financing: Supervision and Registration

#### CHAPTER 1

##### Duties of supervisory authorities

##### **Duties of supervisory authorities**

**46.**—(1) A supervisory authority must effectively monitor the relevant persons for which it is the supervisory authority (“its own sector”) and take necessary measures for the purpose of securing compliance by such persons with the requirements of these Regulations.

(2) Each supervisory authority must—

- (a) adopt a risk-based approach to the exercise of its supervisory functions, informed by the risk assessments carried out by the authority under regulation 17;
- (b) ensure that its employees and officers have access both at its offices and elsewhere to relevant information on the domestic and international risks of money laundering and terrorist financing which affect its own sector;
- (c) base the frequency and intensity of its on-site and off-site supervision on the risk profiles prepared under regulation 17(4);
- (d) keep a record in writing of the actions it has taken in the course of its supervision, and of its reasons for deciding not to act in a particular case;
- (e) take effective measures to encourage its own sector to report breaches of the provisions of these Regulations to it.

(3) In determining its approach to the exercise of its supervisory functions the supervisory authority must—

- (a) take account of any guidelines issued by the European Supervisory Authorities under Articles 17, 18.4 and 48.10 of the fourth money laundering directive;
- (b) take account of the degree of discretion permitted to relevant persons in taking measures to counter money laundering and terrorist financing.

(4) In accordance with its risk-based approach, the supervisory authority must take appropriate measures to review—

- (a) the risk assessments carried out by relevant persons under regulation 18;
- (b) the adequacy of the policies, controls and procedures adopted by relevant persons under regulation 19 to 21 and 24, and the way in which those policies, controls and procedures have been implemented.

(5) A supervisory authority which, in the course of carrying out any of its supervisory functions or otherwise, knows or suspects, or has reasonable grounds for knowing or suspecting, that a person is or has engaged in money laundering or terrorist financing must as soon as practicable inform the NCA.

(6) A disclosure made under paragraph (5) is not to be taken to breach any restriction, however imposed, on the disclosure of information.

(7) Where a disclosure under paragraph (5) is made in good faith, no civil liability arises in respect of the disclosure on the part of the person by whom, or on whose behalf, it is made.

(8) The FCA, when carrying out its supervisory functions in relation to an auction platform—

- (a) must effectively monitor the auction platform’s compliance with—

- (i) the customer due diligence requirements of Articles 19 and 20.6 of the emission allowance auctioning regulation;
  - (ii) the monitoring and record-keeping requirements of Article 54 of that regulation; and
  - (iii) the notification requirements of Article 55.2 and 55.3 of that regulation; and
  - (b) may monitor the auction platform's compliance with regulations 18 to 21 and 24 of these Regulations.
- (9) The functions of the FCA under these Regulations shall be treated for the purposes of Parts 1, 2 and 4 of Schedule 1ZA to FSMA(100) (the Financial Conduct Authority) as functions conferred on the FCA under that Act.

### **Duties of supervisory authorities: information**

**47.**—(1) A supervisory authority must, in any way it considers appropriate, make up-to-date information on money laundering and terrorist financing available to those relevant persons which it supervises (“its own sector”).

(2) The information referred to in paragraph (1) must include the following—

- (a) information on the money laundering and terrorist financing practices considered by the supervisory authority to apply to its own sector;
- (b) a description of indications which may suggest that a transfer of criminal funds is taking place in its own sector;
- (c) a description of the circumstances in which the supervisory authority considers that there is a high risk of money laundering or terrorist financing.

(3) The information referred to in paragraph (1) must also include information from the following sources which the supervisory authority considers is relevant to its own sector—

- (a) reports drawn up by the European Commission under Article 6.1 of the fourth money laundering directive;
- (b) recommendations made by the European Commission under Article 6.4 of that directive (unless the Treasury and the Home Office notify the supervisory authority that a recommendation will not be followed);
- (c) joint opinions issued by the European Supervisory Authorities under Article 6.5 of that directive;
- (d) high-risk third countries identified in delegated acts adopted by the European Commission under Article 9.2 of the fourth money laundering directive;
- (e) guidelines issued by the European Supervisory Authorities under Articles 17, 18.4, or 48.10 of that directive;
- (f) the report prepared by the Treasury and the Home Office under regulation 16(6);
- (g) any relevant information made available by the Treasury and the Home Office under regulation 16(8);
- (h) any relevant information published by the Director General of the NCA under section 4(9) (operations) or 6 (duty to publish information) of the Crime and Courts Act 2013(101).

(100) 2000 c 8. Schedule 1ZA was substituted, with Schedule 1ZB, for Schedule 1 to the Financial Services and Markets Act by section 6(2) of the Financial Services Act 2012 (c.21), and amended by paragraphs 14 and 16 of Schedule 3 and paragraph 7 of Schedule 8 to the Financial Services (Banking Reform) Act 2013 (c.33), paragraph 13 of Schedule 3 to the Pension Scheme Act 2015 (c.8), section 18 of the Bank of England and Financial Services Act 2016 (c.14) and S.I. 2013/1388.

(101) 2013 c.22.

**Duties of the FCA: guidance on politically exposed persons**

**48.**—(1) The FCA must give guidance under section 139A of FSMA (power of the FCA to give guidance)(102) to relevant persons, who are subject to rules made by the FCA, in relation to the enhanced customer due diligence measures required under regulation 35 in respect of politically exposed persons (“PEPs”), their family members and known close associates (within the meanings given in regulation 35(12)).

(2) The guidance referred to in paragraph (1) must include guidance on the following matters—

- (a) taking into account regulation 35(14), what functions are, and are not, to be taken to be “prominent public functions” for the purposes of determining whether an individual is a PEP;
- (b) which persons should be treated as coming within the definitions of—
  - (i) a family member of a PEP; or
  - (ii) a known close associate of a PEP;
- (c) what constitutes “appropriate risk-management systems and procedures” for the purposes of regulation 35(1);
- (d) what account is to be taken of the jurisdiction in which the prominent public function arises (taking into consideration the controls against money-laundering and terrorist financing in different jurisdictions);
- (e) how the level of risk associated with a particular individual is to be assessed for the purposes of regulation 35(3), and what approach is to be taken in relation to a PEP, or a family member or known close associate of a PEP, if the PEP, family member or close associate is assessed as presenting a low level of risk;
- (f) who should be treated as coming within the meaning of “senior management” for the purposes of regulation 35(5) and (8);
- (g) the situations in which it would be appropriate for the senior management approval mentioned in regulation 35(5) to be given by an individual who is not a member of the board of directors (or, if there is no such board, a member of the equivalent management body) of a business;
- (h) what constitutes “adequate measures” and “reasonable measures” for the purposes of paragraphs (5) and (6) respectively of regulation 35;
- (i) the extent to which information on public registers may be taken into account for the purposes of regulation 35(5) and (6);
- (j) what sort of monitoring and scrutiny is required for the purposes of regulation 35(5) and (8);
- (k) what measures are required in relation to persons who have ceased to be PEPs to comply with regulation 35(9); and
- (l) how to address risks of money laundering or terrorist financing where a PEP, a family member of a PEP or a known close associate of a PEP, is—
  - (i) the beneficial owner of a customer;
  - (ii) a beneficiary of a contract of long-term insurance;
  - (iii) the beneficial owner of a beneficiary of a contract of long-term insurance.

(102) 2000 c.8. Section 139A was substituted (together with the rest of Part 9A of FSMA) for the original Part 10 by section 24 of the Financial Services Act 2012 (c.21).

## **Duties of self-regulatory organisations**

- 49.**—(1) Self-regulatory organisations must make arrangements to ensure that—
- (a) their supervisory functions are exercised independently of any of their other functions which do not relate to disciplinary matters;
  - (b) sensitive information relating to the supervisory functions is appropriately handled within the organisation;
  - (c) they employ only persons with appropriate qualifications, integrity and professional skills to carry out the supervisory functions;
  - (d) contravention of a relevant requirement by a relevant person they are responsible for supervising renders that person liable to effective, proportionate and dissuasive disciplinary measures under their rules.
- (2) Self-regulatory organisations must—
- (a) provide adequate resources to carry out the supervisory functions;
  - (b) appoint a person to monitor and manage the organisation’s compliance with its duties under these Regulations.
- (3) The person appointed under paragraph (2)(b) is to be responsible—
- (a) for liaison with—
    - (i) another supervisory authority or a registering authority (within the meaning of regulation 53);
    - (ii) any law enforcement authority; and
    - (iii) any overseas authority (within the meaning of regulation 50(4))
  - (b) for ensuring that the self-regulatory organisation responds fully and rapidly to any request from an authority referred to in paragraph (a)(i) or (ii) for information about any person it supervises, whether that request concerns an application by that person for registration or any other matter.

## **Duty to co-operate**

- 50.**—(1) A supervisory authority must take such steps as it considers appropriate—
- (a) to co-operate with other supervisory authorities, the Treasury and law enforcement authorities in relation to the development and implementation of policies to counter money laundering and terrorist financing;
  - (b) to co-ordinate activities to counter money laundering and terrorist financing with other supervisory authorities and law enforcement authorities;
  - (c) to co-operate with overseas authorities to ensure the effective supervision of a relevant person to which paragraph (2) applies.
- (2) This paragraph applies to a relevant person established—
- (a) in the United Kingdom, which has its head office in another country; or
  - (b) in another country but which has its head office in the United Kingdom.
- (3) Co-operation may include the sharing of information which the supervisory authority is not prevented from disclosing.
- (4) For the purposes of this regulation “overseas authority” means—
- (a) an authority responsible for any of the functions provided for in the fourth money laundering directive in an EEA state other than the United Kingdom in which the relevant person is established or has its head office; and

- (b) where the relevant person is established or has its head office in a country which is not an EEA state, an authority in that country which has equivalent functions to any of the functions provided for in the fourth money laundering directive.

(5) A supervisory authority must on request provide a European Supervisory Authority with information reasonably required by the Authority to enable it to carry out its duties under the fourth money laundering directive.

### **Regulatory information**

**51.**—(1) A supervisory authority within regulation 7 must collect such information as it considers necessary for the purpose of performing its supervisory functions, including the information specified in Schedule 4.

(2) A supervisory authority within regulation 7 must on request provide the Treasury with such information collected under paragraph (1) as may be specified by the Treasury, for the purpose of enabling the Treasury to comply with its obligations under Article 6, 7 or 44 of the fourth money laundering directive.

(3) The Treasury must publish an annual consolidated review of the information provided by the supervisory authorities under paragraph (2).

(4) A disclosure made under paragraph (2) is not to be taken to breach any restriction, however imposed, on the disclosure of information.

(5) Where a disclosure under paragraph (2) is made in good faith, no civil liability arises in respect of the disclosure on the part of the person by whom, or on whose behalf, it is made.

### **Disclosure by supervisory authorities**

**52.**—(1) A supervisory authority may disclose to a relevant authority information it holds relevant to its supervisory functions, provided the disclosure is made for purposes connected with the effective exercise of—

- (a) the functions of the relevant authority under these Regulations;
- (b) the functions of the law enforcement authority; or
- (c) in the case of an overseas authority, the functions provided for in the fourth money laundering directive, or equivalent functions.

(2) Information disclosed to a relevant authority under paragraph (1) may not be further disclosed by that authority, except—

- (a) in accordance with paragraph (1);
- (b) by the FCA to the PRA, where the information concerns a PRA-authorised person or a person who has a qualifying relationship with a PRA-authorised person;
- (c) in the case of an overseas authority, in accordance with any conditions imposed on further disclosure of that information by the supervisory authority which disclosed that information to the overseas authority;
- (d) with a view to the institution of, or otherwise for the purposes of, any criminal or other enforcement proceedings; or
- (e) as otherwise required by law.

(3) A disclosure made under paragraph (1) is not to be taken to breach any restriction, however imposed, on the disclosure of information.

(4) Where a disclosure under paragraph (1) is made in good faith, no civil liability arises in respect of the disclosure on the part of the person by whom, or on whose behalf, it is made.

- (5) For the purposes of this regulation, “relevant authority” means—
- (a) another supervisory authority;
  - (b) the Treasury;
  - (c) any law enforcement authority;
  - (d) an overseas authority, within the meaning of regulation 50(4).

## CHAPTER 2

### Registration

#### Interpretation

**53.** For the purposes of this Chapter—

“registering authority” means—

- (a) the FCA, in relation to—
  - (i) those relevant persons which it is required to register under regulation 54(1); and
  - (ii) those relevant persons it decides to register under regulation 55(1);
- (b) the Commissioners, in relation to—
  - (i) those relevant persons which they are required to register under regulation 54(2); and
  - (ii) those relevant persons they decide to register under regulation 55(3);

“telecommunication, digital and IT payment service provider” means an undertaking which provides payment services falling within paragraph 1(g) of Schedule 1 to the Payment Services Regulations 2009(103).

#### Duty to maintain registers of certain relevant persons

**54.—(1)** The FCA must maintain a register of those relevant persons who—

- (a) are authorised persons, and
- (b) have notified the FCA under regulation 23 that they are acting, or intend to act, as a money service business or a trust or company service provider.

(2) The Commissioners must maintain a register of those relevant persons who are not included in the register maintained by the FCA under paragraph (1) and are—

- (a) high value dealers;
- (b) money service businesses;
- (c) trust or company service providers;
- (d) bill payment service providers, for which the Commissioners are the supervisory authority;
- (e) telecommunication, digital and IT payment service providers, for which the Commissioners are the supervisory authority.

(3) Subject to paragraph (4) the registering authorities may keep the registers required by this regulation in any form they think fit.

(4) The register maintained by the Commissioners must include entries in the registers maintained under regulation 25 of the Money Laundering Regulations 2007(104) which were current immediately before the date that regulation was revoked.

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(103) S.I. 2009/209.

(104) S.I. 2007/2157. Regulation 25 was amended by S.I. 2009/209.



(5) A registering authority may publish or make available to public inspection all or part of a register maintained by it under this regulation.

### **Power to maintain registers**

**55.**—(1) The FCA may maintain a register of Annex 1 financial institutions.

(2) For the purposes of paragraph (1), an “Annex 1 financial institution” is a financial institution which—

- (a) falls within regulation 10(2)(a), and
- (b) is not—
  - (i) a money service business;
  - (ii) an authorised person;
  - (iii) a bill payment service provider; or
  - (iv) a telecommunication, digital and IT payment service provider.

(3) The Commissioners may maintain registers of relevant persons who are not supervised by any of the professional bodies listed in Schedule 1, and who are—

- (a) estate agents,
- (b) auditors;
- (c) external accountants;
- (d) tax advisers;
- (e) bill payment service providers; or
- (f) telecommunication, digital and IT payment service providers.

(4) Where a registering authority decides to maintain a register under this regulation, it must take reasonable steps to bring its decision to the attention of those relevant persons in respect of which the register is to be established.

(5) Subject to paragraph (6) a registering authority may maintain a register under this regulation in any form it thinks fit.

(6) The registers maintained by the registering authorities must include entries in any equivalent registers maintained under regulation 32 of the Money Laundering Regulations 2007(105) which were current immediately before the date that regulation was revoked.

(7) A registering authority may publish or make available to public inspection all or part of a register maintained by it under this regulation.

### **Requirement to be registered**

**56.**—(1) Unless a person in respect of whom the registering authorities are required to maintain a register under regulation 54 is included in the appropriate register, or paragraph (2) applies, that person must not act as a—

- (a) high value dealer;
- (b) money service business;
- (c) trust or company service provider;
- (d) bill payment service provider; or
- (e) telecommunication, digital and IT payment service provider.

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(105) Regulation 32 was amended by S.I. 2013/1881 and 2014/631.

(2) This paragraph applies if the person concerned has applied for registration in the register, but that application has not yet been determined.

(3) A relevant person which is registered in the register maintained by the Commissioners under regulation 25 or 32 of the Money Laundering Regulations 2007<sup>(106)</sup> is to be treated as included in the appropriate registers maintained by the Commissioners under regulation 54 or 55 of these Regulations for the purpose of paragraph (1)—

- (a) during the period of 12 months beginning with the date on which these Regulations come into force, and
- (b) after that period, if the person concerned has provided the additional information required for registration under regulation 57 within the period referred to in sub-paragraph (a).

(4) A relevant person which is registered in the register maintained by the FCA under regulation 32 of the Money Laundering Regulations 2007 is to be treated as included in the register maintained by the FCA under regulation 55(1) for the purposes of paragraph (1).

(5) Where a registering authority decides to maintain a register under regulation 55(1) or (3) in respect of any description of relevant persons and establishes a register for that purpose, a relevant person of that description must not carry on the business or profession in question for a period of more than 12 months beginning with the date on which the registering authority establishes the register unless—

- (a) that person is included in the register, or
- (b) that person has applied for registration in the register, but that application has not yet been determined.

### **Applications for registration in a register maintained under regulation 54 or 55**

**57.**—(1) A person applying for registration in a register maintained under regulation 54 or 55 (“an applicant”) must make an application in such manner and provide such information as the registering authority may specify.

(2) The information which the registering authority may specify includes, among other things—

- (a) the applicant’s full name and where different the name of the business;
- (b) where the applicant is an individual, the applicant’s date of birth and residential address;
- (c) the nature of the business;
- (d) the address of the head office of the business with its company number (in the case of a company), and of any branches the business has in the United Kingdom;
- (e) the full name of the nominated officer (if any);
- (f) a risk assessment which satisfies the requirements in regulation 18;
- (g) information as to the way in which the business meets the requirements set out in—
  - (i) these Regulations;
  - (ii) Part 3 of the Terrorism Act 2000 (terrorist property)<sup>(107)</sup>;
  - (iii) Part 7 of the Proceeds of Crime Act 2002 (money laundering)<sup>(108)</sup>; and
  - (iv) Part 8 of the Proceeds of Crime Act 2002 (investigations);
- (h) in relation to a money service business or a trust or company service provider—
  - (i) the full name, date of birth and residential address of any officer, manager or beneficial owner of the business or service provider; and

<sup>(106)</sup>S.I. 2007/2157.

<sup>(107)</sup>2000 c.11.

<sup>(108)</sup>2002 c. 29.

- (ii) information needed by the registering authority to decide whether it must refuse the application pursuant to regulation 58;
  - (i) in relation to a money service business, the full name and address of any agent it uses for the purposes of its business;
  - (j) where the registering authority is not the supervisory authority for the applicant—
    - (i) the name of the applicant's supervisory authority;
    - (ii) confirmation from the applicant's supervisory authority that any person mentioned in regulation 58(1) is a fit and proper person within the meaning of that regulation;
  - (k) whether the applicant, or any person named in the application, has been convicted of a criminal offence listed in Schedule 3.
- (3) At any time after receiving an application and before determining it, the registering authority may require the applicant to provide, within 21 days beginning with the date on which the requirement is issued, such further information as the registering authority reasonably considers necessary to enable it to determine the application.
- (4) If at any time after the applicant has provided the registering authority with any information under paragraph (1) or (3) (whether before or after the applicant is registered)—
- (a) there is a material change affecting any matter contained in that information; or
  - (b) it becomes apparent to the applicant that the information contains an inaccuracy,
- the applicant must provide the registering authority with details of the change or a correction of the inaccuracy within 30 days beginning with the date of the occurrence of the change (or the discovery of the inaccuracy) or within such later time as may be agreed with the registering authority.
- (5) The obligation in paragraph (4) applies also to material changes or inaccuracies affecting any matter contained in any supplementary information provided pursuant to that paragraph.
- (6) Any information to be provided to the registering authority under this regulation must be in such form and verified in such manner as the authority may specify.

### **Fit and proper test**

**58.—**(1) The registering authority must refuse to register an applicant for registration in a register maintained under regulation 54 as a money service business or as a trust or company service provider, if it is satisfied that—

- (a) the applicant;
- (b) an officer or manager of the applicant;
- (c) a beneficial owner of the applicant; or
- (d) where the applicant is a money service business—
  - (i) any agent used by the applicant for the purposes of its business; or
  - (ii) any officer, manager or beneficial owner of the agent,

is not a fit and proper person to carry on that business.

(2) Where the FCA has decided to maintain a register of Annex I financial institutions under regulation 55, paragraph (1) applies in relation to those institutions as it applies to a money service business and a trust or company service provider.

(3) A person who has been convicted of a criminal offence listed in Schedule 3 is to be treated as not being a fit and proper person to carry on the business for the purposes of paragraph (1).

(4) If paragraph (3) does not apply, the registering authority must have regard to the following factors in determining the question in paragraph (1)—

- (a) whether the applicant has consistently failed to comply with the requirements of—
  - (i) these Regulations;
  - (ii) the Money Laundering Regulations 2001<sup>(109)</sup>,
  - (iii) the Money Laundering Regulations 2003<sup>(110)</sup>, or
  - (iv) the Money Laundering Regulations 2007<sup>(111)</sup>; and
- (b) the risk that the applicant's business may be used for money laundering or terrorist financing.

(5) Where the applicant is a money service business, the registering authority may, in determining the question in paragraph (1), take account of the opinion of the applicant as to whether any person referred to in paragraph (1)(d) is a fit and proper person to carry on the business.

(6) Where the registering authority is not the supervisory authority of the applicant, the registering authority must consult the supervisory authority and may rely on its opinion as to whether or not the applicant is a fit and proper person to carry on the business referred to in paragraph (1).

### **Determination of applications for registration under regulations 54 and 55**

**59.**—(1) Subject to regulation 58, the registering authority may refuse to register an applicant for registration in a register maintained under regulation 54 or 55 if—

- (a) any requirement of, or imposed under, regulation 57 has not been complied with;
- (b) it appears to the registering authority that any information provided pursuant to regulation 57 is false or misleading in a material particular;
- (c) the applicant has failed to pay—
  - (i) a penalty imposed by the authority under Part 9;
  - (ii) a charge imposed by the authority under Part 11; or
  - (iii) a penalty or charge imposed by the authority under regulation 35(1) or 42(1) of the Money Laundering Regulations 2007;
- (d) where the registering authority is not the applicant's supervisory authority, the supervisory authority opposes the application for registration on reasonable grounds; or
- (e) the registering authority suspects, on reasonable grounds—
  - (i) that the applicant will fail to comply with any of its obligations under—
    - (aa) these Regulations;
    - (bb) Part 3 of the Terrorism Act 2000<sup>(112)</sup>; or
    - (cc) Parts 7 and 8 of the Proceeds of Crime Act 2002<sup>(113)</sup>;
 (the “relevant obligations”);
  - (ii) that any person whom the applicant has identified as one of its officers or managers will fail to comply with any of the relevant obligations.

(2) Where the Commissioners are the registering authority, they must within 45 days beginning either with the date on which they receive the application or, where applicable, with the date on which they receive any further information required under regulation 57(3), give the applicant notice of—

- (a) the decision to register the applicant; or

<sup>(109)</sup>S.I. 2001/3641.

<sup>(110)</sup>S.I. 2003/3075.

<sup>(111)</sup>S.I. 2007/2157.

<sup>(112)</sup>2000 c.11.

<sup>(113)</sup>2002 c. 29.

- (b) the following matters—
  - (i) their decision not to register the applicant;
  - (ii) the reasons for their decision;
  - (iii) the right to a review under regulation 94; and
  - (iv) the right to appeal under regulation 99.
- (3) Where the FCA is the registering authority, it must within 45 days beginning either with the date on which it receives the application or, where applicable, with the date on which it receives any further information required under regulation 57(3), give the applicant notice of—
  - (a) its decision to register the applicant; or
  - (b) the following matters—
    - (i) that it is minded not to register the applicant;
    - (ii) the reasons for being minded to refuse to register the applicant; and
    - (iii) the right to make representations to it within a specified period (which may not be less than 28 days).
- (4) After the expiry of the period referred to in paragraph (3)(b)(iii), the FCA must decide, within a reasonable period, whether to register the applicant and it must give the applicant notice of—
  - (a) its decision to register the applicant; or
  - (b) the following matters—
    - (i) its decision not to register the applicant;
    - (ii) the reasons for its decision; and
    - (iii) the right to appeal under regulation 93.
- (5) The registering authority must, as soon as practicable after deciding to register a person, include that person in the relevant register.

### **Cancellation and suspension of registration in a register under regulation 54 or 55**

- 60.**—(1) If paragraph (2) applies, the registering authority may suspend (for such period as it considers appropriate) or cancel—
- (a) the registration of a money service business or a trust or company service provider in a register maintained under regulation 54; or
  - (b) the registration of an Annex 1 financial institution in a register maintained under regulation 55 (including the registration of an Annex 1 financial institution previously included in a register maintained under regulation 32 of the Money Laundering Regulations 2007)(114).
- (2) This paragraph applies if, at any time after registration, the registering authority is satisfied that—
- (a) the money service business, trust or company service provider, or Annex 1 financial institution (as the case may be); or
  - (b) any other person mentioned in regulation 58(1) in relation to that business, provider, or financial institution,
- is not a fit and proper person for the purposes of regulation 58.

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(114) S.I. 2007/2157.

(3) The registering authority may suspend (for such period as it considers appropriate) or cancel a person's registration in a register maintained by it under regulation 54 or 55 if, at any time after registration—

- (a) it appears to the authority that any of paragraphs (a) to (e) of regulation 59(1) apply; or
- (b) the person has failed to comply with any requirement of a notice given under regulation 66.

(4) The Commissioners may suspend (for such period as they consider appropriate) or cancel the registration of a person who—

- (a) was included in a register maintained by the Commissioners under regulation 25 or 32 of the Money Laundering Regulations 2007, and
- (b) has not provided the additional information required for registration under regulation 57 within the period of 12 months beginning with the date on which these Regulations come into force.

(5) The Commissioners may suspend (for such period as they consider appropriate) or cancel the registration of a money service business in a register maintained under regulation 54(2)(b) where the money service business is—

- (a) providing a payment service in the United Kingdom, or is purporting to do so;
- (b) not included in the register of payment service providers maintained by the FCA under regulation 4(1) of the Payment Service Regulations 2009(115); and
- (c) not a person—
  - (i) mentioned in paragraphs (c) to (h) of the definition of a “payment service provider” in regulation 2(1) of the Payment Services Regulations 2009, or
  - (ii) to whom regulation 3 or 121(116) of those Regulations applies.

(6) Where the supervisory authority of a person on the register maintained under regulation 54 or 55 is not the registering authority, the supervisory authority must inform the registering authority as soon as possible if it becomes aware of any grounds on which the registering authority might decide to suspend or cancel that person's registration.

(7) Where the Commissioners decide to suspend or cancel a person's registration they must give that person notice of—

- (a) their decision and, subject to paragraph (10), the date from which the suspension or cancellation takes effect;
- (b) if appropriate, the period of the suspension;
- (c) the reasons for their decision;
- (d) the right to a review under regulation 94; and
- (e) the right to appeal under regulation 99.

(8) Where the FCA is minded to suspend or cancel a person's registration it must give that person notice—

- (a) that it is so minded;
- (b) if appropriate, the proposed period of the suspension;
- (c) the reasons for being so minded; and
- (d) the right to make representations to it within the period specified in the notice (which must not be less than 28 days).

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(115) S.I. 2009/209.

(116) Regulation 121 was amended by S.I. 2010/22 and 2013/3115.

(9) The FCA must then decide, within a reasonable period, whether to suspend or cancel the person's registration and it must give that person notice of—

- (a) its decision not to suspend or cancel the person's registration; or
- (b) the following matters—
  - (i) its decision to suspend or cancel the person's registration and, subject to paragraph (10), the date from which the suspension or cancellation takes effect;
  - (ii) the period of the suspension;
  - (iii) the reasons for its decision; and
  - (iv) the right to appeal under regulation 93.

(10) If the registering authority—

- (a) considers that the interests of the public require the suspension or cancellation of a person's registration to have immediate effect; and
- (b) includes a statement to that effect and the reasons for it in the notice given under paragraph (7) or (9),

the suspension or cancellation takes effect when the notice is given to the person.

## PART 7

### Transfer of Funds (Information on the Payer) Regulations

#### Interpretation

**61.** In this Part “transfer of funds supervisory authority” in relation to a payment service provider means the supervisory authority specified by regulation 62.

#### Transfer of funds supervisory authorities

**62.—**(1) The FCA is the transfer of funds supervisory authority for payment service providers, who are—

- (a) authorised persons;
- (b) authorised payment institutions under the Payment Services Regulations 2009(117) which are not included in the register maintained by the Commissioners under regulation 54(2);
- (c) registered small payment institutions under the Payment Services Regulations 2009 which are not included in the register maintained by the Commissioners under regulation 54(2);
- (d) authorised electronic money institutions under the Electronic Money Regulations 2011(118); or
- (e) registered small electronic money institutions under the Electronic Money Regulations 2011.

(2) The Commissioners are the transfer of funds supervisory authority for payment service providers who do not come within paragraph (1).

#### Duties of transfer of funds supervisory authorities

**63.—**(1) A transfer of funds supervisory authority must—

(117) S.I. 2009/209.

(118) S.I. 2011/99.



- (a) monitor effectively the payment service providers for whom it is the transfer of funds supervisory authority;
- (b) take the measures necessary to secure compliance by payment service providers with the requirements of the funds transfer regulation;
- (c) take effective measures to encourage the payment service provider to report breaches of the provisions of the funds transfer regulation to the authority;
- (d) take such steps as it considers appropriate—
  - (i) to co-operate with other supervisory authorities, the Treasury and law enforcement authorities in relation to the development and implementation of policies to counter money laundering and terrorist financing;
  - (ii) to co-ordinate activities to counter money laundering and terrorist financing;
  - (iii) to co-operate with overseas authorities to ensure the effective supervision of a payment service provider to which paragraph (2) applies.
- (2) This paragraph applies to a payment service provider established—
  - (a) in the United Kingdom, which has its head office in another country; or
  - (b) in another country but which has its head office in the United Kingdom.
- (3) Co-operation may include the sharing of information which the supervisory authority is not prevented from disclosing.
- (4) A transfer of funds supervisory authority must take into account any guidelines issued by the European Supervisory Authorities under Article 25 of the funds transfer regulation in determining what measures are required to comply with that regulation.
- (5) A transfer of funds supervisory authority which, in the course of carrying out any of its functions under this Part or otherwise, knows or suspects, or has reasonable grounds for knowing or suspecting, that a payment service provider is or has engaged in money laundering or terrorist financing must as soon as practicable inform the NCA.
- (6) A disclosure made under paragraph (5) is not to be taken to breach any restriction, however imposed, on the disclosure of information.
- (7) Where a disclosure under paragraph (5) is made in good faith, no civil liability arises in respect of the disclosure on the part of the person by whom, or on whose behalf, it is made.
- (8) The functions of the FCA under this Part are to be treated for the purposes of section 1A of, and Parts 1, 2 and 4 of Schedule 1ZA to, FSMA (the Financial Conduct Authority)(119) as functions conferred on the FCA under that Act.
- (9) A transfer of funds supervisory authority must on request provide a European Supervisory Authority with information reasonably required by the Authority to enable it to carry out its duties under the funds transfer regulation.
- (10) For the purposes of this regulation, “overseas authority” means—
  - (a) an authority responsible for any of the functions provided for in the funds transfer regulation in an EEA state other than the United Kingdom in which the payment service provider is established or has its head office; and

(119) 2000 c.8. Section 1A was substituted, together with the rest of Part 1A for Part 1 of the Financial Services and Markets Act 2000 by section 6(1) of the Financial Services Act 2012 (c.21). Schedule 1ZA was substituted, with Schedule 1ZB, for Schedule 1 to the Financial Services and Markets Act by section 6(2) of the Financial Services Act 2012 (c.21), and amended by paragraphs 14 and 16 of Schedule 3 and paragraph 7 of Schedule 8 to the Financial Services (Banking Reform) Act 2013 (c.33), paragraph 13 of Schedule 3 to the Pension Scheme Act 2015 (c.8) section 18 of the Bank of England and Financial Services Act 2016 (c.14) and S.I. 2013/1388.

- (b) where the payment service provider is established or has its head office in a country which is not an EEA state, an authority in that country which has equivalent functions to any of the functions provided for in the funds transfer regulation.

### **Obligations of payment service providers**

**64.—**(1) A payment service provider must take into account any guidelines issued by the European Supervisory Authorities under Article 25 of the funds transfer regulation in determining what measures are required to comply with that regulation.

(2) A payment service provider must ensure that it is able (whether by means of the central contact point appointed under regulation 22 or otherwise) to respond fully and rapidly to enquiries from a person specified in paragraph (3) concerning any of the information required by or under the funds transfer regulation.

(3) The persons specified in this paragraph are—

- (a) financial investigators accredited under section 3 of the Proceeds of Crime Act 2002 (accreditation and training)(120);
- (b) persons acting on behalf of the Scottish Ministers in their capacity as an enforcement authority under that Act; and
- (c) constables or equivalent officers of any law enforcement authority.

## **PART 8**

### **Information and Investigation**

#### **Interpretation**

**65.—**(1) In this Part—

“premises” means any building or other structure, including a moveable structure, other than premises used only as a dwelling;

“tribunal” means the First-tier Tribunal or, where determined by or under Tribunal Procedure Rules, the Upper Tribunal;

(2) Unless otherwise defined in this Part—

“officer” means—

- (a) an officer of the FCA, including a member of the FCA’s staff or an agent of the FCA;
- (b) an officer of Revenue and Customs; or
- (c) an employee or agent of a professional body listed in Schedule 1 who is authorised by the body to act on behalf of the body for the purposes of this Part;
- (d) a relevant officer;

“relevant officer” means—

- (a) in Great Britain, an officer of a local weights and measures authority;
  - (b) in Northern Ireland, an officer of the Department for the Economy,
- acting pursuant to arrangements made with the FCA or with the Commissioners for the purposes of these Regulations.

(120) 2002 c. 29. Section 3 was amended by paragraph 111 of Schedule 8 to the Crime and Courts Act 2013 (c. 22), and by paragraph 120 of Schedule 8 and paragraph 1 of Schedule 14 to the Serious Crime Act 2007 (c. 27).

(3) For the purposes of this Part, a person is connected to a relevant person or a payment service provider (“a connected person”) if that person is a person listed in Schedule 5 in relation to the relevant person or payment service provider.

### **Power to require information**

**66.**—(1) A supervisory authority may, by notice in writing to a person (“P”) who is (or was at any time) a relevant person, a payment service provider or a connected person, require P to—

- (a) provide specified information, or information of a specified description;
- (b) produce specified documents, or documents of a specified description; or
- (c) attend before an officer of the supervisory authority (or of a supervisory authority which is acting on behalf of that authority) at a time and place specified in the notice and answer questions.

(2) The information or documents must be provided or produced—

- (a) before the end of such reasonable period as may be specified; and
- (b) at such place as may be specified.

(3) An officer who has authorisation in writing from a supervisory authority to do so may require P without unreasonable delay to—

- (a) provide the officer with specified information or information of a specified description; or
- (b) produce to the officer specified documents or documents of a specified description.

(4) The powers in this regulation may only be exercised by a supervisory authority, or by an officer authorised under paragraph (3) to act on behalf of the supervisory authority, in relation to information or documents which are reasonably required by the supervisory authority in connection with the exercise by the authority of any of its supervisory functions.

(5) Where a supervisory authority or an officer requires information to be provided or documents to be produced under paragraph (1) or (3), the notice must set out the reasons why the information is required to be provided or the documents produced, unless the supervisory authority or (as the case may be) the officer is not permitted to disclose this information.

(6) The supervisory authority may require—

- (a) information contained in a computer or other storage device, or recorded in any other way otherwise than in legible form to be produced to it in legible form or in a form from which the information can readily be produced in visible and legible form; and
- (b) any information provided under this regulation to be provided in such form as it may reasonably require.

(7) The production of a document does not affect any lien which a person has on the document.

(8) If a supervisory authority has power under this regulation to require a person to produce a document but it appears that the document is in the possession of a third person, that power may be exercised by the supervisory authority in relation to the third person.

### **Requests in support of other authorities**

**67.**—(1) On receiving a request to which paragraph (2) applies from a foreign authority, the supervisory authority may exercise the power conferred by regulation 66, and for these purposes, regulation 66 has effect as if it also referred to information and documents reasonably required by the supervisory authority to meet such a request.

(2) This paragraph applies if the request is made by the foreign authority in connection with the exercise by that authority of—

- (a) functions provided for in the fourth money laundering directive;
  - (b) functions provided for in the funds transfer regulation; or
  - (c) functions provided for in the law of a third country equivalent to those provided for in the fourth money laundering directive or the funds transfer regulation.
- (3) In deciding whether or not to exercise its powers under regulation 66 in response to a request, the supervisory authority may take into account in particular—
- (a) whether, in the territory of the foreign authority concerned, corresponding assistance would be given to the supervisory authority;
  - (b) whether the case concerns the breach of a law, or other requirement, which has no close parallel in the United Kingdom or involves the assertion of a jurisdiction not recognised by the United Kingdom;
  - (c) the seriousness of the case and its importance to persons in the United Kingdom.
- (4) The supervisory authority may decide not to exercise its powers under regulation 66 unless the foreign authority undertakes—
- (a) to make such contribution towards the cost of doing so as the supervisory authority considers appropriate; and
  - (b) to comply with such conditions in relation to the information and documents as the supervisory authority considers appropriate.
- (5) Paragraphs (3) and (4) do not apply if the supervisory authority considers that the exercise of its powers is necessary to comply with an EU obligation.
- (6) “Foreign authority” means an authority in a territory which is not part of the United Kingdom which exercises functions referred to in paragraph (2).

### **Requests to other authorities**

- 68.**—(1) This regulation applies if—
- (a) documents or information which are reasonably required by a supervisory authority in connection with the exercise by the authority of any of the functions given to it under these Regulations are not (as far as the supervisory authority is aware) available in the United Kingdom; and
  - (b) the supervisory authority has reason to believe that such documents or information may be held by a person who is within the jurisdiction of a foreign authority.
- (2) A supervisory authority may request the assistance of the foreign authority in obtaining specified information or documents which satisfy the conditions in paragraph (1).
- (3) The information or documents provided to the supervisory authority pursuant to a request under paragraph (2) must only be used—
- (a) for the purpose for which it was provided; or
  - (b) for the purposes of proceedings arising as a result of contravention of a relevant requirement in these Regulations, or proceedings arising out of such proceedings.
- (4) Paragraph (3) does not apply if the foreign authority by which the information or documents were provided consents to its use.
- (5) In this regulation, “foreign authority” has the meaning given in regulation 67(6).

### **Entry, inspection of premises without a warrant etc**

**69.**—(1) Paragraph (2) applies where a duly authorised officer of (or acting on behalf of) a supervisory authority in relation to a relevant person or a payment service provider (“P”) has reasonable grounds to believe that—

- (a) any premises are being used by P in connection with P’s business or professional activities; and
- (b) P may have contravened the requirements of—
  - (i) the fourth money laundering directive,
  - (ii) the funds transfer regulation, or
  - (iii) these Regulations.

(2) The officer may, on producing evidence of the officer’s authority, at any reasonable time—

- (a) enter the premises;
- (b) inspect the premises;
- (c) observe the carrying on of business or professional activities by P;
- (d) inspect any documents or other information found on the premises;
- (e) require any person on the premises to provide an explanation of any document or to state where documents or information might be found;
- (f) inspect any cash found on the premises.

(3) The officer may take copies of, or make extracts from, any documents found as a result of the exercise of the power in paragraph (2).

(4) In this regulation, “duly authorised officer” means—

- (a) an officer of the FCA, authorised in writing to exercise the powers under this regulation on behalf of the FCA or another supervisory authority, by a Head of Department working within the enforcement function of the FCA; or
- (b) an officer of Revenue and Customs authorised in writing to exercise the powers under this regulation on behalf of the Commissioners, or another supervisory authority, by an officer of Revenue and Customs of at least the grade of senior officer.

### **Entry of premises under warrant**

**70.**—(1) A justice may issue a warrant under this regulation if satisfied on information given on oath (or in Scotland by evidence on oath) by a duly authorised officer acting on behalf of a supervisory authority that—

- (a) there are reasonable grounds for believing that the first, second, or third set of conditions is satisfied; or
- (b) there are reasonable grounds for suspecting that the fourth set of conditions is satisfied.

(2) The application for the warrant must—

- (a) identify the premises to which the application relates and state that the premises is not used only as a dwelling;
- (b) state that the officer has reasonable grounds to suspect a warrant is necessary in connection with the exercise of the supervisory functions of the supervisory authority for which the officer is acting and the warrant is sought for the purpose of those functions;
- (c) state that the officer executing the warrant—
  - (i) will give to any person on the premises, when entering the premises, evidence of identification and authority to act on behalf of the supervisory authority, and

- (ii) will give to that person, no later than on entering the premises, a notice identifying and explaining the powers exercisable under this regulation, and
- (d) state that the warrant is sought in relation to material specified in the application, or that there are reasonable grounds for suspecting that there is material falling within regulation 66 on the premises.
- (3) The first set of conditions is—
  - (a) that a person on whom a requirement has been imposed under regulation 66 has failed (wholly or in part) to comply with it, and
  - (b) that on the premises specified in the warrant—
    - (i) there are documents which have been required, or
    - (ii) there is information which has been required.
- (4) The second set of conditions is—
  - (a) that the premises specified in the warrant are premises of—
    - (i) the relevant person or the payment service provider (“P”),
    - (ii) a member of the same group as P; or
    - (iii) a third person referred to in regulation 66(8);
  - (b) that there are on the premises documents or information in relation to which a requirement could be imposed under regulation 66, and
  - (c) that if such a requirement were to be imposed—
    - (i) it would not be complied with, or
    - (ii) the documents or information to which it related would be removed, tampered with or destroyed.
- (5) The third set of conditions is—
  - (a) that an officer has been obstructed in the exercise of the power under regulation 69; and
  - (b) that there is on the premises specified in the warrant documents, information or cash which could be inspected under regulation 69(2)(d) or (f).
- (6) The fourth set of conditions is—
  - (a) that an offence under these Regulations has been, is being or is about to be committed by P; and
  - (b) there is on the premises specified in the warrant information or documents relevant to whether the offence has been, is being or is about to be committed.
- (7) A warrant under this regulation authorises the executing officer—
  - (a) to enter the premises specified in the warrant;
  - (b) to search the premises and take possession of any documents or information appearing to be documents or information of a kind in respect of which the warrant was issued (“the relevant kind”) or to take, in relation to any such documents or information, any other steps which may appear to be necessary for preserving them or preventing interference with them;
  - (c) to inspect any cash found on the premises;
  - (d) to take copies of, or extracts from, any documents or information appearing to be of the relevant kind;
  - (e) to require any person on the premises to provide an explanation of any document or information appearing to be of the relevant kind or to state where it may be found; and

(f) to use such force as may be reasonably necessary.

(8) Where information of the relevant kind is contained in a computer or other storage device, or is recorded in any other way otherwise than in legible form, the warrant authorises the executing officer to take possession of that information in a form in which it can be taken away and in which it is legible.

(9) A warrant under this regulation—

- (a) may be exercised by any executing officer;
- (b) may authorise persons to accompany any executing officer who is executing it;
- (c) may be issued subject to conditions.

(10) The powers in paragraph (7) may be exercised by a person authorised by the warrant to accompany an executing officer; but that person may exercise those powers only in the company of, and under the supervision of, an executing officer.

(11) In England and Wales, sections 15(5) to (8) and 16(3) to (12) of the Police and Criminal Evidence Act 1984<sup>(121)</sup> (execution of warrants and safeguards) apply to warrants issued under this regulation.

(12) In Northern Ireland, Articles 17(5) to (8) and 18(3) to (12) of the Police and Criminal Evidence (Northern Ireland) Order 1989 (execution of warrants and safeguards)<sup>(122)</sup> apply to warrants issued under this regulation.

(13) In this regulation—

“duly authorised officer” means—

- (a) where a warrant is issued on the basis of information given on behalf of the FCA or another supervisory authority, an officer of the FCA authorised in writing to exercise the powers under this regulation by a Head of Department working within the enforcement function of the FCA,
- (b) where a warrant is issued on the basis of information given on behalf of the Commissioners or another supervisory authority, an officer of Revenue and Customs authorised in writing to exercise the powers under this regulation by an officer of Revenue and Customs of at least the grade of senior officer;

“executing officer” means—

- (a) where a warrant is issued on the basis of information given on behalf of the FCA, or of a supervisory authority for which the FCA is acting, a constable,
- (b) where a warrant is issued on the basis of information given on behalf of the Commissioners, or of a supervisory authority for which the Commissioners are acting, an officer of Revenue and Customs;

“justice” means—

- (a) in England and Wales, a justice of the peace;
- (b) in Northern Ireland, a lay magistrate; or
- (c) in Scotland, a sheriff or summary sheriff.

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<sup>(121)</sup> 1984 c.60. Sections 15(5) to (8) and 16(3) to (12) have been amended by sections 113 and 114 of the Serious Organised Crime and Police Act 2005 (c.15), and S.I. 2005/3496. Section 16 has also been amended by paragraph 281 of Schedule 8 to the Courts Act 2003 (c.39).

<sup>(122)</sup> S.I. 1989/1341 (N.I. 12). Articles 17 and 18 have been amended by S.I. 2007/288 (N.I.).



**Retention of documents taken under regulation 66 or 70**

71.—(1) Any material possession of which is taken in accordance with a requirement under regulation 66 or under a warrant issued under regulation 70 (“seized material”) may be retained for so long as it is necessary to retain it (rather than copies of it) in connection with the exercise of the functions of the supervisory authority under these Regulations for the purposes of which any requirement was imposed or the warrant was issued.

(2) If a duly authorised officer (within the meaning of regulation 70(13)) has reasonable grounds for suspecting that—

- (a) the seized material may need to be produced for the purposes of legal proceedings; and
- (b) it might otherwise be unavailable for those purposes,

it may be retained until the proceedings are concluded.

(3) A person claiming to be the owner of any seized material may apply to the Crown Court or (in Scotland) the sheriff or the summary sheriff for an order for the delivery of the material to the person appearing to the court, the sheriff or the summary sheriff to be the owner.

(4) If on an application under paragraph (3), the court or (in Scotland) the sheriff or the summary sheriff cannot ascertain who is the owner of the seized material the court, the sheriff or the summary sheriff may make such order as the court, the sheriff or the summary sheriff thinks fit.

(5) An order under paragraph (3) or (4) does not affect the right of any person to take legal proceedings against any person in possession of seized material for the recovery of the material.

**Provision of information and warrants: safeguards**

72.—(1) A person may not be required under regulation 66, 69 or 70 to produce excluded material, or to provide information, produce documents or answer questions which that person would be entitled to refuse to provide, produce or answer on grounds of legal professional privilege in proceedings in the High Court, except that a lawyer may be required to provide the full name and address of the lawyer’s client.

(2) The provision of information in accordance with regulation 66, 69 or 70, is not to be taken to breach any restriction, however imposed, on the disclosure of information.

(3) Where a disclosure is made in good faith in accordance with regulations 66, 69 or 70 no civil liability arises in respect of the disclosure on the part of the person making the disclosure.

(4) A warrant issued under regulation 70 does not confer the right to seize privileged material or excluded material.

(5) Privileged material is any material which the person would be entitled to refuse to produce on grounds of legal professional privilege in proceedings in the High Court.

(6) In the application of this regulation to Scotland, the references in paragraphs (1) and (5)—

- (a) to proceedings in the High Court are to be read as references to proceedings in the Court of Session; and
- (b) to an entitlement on grounds of legal professional privilege are to be read as references to an entitlement on the grounds of confidentiality of communication—
  - (i) between professional legal advisers and their clients; or
  - (ii) made in connection with or in contemplation of legal proceedings and for the purposes of those proceedings.

(7) For the purposes of this regulation, “excluded material” means personal records which a person has acquired or created in the course of any trade, business, profession or other occupation or for the purposes of any paid or unpaid office and which is held subject—

- (a) to an express or implied undertaking to hold it in confidence; or
- (b) to a restriction on disclosure or an obligation of secrecy contained in any enactment, including an enactment contained in, or made under, an Act passed after this Regulation.

### Admissibility of statements

**73.**—(1) A statement made by a person in response to a requirement imposed under regulations [66\(1\)\(c\)](#), [69\(2\)\(e\)](#) or [70\(7\)\(e\)](#) may not be used in evidence against the person in criminal proceedings.

(2) Paragraph (1) does not apply—

- (a) in the case of proceedings under Parts 2 to 4 of the Proceeds of Crime Act 2002 (confiscation proceedings)([123](#));
- (b) on a prosecution for an offence under section 5 of the Perjury Act 1911 (false statements)([124](#));
- (c) on a prosecution for an offence under Article 10 of the Perjury (Northern Ireland) Order 1979 (false statements)([125](#));
- (d) on a prosecution for an offence under section 44(2) of the Criminal Law (Consolidation) (Scotland) Act 1995 (false statements and declarations)([126](#));
- (e) on a prosecution for an offence under regulation [88](#); or
- (f) for some other offence where, in giving evidence, the person makes a statement inconsistent with the statement mentioned in paragraph (1).

(3) A statement may not be used by virtue of paragraph (2)(f) against a person unless—

- (a) evidence relating to it is adduced; or
- (b) a question relating to it is asked;

by them or on their behalf in the proceedings arising out of the prosecution.

### Powers of relevant officers

**74.**—(1) A relevant officer (“R”) may only exercise powers under this Part pursuant to arrangements made with the FCA or with the Commissioners—

- (a) by or on behalf of the local weights and measures authority of which R is an officer (“R’s authority”); or
- (b) by the Department for the Economy.

(2) Anything done or omitted to be done by, or in relation to, R in the exercise or purported exercise of a power in this Part is to be treated for all purposes as having been done or omitted to be done by, or in relation to—

- (a) an officer of the FCA, if R is acting pursuant to arrangements made with the FCA, or
- (b) an officer of Revenue and Customs, if R is acting pursuant to arrangements made with the Commissioners.

(3) Paragraph (2) does not apply for the purpose of any criminal proceedings brought against R, R’s authority, the Department for the Economy, the FCA or the Commissioners, in respect of anything done or omitted to be done by R.

([123](#)) [2002 c. 29](#).

([124](#)) [1911 c.6](#). Section 5 was amended by virtue of section 1(2) of the Criminal Justice Act [1948 \(c.58\)](#).

([125](#)) [S.I. 1979/1714 \(NI 19\)](#).

([126](#)) [1995 c.39](#).

(4) R must not disclose to any person other than the FCA (if R is acting pursuant to arrangements made with the FCA), the Commissioners (if R is acting pursuant to arrangements made with the Commissioners), R's authority or, as the case may be, the Department of the Economy, information obtained by R in the exercise of such powers unless—

- (a) R has the approval of the FCA or where appropriate the Commissioners to do so, or
- (b) R is under a duty to make the disclosure.

## PART 9

### Enforcement

#### CHAPTER 1

##### General

#### **Meaning of “relevant requirement”**

**75.** For the purposes of this Part, “relevant requirement” has the meaning given in Schedule 6.

#### CHAPTER 2

##### Civil penalties and notices

#### **Power to impose civil penalties: fines and statements**

**76.**—(1) Paragraph (2) applies if a designated supervisory authority is satisfied that any person (“P”) has contravened a relevant requirement imposed on that person.

(2) A designated supervisory authority may do one or both of the following—

- (a) impose a penalty of such amount as it considers appropriate on P;
- (b) publish a statement censuring P.

(3) If a designated supervisory authority considers that another person who was at the material time an officer of P was knowingly concerned in a contravention of a relevant requirement by P, the designated supervisory authority may impose on that person a penalty of such amount as it considers appropriate.

(4) A designated supervisory authority must not impose a penalty on P under this regulation for contravention of a relevant requirement if the authority is satisfied that P took all reasonable steps and exercised all due diligence to ensure that the requirement would be complied with.

(5) Where the FCA proposes to impose a penalty under this regulation on a PRA-authorised person or on a person who has a qualifying relationship with a PRA-authorised person, it must consult the PRA.

(6) In deciding whether P has contravened a relevant requirement, the designated supervisory authority must consider whether at the time P followed—

- (a) any relevant guidelines issued by the European Supervisory Authorities in accordance with—
  - (i) Articles 17, 18.4 or 48.10 of the fourth money laundering directive; or
  - (ii) Article 25 of the funds transfer regulation;
- (b) any relevant guidance which was at the time—
  - (i) issued by the FCA; or

- (ii) issued by any other supervisory authority or appropriate body and approved by the Treasury.
- (7) A penalty imposed under this Part is payable to the designated supervisory authority which imposes it.
- (8) For the purposes of this regulation—
  - (a) “appropriate” means (other than in references to an appropriate body) effective, proportionate and dissuasive;
  - (b) “designated supervisory authority” means the FCA or the Commissioners.

**Power to impose civil penalties: suspension and removal of authorisation**

**77.**—(1) Paragraph (2) applies if the FCA is satisfied that a relevant person or a payment service provider has—

- (a) repeatedly or systematically failed to include the information it is required to include on the payer or the payee under Articles 4, 5 or 6 of the funds transfer regulation;
  - (b) failed to implement effective risk-based procedures in breach of Articles 8 or 12 of the funds transfer regulation;
  - (c) failed to comply with Articles 11, 12 or 16 of the funds transfer regulation, where the failure is a serious one;
  - (d) repeatedly or systematically failed to retain records in breach of Article 16 of the funds transfer regulation; or
  - (e) failed to comply with a relevant requirement.
- (2) The FCA may take one or more of the measures set out in sub-paragraphs (a) and (b)—
- (a) to cancel or suspend, for such period as it considers appropriate—
    - (i) any permission which an authorised person has to carry on a regulated activity;
    - (ii) the authorisation of a payment service provider as an authorised payment institution under the Payment Services Regulations 2009<sup>(127)</sup>;
    - (iii) the registration of a payment service provider as a small payment institution under the Payment Services Regulations 2009;
    - (iv) the authorisation of a payment service provider as an authorised electronic money institution under the Electronic Money Regulations 2011<sup>(128)</sup>; or
    - (v) the registration of a payment service provider as a small electronic money institution under the Electronic Money Regulations 2011;
  - (b) to impose, for such period as it considers appropriate, such limitations or other restrictions as it considers appropriate—
    - (i) in relation to the carrying on of a regulated activity by an authorised person;
    - (ii) on the authorisation of a payment service provider as a payment institution under the Payment Services Regulations 2009;
    - (iii) on the registration of a payment service provider as a small payment institution under the Payment Services Regulations 2009;
    - (iv) on the authorisation of a payment service provider as an electronic money institution under the Electronic Money Regulations 2011; or

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<sup>(127)</sup>S.I. 2009/209.

<sup>(128)</sup>S.I. 2011/99.

- (v) on the registration of a payment service provider as a small electronic money institution under the Electronic Money Regulations 2011.
- (3) In paragraph (2)—
  - (a) “permission” means any permission that the authorised person has, whether given (or treated as given) under Part 4A of FSMA(129);
  - (b) “regulated activity” has the meaning given by section 22 of FSMA(130)).
- (4) The period for which a suspension, limitation or other restriction is to have effect may not exceed 12 months.
- (5) A suspension may relate only to the carrying on of an activity in circumstances specified by the FCA when the suspension is imposed.
- (6) A restriction may, in particular, be imposed so as to require the person concerned to take, or refrain from taking, specified action.
- (7) The FCA may—
  - (a) withdraw a suspension, limitation or other restriction; or
  - (b) vary a suspension, limitation or other restriction so as to reduce the period for which it has effect or otherwise to limit its effect.
- (8) For the purposes of this regulation, “appropriate” means effective, proportionate and dissuasive.

#### **Power to impose civil penalties: prohibitions on management**

**78.**—(1) Paragraph (2) applies if a designated supervisory authority considers that another person who was at the material time an officer of P was knowingly concerned in a contravention of a relevant requirement by P.

(2) The designated supervisory authority may impose one of the following measures on the person concerned—

- (a) a temporary prohibition on the individual concerned holding an office or position involving responsibility for taking decisions about the management of a relevant person or a payment service provider (“having a management role”);
  - (b) a permanent prohibition on the individual concerned having a management role.
- (3) A prohibition may be expressed to expire at the end of such period as the designated supervisory authority may specify, but the imposition of a prohibition under paragraph (2)(a) that expires at the end of a specified period does not affect the designated supervisory authority’s power to impose a new prohibition under paragraph (2)(a).
- (4) A prohibition imposed under paragraph (2) may be expressed to be a prohibition on an individual having a management role in—
- (a) a named relevant person or payment service provider;
  - (b) a relevant person or payment service provider of a description specified by the designated supervisory authority when the prohibition is imposed; or
  - (c) any relevant person or payment service provider.
- (5) A relevant person or payment service provider must take reasonable care to ensure that no individual who is subject to a prohibition under paragraph (2) on having a management role with that relevant person or payment service provider is given such a role, or continues to act in such a role.

(129) Part 4A was substituted by section 11 of the Financial Services Act 2012 (c.21).

(130) 2000 (c.8). Section 22 was amended by section 7 of the Financial Services Act 2012 (c.21).

### **Imposition of civil penalties**

**79.** Any one or more of the powers in regulations 76, 77 and 78 may be exercised by a designated supervisory authority in relation to the same contravention.

### **Injunctions**

**80.**—(1) If, on the application of a designated supervisory authority, the court is satisfied—

- (a) that there is a reasonable likelihood that any person will contravene a relevant requirement; or
- (b) that any person has contravened a relevant requirement and that there is a reasonable likelihood that the contravention will continue or be repeated,

the court may make an order restraining (or in Scotland an interdict prohibiting) the contravention.

(2) If on the application of a designated supervisory authority the court is satisfied—

- (a) that any person has contravened a relevant requirement; and
- (b) that there are steps which could be taken for remedying the contravention,

the court may make an order requiring that person, and any other person who appears to have been knowingly concerned in the contravention, to take such steps as the court may direct to remedy it.

(3) If, on the application of a designated supervisory authority, the court is satisfied that any person may have—

- (a) contravened a relevant requirement; or
- (b) been knowingly concerned in the contravention of a relevant requirement,

the court may make an order restraining (or in Scotland an interdict prohibiting) that person from disposing or otherwise dealing with any assets belonging to that person which it is satisfied that that person is reasonably likely to dispose of or otherwise deal with.

(4) The jurisdiction in this regulation is exercisable by the High Court and the Court of Session.

(5) In paragraph (2), references to remedying a contravention include references to mitigating its effect.

### **The FCA: disciplinary measures (procedure)**

**81.**—(1) When determining the type of sanction, and level of any penalty, to be imposed on a person (“P”) under regulation 76, 77 or 78, the FCA must take into account all relevant circumstances, including where appropriate—

- (a) the gravity and the duration of the contravention or failure;
- (b) the degree of responsibility of P;
- (c) the financial strength of P;
- (d) the amount of profits gained or losses avoided by P;
- (e) the losses for third parties caused by the contravention or failure;
- (f) the level of co-operation of P with the FCA;
- (g) previous contraventions or failures by P; and
- (h) any potential systemic consequences of the contravention or failure.

(2) If the FCA proposes to impose a sanction on P under regulation 76, 77 or 78 it must give P a warning notice.

(3) Where the FCA proposes to impose a penalty on a PRA-authorised person or on a person who has a qualifying relationship with a PRA-authorised person, it must consult the PRA.

(4) Section 387 of FSMA (warning notices)(**131**) applies in relation to a notice given under paragraph (2) as it applies in relation to a warning notice given by the FCA under that Act, subject to paragraph (5).

(5) In complying with section 387(1)(a), a warning notice must—

- (a) if it is about a proposal to publish a statement, set out the terms of the statement;
- (b) if it is about a proposal to impose a penalty, specify the amount of the penalty;
- (c) if it is about a proposal to impose a suspension, limitation or other restriction—
  - (i) state the period for which the suspension, limitation or restriction is to have effect,
  - (ii) sets out the terms of the suspension, limitation or other restriction;
- (d) if it is about a proposal to cancel, state the date from which the cancellation is to have effect;
- (e) if it is about a proposal to impose a prohibition on an individual, set out the terms of the proposed prohibition.

(6) If the FCA decides to impose a sanction on P under regulation 76, 77 or 78 it must without undue delay give P a decision notice.

(7) If the decision is to publish a statement, the decision notice must set out the terms of the statement.

(8) If the decision is to impose a penalty, the decision notice must specify the amount of the penalty.

(9) If the decision is to impose a suspension, limitation or other restriction, the decision notice must—

- (a) state the period for which the suspension, limitation or restriction is to have effect;
- (b) sets out the terms of the suspension, limitation or other restriction.

(10) If the decision is to cancel a permission, registration or authorisation, the decision notice must state the date from which the cancellation is to have effect.

(11) If the decision is to impose a prohibition on an individual, the decision notice must set out the terms of the prohibition.

(12) Section 388 of FSMA (decision notices)(**132**) applies in relation to a decision notice given under paragraph (6) as it applies in relation to a decision notice given by the FCA under FSMA, subject to paragraph (13).

(13) Section 388 of FSMA has effect for the purposes of paragraph (12) as if—

- (a) in subsection (1)(e)(i) for “this Act” there were substituted “regulation 93(1) of the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017”, and
- (b) subsections (1A) and (2) were omitted.

### **The FCA: procedure (general)**

**82.**—(1) Sections 389 (notices of discontinuance), 390 (final notices) and 392 (application of sections 393 and 394) to 395 (the FCA’s and PRA’s procedures) of FSMA(**133**) apply in relation to

(**131**) Section 387 was amended by paragraph 26 of Schedule 9 to the Financial Services Act 2012 (c.21), paragraph 12 of Schedule 3 to the Financial Services (Banking Reform) Act 2013 (c.33).

(**132**) Section 388 was amended (and subsection (1A) inserted) by paragraph 27 of Schedule 9 to the Financial Services Act 2012 and paragraph 13 of Schedule 3 to the Financial Services (Banking Reform) Act 2013.

(**133**) Section 389 was amended by paragraph 28 of Schedule 9 to the Financial Services Act 2012. Section 390 was amended by paragraph 29 of Schedule 9 to the Financial Services Act 2012 and S.I. 2010/22. Section 392 was amended by paragraph 29 of Schedule 2 to the Financial Services Act 2010 (c.28); section 18 of, paragraph 31 of Schedule 9, paragraph 37 of Schedule 8



a warning notice given under regulation 81(2) and a decision notice given under regulation 81(6) as they apply in relation to a warning notice or decision notice given under FSMA, subject to paragraphs (2) to (3).

(2) Section 390 of FSMA has effect as if—

(a) for subsection (4) there were substituted—

“(4) A final notice about a cancellation, suspension, limitation or other restriction under regulation 77 or 78 of the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (“the 2017 Regulations”) must—

(a) specify the permission, authorisation or registration which is being cancelled, suspended or the terms of the limitation or other restriction being imposed, and

(b) give details of—

(i) the date on which the cancellation, suspension, limitation or other restriction has effect, and

(ii) the period for which the suspension, limitation or other restriction is imposed.

(4A) A final notice about a prohibition under regulation 78 of the 2017 Regulations must—

(a) specify the extent of the prohibition; and

(b) give details of the date on which the prohibition has effect, and if relevant the period for which it has effect.”;

(b) subsections (6), (7) and (10) were omitted.

(3) Section 392 of FSMA has effect as if for paragraphs (a) and (b) there were substituted—

“(a) a warning notice given under regulation 81(2) of the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (“the 2017 Regulations”);

(b) a decision notice given under regulation 81(6) of the 2017 Regulations.”.

### **The Commissioners: disciplinary measures (procedure)**

**83.—**(1) When determining the type of sanction, and level of any penalty, to be imposed on a person (“P”) under regulation 76 or 78, the Commissioners must take into account all relevant circumstances, including where appropriate—

(a) the gravity and the duration of the contravention or failure;

(b) the degree of responsibility of P;

(c) the financial strength of P;

(d) the amount of profits gained or losses avoided by P;

(e) the losses for third parties caused by the contravention or failure;

(f) the level of co-operation of P with the Commissioners;

(g) previous contraventions or failures by P; and

(h) any potential systemic consequences of the contravention or failure.

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and paragraph 8 of Schedule 13 to, the Financial Services Act 2012; section 4 of the Financial Services (Banking Reform) Act 2013 (c.33); S.I. 2007/126 and 2013/1388. Section 395 was amended by sections 17, 18, 19 and 24 of, and paragraph 34 of Schedule 9 to the Financial Services Act 2012, and paragraph 14 of Schedule 3 to the Financial Services (Banking Reform) Act 2013; S.I. 2005/381, 2005/1433, 2007/1973, 2009/534 and 2013/1388.

(2) Where the Commissioners decide to impose a penalty or publish a statement under regulation 76, or impose a prohibition under regulation 78, the Commissioners must give P a notice in accordance with paragraph (3).

(3) A notice must be given of—

(a) the Commissioners' decision—

- (i) to impose a penalty, and the amount of the penalty;
- (ii) to publish a statement, and the terms of the statement;
- (iii) to impose a prohibition, and the terms of the prohibition;

(b) the Commissioners' reasons for imposing a penalty, publishing a statement or imposing a prohibition;

(c) the right to a review under regulation 94; and

(d) the right to appeal under regulation 99.

(4) A notice about a penalty must—

(a) state the manner in which and the period within which, the penalty is to be paid;

(b) give details of the way in which the penalty may be recovered if it is not paid by the date stated in the notice.

### **Publication: the FCA**

**84.**—(1) Where a warning notice is given by the FCA under regulation 81(2), neither the FCA nor any person to whom it is given or copied may publish the notice or any details concerning it.

(2) Where the FCA gives a decision notice under regulation 81(6), the FCA must publish on their official website such information about the matter to which the notice relates as it considers appropriate, subject to paragraphs (3) to (9).

(3) Where the FCA publishes information under paragraph (2) or (4) about a matter to which a decision notice relates and the person to whom the notice is given refers the matter to the Upper Tribunal (see regulation 93), the FCA must, without undue delay, publish on its official website information about the status of the appeal and its outcome.

(4) Subject to paragraph (5), (6) and (9) where the FCA gives a final notice, it must, without undue delay, publish on its official website information on the type and nature of the breach and the identity of the person on whom the sanction or measure is imposed.

(5) Subject to paragraph (8) and (9), information about a matter to which a final notice relates must be published in accordance with paragraph (6) where—

- (a) the FCA considers it to be disproportionate to publish the identity of a legal person on whom the sanction or measure is imposed following an assessment by the FCA of the proportionality of publishing the person's identity;
- (b) the FCA considers it to be disproportionate to publish the personal data of the individual on whom the sanction or measure is imposed following an assessment by the FCA of the proportionality of publishing the personal data; or
- (c) the publication of information under paragraph (4) would jeopardise the stability of the financial markets or an ongoing investigation.

(6) Where paragraph (5) applies, the FCA must—

- (a) defer the publication of the information about a matter to which a final notice relates until such time as paragraph (5) ceases to apply; or
- (b) publish the information on an anonymous basis if publication on that basis would ensure the effective protection of any anonymised personal data in the information.

(7) Where paragraph (6)(b) applies, the FCA may make such arrangements as to the publication of information (including as to the timing of publication) as are necessary to preserve the anonymity of the person on whom the sanction or measure is imposed.

(8) The FCA may make arrangements for the postponed publication of personal data that is anonymised in information it publishes under paragraph (6)(b) if—

- (a) the publication of the data is postponed for a reasonable period of time; and
- (b) the FCA considers that paragraphs (5)(b) and (6)(b) will no longer apply in respect of that data at the time of the postponed publication.

(9) Information about a matter to which a final notice relates must not be published if publication in accordance with paragraph under paragraph (6) is considered by the FCA insufficient to ensure—

- (a) that the stability of the financial markets would not be put in jeopardy; or
- (b) that the publication of the information would be proportionate with regard to sanctions or measures which are considered by the FCA to be of a minor nature.

(10) Where the FCA publishes information in accordance with paragraphs (2) to (8), the FCA must ensure that the information remains on its official website for at least five years, unless the information is personal data and the Data Protection Act 1998(134) requires the information to be retained for a different period.

(11) For the purposes of this regulation “personal data” has the meaning given in section 1 of the Data Protection Act 1998 (basic interpretative provisions)(135).

### **Publication: the Commissioners**

**85.**—(1) Where the Commissioners give a notice under regulation 83, the Commissioners must publish on their official website such information about the matter to which the notice relates as they consider appropriate, subject to paragraphs (2) to (8).

(2) Where the Commissioners publish information under paragraph (1) or (3) about a matter to which a notice under regulation 83 relates and the person to whom the notice is given refers the matter to the tribunal (see regulation 99), the Commissioners must, without undue delay, publish on their official website information about the status of the appeal and its outcome.

(3) Subject to paragraph (4), (5) and (8) where the Commissioners give a notice under regulation 83, they must, without undue delay, publish on their official website information on the type and nature of the breach and the identity of the person on whom the sanction or measure is imposed.

(4) Subject to paragraph (7) and (8), information about a matter to which a notice under regulation 83 relates must be published in accordance with paragraph (5) where—

- (a) the Commissioners consider it to be disproportionate to publish the identity of a legal person on whom the sanction or measure is imposed following an assessment by the Commissioners of the proportionality of publishing the person’s identity;
- (b) the Commissioners consider it to be disproportionate to publish the personal data of the individual on whom the sanction or measure is imposed following an assessment by the Commissioners of the proportionality of publishing the personal data; or
- (c) the publication of information under paragraph (3) would jeopardise the stability of the financial markets or an ongoing investigation.

(5) Where paragraph (4) applies, the Commissioners must—

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(134) 1998 (c.29).

(135) Section 1 was amended by section 68 of and Part 3 of Schedule 8 to the Freedom of Information Act 2000 (c.36), and by S.I. 2004/3089.

- (a) defer the publication of the information about a matter to which a notice under regulation 83 relates until such time as paragraph (4) ceases to apply; or
  - (b) publish the information on an anonymous basis if publication on that basis would ensure the effective protection of any anonymised personal data in the information.
- (6) Where paragraph (5)(b) applies, the Commissioners may make such arrangements as to the publication of information (including as to the timing of publication) as are necessary to preserve the anonymity of the person on whom the sanction or measure is imposed.
- (7) The Commissioners may make arrangements for the postponed publication of personal data that is anonymised in information they publish under paragraph (5)(b) if—
- (a) the publication of the data is postponed for a reasonable period of time; and
  - (b) the Commissioners consider that paragraphs (4)(b) and (5)(b) will no longer apply in respect of that data at the time of the postponed publication.
- (8) Information about a matter to which a notice relates must not be published if publication in accordance with paragraph under paragraph (5) is considered by the Commissioners insufficient to ensure—
- (a) that the stability of the financial markets would not be put in jeopardy; or
  - (b) that the publication of the information would be proportionate with regard to sanctions or measures which are considered by the Commissioners to be of a minor nature.
- (9) Where the Commissioners publish information in accordance with paragraphs (1) to (7), the Commissioners must ensure that the information remains on their official website for at least five years, unless the information is personal data and the Data Protection Act 1998(136) requires the information to be retained for a different period.
- (10) For the purposes of this regulation “personal data” has the meaning given in section 1 of the Data Protection Act 1998 (basic interpretative provisions)(137).

### CHAPTER 3

#### Criminal offences, penalties and proceedings etc.

##### **Criminal offence**

**86.**—(1) A person who contravenes a relevant requirement imposed on that person is guilty of an offence and liable—

- (a) on summary conviction—
  - (i) in England and Wales, to imprisonment for a term not exceeding three months, to a fine or to both;
  - (ii) in Scotland or Northern Ireland, to imprisonment for a term not exceeding three months, to a fine not exceeding the statutory maximum or to both;
- (b) on conviction on indictment, to imprisonment for a term not exceeding two years, to a fine, or to both.

(2) In deciding whether a person has committed an offence under paragraph (1), the court must decide whether that person followed—

- (a) any guidelines issued by the European Supervisory Authorities in accordance with Article 17, 18.4 and 48.10 of the fourth money laundering directive or Article 25 of the funds transfer regulation; and

(136) 1998 (c.29).

(137) Section 1 was amended by section 68 of and Part 3 of Schedule 8 to the Freedom of Information Act 2000 (c.36), and by S.I. 2004/3089.

(b) any relevant guidance which was at the time—

(i) issued by the FCA; or

(ii) issued by any other supervisory authority or appropriate body and approved by the Treasury.

(3) A person is not guilty of an offence under this regulation if that person took all reasonable steps and exercised all due diligence to avoid committing the offence.

(4) Where a person has been convicted of an offence under this regulation, that person is not also to be liable to a sanction under Chapter 2 of this Part.

### **Offences of prejudicing investigations**

**87.**—(1) This regulation applies if a person (“P”) knows or suspects that an appropriate officer is acting (or proposing to act) in connection with an investigation into a potential contravention of a relevant requirement which is being or is about to be conducted.

(2) P commits an offence if—

(a) P makes a disclosure which is likely to prejudice the investigation; or

(b) P falsifies, conceals, destroys or otherwise disposes of, or causes or permits the falsification, concealment, destruction or disposal of, documents which are relevant to the investigation.

(3) P does not commit an offence under paragraph (2)(a) if—

(a) P does not know or suspect that the disclosure is likely to prejudice the investigation;

(b) the disclosure is made in the exercise of a function under these Regulations, or in compliance with a requirement imposed by or under these Regulations;

(c) the disclosure is made in the exercise of a function, or in compliance with a requirement imposed, by or under the Terrorism Act 2000(**138**);

(d) the disclosure is made in the exercise of a function, or in compliance with a requirement imposed, by or under the Proceeds of Crime Act 2002(**139**);

(e) the disclosure is made in the exercise of a function, or in compliance with a requirement imposed, under any Act relating to criminal conduct or benefit from criminal conduct; or

(f) P is a professional legal adviser and the disclosure falls within paragraph (6).

(4) Criminal conduct is conduct which—

(a) constitutes an offence in any part of the United Kingdom; or

(b) would constitute an offence in any part of the United Kingdom if it occurred there.

(5) A person benefits from conduct if that person obtains property as a result of or in connection with the conduct.

(6) Subject to paragraph (7), a disclosure falls within this paragraph if it is a disclosure—

(a) to (or to a representative of) a client of the professional legal adviser in connection with the giving by the adviser of legal advice to the client; or

(b) to any person in connection with legal proceedings or contemplated legal proceedings.

(7) A disclosure does not fall within paragraph (6) if it is made with the intention of furthering a criminal purpose.

(8) P does not commit an offence under paragraph (2)(b) if—

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(138) 2000 c.11.

(139) 2002 c. 29.

- (a) P does not know or suspect that the documents are relevant in connection with the investigation; or
  - (b) P does not intend to conceal any facts disclosed by the documents from any appropriate officer acting in connection with the investigation.
- (9) A person guilty of an offence under paragraph (2) is liable—
- (a) on summary conviction—
    - (i) in England and Wales, to imprisonment for a term not exceeding three months, to a fine or to both,
    - (ii) in Scotland or Northern Ireland, to imprisonment for a term not exceeding three months, to a fine not exceeding the statutory maximum or to both;
  - (b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine, or to both.
- (10) For the purposes of this regulation—
- “appropriate officer” means—
- (a) an officer of the FCA, including a member of the FCA’s staff or an agent of the FCA;
  - (b) an officer of Revenue and Customs;
  - (c) an employee or agent of a professional body listed in Schedule 1 who is authorised by the body to act on behalf of the body for the purposes of this Part; or
  - (d) a relevant officer;
- “relevant officer” means—
- (a) in Great Britain, an officer of a local weights and measures authority;
  - (b) in Northern Ireland, an officer of the Department for the Economy;
- acting pursuant to arrangements made with the FCA or with the Commissioners for the purposes of these Regulations.

### **Information offences**

**88.—**(1) A person (“P”) commits an offence if, in purported compliance with a requirement imposed on P by or under these Regulations, P provides information to any person which is false or misleading in a material particular, and—

- (a) P knows that the information is false or misleading; or
  - (b) P is reckless as to whether the information is false or misleading.
- (2) A person guilty of an offence under paragraph (1) is liable—
- (a) on summary conviction—
    - (i) in England and Wales, to imprisonment for a term not exceeding three months, to a fine or to both,
    - (ii) in Scotland or Northern Ireland, to imprisonment for a term not exceeding three months, to a fine not exceeding the statutory maximum or to both;
  - (b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both.
- (3) A person who discloses information in contravention of a relevant requirement is guilty of an offence and liable—
- (a) on summary conviction—

- (i) in England and Wales, to imprisonment for a term not exceeding three months, to a fine or to both,
  - (ii) in Scotland or Northern Ireland, to imprisonment for a term not exceeding three months, to a fine not exceeding the statutory maximum or to both;
  - (b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both.
- (4) It is a defence for a person charged with an offence under paragraph (3) of disclosing information to prove that they reasonably believed—
- (a) that the disclosure was lawful; or
  - (b) that the information had already and lawfully been made available to the public.

### **Proceedings: general**

**89.**—(1) Proceedings for an offence under these Regulations may be instituted by—

- (a) order of the Commissioners;
- (b) a local weights and measures authority;
- (c) the Department for the Economy;
- (d) the Director of Public Prosecutions; or
- (e) the Director of Public Prosecutions for Northern Ireland.

(2) Where proceedings under paragraph (1) are instituted by order of the Commissioners, the proceedings must be brought in the name of an officer of Revenue and Customs.

(3) A local weights and measures authority must, whenever the FCA or (where the authority is acting pursuant to arrangements made with the Commissioners) the Commissioners require, report in such form and with such particulars as the FCA or the Commissioners require on the exercise of its functions under these Regulations.

(4) Where the Commissioners investigate, or propose to investigate, any matter with a view to determining—

- (a) whether there are grounds for believing that an offence under these Regulations has been committed by any person; or
- (b) whether a person should be prosecuted for such an offence,

that matter is to be treated as an assigned matter within the meaning of section 1(1) of the Customs and Excise Management Act 1979 (interpretation)(140).

(5) Paragraphs (1) and (3) do not extend to Scotland.

(6) In its application to the Commissioners acting in Scotland, paragraph (4)(b) is to be read as referring to the Commissioners determining whether to refer the matter to the Crown Office and Procurator Fiscal Service with a view to the Procurator Fiscal determining whether a person should be prosecuted for such an offence.

### **Proceedings: jurisdiction**

**90.**—(1) Proceedings against any person for an offence under these Regulations may be taken before the appropriate court in the United Kingdom having jurisdiction in the place where that person is for the time being.

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(140) 1979 c.2. The definition of “assigned matter” was substituted by paragraph 22 of Schedule 4 to the Commissioners of Revenue and Customs Act 2006 (c.11) and amended by section 24(7) of the Scotland Act 2012 (c.11) and section 7 of the Wales Act 2014 (c.29).



(2) Proceedings against any person for an offence under these Regulations which cannot be taken under paragraph (1) may be taken at any appropriate court in the United Kingdom.

(3) An offence falling under these Regulations which is committed wholly or partly outside the United Kingdom may for all incidental purposes be treated as having been committed within the jurisdiction of the court where proceedings were taken.

### **Proceedings: partnership or unincorporated association**

**91.**—(1) Proceedings for an offence alleged to have been committed by—

- (a) a partnership must be brought in the name of the partnership; or
- (b) an unincorporated association must be brought in the name of the association,

and not in that of its members.

(2) A fine imposed on—

- (a) a partnership on its conviction of an offence is to be paid out of the funds of the partnership; and
- (b) an unincorporated association on its conviction of an offence is to be paid out of the funds of the association.

(3) Rules of court relating to the service of documents are to have effect as if a partnership or unincorporated association were a body corporate.

(4) In proceedings for an offence brought against a partnership or an unincorporated association—

- (a) section 33 of the Criminal Justice Act 1925(**141**) (procedure on charge of offence against corporation) and Schedule 3 to the Magistrates' Courts Act 1980(**142**) (corporations) apply as they do in relation to a body corporate; and
- (b) section 18 of the Criminal Justice (Northern Ireland) Act 1945(**143**) (procedure on charge) and Schedule 4 to the Magistrates' Courts (Northern Ireland) Order 1981(**144**) (corporations) apply as they do in relation to a body corporate.

### **Offence by bodies corporate, partnership or unincorporated association**

**92.**—(1) If an offence under this Part committed by a body corporate is shown—

- (a) to have been committed with the consent or the connivance of an officer of the body corporate; or
- (b) to be attributable to any neglect on the part of an officer,

the officer (as well as the body corporate) is guilty of the offence and is liable to be proceeded against and punished accordingly.

(2) If the affairs of a body corporate are managed by its members, paragraph (1) applies in relation to the acts and defaults of a member in connection with their functions of management as if the member was a director of the body.

(3) If an offence under this Part committed by a partnership is shown—

- (a) to have been committed with the consent or the connivance of an officer; or
- (b) to be attributable to any neglect on the part of an officer,

(**141**) 1995 c.86. Section 33 was amended by Schedule 6 to the Magistrates' Court Act 1952 (c.55) and paragraph 19 of Schedule 8 to the Courts Act 1971 (c.23).

(**142**) 1980 c.43. Schedule 3 was amended by sections 25 and 101 and Schedule 13 to the Criminal Justice Act 1991; paragraph 51 of Schedule 3 and by Schedule 37 to the Criminal Justice Act 2003 (c.44).

(**143**) 1945 c.15 (N.I.1). Section 18 was amended by paragraph 1 of Schedule 12 to the Justice (Northern Ireland) Act 2002 (c.26) and by S.I. 1972/538 (N.I.1).

(**144**) S.I. 1981/1675 (N.I. 26).

that officer (as well as the partnership) is guilty of the offence and is liable to be proceeded against and punished accordingly.

(4) If an offence under this Part committed by an unincorporated association (other than a partnership) is shown—

(a) to have been committed with the consent or the connivance of an officer of the association;  
or

(b) to be attributable to any neglect on the part of an officer,

that officer (as well as the association) is guilty of the offence and is liable to be proceeded against and punished accordingly.

## PART 10

### Appeals

#### CHAPTER 1

##### Decisions of the FCA

#### Appeals against decisions of the FCA

**93.**—(1) A person may appeal from a decision by the FCA under these Regulations to the Upper Tribunal.

(2) The provisions of Part 9 of FSMA (hearings and appeals), apply, subject to the modifications set out in paragraph (3), in respect of appeals to the Upper Tribunal made under this regulation as they apply in respect of references made to that Tribunal under that Act.

(3) Part 9 of FSMA has effect as if—

(a) in section 133 (proceedings before Tribunal: general provision), in subsection (7A)(**145**), after paragraph (o) there were inserted—

“(p) a decision to take action under any of regulations 76 to 78 of the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017.”; and

(b) for section 133A(**146**) there were substituted—

#### “Proceedings before Tribunal: decision notices

**133A.**—(1) The action specified in a decision notice given under regulation 81(6) of the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 must not be taken—

(a) during the period within which the matter to which the notice relates may be referred to the Tribunal under the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017; and

(b) if the matter is so referred, until the reference, and any appeal against the Tribunal’s determination, has been finally disposed of.

(**145**) 2000 c.8. Subsection 7A was inserted by section 23 of the Financial Services Act 2012 (c.21) and amended by section 4(2) of the Financial Services (Banking Reform) Act 2013 (c.33) and by S.I. 2013/1388; 20143/3329.

(**146**) Section 133A was inserted by S.I. 2010/22 and amended by section 23 of the Financial Services Act 2012.

(2) The Tribunal may, on determining a reference under these Regulations in respect of a decision of the FCA, make recommendations as to its regulating provisions or its procedures.”.

## CHAPTER 2

### Decisions of the Commissioners

#### Offer of review

**94.**—(1) The Commissioners must offer a person (“P”) a review of a decision that has been notified to P if an appeal lies under this Chapter in respect of the decision.

(2) The offer of a review must be made by notice given to P at the same time as the decision is notified to P.

(3) This regulation does not apply to the notification of the conclusions of a review.

#### Review by the Commissioners

**95.**—(1) The Commissioners must review a decision if—

- (a) they have offered a review of the decision under this Chapter, and
- (b) the person concerned (“P”) notifies the Commissioners that P accepts the offer within 30 days from the date of the notice of the offer of a review.

(2) P may not notify acceptance of the offer where P has already appealed against the decision to the tribunal under regulation 100.

(3) The Commissioners must not review a decision if P has appealed to the tribunal under regulation 100 in respect of the decision.

#### Extensions of time

**96.**—(1) If under this Chapter the Commissioners have offered a person (“P”) a review of a decision the Commissioners may within the relevant period notify P that the relevant period is extended.

(2) If notice is given, the relevant period is extended to the end of 30 days from—

- (a) the date of the notice; or
- (b) any other date set out in the notice or a further notice.

(3) More than one notice may be given under paragraph (1).

(4) In this regulation, “relevant period” means—

- (a) the period of 30 days referred to in regulation 95(1)(b); or
- (b) in the case where one or more notices have already been given under paragraph (1) the period as extended (or as most recently extended) in accordance with paragraph (2).

#### Review out of time

**97.**—(1) This regulation applies if—

- (a) the Commissioners have offered a review of a decision under this Chapter to a person (“P”); and
- (b) P does not accept the offer within the time allowed under regulation 95(1)(b) or 96(2).

(2) The Commissioners must review the decision if—

- (a) after the time allowed, P notifies the Commissioners in writing requesting a review out of time;
- (b) the Commissioners are satisfied that P had a reasonable excuse for not accepting the offer of a review within the time allowed; and
- (c) the Commissioners are satisfied that P made the request without unreasonable delay after the excuse had ceased to apply.

### **Nature of review etc**

**98.**—(1) This regulation applies if the Commissioners are required to undertake a review under regulation 95 or 97.

(2) The nature and extent of the review are to be such as appear appropriate to the Commissioners in the circumstances.

(3) For the purpose of paragraph (2), the Commissioners must, in particular, have regard to steps taken before the beginning of the review—

- (a) by the Commissioners in reaching the decision; and
- (b) by any person in seeking to resolve disagreement about the decision.

(4) The review must take account of any representations made by the person (“P”) at a stage which gives the Commissioners a reasonable opportunity to consider them.

(5) The review may conclude that the decision is to be—

- (a) upheld;
- (b) varied; or
- (c) cancelled.

(6) The Commissioners must give P notice of the conclusions of the review and their reasoning within—

- (a) a period of 45 days beginning with the relevant date; or
- (b) such other period as the Commissioners and P may agree.

(7) In paragraph (6), “relevant date” means—

- (a) in a case falling within regulation 95, the date the Commissioners received notification accepting the offer of a review from P; or
- (b) in a case falling within regulation 97, the date on which the Commissioners decided to undertake the review.

(8) Where the Commissioners are required to undertake a review but do not give notice of the conclusions within the time period specified in paragraph (6), the review is to be treated as having concluded that the decision is upheld.

(9) If paragraph (8) applies, the Commissioners must notify P of the conclusion which the review is treated as having reached.

### **Appeals against decisions of the Commissioners**

**99.**—(1) Any person who is the subject of a decision by the Commissioners under these Regulations may appeal to the tribunal in accordance with regulation 100.

(2) The provisions of Part 5 of the Value Added Tax Act 1994(147) (appeals), subject to the modifications set out in paragraph (3), apply in respect of appeals to the tribunal made under this

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(147) 1994 c.23.

regulation as they apply in respect of appeals made to the tribunal under section 83 of that Act (appeals)(148).

(3) Part 5 of the Value Added Tax Act 1994 has effect as if sections 83A(149) to 84(150), 85A and 85B (appeals and reviews)(151) were omitted.

(4) The tribunal hearing an appeal under paragraph (1) has the power to—

- (a) quash or vary any decision of the Commissioners, including the power to reduce any penalty to such amount (including nil) as the tribunal thinks appropriate; and
- (b) substitute the tribunal's own decision for any decision quashed on appeal.

(5) For the purpose of an appeal under this regulation, the meaning of “tribunal” is as defined in section 82 of the Value Added Tax Act 1994 (meaning of tribunal)(152).

### **Appeals against decisions of the Commissioners: procedure**

**100.**—(1) Subject to paragraphs (2) to (4), an appeal under regulation 99 is to be made to the tribunal before—

- (a) the end of the period of 30 days beginning with the date of the notice notifying the decision to which the appeal relates; or
- (b) if later, the end of the relevant period (within the meaning of regulation 96).

(2) In a case where the Commissioners are required to undertake a review under regulation 95—

- (a) an appeal may not be made until the conclusion date; and
- (b) any appeal is to be made within the period of 30 days beginning with the conclusion date.

(3) In a case where the Commissioners are requested to undertake a review in accordance with regulation 97—

- (a) an appeal may not be made—
  - (i) unless the Commissioners have notified the person concerned (“P”) as to whether or not a review will be undertaken; and
  - (ii) if the Commissioners have notified P that a review will be undertaken, until the conclusion date;
- (b) any appeal where sub-paragraph (a)(ii) applies is to be made within the period of 30 days beginning with the conclusion date; and
- (c) if the Commissioners have notified P that a review will not be undertaken, an appeal may be made only if the tribunal gives permission to appeal.

(4) In a case where regulation 98(8) applies, an appeal may be made at any time from the end of the period specified in regulation 98(6) to the date 30 days after the conclusion date.

(5) An appeal may be made after the end of the period specified in paragraph (1), (2)(b), 3(b) or (4) if the tribunal gives permission to appeal.

(6) In this regulation, “conclusion date” means the date of the notice notifying the conclusions of the review.

(148) Section 83 was amended by section 77(4) of the Finance Act 2009 (c.10), section 200(3) of the Finance Act 2012 (c.14), section 124 of the Finance Act 2016 (c.24) and by S.I. 2009/56.

(149) Section 83A was inserted by S.I. 2009/56.

(150) Section 84 was amended by section 31(4) of the Finance Act 1996 (c.8); section 31(3) of the Finance Act 1997 (c.16);, paragraph 4 of Schedule 2 to the Finance Act 1999 (c.16); section 23(3) of the Finance Act 2002 (c.23); section 17 of the Finance Act 2003 (c.14); paragraph 5 of Schedule 2 to the Finance Act 2004 (c.12); section 21(5) of the Finance Act 2006 (c.25); section 93(9) of the Finance Act 2007 (c.11); paragraph 17 of Schedule 22(3) to the Finance Act 2014 (c.26) and section 124(4) of the Finance Act 2016 (c.24) and by S.I. 2008/1146 and 2009/56.

(151) Sections 85A and 85B were inserted by S.I. 2009/56.

(152) Section 82 was amended by S.I. 2009/56.

## PART 11

### Miscellaneous Provisions

#### Recovery of charges and penalties through the court

**101.** Any charge or penalty imposed on a relevant person or on a payment service provider by the FCA or the Commissioners under these Regulations is a debt due from that person to the FCA or the Commissioners respectively, and is recoverable accordingly.

#### Costs of supervision

**102.**—(1) The FCA and the Commissioners may impose charges on—

- (a) applicants for approval under Chapter 3 of Part 2;
- (b) applicants for registration under Chapter 2 of Part 6;
- (c) relevant persons supervised by them;
- (d) payment service providers supervised by them;
- (e) professional bodies listed in Schedule 1, for which they undertake enforcement action in relation to relevant persons supervised by those professional bodies.

(2) Charges levied under paragraph (1) must not exceed such amount as the FCA or the Commissioners (as the case may be) consider will enable them to meet any expenses reasonably incurred by them in carrying out their functions under these Regulations or for any incidental purpose (including any expenses reasonably incurred by them in undertaking enforcement action on behalf of a self-regulatory organisation).

(3) Without prejudice to the generality of paragraph (2), a charge may be levied in respect of each of the premises at which the relevant person, the provider or a person connected with the relevant person or the provider carries on (or proposes to carry on) business or professional activities.

(4) The FCA must in respect of each of its financial years pay to the Treasury any amounts received by the FCA during the year by way of penalties imposed under Part 9.

(5) The Treasury may give directions to the FCA as to how the FCA is to comply with the duty under paragraph (4).

(6) The directions may in particular—

- (a) specify the time when any payment is required to be made to the Treasury; and
- (b) require the FCA to provide the Treasury at specified times with information relating to penalties that the FCA has imposed under Part 9.

(7) The Treasury must pay into the Consolidated Fund any sums received by them under this regulation.

(8) In paragraph (2), “expenses” includes expenses incurred by a local weights and measures authority or the Department for the Economy pursuant to arrangements made for the purposes of these Regulations with the FCA or with the Commissioners—

- (a) by or on behalf of the authority; or
- (b) by the Department for the Economy.

#### Obligations on public authorities

**103.**—(1) The following bodies and persons must, if they know or suspect or have reasonable grounds for knowing or suspecting that a person is or has engaged in money laundering or terrorist financing, as soon as practicable, inform the NCA—

- (a) the Auditor General for Scotland;
- (b) the Auditor General for Wales;
- (c) the Bank of England;
- (d) the Comptroller and Auditor General;
- (e) the Comptroller and Auditor General for Northern Ireland;
- (f) the FCA;
- (g) the Gambling Commission;
- (h) the Official Solicitor to the Supreme Court;
- (i) the Pensions Regulator;
- (j) the PRA;
- (k) the Public Trustee;
- (l) the Secretary of State, in the exercise of his or her functions under enactments relating to companies and insolvency;
- (m) the Treasury, in the exercise of their functions under FSMA;
- (n) the Treasury Solicitor;
- (o) a designated professional body for the purposes of Part 20 of FSMA (provision of financial services by members of the professions);
- (p) a person or inspector appointed under section 65 (investigations on behalf of FCA) or 66 (inspections and special meetings) of the Friendly Societies Act 1992<sup>(153)</sup>;
- (q) an inspector appointed under section 106 of the Co-operative and Community Benefit Societies 2014<sup>(154)</sup> (appointment of inspectors) or section 18 of the Credit Unions Act 1979<sup>(155)</sup> (power to appoint inspector);
- (r) an inspector appointed under section 431 (investigation of a company on its own application), 432 (other company investigations), 442 (power to investigate company ownership) or 446D (appointment of replacement inspectors) of the Companies Act 1985<sup>(156)</sup>;
- (s) a person or inspector appointed under section 55 (investigations on behalf of FCA) or 56 (inspections and special meetings) of the Building Societies Act 1986<sup>(157)</sup>;
- (t) a person appointed under section 167 (appointment of persons to carry out investigations), 168(3) or (5) (appointment of persons to carry out investigations in particular cases), 169(1)(b) (investigations to support overseas regulator) or 284 (power to investigate affairs of a scheme) of FSMA<sup>(158)</sup>, or under regulations made under section 262(2)(k) (open-ended investment companies) of that Act<sup>(159)</sup>, to conduct an investigation; and

<sup>(153)</sup> 1992 c.40. Section 65 was amended by S.I. 1994/1984; 2001/2617 and 2013/496. Section 66 was amended by S.I. 2009/1941 and 2013/496.

<sup>(154)</sup> 2014 c.14.

<sup>(155)</sup> 1979 c.34. Section 18 was amended by paragraph 9 of Schedule 4 to the Co-operative and Community Benefit Society Act (c.14) and by S.I. 2001/2617; 2002/1501 and 2013/496.

<sup>(156)</sup> 1985 c.6. Section 431 was amended by section 1035(2) of the Companies Act 2006 (c.46) and S.I. 2003/1116, section 432 was amended by sections 55 and 213 of the Companies Act 1989 (c. 40), section 1035(3) of the Companies Act 2006, section 442 was amended by sections 62 and 213(2) of the Companies Act 1989 and by paragraph 1 of Schedule 16 to the Companies Act 2006 and section 446D was inserted by section 1036 of the Companies Act 2006.

<sup>(157)</sup> 1986 c.53. Section 55 was amended by paragraph 21 of Schedule 7 to the Building Societies Act 1987 (c.37) and by S.I. 2013/496, and section 56 was amended by paragraph 22 of Schedule 7 to the Building Societies Act 1997 and by S.I. 2013/496.

<sup>(158)</sup> Section 167 was amended by paragraph 7 of Schedule 12 to the Financial Services Act 2012 (c.21), and by S.I. 2005/575 and 2007/126, section 168(5) and been amended by paragraph 8 of Schedule 12 to the Financial Services Act 2012, section 284 was amended by paragraph 17 of Schedule 18 to the Financial Services Act 2012.

<sup>(159)</sup> Section 262(2)(k) was amended by paragraph 9 of Schedule 18 to the Financial Services Act 2012.



- (u) a person authorised to require the production of documents under section 447 (Secretary of State's power to require production of documents) of the Companies Act 1985<sup>(160)</sup>, or section 84 of the Companies Act 1989<sup>(161)</sup> (exercise of powers by officer).
- (2) A disclosure made under paragraph (1) is not to be taken to breach any restriction, however imposed, on the disclosure of information.
- (3) Where a disclosure under paragraph (1) is made in good faith, no civil liability arises in respect of the disclosure on the part of the person by whom, or on whose behalf, it is made.

### Suspicious activity disclosures

- 104.**—(1) The NCA must make arrangements to provide appropriate feedback on the suspicious activity disclosures it has received at least once a year.
- (2) The feedback referred to in paragraph (1) may be provided by the NCA jointly with another person, or by another person on behalf of the NCA.
  - (3) The feedback referred to in paragraph (1) may be provided in any form the NCA thinks fit.
  - (4) In this regulation, a “suspicious activity disclosure” is a disclosure made to the NCA under—
    - (a) Part 3 of the Terrorism Act 2000 (terrorist property)<sup>(162)</sup>;
    - (b) Part 7 of the Proceeds of Crime Act 2002 (money laundering)<sup>(163)</sup>.

### Disclosure by the Commissioners

- 105.**—(1) The Commissioners may disclose to the FCA information held in connection with their functions under these Regulations if the disclosure is made for the purpose of enabling or assisting the FCA to discharge any of its functions under the Payment Services Regulations 2009<sup>(164)</sup> or the Electronic Money Regulations 2011<sup>(165)</sup>.
- (2) Information disclosed to the FCA under paragraph (1) may not be disclosed by the FCA or any person who receives the information directly or indirectly from the FCA except—
    - (a) to, or in accordance with authority given by, the Commissioners;
    - (b) with a view to the institution of, or otherwise for the purposes of, any criminal proceedings;
    - (c) with a view to the institution of any other proceedings by the FCA, for the purposes of any such proceedings, or for the purposes of any reference to the Upper Tribunal under the Payment Services Regulations 2009; or
    - (d) in the form of a summary or collection of information so framed as not to enable information relating to any particular person to be ascertained from it.

### General restrictions

- 106.** These Regulations do not authorise or require—
- (a) a disclosure, in contravention of any provisions of the Data Protection Act 1998<sup>(166)</sup>, of personal data which are not exempt from those provisions; or

<sup>(160)</sup> 1985 c.6. Section 447 was amended by section 21 of the Companies (Audit, Investigations and Community Enterprise) Act 2004 (c.27), and by section 1038 of the Companies Act 2006.

<sup>(161)</sup> 1989 c.40.

<sup>(162)</sup> 2000 c.11.

<sup>(163)</sup> 2002 c.29.

<sup>(164)</sup> S.I. 2009/209.

<sup>(165)</sup> S.I. 2011/99.

<sup>(166)</sup> 1998 c.29.

- (b) a disclosure which is prohibited by any of Parts 1 to 3 or 5 to 7 of the Investigatory Powers Act 2016<sup>(167)</sup>.

### **Transfers between the United Kingdom and the Channel Islands and the Isle of Man**

**107.** In determining whether a person has failed to comply with any requirement in the funds transfer regulation, any transfer of funds between the United Kingdom and—

- (a) the Channel Islands; or
- (b) the Isle of Man;

is to be treated as a transfer of funds within the United Kingdom.

### **Review**

**108.**—(1) The Treasury must from time to time—

- (a) carry out a review of the regulatory provision 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(3) of the Small Business, Enterprise and Employment Act 2015 (provision for review)<sup>(168)</sup> requires that a review carried out under this regulation must, so far as is reasonable, have regard to how—

- (a) the emission allowance auctioning regulation;
- (b) the fourth money laundering directive; and
- (c) the funds transfer regulation;

are implemented in other member States.

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

- (a) set out the objectives intended to be achieved by the regulatory provision referred to in paragraph (1)(a);
- (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.

(6) In this regulation, “regulatory provision” has the same meaning as in sections 28 to 32 of the Small Business, Enterprise and Employment Act 2015 (see section 32 of that Act).

### **Consequential amendments**

**109.** Schedule 7 makes amendments relating to these Regulations.

### **Revocation and saving provisions**

**110.**—(1) The old money laundering regulations and the old transfer of funds regulations are revoked.

<sup>(167)</sup>2016 c.25.

<sup>(168)</sup>2015 c.26.

(2) The old money laundering regulations and the old transfer of funds regulations shall continue to have effect where the conduct constituting a contravention of one of those Regulations, or an offence under one of those Regulations began before the date on which these Regulations come into force.

(3) Where the old money laundering regulations or the old transfer of funds regulations continue to have effect, a penalty or an offence under the relevant Part of these Regulations is not to have effect in such circumstances.

(4) Where the conduct is found to have been committed over a period of two or more days, or at some point during a period of two or more days, it is to be taken for the purposes of paragraph (2) to have been begun on the earliest of those days.

(5) The “old money laundering regulations” means—

- (a) the Money Laundering Regulations 2007(**169**);
- (b) the Money Laundering (Amendment) Regulations 2007(**170**);
- (c) the Money Laundering (Amendment) Regulations 2011(**171**);
- (d) the Money Laundering (Amendment) Regulations 2012(**172**); and
- (e) the Money Laundering (Amendment) Regulations 2015(**173**).

(6) The “old transfer of funds regulations” means the Transfer of Funds (Information on the Payer) Regulations 2007(**174**).

*David Evennett*

*Andrew Griffiths*

Two of the Lords Commissioners of Her  
Majesty’s Treasury

At 9.20 a.m. on 22nd June 2017

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(**169**) S.I. 2007/2157.

(**170**) S.I. 2007/3299.

(**171**) S.I. 2011/1781.

(**172**) S.I. 2012/2298.

(**173**) S.I. 2015/11.

(**174**) S.I. 2007/3298.