

EXPLANATORY MEMORANDUM TO
THE MONEY LAUNDERING AND TERRORIST FINANCING (AMENDMENT)
REGULATIONS 2022

2022 No. [XXXX]

1. Introduction

- 1.1 This explanatory memorandum has been prepared by HM Treasury and is laid before Parliament by Command of Her Majesty.
- 1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

- 2.1 These Regulations update the existing United Kingdom (“UK”) anti-money laundering legislation to make minor amendments concerning the UK’s register of express trusts.
- 2.2 The main changes are made in order to extend the deadlines imposed on trustees for registering and updating information on the register, and also to amend the categories of trusts which are required to register.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 This instrument makes changes to the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (S.I. 2017/692) (the “MLRs”), further to changes that were previously made by the Money Laundering and Terrorist Financing (Amendment) Regulations 2019 (S.I. 2019/1511) and the Money Laundering and Terrorist Financing (Amendment) (EU Exit) Regulations 2020 (S.I. 2020/991). The 2020 Regulations were made under Section 2(2) of the European Communities Act 1972. All specific procedural and publication requirements were complied with in making that previous instrument. This instrument is made under the separate powers in section 49 of, and paragraphs 6 and 23 of Schedule 2 to the Sanctions and Anti-Money Laundering Act 2018 (c. 13) and is subject to the draft affirmative procedure as required by section 55(5)(d) of that Act.

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is all of the UK.
- 4.2 The territorial application of this instrument is all of the UK.

5. European Convention on Human Rights

- 5.1 The Economic Secretary to the Treasury has made the following statement regarding Human Rights:

“In my view the provisions of the Money Laundering and Terrorist Financing (Amendment) Regulations 2022 are compatible with the Convention rights.”

6. Legislative Context

- 6.1 This instrument amends the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (S.I. 2017/692) (the “MLRs”).
- 6.2 The MLRs were previously amended by the Money Laundering and Terrorist Financing (Amendment) (EU Exit) Regulations 2020 (S.I. 2020/991) to implement amendments made by EU Directive 2018/843 (the “Amending Directive”) to EU Directive 2015/849 (the “Fourth Anti-Money Laundering Directive”). The Fourth Anti-Money Laundering Directive gave effect to the updated Financial Action Task Force (“FATF”) standards which promote effective implementation of legal, regulatory and operational measures for combating money laundering, terrorist financing and other related threats to the integrity of the international financial system.
- 6.3 The Amending Directive amended certain parts of the Fourth Anti-Money Laundering Directive on 19 June 2018, in particular making changes to Article 31 of the Fourth Anti-Money Laundering Directive in relation to registration of beneficial ownership of express trusts. It required EU Member States (and also the UK during the transition period) to set up an expanded register of express trusts by 10 March 2020.
- 6.4 These provisions were transposed by the Money Laundering and Terrorist Financing (Miscellaneous Amendments) Regulations 2018 (S.I. 2018/1337) on 10 January 2019; the Money Laundering and Terrorist Financing (Amendment) Regulations 2019 (S.I. 2019/1511) on 10 January 2020; and the Money Laundering and Terrorist Financing (Amendment) (EU Exit) Regulations 2020 on 6 October 2020 (S.I. 2020/991).
- 6.5 The Amending Directive was cleared from scrutiny by the Commons European Scrutiny Committee on 31 January 2018 and the Lords European Scrutiny Committee on 19 December 2017.

7. Policy background

What is being done and why?

- 7.1 Money laundering and terrorist financing undermines the integrity and stability of our financial institutions. It is a global problem and the UK must play its part in strengthening its regime and adhering to international standards. Money laundering is also a key enabler of serious and organised crime, which costs the UK at least £37 billion every year.
- 7.2 The UK is a founding member of the FATF, which sets global anti-money laundering and counter-terrorist financing (“AML”/ “CTF”) standards. As a leading member of the FATF, the UK will continue to update anti-money laundering policies according to international standards, ensuring the UK’s AML/CTF regime remains effective, proportionate, and responsive to new and emerging threats.
- 7.3 The MLRs are a key part of the UK’s regulatory framework for addressing and mitigating the risks related to money laundering and terrorist financing. The UK government’s objective through amending the MLRs via this instrument is to retain and support the principle of combating illicit finance and address emerging risks while adjusting some small elements in order to minimise the burden on legitimate businesses and individuals.

Trusts Register

- 7.4 As part of the UK's AML/CTF policy framework, UK express trusts with taxable consequences are required to collect information on beneficial ownership and register with HMRC's Trust Registration Service (TRS). Changes introduced by the Money Laundering and Terrorist Financing (Amendment) (EU Exit) Regulations 2020 (S.I. 2020/991) mean that additional types of trusts, including those with no tax consequences, are required to register, with some exceptions for certain categories of trusts that are assessed as carrying an inherently low risk of money laundering or are already regulated elsewhere. Prior to the changes being made by this instrument, trustees of these additional types of trusts were required to register on TRS by 10 March 2022.
- 7.5 The government has accepted that trustees should be provided with a period of at least 12 months to register on TRS in advance of the statutory deadline. The IT development work necessary to allow TRS to accept registrations from these additional types of trusts was not completed until 1 September 2021. Therefore, this instrument is extending the registration deadline until 1 September 2022 to ensure that trustees have 12 months to register from the date that they were able to do so.
- 7.6 Trustees of trusts within scope are also required to keep the information held on TRS up to date. Prior to the changes being made by this instrument, trustees were required to update TRS with changes within 30 days of becoming aware of the change. This instrument extends that time period to 90 days. This change ensures that trustees have adequate time to make the necessary updates to TRS, recognising that relevant changes to information held on TRS may often relate to life events which require a range of wider actions to be taken, and that 30 days may not be sufficient in such circumstances.
- 7.7 This instrument also provides for further exclusions from the requirement to register (listed at Schedule 3A to the MLRs). This instrument extends the existing exclusion for trusts holding life insurance policies, to ensure that such trusts do not cease to benefit from this exclusion if the policy can also pay out on the occasion of temporary disablement. The instrument also ensures that trusts holding healthcare policies are excluded from registration and that the exclusion applies to trusts holding the death benefits payable under a retirement policy.
- 7.8 Lastly, the instrument clarifies, through the addition of a new category of trusts at Schedule 3A, that trusts created in the course of opening a bank account for a minor or a vulnerable person are not within scope of registration. This ensures that large numbers of low risk accounts which are structured as trusts are excluded from registration, as this was not the original policy intention.

8. European Union Withdrawal and Future Relationship

- 8.1 This instrument is not being made under the European Union (Withdrawal) Act 2018 (c.16) but relates to the withdrawal of the United Kingdom from the European Union as the MLRs are made under section 2(2) of the European Communities Act 1972.
- 8.2 In accordance with the requirements of that Act the Minister has made the relevant statements as detailed in Part 2 of the Annex to this Explanatory Memorandum.

9. Consolidation

- 9.1 The MLRs revoked and replaced the previous 2007 Regulations along with amendments and the changes made to transpose the Fourth Anti-Money Laundering Directive. There are no current plans for a further consolidation of the MLRs.

10. Consultation outcome

- 10.1 No stand-alone consultation took place relating to the changes made by this instrument. However, the government had previously launched a technical consultation on 24 January 2020 entitled “Fifth Money Laundering Directive and Trust Registration Service”. This consultation sought views on the extension of the Trust Registration Service including proposals relating to the changes made by this instrument. A copy of the consultation is available at: <https://www.gov.uk/government/consultations/technical-consultation-fifth-money-laundering-directive-and-trust-registration-service>.
- 10.2 The government has published its formal response to the consultation. The response document summarises the stakeholder responses submitted and sets out the legislative changes and reasoning behind them. A copy of the consultation response is available at: <https://www.gov.uk/government/consultations/technical-consultation-fifth-money-laundering-directive-and-trust-registration-service>.

11. Guidance

- 11.1 HMRC’s guidance for Trust Registration Service is available at <https://www.gov.uk/trusts-taxes/registering-a-trust>. Further guidance will be available in due course.

12. Impact

- 12.1 There is no, or no significant, impact on business, charities or voluntary bodies.
- 12.2 There is no, or no significant, impact on business, charities or voluntary bodies.
- 12.3 An Impact Assessment has not been prepared for this instrument because, in line with Better Regulation guidance, the Government considers that the net impact on businesses will be less than £5 million a year. Due to this limited impact, a de-minimis impact assessment has been carried out.
- 12.4 This instrument will mean that trustees of trusts within scope of TRS registration will have additional time to do so, to ensure that the administrative burden of registration is minimised as much as possible. This instrument also means that certain types of trusts (such as trusts holding certain insurance policies) are not required to register, removing the administrative burden of registration from those trustees entirely.
- 12.5 A full Impact Assessment covering transposition of the Amending Directive was published alongside the Money Laundering and Terrorist Financing (Amendment) Regulations 2019.

13. Regulating small business

- 13.1 The legislation applies to activities that are regulated under the Regulations regardless of the size of the business. We do not anticipate that the amendments to the MLRs made by this instrument will have a significant impact on small businesses.

13.2 The basis for the final decision on what action to take to assist small businesses is that there is no disproportionate impact on small business and therefore no additional assistance for small business is required.

14. Monitoring & review

14.1 The Money Laundering and Terrorist Financing (Amendment) (EU Exit) Regulations 2020 (S.I. 2020/991) require HM Treasury, from time to time, to carry out a review of the regulatory provisions contained in those Regulations (including the provisions amended by this instrument) and publish a report setting out the conclusions of the review. The first report must be published before 26 June 2022. Subsequent reports must be published at intervals not exceeding 5 years.

15. Contact

15.1 James Wright at HM Treasury (Telephone: 07833 741298 or email: james.wright@hmtreasury.gov.uk) can be contacted with any queries regarding the instrument.

15.2 Emily Bayley, Deputy Director for Sanctions and Illicit Finance at HM Treasury can confirm that this Explanatory Memorandum meets the required standard.

15.3 John Glen MP, the Economic Secretary to the Treasury at HM Treasury can confirm that this Explanatory Memorandum meets the required standard.

Annex

Statements under the European Union (Withdrawal) Act 2018 and the European Union (Future Relationship) Act 2020

Part 1A

Table of Statements under the 2018 Act

This table sets out the statements that may be required under the 2018 Act.

Statement	Where the requirement sits	To whom it applies	What it requires
Sifting	Paragraphs 3(3), 3(7) and 17(3) and 17(7) of Schedule 7	Ministers of the Crown exercising sections 8(1) or 23(1) to make a Negative SI	Explain why the instrument should be subject to the negative procedure and, if applicable, why they disagree with the recommendation(s) of the SLSC/Sifting Committees
Appropriate-ness	Sub-paragraph (2) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1) or 23(1) or jointly exercising powers in Schedule 2	A statement that the SI does no more than is appropriate.
Good Reasons	Sub-paragraph (3) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1) or 23(1) or jointly exercising powers in Schedule 2	Explain the good reasons for making the instrument and that what is being done is a reasonable course of action.
Equalities	Sub-paragraphs (4) and (5) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1) or 23(1) or jointly exercising powers in Schedule 2	Explain what, if any, amendment, repeals or revocations are being made to the Equalities Acts 2006 and 2010 and legislation made under them. State that the Minister has had due regard to the need to eliminate discrimination and other conduct prohibited under the Equality Act 2010.
Explanations	Sub-paragraph (6) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1) or 23(1) or jointly exercising powers in Schedule 2 In addition to the statutory obligation the Government has made a political commitment to include these statements alongside all EUWA SIs	Explain the instrument, identify the relevant law before IP completion day, explain the instrument's effect on retained EU law and give information about the purpose of the instrument, e.g., whether minor or technical changes only are intended to the EU retained law.
Criminal	Sub-paragraphs (3) and (7)	Ministers of the Crown	Set out the 'good reasons' for creating a

offences	of paragraph 28, Schedule 7	exercising sections 8(1) or 23(1) or jointly exercising powers in Schedule 2 to create a criminal offence	criminal offence, and the penalty attached.
Sub-delegation	Paragraph 30, Schedule 7	Ministers of the Crown exercising section 8 or part 1 of Schedule 4 to create a legislative power exercisable not by a Minister of the Crown or a Devolved Authority by Statutory Instrument.	State why it is appropriate to create such a sub-delegated power.
Urgency	Paragraph 34, Schedule 7	Ministers of the Crown using the urgent procedure in paragraphs 5 or 19, Schedule 7.	Statement of the reasons for the Minister's opinion that the SI is urgent.
Scrutiny statement where amending regulations under 2(2) ECA 1972	Paragraph 14, Schedule 8	Anybody making an SI after IP completion day under powers conferred before the start of the 2017-19 session of Parliament which modifies subordinate legislation made under s. 2(2) ECA	Statement setting out: a) the steps which the relevant authority has taken to make the draft instrument published in accordance with paragraph 16(2), Schedule 8 available to each House of Parliament, b) containing information about the relevant authority's response to— (i) any recommendations made by a committee of either House of Parliament about the published draft instrument, and (ii) any other representations made to the relevant authority about the published draft instrument, and, c) containing any other information that the relevant authority considers appropriate in relation to the scrutiny of the instrument or draft instrument which is to be laid.
Explanations where amending regulations under 2(2) ECA 1972	Paragraph 15, Schedule 8	Anybody making an SI after IP completion day under powers outside the European Union (Withdrawal) Act 2018 which modifies subordinate legislation made under s. 2(2) ECA	Statement explaining the good reasons for modifying the instrument made under s. 2(2) ECA, identifying the relevant law before IP completion day, and explaining the instrument's effect on retained EU law.

Part 1B

Table of Statements under the 2020 Act

This table sets out the statements that may be required under the 2020 Act.

Statement	Where the requirement sits	To whom it applies	What it requires
Sifting	Paragraph 8 Schedule 5	Ministers of the Crown exercising section 31 to make a Negative SI	Explain why the instrument should be subject to the negative procedure and, if applicable, why they disagree with the recommendation(s) of the SLSC/Sifting Committees

Part 2

Statements required under the European Union (Withdrawal) 2018 Act or the European Union (Future Relationship) Act 2020

1. Explanations where amending or revoking regulations etc. made under section 2(2) of the European Communities Act 1972

1.1 The Economic Secretary to the Treasury, John Glen MP has made the following statement regarding regulations made under the European Communities Act 1972:

“In my opinion there are good reasons for The Money Laundering and Terrorist Financing (Amendment) Regulations 2022 to amend The Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (S.I. 2017/692).

This is because of the need to amend the deadlines that apply to trustees in fulfilling their obligations to provide information on beneficial ownership to the trusts register held by HMRC, to ensure that trustees have sufficient time to meet these obligations. This is also because of the need to amend the scope of trusts required to register on the trusts register to ensure that trusts that are regulated elsewhere are not required to register.”

1.2 There are good reasons for the amendment for the reasons given in sections 6 and 7 of this memorandum.

Relevant law and effect of the amendment on retained EU law – paragraph 15(3), Schedule 8

1.3 Section 6 of this memorandum sets out the law which is relevant to the amendment, specifically the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (S.I. 2017/692), the Money Laundering and Terrorist Financing (Amendment) (EU Exit) Regulations 2020 (S.I. 2020/991) and the powers given by section 49 of the Sanctions and Anti-Money Laundering Act 2018 (c.13).

1.4 There is no direct impact on other retained EU law as a result of these Regulations.