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STATUTORY INSTRUMENTS

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**2019 No. 1511**

**The Money Laundering and Terrorist  
Financing (Amendment) Regulations 2019**

**PART 2**

**Money Laundering Regulations**

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

**2.** The Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017<sup>(1)</sup> are amended in accordance with regulations 3 to 13.

**Amendment of Part 1: introduction**

**3.—(1)** In regulation 3(1) (general interpretation)—

(a) after the definition of “appropriate body” insert—

““art market participant” has the meaning given by regulation 14(1)(d);”;

(b) after the definition of “credit institution” insert—

““cryptoasset exchange provider” has the meaning given by regulation 14A(1);

“custodian wallet provider” has the meaning given by regulation 14A(2);”;

(c) at the end of the definition of “fourth money laundering directive”, insert “, as amended by Directive 2018/843 of the European Parliament and of the Council of 30th May 2018<sup>(2)</sup>;”;

(d) after the definition of “law enforcement authority” insert—

““letting agent” has the meaning given by regulation 13(3);”;

(e) for sub-paragraph (b) in the definition of “specified disclosure obligations” substitute—

“(b) disclosure requirements consistent with Articles 1(4) to (7), 3, 5 to 10, 13 to 19, 20(1), 21 and 23 of Regulation (EU) No 1129/2017 of the European Parliament and of the Council of 14th June 2017 on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market<sup>(3)</sup>;”.

(2) In regulation 7(1) (supervisory authorities)—

(a) in sub-paragraph (a), at the end insert—

“(viii) cryptoasset exchange providers;

(ix) custodian wallet providers;”;

(b) in sub-paragraph (c)(vii), after “estate agents” insert “and letting agents”;

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<sup>(1)</sup> S.I. 2017/692.

<sup>(2)</sup> OJ L 156, 19.06.2018, p.43-74.

<sup>(3)</sup> OJ L 168 30.06.2017, p.12-82.

- (c) after sub-paragraph (c)(vii) insert—  
“(viii) art market participants;”.

**Amendment of Part 2: money laundering and terrorist financing**

**4.—(1) In regulation 8(2) (application)—**

- (a) in sub-paragraph (f), after “estate agents” insert “and letting agents”;  
(b) after sub-paragraph (h) insert—  
“(i) art market participants;  
(j) cryptoasset exchange providers;  
(k) custodian wallet providers.”.

(2) In regulation 11(d) (auditors and others: tax adviser), for “advice about the tax affairs of other persons” substitute “material aid, or assistance or advice, in connection with the tax affairs of other persons, whether provided directly or through a third party”.

(3) In the heading to regulation 13 (estate agents), at the end insert “and letting agents”.

**(4) After regulation 13(2) insert—**

“(3) In these Regulations, “letting agent” means a firm or sole practitioner who, or whose employees, carry out letting agency work, when carrying out such work.

(4) For the purposes of paragraph (3), “letting agency work” means work—

- (a) consisting of things done in response to instructions received from—  
(i) a person (a “prospective landlord”) seeking to find another person to whom to let land, or  
(ii) a person (a “prospective tenant”) seeking to find land to rent, and  
(b) done in a case where an agreement is concluded for the letting of land—  
(i) for a term of a month or more, and  
(ii) at a rent which during at least part of the term is, or is equivalent to, a monthly rent of 10,000 euros or more.

(5) For the purposes of paragraph (3) “letting agency work” does not include the things listed in paragraph (6) when done by, or by employees of, a firm or sole practitioner if neither the firm or sole practitioner, nor any of their employees, does anything else within paragraph (4).

(6) Those things are—

- (a) publishing advertisements or disseminating information;  
(b) providing a means by which a prospective landlord or a prospective tenant can, in response to an advertisement or dissemination of information, make direct contact with a prospective tenant or a prospective landlord;  
(c) providing a means by which a prospective landlord and a prospective tenant can communicate directly with each other;  
(d) the provision of legal or notarial services by a barrister, advocate, solicitor or other legal representative communications with whom may be the subject of a claim to professional privilege or, in Scotland, protected from disclosure in legal proceedings on grounds of confidentiality of communication.

(7) In paragraph (4) “land” includes part of a building and part of any other structure.”.

(5) In the heading to regulation 14 (high value dealers, casinos and auction platforms), for “casinos and auction platforms” substitute “casinos, auction platforms and art market participants”.

(6) In regulation 14(1), at the end insert—

- “(d) “art market participant” means a firm or sole practitioner who—
- (i) by way of business trades in, or acts as an intermediary in the sale or purchase of, works of art and the value of the transaction, or a series of linked transactions, amounts to 10,000 euros or more; or
  - (ii) is the operator of a freeport when it, or any other firm or sole practitioner, by way of business stores works of art in the freeport and the value of the works of art so stored for a person, or a series of linked persons, amounts to 10,000 euros or more;
- (e) “freeport” means a warehouse or storage facility within an area designated by the Treasury as a special area for customs purposes pursuant to section 100A(1) of the Customs and Excise Management Act 1979 (designation of free zones)(4);
- (f) “work of art” means anything which, in accordance with section 21(6) to (6B) of the Value Added Tax Act 1994 (value of imported goods)(5), is a work of art for the purposes of section 21(5)(a) of that Act.”

(7) After regulation 14 insert—

**“Cryptoasset exchange providers and custodian wallet providers**

**14A.—(1)** In these Regulations, “cryptoasset exchange provider” means a firm or sole practitioner who by way of business provides one or more of the following services, including where the firm or sole practitioner does so as creator or issuer of any of the cryptoassets involved, when providing such services—

- (a) exchanging, or arranging or making arrangements with a view to the exchange of, cryptoassets for money or money for cryptoassets,
- (b) exchanging, or arranging or making arrangements with a view to the exchange of, one cryptoasset for another, or
- (c) operating a machine which utilises automated processes to exchange cryptoassets for money or money for cryptoassets.

(2) In these Regulations, “custodian wallet provider” means a firm or sole practitioner who by way of business provides services to safeguard, or to safeguard and administer—

- (a) cryptoassets on behalf of its customers, or
- (b) private cryptographic keys on behalf of its customers in order to hold, store and transfer cryptoassets,

when providing such services.

(3) For the purposes of this regulation—

- (a) “cryptoasset” means a cryptographically secured digital representation of value or contractual rights that uses a form of distributed ledger technology and can be transferred, stored or traded electronically;
- (b) “money” means—
  - (i) money in sterling,
  - (ii) money in any other currency, or
  - (iii) money in any other medium of exchange,but does not include a cryptoasset; and

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(4) 1979 c. 2. Section 100A was inserted by the Finance Act 1984 (c.2), section 8 and (c.43), Schedule 4.

(5) 1994 c. 23. Sections 21(6) to (6B) were inserted by section 12(2) of the Finance Act 1999 (c.16).

(c) in sub-paragraphs (a), (b) and (c) of paragraph (1), “cryptoasset” includes a right to, or interest in, the cryptoasset.”.

(8) In regulation 16 (risk assessment by the Treasury and Home Office), after paragraph (6) insert—

“(6A) The report must also set out—

- (a) the institutional structure and broad procedures of the United Kingdom’s anti-money laundering and counter-terrorist financing regime, including the role of the financial intelligence unit, tax agencies and prosecutors;
- (b) the nature of measures taken and resources allocated to counter money laundering and terrorist financing.”.

(9) In regulation 19(4) (policies, controls and procedures)—

- (a) in sub-paragraph (a)(i), for “and” in sub-paragraph (aa) and for “and” after that sub-paragraph substitute “or”;
- (b) in sub-paragraph (c)—
  - (i) for “technology is”, substitute “new products, new business practices (including new delivery mechanisms) or new technology are”;
  - (ii) after “adoption of such”, insert “products, practices or”;
  - (iii) after “this new”, insert “product, practice or”.

(10) In regulation 20(1)(b) (policies, controls and procedures: group level), at the end add “, including policies on the sharing of information about customers, customer accounts and transactions;”.

(11) In regulation 24(1) (training)—

- (a) in sub-paragraph (a), after “relevant employees” insert “, and any agents it uses for the purposes of its business whose work is of a kind mentioned in paragraph (2),”;
- (b) in sub-paragraph (b), after “relevant employees” insert “and to any agents it uses for the purposes of its business whose work is of a kind mentioned in paragraph (2)”.

(12) In regulation 25 (supervisory action), after paragraph (13) insert—

“(13A) The supervisory authority may, if it considers it proportionate to do so, publish such information about a direction given under paragraph (2) as the authority considers appropriate.

(13B) Where the supervisory authority publishes such information and the supervisory authority decides to rescind the direction to which the notice relates, the supervisory authority must, without delay, publish that fact in the same manner as that in which the information was published under paragraph (13A).

(13C) Where the supervisory authority publishes information under paragraph (13A) and the person to whom the notice is given refers the matter to the Upper Tribunal, the supervisory authority must, without delay, publish information about the status of the appeal and its outcome in the same manner as that in which the information was published under paragraph (13A).”.

(13) In regulation 26 (prohibitions and approvals)—

- (a) in paragraph (2)(c), after “estate agents” insert “and letting agents”;
- (b) after paragraph (2)(d) insert—
  - “(e) art market participants.”;
- (c) after paragraph (3) insert—

“(3A) A person does not breach the prohibition in paragraph (1) if—

- (a) that person became a relevant firm or relevant sole practitioner on 10th January 2020 by virtue of an amendment to these Regulations by the Money Laundering and Terrorist Financing (Amendment) Regulations 2019;
- (b) that person has before 10th January 2021 applied to the supervisory authority for approval under paragraph (6); and
- (c) that application has not yet been determined.”;
- (d) in paragraph (7), for sub-paragraph (b) substitute—
  - “(b) contain, or be accompanied by—
    - (i) sufficient information to enable the supervisory authority, if it is a self-regulatory organisation, to determine whether the person concerned has been convicted of a relevant offence; and
    - (ii) such other information as the supervisory authority may reasonably require.”.

### **Amendment of Part 3: customer due diligence**

#### **5.—(1) In regulation 27 (customer due diligence)—**

- (a) in paragraph (2)—
  - (i) before “a high value dealer”, insert “a letting agent,”;
  - (ii) after “a high value dealer”, insert “an art market participant, a cryptoasset exchange provider of the kind referred to in paragraph (7D)”;
- (b) after paragraph (7) insert—
  - “(7A) A letting agent must also apply customer due diligence measures in relation to any transaction which consists of the conclusion of an agreement for the letting of land (within the meaning given in regulation 13(7))—
    - (i) for a term of a month or more, and
    - (ii) at a rent which during at least part of the term is, or is equivalent to, a monthly rent of 10,000 euros or more.
  - (7B) The letting agent must apply customer due diligence measures under paragraph (7A) in relation to both the person by whom the land is being let, and the person who is renting the land.
  - (7C) An art market participant must also apply customer due diligence measures—
    - (a) in relation to any trade in a work of art (within the meaning given in regulation 14), when the firm or sole practitioner carries out, or acts in respect of, any such transaction, or series of linked transactions, whose value amounts to 10,000 euros or more;
    - (b) in relation to the storage of a work of art (within the meaning given in regulation 14), when it is the operator of a freeport and the value of the works of art so stored for a person, or series of linked persons, amounts to 10,000 euros or more.
  - (7D) A cryptoasset exchange provider of the kind who operates a machine which utilises automated processes to exchange cryptoassets for money, or money for cryptoassets, must also apply customer due diligence measures in relation to any such transaction carried out using that machine (and for the purposes of this paragraph “money” and “cryptoasset” have the same meanings as they have in regulation 14A(1)).”;
- (c) in paragraph (8), before sub-paragraph (a) insert—

- “(za) when the relevant person has any legal duty in the course of the calendar year to contact an existing customer for the purpose of reviewing any information which—
- (i) is relevant to the relevant person’s risk assessment for that customer, and
  - (ii) relates to the beneficial ownership of the customer, including information which enables the relevant person to understand the ownership or control structure of a legal person, trust, foundation or similar arrangement who is the beneficial owner of the customer;
- (zb) when the relevant person has to contact an existing customer in order to fulfil any duty under the International Tax Compliance Regulations 2015(6);”.
- (2) In regulation 28 (customer due diligence measures)—
- (a) after paragraph (3) insert—
 

“(3A) Where the customer is a legal person, trust, company, foundation or similar legal arrangement the relevant person must take reasonable measures to understand the ownership and control structure of that legal person, trust, company, foundation or similar legal arrangement.”;
  - (b) for paragraph (8) substitute—
 

“(8) If paragraph (7) applies, the relevant person must—

    - (a) keep records in writing of all the actions it has taken to identify the beneficial owner of the body corporate;
    - (b) take reasonable measures to verify the identity of the senior person in the body corporate responsible for managing it, and keep records in writing of—
      - (i) all the actions the relevant person has taken in doing so, and
      - (ii) any difficulties the relevant person has encountered in doing so.”;
  - (c) after paragraph (18) insert—
 

“(19) For the purposes of this regulation, information may be regarded as obtained from a reliable source which is independent of the person whose identity is being verified where—

    - (a) it is obtained by means of an electronic identification process, including by using electronic identification means or by using a trust service (within the meanings of those terms in Regulation (EU) No 910/2014 of the European Parliament and of the Council of 23rd July 2014 on electronic identification and trust services for electronic transactions in the internal market(7)); and
    - (b) that process is secure from fraud and misuse and capable of providing an appropriate level of assurance that the person claiming a particular identity is in fact the person with that identity.”.
- (3) After regulation 30 (timing of verification) insert—

**“Requirement to report discrepancies in registers**

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

- (a) a company which is subject to the requirements of Part 21A of the Companies Act 2006 (information about people with significant control)(8),

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(6) S.I. 2015/878, amended by S.I. 2017/598.

(7) OJ L 257, 28.08.2014, p.73.

(8) 2006 c. 46; Part 21A was inserted by Schedule 3 to the Small Business, Enterprise and Employment Act 2015 (c.26).

- (b) an unregistered company which is subject to the requirements of the Unregistered Companies Regulations 2009<sup>(9)</sup>,
- (c) a limited liability partnership which is subject to the requirements of the Limited Liability Partnerships (Application of Companies Act 2006) Regulations 2009<sup>(10)</sup>,  
or
- (d) an eligible Scottish partnership which is subject to the requirements of the Scottish Partnerships (Register of People with Significant Control) Regulations 2017<sup>(11)</sup>,

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

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

- (a) which the relevant person collects under paragraph (1); and
- (b) which otherwise becomes available to the relevant person in the course of carrying out its duties under these Regulations.

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

(4) The registrar must take such action as the registrar considers appropriate to investigate and, if necessary, resolve the discrepancy in a timely manner.

(5) A discrepancy which is reported to the registrar under paragraph (2) is material excluded from public inspection for the purposes of section 1087 of the Companies Act 2006 (material not available for public inspection), including for the purposes of that section as applied—

- (a) to unregistered companies by paragraph 20 of Schedule 1 to the Unregistered Companies Regulations 2009;
- (b) to limited liability partnerships by regulation 66 of the Limited Liability Partnerships (Application of Companies Act 2006) Regulations 2009; and
- (c) to eligible Scottish partnerships by regulation 61 of the Scottish Partnerships (Register of People with Significant Control) Regulations 2017.

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

(4) In regulation 33 (duty to apply enhanced customer due diligence)—

- (a) in paragraph (1)(b)—
  - (i) omit “or transaction”;
  - (ii) at the end insert “or in relation to any relevant transaction where either of the parties to the transaction is established in a high-risk third country”;
- (b) for paragraph (1)(f) substitute—
  - “(f) in any case where—
    - (i) a transaction is complex or unusually large,
    - (ii) there is an unusual pattern of transactions, or

<sup>(9)</sup> S.I. 2009/2436, amended by S.I. 2017/693.

<sup>(10)</sup> S.I. 2009/1804, amended by S.I. 2016/340.

<sup>(11)</sup> S.I. 2017/694.

- (iii) the transaction or transactions have no apparent economic or legal purpose, and”;
- (c) for paragraph (3) substitute—
  - “(3) For the purposes of paragraph (1)(b)—
    - (a) 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;
    - (b) a “relevant transaction” means a transaction in relation to which the relevant person is required to apply customer due diligence measures under regulation 27;
    - (c) being “established in” a country means—
      - (i) in the case of a legal person, being incorporated in or having its principal place of business in that country, or, in the case of a financial institution or a credit institution, having its principal regulatory authority in that country; and
      - (ii) in the case of an individual, being resident in that country, but not merely having been born in that country.”;
- (d) after paragraph (3) insert—
  - “(3A) The enhanced due diligence measures taken by a relevant person for the purpose of paragraph (1)(b) must include—
    - (a) obtaining additional information on the customer and on the customer’s beneficial owner;
    - (b) obtaining additional information on the intended nature of the business relationship;
    - (c) obtaining information on the source of funds and source of wealth of the customer and of the customer’s beneficial owner;
    - (d) obtaining information on the reasons for the transactions;
    - (e) obtaining the approval of senior management for establishing or continuing the business relationship;
    - (f) conducting enhanced monitoring of the business relationship by increasing the number and timing of controls applied, and selecting patterns of transactions that need further examination.”;
- (e) after paragraph (4) insert—
  - “(4A) Where the customer—
    - (a) is the beneficiary of a life insurance policy,
    - (b) is a legal person or a legal arrangement, and
    - (c) presents a high risk of money laundering or terrorist financing for any other reason,a relevant person who is a credit or financial institution must take reasonable measures to identify and verify the identity of the beneficial owners of that beneficiary before any payment is made under the policy.”;
- (f) in paragraph (6)—
  - (i) after sub-paragraph (a)(vi) insert—
    - “(vii) the customer is the beneficiary of a life insurance policy;



- (viii) the customer is a third country national who is applying for residence rights in or citizenship of an EEA state in exchange for transfers of capital, purchase of a property, government bonds or investment in corporate entities in that EEA state;”;
  - (ii) in sub-paragraph (b)(iii), for “electronic signatures” substitute “an electronic identification process which meets the conditions set out in regulation 28(19)”;
  - (iii) after sub-paragraph (b)(vi) insert—
    - “(vii) there is a transaction related to oil, arms, precious metals, tobacco products, cultural artefacts, ivory or other items related to protected species, or other items of archaeological, historical, cultural or religious significance or of rare scientific value;”;
  - (iv) in sub-paragraph (c)(vi), for “October 2016” substitute “June 2019”.
- (5) In regulation 38 (electronic money)—
- (a) in paragraph (1)—
    - (i) in sub-paragraph (a), for the words from “250 euros” to the end, substitute “150 euros”;
    - (ii) in sub-paragraph (b), for “250 euros”, substitute “150 euros”;
  - (b) in paragraph (2), for “where the amount redeemed exceeds 100 euros” substitute—
    - “where —
    - (a) the amount redeemed exceeds 50 euros; or
    - (b) in the case of remote payment transactions, the amount redeemed exceeds 50 euros per transaction.”;
  - (c) after paragraph (4) insert—
    - “(4A) Credit institutions and financial institutions, acting as acquirers for payment using an anonymous prepaid card issued in a third country, shall only accept payment where—
    - (a) the anonymous prepaid card is subject to requirements in national legislation having an equivalent effect to those laid down in this regulation; and
    - (b) the anonymous prepaid card satisfies those requirements.”;
  - (d) for paragraph (5) substitute—
    - “(5) For the purposes of this regulation—
    - (a) “acquirer” means a payment service provider contracting with a payee to accept and process card-based payment transactions, which result in a transfer of funds to the payee;
    - (b) “payment instrument” has the meaning given by regulation 2(1) of the Electronic Money Regulations 2011(12);
    - (c) “remote payment transaction” has the meaning given by regulation 2 of the Payment Services Regulations 2017(13).”.

## **New Part 5A: bank account portal**

- 6.** After Part 5 (beneficial ownership information) insert—

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(12) S.I. 2011/99.  
(13) S.I. 2017/752.

## “PART 5A

### Requests for information about accounts and safe-deposit boxes

#### **Duty to establish mechanism for requests**

**45A.** The Secretary of State or the Treasury must ensure that a central automated mechanism (referred to in this Part as “the central automated mechanism”) is established for making and responding to requests under this Part.

#### **Duty to respond to requests for information**

**45B.—(1)** Each credit institution and provider of safe custody services must establish and maintain systems which enable that institution or provider to respond, using the central automated mechanism, to a request for information made under this Part by a law enforcement authority or the Gambling Commission.

(2) A credit institution or provider of safe custody services who receives such a request must, using the central automated mechanism, provide the information requested fully and rapidly to the person who made the request.

#### **Requests for information about accounts**

**45C.—(1)** A law enforcement authority or the Gambling Commission may make a request, using the central automated mechanism—

- (a) to a credit institution other than a credit union, for any information specified in this regulation relating to an account held with that institution;
- (b) to a credit union, for any information specified in this regulation relating to an account held with that credit union which has an International Bank Account Number (“IBAN”).

(2) The following information may be requested—

- (a) the name of the account holder;
- (b) where the account holder is an individual, the date of birth of the account holder;
- (c) where the account holder is an individual, the address of the account holder;
- (d) where the account holder is a firm, the address of its registered office and, if different, its principal place of business;
- (e) the name of any person purporting to act on behalf of the account holder;
- (f) the name and date of birth of any individual with a beneficial interest in the account or the account holder;
- (g) the address of any individual with a beneficial interest in the account or the account holder;
- (h) where a beneficial interest in the account holder is held by a firm, the name of that firm, the address of its registered office and, if different, its principal place of business;
- (i) the IBAN of the account;
- (j) any other number by which the individual account is identified by the credit institution (for example a roll number);
- (k) the date of opening of the account;
- (l) if the account has been closed, the date of closing; and

- (m) any other numbers which are specific to an individual who is mentioned in sub-paragraphs (a) to (c) and (e) to (g) and which may be used to verify that individual's identity (such as a passport or driving licence number) contained within any documents or information obtained by the credit institution to satisfy the customer due diligence requirements in regulations 28, 29 and 33 to 37.

#### **Requests for information about safe-deposit boxes**

**45D.**—(1) A law enforcement authority or the Gambling Commission may make a request, using the central automated mechanism, to a provider of safe custody services for any of the information specified in this regulation in relation to a safe-deposit box held with that provider.

- (2) The following information may be requested—
  - (a) the name of the customer to whom the safe-deposit box was or is made available;
  - (b) where the customer is an individual, their date of birth;
  - (c) where the customer is an individual, their address;
  - (d) where the customer is a firm, the address of its registered office and, if different, its principal place of business;
  - (e) the name of any person (except for employees of the provider of safe custody services) who the provider of safe custody services knows holds, or held, a key for the safe-deposit box, or has or has had access to the safe-deposit box in any other way;
  - (f) the date on which the safe-deposit box was made available to the customer and, if appropriate, ceased to be available; and
  - (g) any other numbers which are specific to an individual who is mentioned in sub-paragraphs (a) to (c) and (e) and which may be used to verify that individual's identity (such as a passport or driving licence number) contained within any documents or information obtained by the provider of safe custody services to satisfy the customer due diligence requirements in regulations 28, 29 and 33 to 37.

#### **Requirements for making a request for information**

**45E.**—(1) The NCA, in carrying out its FIU functions, may request information under this Part for any purpose in connection with those functions.

(2) Subject to paragraph (1), a law enforcement authority may only request information under this Part for one or more of the following purposes—

- (a) to investigate money laundering, terrorism (within the meaning of section 1 of the Terrorism Act 2000(14)), or terrorist financing;
- (b) to investigate whether property has been obtained through any conduct mentioned in sub-paragraph (a); or
- (c) to carry out its supervisory functions (where the law enforcement authority also carries out a supervisory function).

(3) The Gambling Commission may only request information under this Part for the purpose of carrying out its supervisory functions.

(4) Only an appropriate officer of the Gambling Commission or the law enforcement authority may make a request under this Part on behalf of that authority or Commission.

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(14) 2000 c. 11. Section 1(1) was amended by section 34 of the Terrorism Act 2006 (c.11) and section 75(1) and (2)(a) of the Counter-Terrorism Act 2008 (c.28).

(5) A request under this Part must not be made by a law enforcement authority (other than the NCA in carrying out its FIU functions) or the Gambling Commission unless the making of that request is first approved in writing by a senior officer of that authority or Commission.

(6) That senior officer must not approve the making of a request unless the officer is satisfied that the request complies with the requirements of this regulation and is proportionate to the purpose or purposes of the request.

(7) A senior officer must maintain a record in writing of any refusal to approve a request.

(8) Law enforcement authorities, and the Gambling Commission, may take into account any guidance which has been issued by the Treasury, or issued by an appropriate body or the NCA and approved by the Treasury, in relation to whom to designate as an appropriate officer or a senior officer.

### **Access to requests and responses, guidance and review**

**45F.**—(1) The NCA may access, using the central automated mechanism, all information or documents relating to requests and responses to requests made under this Part and may use the information or documents—

- (a) in carrying out its FIU functions;
- (b) for any of the purposes listed in regulation 45E(2);
- (c) to prepare guidance under this Part;
- (d) to provide anonymised information to the Secretary of State or the Treasury for the purposes of issuing guidance, preparing reports and making recommendations under this Part.

(2) The NCA must on request provide all or part of the information referred to in paragraph (1)(d) to the Secretary of State, the Treasury or an appropriate body approved by the Treasury.

(3) Credit institutions, providers of safe custody services, law enforcement authorities and the Gambling Commission may take into account any guidance which has been issued by the Treasury, or issued by an appropriate body or the NCA and approved by the Treasury, in relation to this Part.

(4) The Secretary of State must from time to time—

- (a) carry out a review of the central automated mechanism; and
- (b) publish a report setting out the conclusions of the review.

(5) The Secretary of State must publish the first report before the end of the first calendar year after the central automated mechanism is established.

(6) Subsequent reports must be published annually.

(7) A copy of the report must be laid before Parliament, and sent to—

- (a) each law enforcement authority; and
- (b) the Gambling Commission.

### **Record keeping**

**45G.**—(1) Each credit institution and provider of safe custody services must keep the records specified in paragraph (2) for a period of five years beginning with the date of the closure of the account or safe-deposit box.

(2) The records are a copy of any document or information needed in order to respond to a request made under this Part.

(3) Once the period referred to in paragraph (1) has expired, the credit institution or provider of safe custody services must delete any personal data retained 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.

### Interpretation

**45H.**—(1) For the purposes of this Part—

- (a) an “appropriate officer” is an officer who has received appropriate training and who has been authorised in writing by a law enforcement authority or the Gambling Commission to make requests under this Part;
- (b) a “senior officer” is an officer who has received appropriate training, who has sufficient knowledge of money laundering and terrorist financing, and who has been authorised in writing by a law enforcement authority or the Gambling Commission to authorise or refuse the making of requests under this Part;
- (c) “credit union” means—
  - (i) in England, Wales and Scotland, a society which is registered as a credit union under the Co-operative and Community Benefit Societies Act 2014<sup>(15)</sup>;
  - (ii) in Northern Ireland, a society which—
    - (aa) is registered as a credit union under the Credit Unions (Northern Ireland) Order 1985<sup>(16)</sup> and is an authorised person; or
    - (ab) is registered under the Co-operative and Community Benefit Societies Act (Northern Ireland) 1969<sup>(17)</sup> as a credit union and is an authorised person.
- (d) “FIU functions” has the same meaning as in Schedule 6A (the United Kingdom’s Financial Intelligence Unit);
- (e) “provider of safe custody services” means a credit institution or financial institution which makes available, within the United Kingdom, safe-deposit boxes to customers.”.

### Amendment of Part 6: supervision and registration

**7.**—(1) In regulation 46 (duties of supervisory authorities)—

- (a) in paragraph (1), for “securing compliance” to the end substitute—  
“—

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<sup>(15)</sup> 2014 c. 14.

<sup>(16)</sup> 1985 No. 1205 (N.I. 12).

<sup>(17)</sup> 1969 c. 24. Sections 1 and 1A were substituted by the Credit Unions and Co-operative and Community Benefit Societies Act (Northern Ireland) 2016 (c.16), section 8(1).

- (a) securing compliance by such persons with the requirements of these Regulations; and
- (b) securing that any application for which the supervisory authority grants approval under regulation 26 meets the requirements of regulation 26(7), whether or not the person making the application, or being approved, is a relevant person.”;
- (b) in paragraph (2)(e), after “report” insert “actual or potential”;
- (c) after paragraph (2)(e) insert—
  - “(f) provide one or more secure communication channels for persons to report actual or potential breaches of these Regulations to it;
  - (g) take reasonable measures to ensure that the identity of the reporting person is known only to the supervisory authority.”.
- (2) After regulation 46 insert—

**“Annual reports by self-regulatory organisations**

**46A.** A self-regulatory organisation must publish or make arrangements to publish an annual report containing information about—

- (a) measures taken by the self-regulatory organisation to encourage the reporting of actual or potential breaches as referred to in regulation 46(2)(e);
- (b) the number of reports of actual or potential breaches received by that self-regulatory organisation as referred to in regulation 46(2)(e);
- (c) the number and description of measures carried out by the self-regulatory organisation to monitor, and enforce, compliance by relevant persons with their obligations under—
  - (i) Part 3 (customer due diligence);
  - (ii) Part 3 of the Terrorism Act 2000 (terrorist property)(**18**) and Part 7 of the Proceeds of Crime Act 2002 (money laundering)(**19**);
  - (iii) regulation 40 (record-keeping); and
  - (iv) regulations 20 to 24 (policies and controls etc.).”.
- (3) In regulation 49 (duties of self-regulatory organisations), after paragraph (1)(d) insert—
  - “(e) potential conflicts of interest within the organisation are appropriately handled.”.
- (4) In regulation 50 (duty to co-operate)—
  - (a) in paragraph (1), for sub-paragraph (c) substitute—
    - “(c) to co-operate with overseas authorities—
      - (i) for the purposes of these Regulations, and
      - (ii) to ensure the effective supervision of a relevant person to which paragraph (2) applies.”;
  - (b) at the end of paragraph (3) insert—
    - “, provided that—
      - (a) any confidential information disclosed to the authority in question will be subject to an obligation of confidentiality equivalent to that provided for in regulation 52A;

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(18) 2000 c. 11.

(19) 2002 c. 29.

- (b) where the information disclosed has been received from an EEA state, it is only disclosed—
  - (i) with the express consent of the competent authority or other institution which provided the information; and
  - (ii) where appropriate, for the purposes for which the information was originally provided.”.
- (5) In regulation 51 (regulatory information)—
  - (a) after paragraph (2) insert—

“(2A) The Treasury may disclose to the FCA information provided by the supervisory authorities under paragraph (2), provided that the disclosure is made for purposes connected with the effective exercise of—

    - (a) the functions of the Treasury under these Regulations in relation to self-regulatory organisations or under the Oversight of Professional Body Anti-Money Laundering and Counter Terrorist Financing Supervision Regulations 2017(20) (“the Professional Body Regulations”); or
    - (b) the functions of the FCA under the Professional Body Regulations.”;
  - (b) in each of paragraphs (4) and (5), after “paragraph (2)” insert “or (2A)”.
- (6) In regulation 52 (disclosure by supervisory authorities), at the beginning of paragraph (1) insert “Subject to regulation 52A, ”.
- (7) After regulation 52 insert—

**“Obligation of confidentiality**

**52A.**—(1) No person working for a relevant supervisory authority, or acting on behalf of a relevant supervisory authority (or who has worked or acted for a relevant supervisory authority) may, except in accordance with this regulation, disclose any confidential information received in the course of their duties under these Regulations.

(2) Information referred to in paragraph (1) may be disclosed in summary or aggregate form, provided that no credit institution or financial institution is identifiable from the information disclosed.

(3) A relevant supervisory authority may only use confidential information received pursuant to these Regulations—

- (a) in the discharge of its duties under these Regulations or under other legislation relating to—
    - (i) money laundering or terrorist financing;
    - (ii) prudential regulation; or
    - (iii) the supervision of credit institutions and financial institutions;
  - (b) in an appeal against a decision of a supervisory authority;
  - (c) in court proceedings initiated by a relevant supervisory authority in the exercise of the duties referred to in sub-paragraph (a), or otherwise relating to the authority’s discharge of those duties.
- (4) This regulation does not prevent the exchange of information between—
- (a) any authority in the United Kingdom responsible for the supervision of a credit institution or a financial institution in accordance with these Regulations or other law

relating to credit institutions or financial institutions (a “UK authority”) and another UK authority;

- (b) a UK authority and the European Central Bank or a competent authority in an EEA state supervising any credit institution or financial institution in accordance with the fourth money laundering directive or other legislative acts relating to credit institutions or financial institutions.

(5) Confidential information may only be exchanged under paragraph (4) if the authority to which the information is provided agrees to hold it subject to an obligation of confidentiality equivalent to that set out in paragraph (1).

(6) Nothing in this regulation affects the disclosure of confidential information in accordance with regulations made under section 349 (exceptions from section 348) of FSMA(21).

(7) For the purposes of this regulation, a “relevant supervisory authority” is a supervisory authority which is responsible for the supervision of credit institutions or financial institutions.

#### **Obligation of confidentiality: offence**

**52B.**—(1) Any person who discloses information in contravention of regulation 52A is guilty of an offence.

(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) In proceedings for an offence under this regulation, it is a defence for the accused to prove—

(a) that the accused did not know and had no reason to suspect that the information was confidential information; and

(b) that the accused took all reasonable precautions and exercised all due diligence to avoid committing the offence.”.

(8) In regulation 53 (registration: interpretation), in paragraph (a)(i) of the definition of “registering authority”, after “regulation 54(1)” insert “or (1A)”.

(9) In regulation 54 (duty to maintain registers of certain relevant persons), after paragraph (1) insert—

“(1A) The FCA must maintain a register of—

(a) cryptoasset exchange providers; and

(b) custodian wallet providers.”.

(10) In regulation 55(3) (power to maintain registers)—

(a) at the end of sub-paragraph (e) omit “or”;

(b) after sub-paragraph (f) insert—

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(21) 2000 c. 8. Section 349 has been amended by section 964 of the Companies Act 2006 (c.46), paragraph 19 of Schedule 12 to the Financial Services Act 2012 (c.21) and by S.I. 2006/1183 and 2007/1093.



- “(g) letting agents; or
  - (h) art market participants.”.
- (11) In regulation 56 (requirement to be registered)—
- (a) in paragraph (1)—
    - (i) after “paragraph (2)” insert “or regulation 56A (transitional provision for existing cryptoasset businesses)”;
    - (ii) at the end of sub-paragraph (d) omit “or”;
    - (iii) after sub-paragraph (e) insert—
      - “(f) cryptoasset exchange provider; or
      - (g) custodian wallet provider.”;
  - (b) for paragraph (2) substitute—
    - “(2) This paragraph applies if—
      - (a) the person concerned is a high value dealer, a bill payment service provider, or a telecommunications, digital and IT payment service provider and has applied for registration in the register but that application has not yet been determined; or
      - (b) the person concerned is a money service business or a trust or company service provider and has, before 10th January 2020, applied for registration in the register but that application has not yet been determined.”;
  - (c) in paragraph (5)—
    - (i) after “establishes a register for that purpose,” insert “or where a new description of relevant persons is required to be registered in consequence of an amendment to these Regulations.”;
    - (ii) after “establishes the register” insert “or (as the case may be) the date on which the amendment comes into force”.
- (12) After regulation 56 insert—

**“Transitional provision for existing cryptoasset businesses: requirement to register**

**56A.**—(1) Regulation 56 does not apply to an existing cryptoasset exchange provider or existing custodian wallet provider until—

- (a) the date the person is included in the register maintained under regulation 54(1A) following the determination of its application by the FCA;
- (b) where the FCA gives the person notice under regulation 59(4)(b) of the FCA’s decision not to register that person—
  - (i) the date on which the FCA states that the decision takes effect, or
  - (ii) if the FCA considers that the interests of the public require its decision to have immediate effect, the date on which the FCA gives a notice to the person which includes a statement to that effect and the reasons for it; or
- (c) 10th January 2021 if before that date neither of the following has occurred—
  - (i) the giving of notice to that person by the FCA under regulation 59(3);
  - (ii) the expiry of the period specified in regulation 59(3A) for the FCA to give such notice.

(2) In this regulation, “existing cryptoasset exchange provider” and “existing custodian wallet provider” mean a cryptoasset exchange provider or custodian wallet provider which was

carrying on business as a cryptoasset exchange provider or custodian wallet provider (as the case may be) in the United Kingdom immediately before 10th January 2020.”.

(13) In regulation 58 (fit and proper test)—

(a) after paragraph (4)(a) omit “and”;

(b) after paragraph (4)(b) insert “and” and—

“(c) whether the applicant, and any officer, manager or beneficial owner of the applicant, has adequate skills and experience and has acted and may be expected to act with probity.”.

(14) After regulation 58 insert—

**“Fit and proper test: cryptoasset businesses**

**58A.**—(1) The FCA must refuse to register an applicant (“A”) for registration in a register maintained under regulation 54(1A) as a cryptoasset exchange provider or as a custodian wallet provider if A does not meet the requirement in paragraph (2).

(2) A, and any officer, manager or beneficial owner of A, must be a fit and proper person to carry on the business of a cryptoasset exchange provider or custodian wallet provider, as the case may be.

(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 for the purposes of this regulation.

(4) If paragraph (3) does not apply, the FCA must have regard to the following factors in determining whether the requirement in paragraph (2) is met—

(a) whether A has consistently failed to comply with the requirements of these Regulations;

(b) the risk that A’s business may be used for money laundering or terrorist financing; and

(c) whether A, and any officer, manager or beneficial owner of A, has adequate skills and experience and has acted and may be expected to act with probity.”.

(15) In regulation 59 (determination of applications for registration)—

(a) in paragraph (1), after “subject to regulation 58” insert “and regulation 58A”;

(b) in paragraph (3), for “45 days” to “regulation 57(3)” substitute “the period specified in paragraph (3A)”;

(c) after paragraph (3) insert—

“(3A) The period specified in this paragraph is—

(i) where the applicant is a cryptoasset exchange provider or custodian wallet provider, 3 months, or

(ii) in any other case, 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).”.

(16) In regulation 60 (cancellation and suspension of registration)—

(a) after paragraph (2) insert—

“(2A) The FCA may suspend (for such period as it considers appropriate) or cancel the registration of a cryptoasset exchange provider or custodian wallet provider if, at any time after registration, the FCA is satisfied that the cryptoasset exchange provider or custodian wallet provider (as the case may be) does not meet the requirement in regulation 58A(2).”;

(b) after paragraph (10) insert—

“(11) Where the registering authority decides to suspend or cancel a person’s registration, the authority may, if it considers it proportionate to do so, publish such information about that decision as the authority considers appropriate.

(12) Where the supervisory authority publishes information under paragraph (11) and the person whose registration is suspended or cancelled refers the matter to the Upper Tribunal, the supervisory authority must, without delay, publish information about the status of the appeal and its outcome in the same manner as that in which the information was published under paragraph (11).”.

(17) After regulation 60 insert—

### “CHAPTER 3

#### Disclosure obligation

#### **Disclosure by cryptoasset businesses**

**60A.**—(1) Paragraph (2) applies where—

(a) a cryptoasset exchange provider or custodian wallet provider (“cryptoasset business”) establishes a business relationship, or enters into a transaction, with a customer that arises out of any of its activities as a cryptoasset business, and

(b) the activity is not—

(i) within scope of the jurisdiction of the Financial Ombudsman Service, or

(ii) subject to protection under the Financial Services Compensation Scheme, or

(iii) within scope of the jurisdiction of, or subject to protection under, either of the schemes referred to in paragraph (i) or (ii).

(2) Before establishing the business relationship or entering into the transaction, the cryptoasset business must inform the customer of the position in paragraph (1)(b)(i), (ii) or (iii), as the case may be.

(3) In this regulation—

(a) the Financial Ombudsman Service means the scheme established under Part 16 of FSMA(22);

(b) the Financial Services Compensation Scheme means the scheme established under Part 15 of FSMA(23).”.

#### **Amendment of Part 8: information and investigation**

**8.**—(1) In the heading to Part 8, for “Information and Investigation” substitute “Information, Investigation and Directions”.

(2) In regulation 72 (provision of information and warrants: safeguards), in each of paragraphs (1), (2) and (3), for “or 70” substitute “, 70, 74A or 74B”;

(3) In regulation 73(1) (admissibility of statements), for “or 70(7)(e)” substitute “, 70(7)(e) or 74B(6)”.

(22) Section 226 was amended by the Financial Services Act 2012 (c.21), section 39 and Schedule 11 and by S.I. 2009/209, 2011/99, 2017/692 and 2017/752. Section 227 was amended by the Consumer Credit Act 2006 (c.14), section 61; the Financial Services Act 2012, section 39 and Schedule 11 and by S.I. 2013/1881.

(23) Section 212 was amended by the Financial Services Act 2012 (c.21), section 38 and Schedule 10, and by the Financial Services (Banking Reform) Act 2013 (c.33), section 16. Section 213 was amended by the Financial Services Act 2012, section 38 and Schedule 10, and by S.I. 2017/701. Section 214 was amended by the Financial Services Act 2012, section 38 and Schedule 10, and by the Banking Act 2009 (c.1), sections 169 and 174, and by S.I. 2017/701.

(4) After regulation 74 (powers of relevant officers) insert—

**“Reporting requirements: cryptoasset businesses**

**74A.**—(1) Each cryptoasset exchange provider and custodian wallet provider (“cryptoasset business”) must provide to the FCA such information as the FCA may direct—

- (a) about compliance by the cryptoasset business with requirements imposed in or under Parts 2 to 6 of these Regulations;
- (b) which is required by the FCA for the purpose of calculating charges under regulation 102 (costs of supervision); or
- (c) which is otherwise reasonably required by the FCA in connection with the exercise by the FCA of any of its supervisory functions.

(2) The information referred to in paragraph (1) must be provided at such times and in such form, and verified in such manner, as the FCA may direct.

**Report by a skilled person: cryptoasset businesses**

**74B.**—(1) This regulation applies where the FCA reasonably considers that a report by a skilled person, concerning a matter relating to the exercise of the FCA’s functions under these Regulations, is required in connection with the exercise by the FCA of any of its functions under these Regulations in relation to a relevant person who is a cryptoasset exchange provider or custodian wallet provider.

(2) The FCA may either—

- (a) by notice in writing to the relevant person, require the relevant person to appoint a skilled person to provide the FCA with a report on the matter concerned, or
- (b) itself appoint a skilled person to do so, and recover any expenses incurred in doing so as a fee to be payable by the relevant person concerned.

(3) When acting under paragraph (2)(a), the FCA may require—

- (a) the report to be in such form as may be specified in the notice; and
- (b) that the contract between the skilled person and the relevant person contain certain terms that the FCA considers appropriate.

(4) The FCA must give notice in writing of an appointment under paragraph (2)(b) to the relevant person.

(5) References in this regulation to a skilled person are to a person—

- (a) appearing to the FCA to have the skills necessary to make a report on the matter concerned, and
- (b) where the appointment is to be made by the relevant person, nominated or approved by the FCA.

(6) It is the duty of the relevant person and any connected person to give the skilled person all such assistance as the skilled person may reasonably require.

**Directions: cryptoasset businesses**

**74C.**—(1) The FCA may impose a direction in writing on a cryptoasset exchange provider or custodian wallet provider (“cryptoasset business”).

(2) A direction may be imposed before, on or after registration, as the FCA considers appropriate.

(3) A direction may be imposed for the purpose of—

- (a) remedying a failure to comply with a requirement under these Regulations;
  - (b) preventing a failure to comply, or continued non-compliance with a requirement under these Regulations;
  - (c) preventing the cryptoasset business from being used for money laundering or terrorist financing.
- (4) A direction may require or prohibit the taking of specified action.
- (5) The FCA may, on its own initiative—
- (a) impose a new direction;
  - (b) vary a direction imposed under this regulation; or
  - (c) rescind such a direction.
- (6) The FCA may, on the request of a cryptoasset business—
- (a) impose a new direction;
  - (b) vary a direction imposed under this regulation; or
  - (c) rescind such a direction.
- (7) The FCA must consult the PRA before imposing or varying a direction which relates to—
- (a) a person who is a PRA authorised person; or
  - (b) a person who is a member of a group which includes a PRA authorised person.
- (8) A direction may be expressed to expire at the end of such period as the FCA may specify, but the imposition of a direction that expires at the end of a specified period does not affect the FCA’s power to impose a new direction.
- (9) If the FCA imposes or varies a direction under paragraph (5)(a) or (b) it must give the cryptoasset business a notice in writing.
- (10) The notice referred to in paragraph (9) must—
- (a) give details of the direction;
  - (b) state the FCA’s reasons for imposing or varying the direction;
  - (c) inform the cryptoasset business that it may make representations to the FCA within such period as may be specified in the notice (whether or not the cryptoasset business has referred the matter to the Upper Tribunal);
  - (d) inform the cryptoasset business of when the direction takes effect; and
  - (e) inform the cryptoasset business of its right to refer the matter to the Upper Tribunal.
- (11) The FCA may extend the period allowed under the notice for making representations.
- (12) If, having considered any representations made by the cryptoasset business, the FCA decides not to rescind the direction, it must give the cryptoasset business a notice in writing.
- (13) If, having considered any representations made by the cryptoasset business, the FCA decides—
- (a) to vary the direction,
  - (b) to rescind the direction and to impose a different direction, or
  - (c) to rescind the direction and not to impose a different direction,
- it must give the cryptoasset business a notice in writing.
- (14) A notice under paragraph (12) must inform the cryptoasset business of its right to refer the matter to the Upper Tribunal.

(15) A notice under paragraph (13)(a) or (b) must comply with paragraph (10).

(16) If a notice informs the cryptoasset business of its right to refer a matter to the Upper Tribunal, it must give an indication of the procedure on such a reference.

(17) If the FCA imposes or varies a direction under paragraph (6)(a) or (b) it must give the cryptoasset business a notice in writing.

(18) The notice referred to in paragraph (17) must—

- (a) give details of the direction;
- (b) state the reasons for imposing or varying the direction; and
- (c) inform the cryptoasset business of when the direction takes effect.

(19) If the FCA rescinds a direction under paragraph (6)(c) it must give the cryptoasset business a notice in writing.

(20) The FCA may, if it considers it proportionate to do so, publish such information about a notice given under paragraphs (9), (13) or (17) as it considers appropriate.

(21) Where the FCA publishes such information and the FCA decides to rescind the direction to which the notice relates, the FCA must, without delay, publish that fact in the same manner as that in which the information was published under paragraph (20).

(22) Where the FCA publishes information under paragraph (20) and the person to whom the notice is given refers the matter to the Upper Tribunal, the FCA must, without delay, publish information about the status of the appeal and its outcome in the same manner as that in which the information was published under paragraph (20).”.

#### **Amendment of Part 9: enforcement and Part 10: appeals**

**9.**—(1) In regulation 81 (the FCA: disciplinary measures (procedure)), after paragraph (1) insert—

“(1A) Before imposing a sanction on P under regulation 76, 77 or 78, the FCA must check whether P has any criminal convictions that may be relevant to the determination referred to in paragraph (1).”.

(2) In regulation 83 (the Commissioners: disciplinary measures (procedure)), after paragraph (1) insert—

“(1A) Before imposing a sanction on P under regulation 76, 77 or 78, the Commissioners must check whether P has any criminal convictions that may be relevant to the determination referred to in paragraph (1).”.

(3) In regulation 93 (appeals against decisions of the FCA)(**24**), after paragraph (1)(c) insert—

“(ca) regulation 74C(1), to impose a direction;”.

#### **Amendment of Part 11: miscellaneous provisions**

**10.** After regulation 104 (suspicious activity disclosures) insert—

##### **“The United Kingdom’s financial intelligence unit**

**104A.** Schedule 6A makes provision in relation to the NCA in its capacity as the United Kingdom’s financial intelligence unit.”.

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(24) Regulation 93(1) was substituted by [S.I. 2018/1337](#).

#### **Amendment of Schedule 4: supervisory information**

**11.** In Schedule 4 (supervisory information)—

(a) after paragraph 12 insert—

“**12A.** The number of contraventions of these Regulations identified upon exercise of the powers under Part 8.”;

(b) after paragraph 18 insert—

“**19.** The amount of human resource allocated by the supervisory authority to supervising the countering of money laundering and terrorist financing.”.

#### **Amendment of Schedule 6: relevant requirements**

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

(a) after paragraph 7(d) insert—

“(da) regulation 30A (requirement to report discrepancies in registers);”;

(b) after paragraph 9 insert—

“**9A.** The requirements specified in this paragraph are those imposed in regulation 45B (duty to respond to requests for information) and 45G(1) and (3) (record keeping).”;

(c) after paragraph 10(b) insert—

“(c) regulation 60A (disclosure by cryptoasset businesses).”;

(d) after paragraph 12(c) insert—

“(ca) regulation 74A (reporting requirements: cryptoasset businesses);

(cb) regulation 74B (report by a skilled person: cryptoasset businesses);

(cc) regulation 74C (directions: cryptoasset businesses);”.

#### **New Schedule 6A: United Kingdom financial intelligence unit**

**13.** After Schedule 6 (meaning of “relevant requirement”) insert—

“SCHEDULE 6A

Regulation 104A

The United Kingdom’s Financial Intelligence Unit

##### **Interpretation**

**1.** In this Schedule

“external request” means a request to the NCA for information by a foreign FIU which may be relevant for the purpose of the foreign FIU’s performance of FIU functions;

“FIU functions” means the functions of a financial intelligence unit as set out in the fourth money laundering directive;

“foreign competent authority” means an authority in an EEA state other than the United Kingdom which has equivalent functions to those of a United Kingdom competent authority to which a foreign FIU may provide information in connection with its performance of FIU functions;

“foreign FIU” means an authority in an EEA state other than the United Kingdom which performs FIU functions in that state;

“relevant information” means information the NCA possesses in connection with its performance of FIU functions which it considers relevant to an external request;

“the 2000 Act” means the Terrorism Act 2000(25);

“the 2002 Act” means the Proceeds of Crime Act 2002(26);

“United Kingdom competent authority” means any authority other than the NCA concerned in the prevention, investigation, detection or prosecution of criminal offences contained in Part 7 (money laundering) of the 2002 Act or Part 3 (terrorist property) of the 2000 Act, and any supervisory authority, to which the NCA disseminates information in its performance of FIU functions.

### **Reports to the National Crime Agency**

2. Where the NCA has, in its performance of FIU functions, disseminated any information to a United Kingdom competent authority, that authority must, upon request, provide a report to the NCA about the authority’s use of that information, including the outcome of any investigations or inspections conducted on the basis of that information.

### **Co-operation**

3. The NCA must take such steps as it considers appropriate to co-operate with foreign FIUs in their performance of FIU functions.

### **Provision of information in response to external requests**

4. In response to an external request, the NCA must (subject to paragraph 10) provide promptly any relevant information in the NCA’s possession.

5. Where an external request is received and the NCA does not possess information which the NCA considers relevant to the external request, and it suspects a relevant person possesses such information, the NCA—

- (a) may exercise its powers under Parts 7(27) and 8(28) (investigations) of the 2002 Act, any orders made under section 445(29) (external investigations) of that Act, or Part 3 of the 2000 Act(30), as applicable, to seek an order for information from such person, and
- (b) must (subject to paragraph 10) provide any relevant information received in consequence of any such order promptly to the foreign FIU concerned.

6. The NCA must designate at least one point of contact with responsibility for receiving external requests.

7. Where the NCA has provided relevant information to a foreign FIU, and that foreign FIU makes a request for consent to disseminate some or all of the relevant information to a foreign competent authority, the NCA must (subject to paragraph 11) consent to the dissemination of as much of the requested information as possible and communicate its consent promptly to the foreign FIU.

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(25) 2000 c. 11.

(26) 2002 c. 29.

(27) Sections 339ZH-339ZK (further information orders) were inserted into Part 7 by section 12 of the Criminal Finances Act 2017 (c. 22) (“the 2017 Act”). Other amendments have been made to Part 7 but none are relevant.

(28) Sections 362A-362I (unexplained wealth orders: England and Wales and Northern Ireland) and 396A-396I (unexplained wealth orders: Scotland) were inserted into Part 8 by sections 1 and 4 of the 2017 Act. Sections 357, 358 and 362 (disclosure orders: England and Wales and Northern Ireland) and sections 391, 392 and 396 (disclosure orders: Scotland) were amended by sections 7 and 8 of the 2017 Act. Other amendments have been made to Part 8 but none are relevant.

(29) Section 445 was amended by section 24(3) of the 2017 Act.

(30) Part 3 was amended by Schedule 2 (disclosure orders) to the 2017 Act. Sections 22B-22E (further information orders) were inserted into Part 3 by section 37 of the 2017 Act. Other amendments have been made to Part 3 but none are relevant.



8. Where the NCA provides relevant information in response to an external request in accordance with this Schedule, the NCA shall take such steps as it considers appropriate to ensure that such information is transmitted securely.

**Conditions and restrictions on provision or further dissemination of relevant information**

9. The NCA may impose such restrictions and conditions on the use of relevant information provided in response to an external request as the NCA considers appropriate.

10. Where an obligation arises under this Schedule for the NCA to provide relevant information in response to an external request, the NCA may decide not to provide some or all of the information where and to the extent that the NCA considers that doing so could be contrary to national law.

11. The NCA is not required to comply with the duty to give consent to the dissemination of information to a foreign competent authority under paragraph 7 if and to the extent that the NCA considers that the giving of such consent could—

- (a) prejudice an investigation, whether into a criminal cause or matter or in relation to any investigation referred to in section 341 (investigations) of the 2002 Act<sup>(31)</sup> or to which Schedule 5A (terrorist financing investigations) to the 2000 Act<sup>(32)</sup> applies; or
- (b) be contrary to national law.

12. The NCA must have particular regard—

- (a) where making a decision under paragraph 10, to the need for as unfettered an exchange of relevant information in response to external requests as possible, or
- (b) where making a decision under paragraph 11, to the need for as unfettered dissemination of information as possible by a foreign FIU to foreign competent authorities,

in order for the foreign FIU concerned to carry out FIU functions efficiently and effectively.

**Requests for information by the NCA to foreign FIUs**

13. Paragraphs 14 and 15 apply where the NCA wishes to obtain information concerning a relevant person which has its head office in an EEA state other than the United Kingdom.

14. The NCA must address a request for the information to the foreign FIU in the state in which the relevant person has its head office.

15. Where the NCA makes a request to a foreign FIU for information which the NCA considers may be relevant for its performance of FIU functions, the request must contain the relevant facts and background information, reasons for the request and how the information sought is proposed to be used.

**Conditions and restrictions on use of information received by the NCA from foreign FIUs**

16. Where the NCA receives information from a foreign FIU, the NCA must—

- (a) use the information only for the purpose for which it was sought or provided, unless it has obtained the prior consent of the foreign FIU to any other use of the information;

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(31) Section 341 is amended by section 75(1) of the Serious Crime Act 2007 (c. 27); paragraph 2 of Schedule 19 to the Coroners and Justice Act 2009 (c. 25); paragraph 110 of Schedule 7 to the Policing and Crime Act 2009 (c. 26); paragraphs 2 and 25 of Schedule 19 to the Crime and Courts Act 2013 (c. 22); section 38(1) of, and paragraph 55 of Schedule 4 to, the Serious Crime Act 2015 (c. 9); and section 33 of, and paragraph 39 of Schedule 5 to, the Criminal Finances Act 2017 (“the 2017 Act”).

(32) Schedule 5 was inserted by paragraphs 3 and 4 of Schedule 2 to the 2017 Act.

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**Status:** This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

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- (b) comply with any restrictions or conditions of use which have been imposed by the foreign FIU in respect of the information; and
- (c) obtain the prior consent of the foreign FIU to any further dissemination of the information.”.