EXPLANATORY MEMORANDUM TO

THE MONEY LAUNDERING AND TERRORIST FINANCING (AMENDMENT) (NO. 2) 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.

2.2 The main changes make some time-sensitive updates to The Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (the "MLRs"), which are being made to ensure that the UK continues to meet international standards on anti-money laundering and counter-terrorist financing ("AML/CTF"), whilst also strengthening and clarifying how the UK's AML regime operates, following feedback from industry and supervisors.

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 MLRs, further to changes that were previously made by a number of instruments, the most relevant of which are the Money Laundering and Terrorist Financing (Amendment) Regulations 2019 (S.I. 2019/1511) ("the 2019 Regulations") and the Money Laundering and Terrorist Financing (Amendment) (EU Exit) Regulations 2020 (S.I. 2020/991) ("the 2020 Regulations").

3.2 The MLRs were made under section 2(2) of the European Communities Act 1972 (c. 68). These Regulations are made under the separate powers in section 49 of, and Schedule 2 to, the Sanctions and Anti-Money Laundering Act 2018 (c. 13) ("SAMLA") and are subject to the draft affirmative procedure as required by section 55(5)(d) of that Act. Paragraph 15 of Schedule 8 to the European Union (Withdrawal) Act 2018 (c. 16) applies to this instrument. All specific procedural and publication requirements for this instrument have been complied with.

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) (No. 2) Regulations 2022 are compatible with the Convention rights."

6. Legislative Context

6.1 This instrument amends the MLRs.

6.2 The MLRs transposed into UK law EU Directive 2015/849 ("4MLD"). As noted in section 3.1 above, the MLRs have also been amended by the 2019 Regulations and the 2020 Regulations – this was to implement amendments made by EU Directive 2018/843 ("5MLD"). 4MLD and 5MLD gave effect to the updated 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 A full explanation of the legislative measures being proposed is set out in the "Policy Background" section below.

7. Policy background

What is being done and why?

7.1 Money laundering and terrorist financing undermines the integrity and stability of the financial system. Money laundering is also a key enabler of serious and organised crime, which costs the UK at least £37 billion every year[1]. This is a global issue and the UK must play its part in strengthening its AML/CTF regime and adhering to international standards.

7.2 The UK is a founding member of the Financial Action Task Force ("FATF"), which sets global 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 element of the UK's regulatory framework for addressing and mitigating the risks related to money laundering and terrorist financing. The UK government's intention through amending the MLRs via this instrument is to retain and support the objective to combat illicit finance and address emerging risks, whilst minimising the burden on legitimate businesses and individuals.

7.4 This instrument has been limited to a number of specific measures, while the separate review underway of the MLRs is intended to shape the UK's broader direction on AML for the coming years.

Instrument Measures

Terrorist and Asset-Freezing etc. Act 2010 (regulation 3)

7.5 This instrument is removing the redundant reference to the Terrorist Financing Asset-Freezing etc Act 2010 (c.38) ("TAFA") from regulation 3 of the MLRs.

7.6 In the MLRs, Terrorist Financing is defined under regulation 3(1). This definition currently includes a reference to TAFA. TAFA was replaced in law at the end of the transition period by the Counter Terrorism (Sanctions) (EU Exit) Regulations 2019.

[1] https://commonslibrary.parliament.uk/research-briefings/cbp-9013/

Therefore, the reference to TAFA in the MLRs is now redundant and should be removed. This will ensure that the MLRs do not reference historic legislation.

Trust and Company Service Provider services and business relationships (regulation 4)

7.7 This instrument is amending the wording of regulation 12(2)(a) of the MLRs to include the formation of all forms of business arrangement, not just companies and other legal persons. This will now specifically include Limited Partnerships which are registered in England and Wales or Northern Ireland (Scottish Limited Partnerships are already included as they are "legal persons" and so are caught under the current provisions). This instrument is also amending regulation 4(2) of the MLRs to require Trust and Company Service Providers ("TCSPs") to conduct CDD on their customers, when they are providing the services outlined in regulation 12(2)(a), (b) and (d).

7.8 Regulation 12(2) of the MLRs defines a TCSP as a firm or sole practitioner who, by way of business, provides any of the services listed within that regulation. Some of these services include forming companies or other "legal persons" or providing formal addresses for them. However, the present requirements for TCSPs in the MLRs do not adequately cover all business arrangements and services provided that are required to be registered with Companies House.

7.9 TCSPs are also required to undertake CDD checks on their customers in certain circumstances, as set out in regulation 27(1) of the MLRs, including when they establish a business relationship (regulation 4(2)). The government considers that the term "business relationship" should apply when a TCSP forms all types of business arrangement that are required to register with Companies House, as well as when a TCSP provides the services in regulation 12(2)(b) (acting, or arranging for another person to act, as a director or secretary of a company, as a partner of a partnership or in a similar capacity in relation to other legal person) and (d) (acting, or arranging for another person to act as a trustee of an express trust or similar legal arrangement or as a nominee shareholder for a person other than a company whose securities are listed on a regulated market), notwithstanding that these transactions may otherwise lack the expectation of duration otherwise required for a business relationship.

Travel Rule (regulation 5)

7.10 This instrument inserts a new Part 7A into the MLRs to expand the information sharing standard for wire/bank transfers to transfers involving cryptoassets (referred to as the "Travel Rule").

7.11 The Travel Rule will expand the application of FATF Recommendation 16, regarding information sharing requirements for wire transfers, to cryptoassets. This is in order to maintain the UK's compliance with FATF standards. This requirement is designed to enable financial institutions to detect potential money laundering or terrorist financing activity by ensuring that the identities of the parties to the transaction are known, and facilitates investigations by law enforcement through ensuring appropriate records of transactions are kept. This requirement applies to both domestic and cross-border wire transfers.

7.12 The UK intends to take a tailored approach to meeting international Travel Rule requirements. Amendments will be made to the MLRs rather than the Funds Transfer Regulation ("FTR"), which implemented Recommendation 16 for transfers of funds, as the FTR is retained EU law and cannot be amended via secondary legislation to

include cryptoassets. Moreover, the FTR's requirements were drafted with conventional wire transfers (such as bank transfers via the SWIFT system) in mind, and some requirements are not appropriate for cryptoassets. The EU has adopted a similar approach by adding a new section to the FTR that deals specifically with cryptoassets. Officials have also engaged closely with other FATF members to inform a risk-based approach to certain requirements. FATF Recommendation 1 permits jurisdictions to depart from the requirements of the standards where the risk of doing so is deemed to be low.

Proliferation Financing Risk Assessment (regulation 6)

7.13 This instrument is amending the MLRs, by supplementing regulations 16, 17 and 18, to strengthen the mitigation of proliferation financing ("PF") risk. A definition of PF will also be included in the MLRs to clarify the type of activity that would be considered PF, whilst remaining tied to relevant UN Security Council Resolutions ("UNSCRs") so as not to expand the scope included under FATF Recommendation 1.

7.14 The amendments to the MLRs provide a useful opportunity to make sure that the UK meets FATF standards ahead of the UK's next Mutual Evaluation Review in 2025, particularly in relation to PF. Recent updates to Recommendation 1 of the FATF standards are aimed at requiring financial institutions ("FIs") and designated non-financial businesses and professions ("DNFBPs") to identify, assess and take effective action to mitigate PF risk. In order to implement these updates, the UK is required as a matter of policy to carry out a PF National Risk Assessment and legislate to require FIs and DNFBPs to complete their own risk assessments of PF, alongside their current risk assessments for money laundering and terrorist financing. These measures are designed to enable financial institutions and DNFPBs to detect and prevent the non-implementation, potential breach, or evasion of targeted financial sanctions pertaining to PF under Recommendation 7 of the FATF standards.

7.15 The current scope of activity constituting PF within FATF's Recommendation 1 is narrow, referring to 'proliferation financing risk' as "strictly and only to the potential breach, non-implementation or evasion of the targeted financial sanctions obligations referred to in Recommendation 7", namely the relevant counter-proliferation related UNSCRs.

Art Market Participants definition (regulation 7)

7.16 This instrument is amending the definition for Art Market Participants ("AMPs") in regulation 14(1)(d) of the MLRs to exempt from scope artists who sell their own works of art over the EUR 10,000 threshold, including when the artist sells their art as an individual and when they sell it through a company or partnership where they are a shareholder or partner.

7.17 The provision bringing the art sector into scope of the MLRs was introduced due to the expansion of obliged entities under 5MLD. When transposing the definition relating to "art intermediaries" into the MLRs, it was not the government's intention to include artists who sell their own works of art over the EUR 10,000 threshold as AMPs. The government's intended definition of AMPs is therefore being clarified through an amendment to regulation 14(1)(d) of the MLRs.

Regulation 15 Exclusions (regulation 8)

7.18 This instrument is amending regulation 15(3)(f) to include in its reference to relevant persons under regulation 8(2), AMPs (8(2)(i)), cryptoasset exchange providers (8(2)(j)), and custodian wallet providers (8(2)(k)). This will align regulations 8 and 15 with regard to the list of relevant persons under the MLRs.

7.19 Under the MLRs, regulation 8(2) lists the relevant persons who are in scope. Regulation 15 of the MLRs excludes certain activities from scope of the Regulations. This includes, in regulation 15(3), where those activities are 'occasional or very limited'. Regulation 15(3) goes on to list the conditions that must be fulfilled in order for the activity to fall within that description, including (regulation 15(3)(f)) that the 'main activity' of the business does not fall within regulation 8(2)(a) to (f) or (h). As an illustration, if a person gave tax advice on an occasional or very limited basis, this activity would not be in scope of the MLRs, unless that person's main activity was being a legal professional.

7.20 Where regulation 15(3) lists the conditions that must be met in order for activity carried out by relevant persons to be described as 'occasional or very limited', it does not currently include in regulation 15(3)(f) AMPs, cryptoasset exchange providers or custodian wallet providers. This instrument will therefore resolve the disparity between the list of relevant persons in regulation 8(2) and the exclusion in regulation 15(3).

Discrepancy Reporting (regulations 9, 16 and 17)

7.21 This instrument is amending regulation 30A(1) of the MLRs to extend the scope of the discrepancy reporting regime so that it is an ongoing requirement and limiting the requirement to report only 'material discrepancies' as defined in the Regulations. There will be a grace period before these changes come into effect. Additionally, this instrument is also expanding the discrepancy reporting regime to extend the requirement to include discrepancies on the new Register of Overseas Entities ("ROE").

7.22 Regulation 30A of the MLRs requires relevant persons to report to the registrar of companies any discrepancies between the information they hold about the beneficial owners of companies, as a result of CDD measures, and the information recorded by Companies House on the public companies register. This requirement applies at the onboarding stage, "before establishing a business relationship". If a relevant person later comes into possession of information which is different from that held at Companies House, there has been no clear obligation to report the discrepancy on the register. This has implications for the accuracy of the company register, and whilst the lack of reporting means it is difficult to assess the extent of this gap, the government considers that, to enhance the accuracy and integrity of the companies register, the obligation should be ongoing. Additionally, feedback from obliged entities during the consultation was clear on the need to provide more clarity on the types of discrepancy that should be reported. This expanded discrepancy reporting regime will also apply in respect of relevant trusts and the required register of trusts kept by the Commissioners.

7.23 Since the consultation on this instrument, the government has passed the Economic Crime (Transparency and Enforcement) Act 2022 (c.10) ("ECTEA"), legislating to create a new register of overseas entities who own or control UK property. As regulation 30A is currently drafted there is no obligation to report discrepancies on the

new register. Property is assessed as a high risk for money laundering in the 2020 National Risk Assessment for money laundering and terrorist financing. The government therefore considers that the obligation should be extended to include discrepancies identified on the ROE.

7.24 Consequential amendments are made to the ECTEA and the Companies Act 2006 (c.46) to allow the respective registers to be updated following discrepancy reports.

Bank Account Portal (regulation 10)

7.25 This instrument is removing the requirements in Part 5A of the MLRs relating to the Bank Account Portal ("BAP").

7.26 Under 5MLD, the UK was required to implement a centralised automated mechanism to identify persons holding or controlling bank accounts or safe deposit boxes through a BAP. The UK transposed the 5MLD elements relating to a BAP in 2019; however, having conducted more detailed stakeholder engagement and scoping of the costs and schedule, the government decided not to proceed with the project at this time. The strong view was that it did not offer a robust value for money case, given the UK's existing capability, through Customer Information Orders and other tools under the Proceeds of Crime Act 2002 (c.29) ("POCA"), to extract this information from financial institutions. While these tools do require law enforcement to apply to the courts, they can be aimed at one bank, several banks, or all banks in the country. The government does not believe there was a strong requirement for an alternative, centralised mechanism in order to support the work, and obligations to international partners, of law enforcement.

Information-sharing (regulation 11)

7.27 This instrument is amending regulation 52 of the MLRs to:

- Expand the information and intelligence sharing gateway to allow for reciprocal sharing between supervisors and relevant authorities (including law enforcement);
- Expand the list of 'relevant authorities' explicitly to include other government agencies, such as certain functions of the Department for Business, Energy & Industrial Strategy ("BEIS") and Companies House; and
- Enable the Financial Conduct Authority ("FCA") to disclose the confidential information it receives, in relation to its MLR duties, more widely.

7.28 Regulation 52 of the MLRs currently allows for the disclosure of intelligence and information by supervisory authorities to other relevant authorities, for specific purposes connected to their functions. However, the MLRs do not allow for wider information-sharing between a range of bodies with key roles in AML/CTF (such as law enforcement agencies), to reduce the existing barriers to sharing information and intelligence about AML threats and firms' compliance. There is no reciprocal gateway for information and/ or intelligence to be shared by a relevant authority to a supervisory authority for the same purpose. Expanding the gateway to permit such reciprocal information-sharing will allow for protected information and intelligence to be disclosed by relevant authorities, especially law enforcement agencies to supervisory authorities.

7.29 Regulation 52(1) also limits the disclosure or sharing of intelligence and/or information by supervisory authorities to relevant authorities for the purposes of their

functions under the MLRs. A 'relevant authority' is currently defined by regulation 52(5) as another supervisory authority, HM Treasury, any law enforcement authority, or an overseas authority as defined by regulation 50(4). The list of relevant authorities does not include other government departments such as BEIS, and the enforcement agencies within BEIS, who may benefit from utilising the gateway for the protected sharing of information and intelligence relevant to their MLR functions. Regulation 52 also limits the disclosure of confidential information received by the FCA, even if the sharing of such information would assist one or both of the FCA and HM Treasury's public functions. However, under the FSMA disclosure regime, received confidential information may be shared by the FCA to HM Treasury in order to enable or assist in any of HM Treasury's public functions. Therefore, regulation 52 will be amended so that it widens the existing narrower gateway.

Change in control – cryptoasset firms (regulation 12(3))

7.30 This instrument is amending the MLRs by adding a new schedule 6B to require proposed acquirers of cryptoasset firms to notify the FCA ahead of such acquisitions and provide the FCA with powers to undertake a 'fit and proper' assessment of the acquirer. This includes powers to object to any such acquisition before it takes place. The instrument will also capture Change in Control offences under the MLRs in the new schedule 6B.

7.31 The FCA has highlighted the potential for firms who want to access the UK cryptoasset market and bypass the MLR registration gateway to acquire already-registered cryptoasset firms. Without amendment, the FCA estimates that it would take up to 90 days from the date of acquisition to cancel a firm's registration, potentially enabling the acquiring firm to undertake illicit activities before the FCA could take action. This amendment will require proposed acquirers of cryptoasset firms to notify the FCA ahead of such acquisitions, allowing the FCA to undertake a 'fit and proper' assessment of the acquirer, including FCA powers to object to such an acquisition. The FCA already has powers to cancel the registration of the firm being acquired. This will ensure that firms cannot avoid proper assessment by the FCA, which will be provided with powers to align with the approach taken under FSMA.

Notices of refusal to register (regulation 12(2))

7.32 This instrument is amending regulation 59 of the MLRs to grant the FCA and HMRC the power to publish notices of refusal to register under the MLRs.

7.33 Currently under the MLRs, the FCA and HMRC can publish notices relating to the cancellation and suspension of MLR registrations; however, neither is able to publish notices of refusal to register. This amendment will improve transparency of FCA and HMRC decision-making by aligning the treatment of notices of refusal to register with their powers to publish notices for the cancellation and suspension of registrations. The amendment will also allow the FCA to publish such notices where it has refused registration in the context of an acquisition of an already-registered cryptoasset firm.

Suspicious Activity Reports (regulation 13)

7.34 This instrument is making amendments to the MLRs to make explicit that supervisors can directly request Suspicious Activity Reports ("SARs") from their members, to help them in fulfilling their supervisory functions, and driving greater consistency of approach to utilising SARs across supervisors.

7.35 Regulation 51(1) and Schedule 4 of the MLRs set out the responsibilities of AML/CTF supervisors and information they are able to access in relation to Suspicious Activity Reports ("SARs") submitted by their supervised populations. Regulation 66 is the power on the part of supervisory authorities to require information to be provided. The amendments introduce an explicit legal right of access gateway for AML/CTF supervisors to access, view and consider the quality of the content in SARs submitted by supervised populations. Currently, there is no standardised approach to accessing SARs. Some supervisors are already accessing the content of SARs to fulfil their supervisory functions while others are hesitant, due to the ambiguity of the MLRs as to whether they have explicit permission to do so.

7.36 Clarifying the right of access will aid supervisors in delivering their supervisory obligations under the MLRs more effectively. It will allow supervisors to review and provide feedback on SARs to their supervised population following a risk-based approach, obtain information that is necessary to help inform their understanding of sector risks, and strengthen guidance provided to supervised populations, improving the quality of SARs.

Information-gathering (regulation 14)

7.37 This instrument is amending regulations 74A-C to extend the FCA's current powers of direction for cryptoasset firms, to cover Annex 1 firms.

7.38 The FCA is required by the MLRs to supervise Annex I firms for compliance (the MLRs refer to certain businesses as 'Annex I financial institutions'. These are defined in regulation 55 to the MLRs, with categories of firms listed in Schedule 2). These firms perform activities such as renting out safe deposit boxes and commercial lending, and include existing firms who have registered an unregulated part of their group to engage in corporate finance/lending.

7.39 These firms have been historically categorised as 'low risk' but recently there has been increasing concern about the current light touch approach to supervising them in the MLRs. This is in response to several cases related to Annex I firms which have highlighted heightened risks particularly, but not limited to, the credit and guarantees and corporate lending sectors. Given that these closely mirror activities undertaken by financial services firms, it is believed that there is now greater scope for financial crime in this sector.

7.40 The supervisory tools available to the FCA under regulation 66 of the MLRs are limited in respect of Annex I firms, especially when compared against other sectors within the FCA remit, particularly under FSMA. By extending Regulations 74A-C to apply to Annex I firms, the government will be bringing these firms in alignment with the current powers that the FCA have available to them for cryptoasset businesses. This will create a level playing field, from the position of cryptoasset firms, and will enable the FCA to better detect and manage harm wherever it occurs in their supervised population.

Account Information Service Providers (regulation 15)

7.41 This instrument is amending Schedule 2 of the MLRs to remove Account Information Service Providers ("AISPs") from scope.

7.42 AISPs were brought into scope of the MLRs for the first time during the transposition of 5MLD and the EU Revised Directive on Payment Services ("PSD2"). Following concerns from stakeholders and AML supervisors that payment service providers are

disproportionately impacted by being within scope of the MLRs, the SI consultation sought views on the current impact of AML obligations and compliance costs on relevant businesses; whether these impacts are dissuading customers from using AISPs; and whether the government should consider excluding them from scope of the MLRs.

7.43 AISPs are purely informational tools which allow customers to view their data and link that information to other services (for example, an AISP may be used to help an SME track cash flow and digitise their accounts, or as part of credit checks). Under the current MLRs, an AISP is required to include baseline AML checks into its consumer identity verification process (which verifies that the customer making the request is the genuine account holder and obtains their explicit consent for the AISP to access their account data and share it with another organisation). These checks are additional to customer due diligence ("CDD") checks already carried out by a financial sector firm or bank on the customer who already holds an open bank account. However, these information service providers cannot access accounts to make payments, and do not come into possession of funds or execute payments. Therefore, the government considers AISPs to present a low ML/TF risk, and is removing them from the scope of the MLRs.

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 Money Laundering Regulations along with amendments and the changes made to transpose the Fourth and Fifth Anti-Money Laundering Directives. Further amendments have also been made to the MLRs following the UK's exit of the EU, including S.I. 2018/1337, S.I. 2021/392, S.I. 2021/1218, S.I. 2021/137 and S.I. 2022/393. There are no current plans for a further consolidation of the MLRs, however a statutory review of the UK's AML/CTF regulatory and supervisory regimes (the "MLRs review") is currently underway.

9.2 The MLRs review will assess the overall effectiveness of the regimes, their extent (i.e. the sectors in scope as relevant entities), and the application of particular elements of the Regulations to ensure they are operating as intended. It will also consider the structure of the supervisory regime, and the work of the Office for Professional Body Anti-Money Laundering Supervision ("OPBAS") to improve the efficacy and consistency of Professional Body supervision. HM Treasury will publish its initial findings and next steps from the MLRs Review in June 2022.

10. Consultation outcome

10.1 HM Treasury launched a public consultation for this instrument on 22 July 2021, entitled "Amendments to the Money Laundering, Terrorist Financing and Transfer of

Funds (Information on the Payer) Regulations 2017 Statutory Instrument 2022"[2]. Through the consultation, the government sought views and evidence on the changes it proposed to make to the MLRs.

10.2 The consultation closed on 14 October 2021, with the government receiving 94 responses from stakeholders across a wide range of sectors. These included, AML/CTF supervisors, industry, civil society, academia and government departments.

10.3 The government has responded to the consultation in full, which can be found on GOV.UK[3].

11. Guidance

11.1 The MLRs allow for relevant persons to consider any guidance which has been issued by the FCA or issued by any other supervisory authority or appropriate body and approved by HM Treasury. To avoid confusion and inconsistent guidance within sectors, HM Treasury approves a single piece of guidance for each sector regulated under the MLRs, drafted either by the supervisory authority/authorities, or by another appropriate body.

11.2 The existing guidance for each sector will be updated by the relevant supervisory body or appropriate body, in order to accommodate the changes made by this instrument. This revised guidance will then subsequently be approved by HM Treasury.

[2] https://www.gov.uk/government/consultations/amendments-to-the-money-laundering-terrorist-financing-and-transfer-of-funds-information-on-the-payer-regulations-2017-statutory-instrument-2022
[3] https://www.gov.uk/government/consultations/amendments-to-the-money-laundering-terrorist-financing-and-transfer-of-funds-information-on-the-payer-regulations-2017-statutory-instrument-2022

12. Impact

12.1 Despite gathering views from the responses to the consultation and further engagement on the costs and impacts of implementing these measures with key stakeholders, it is difficult to quantify the impact of all measures in the instrument. Therefore the impact on business will vary across the measures in this instrument.

12.2 For some of the measures, for example the removal of the TAFA reference or the removal of the requirements to implement a BAP, there will be no impact on businesses. However, other measures, such as Proliferation Financing Risk Assessment or Discrepancy Reporting, are likely to affect all businesses in scope of the regulated sector. Within the regulated sector, how much the measures of this instrument will impact different businesses will also vary.

12.3 There is no, or no significant, impact on charities or voluntary bodies.

12.4 The impact on the public sector of this instrument is likely to be limited to those AML/CTF supervisors in the public sector, such as HMRC, FCA and the Gambling Commission, as well as OPBAS which oversees the professional body supervisors ("PBSs") in the legal and accountancy sectors. The impact on these bodies will vary across the measures in this instrument, but the government does not expect the impact to be significantly burdensome.

12.5 A full Impact Assessment will be published in due course alongside the Explanatory Memorandum on the legislation.gov.uk website.

13. Regulating small business

13.1 The legislation applies to activities that are undertaken by small businesses.

13.2 No specific action is proposed to minimise regulatory burdens on small businesses.

13.3 The basis for the final decision on what action to take to assist small businesses is that the MLRs apply to all businesses in scope of the regulated sector regardless of the size of business and therefore small businesses cannot be exempt from requirements under the MLRs if they fall within scope of the Regulations.

13.4 All those in scope of the regulated sector must apply a risk-based approach to complying with the requirements under the MLRs and therefore the burden on small businesses may be mitigated in some respect as not all of the measures in this instrument affect the whole of the regulated sector.

13.5 As will be noted in the Impact Assessment, the government does not think that the measures in this instrument will have a significantly negative impact on small businesses.

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.

14.2 The MLRs review, which will be completed by June 2022, will assess if the MLRs are functioning as intended, however given the similar timing for laying this instrument and publishing a report on the findings of the MLRs review, the review will not be able to look specifically at these measures. The next comprehensive review of the MLRs is due to be conducted in 2027, and the measures in this instrument will be assessed as part of that review. HM Treasury also engages frequently with stakeholders in both the public and private sectors to understand how the MLRs are being applied and works to resolve any issues.

15. Contact

15.1 Saskia Gibbs and Shantel Simms at HM Treasury (Email: Saskia.Gibbs@hmtreasury.gov.uk / Shantel.Simms@hmtreasury.gov.uk) can be contacted with any queries regarding the instrument.

15.2 Catherine Kernaghan, 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 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) (No. 2) Regulations 2022 to amend The Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (S.I. 2017/692).

1.2 This is because the Money Laundering Regulations 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 Regulations via this instrument is to retain and support the principle of combatting illicit finance and address emerging risks whilst minimising the burden on legitimate businesses and individuals.

1.3 As a leading member of the Financial Action Task Force ("FATF"), which sets global anti-money laundering and counter-terrorist financing standards, the UK must also continue to update anti-money laundering policies according to international standards, ensuring the UK's regime remains effective, proportionate, and responsive to new and emerging threats.

1.4 There are good reasons for the amendments 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

1.5 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) and the powers given by section 49 of the Sanctions and Anti-Money Laundering Act 2018 (c.13).

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