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STATUTORY INSTRUMENTS

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**2020 No. 991**

The Money Laundering and Terrorist Financing  
(Amendment) (EU Exit) Regulations 2020

PART 2

Implementation of EU law

**New Schedule 3A: excluded trusts**

11. After Schedule 3 (relevant offences) insert—

“SCHEDULE 3A

Regulation 42

Excluded Trusts

**Legislative Trusts**

1. A trust imposed or required by an enactment.

**Trusts imposed by court order**

2. A trust created by, or in order to satisfy the terms of, an order of a court or tribunal.

**Pension scheme trusts**

3. A trust holding sums or assets of a pension scheme which is a registered pension scheme for the purposes of Part 4 of the Finance Act 2004<sup>(1)</sup>.

**Trusts of insurance policies**

4. A trust of a life policy or retirement policy paying out only—  
(a) on the death, terminal or critical illness or permanent disablement of the person assured;  
or  
(b) to meet the cost of healthcare services provided to the person assured.

**Charitable trusts**

5. A trust for charitable purposes which—  
(a) in Scotland or Northern Ireland, is registered as a charity; or  
(b) in England and Wales, is registered as a charity or not required to register by virtue of section 30(2)(a) to (d) of the Charities Act 2011<sup>(2)</sup>.

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(1) 2004 c. 12.

(2) 2011 c. 25. Section 30(2)(c) was amended by S.I. 2016/997.

### **Pilot trusts**

6. A trust which—
- (a) holds property with a value not exceeding £100, and
  - (b) was created before the date on which regulation 42(2)(iii) of these Regulations comes into force.

### **Trusts having effect on death**

- 7.—(1) A trust effected by will where—
- (a) the trust is holding only the property comprised in a person’s estate on death, and
  - (b) less than two years has passed since that person’s death.
- (2) In this paragraph, a person’s “estate” means the aggregate of all the property to which that person is beneficially entitled.
8. A trust where—
- (a) the trust is holding only benefits received on the death of the person assured under a policy within paragraph 4, and
  - (b) less than two years has passed since that person’s death.

### **Co-ownership**

9. A trust of jointly held property where the trustees and the beneficiaries are the same persons.

### **Financial markets infrastructure**

- 10.—(1) A trust—
- (a) created under, or for the purpose of, the default arrangements of a designated system or of the default rules of a recognised body, or for the purpose of any action or proceedings taken by or for such a system or body under such arrangements or rules;
  - (b) relating to the creation of a beneficial interest in securities belonging to a person whose name and address are maintained on a register of securities (within the meaning of regulation 3(1) of the Uncertificated Securities Regulations 2001<sup>(3)</sup>); or
  - (c) created by or for a segregating entity—
    - (i) for the purpose of protecting sums or assets belonging to the segregating entity’s clients; or
    - (ii) for the purpose of complying with a legal obligation to safeguard and segregate sums or assets belonging to the segregating entity’s clients or to keep separate client records and accounts.
- (2) In this paragraph—
- “clearing member” and “default rules” have the meanings given, respectively, in sections 190(1) and 188 of the Companies Act 1989<sup>(4)</sup>;

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<sup>(3)</sup> S.I. 2001/3755.

<sup>(4)</sup> 1989 c. 40. Section 190(1) was amended by S.I. 2013/504. There are other amendments which are not relevant to these Regulations. Section 188 was amended by S.I. 2009/853, 2013/504, 2013/1908, 2017/1064 and 2017/1247.

“default arrangements”, “designated system” and “participant” have the meanings given in regulation 2(1) of the Financial Markets and Insolvency (Settlement Finality) Regulations 1999<sup>(5)</sup>;

“recognised body” and “recognised central counterparty” have the meanings given in section 313 of FSMA<sup>(6)</sup>;

“segregating entity” means—

- (a) an authorised person;
- (b) a clearing member of a recognised central counterparty;
- (c) a participant in a designated system;
- (d) a designated system; or
- (e) a recognised body.

#### **Professional services**

**11.** A trust created for the purpose of enabling or facilitating the holding of sums, assets or (in the case of sub-paragraph (c)), documents, belonging to a person other than the trustee, in connection with which sums, assets or documents the trustee is—

- (a) carrying on by way of business the activity specified in article 40 (safeguarding and administering investments) of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001<sup>(7)</sup>;
- (b) acting by way of business as the trustee of an authorised unit trust scheme (and for this purpose “trustee” and “authorised unit trust scheme” have the meanings given in section 237 of FSMA); or
- (c) acting by way of business as an agent holding sums, assets or documents in escrow until the performance of a contractual condition agreed between two or more other persons, including the person for whom the sums, assets or documents are being held.

#### **Client money etc.**

**12.** A trust created by a relevant supervised person for the purpose of holding client money, securities or other assets, where that trust is incidental to the carrying on of business by the relevant supervised person.

#### **Capital markets etc.**

**13.** A trust created for the purpose of enabling or facilitating an activity listed in points 2, 3, 6, 7 or 8 of Annex 1 to the capital requirements directive as set out in Schedule 2, or for protecting or enforcing rights relating to that activity, where—

- (a) one or more of the participants in that activity is a relevant supervised person, and
- (b) the use of the trust is incidental to the principal purpose of that activity.

#### **Commercial transactions**

**14.** A trust created for the purpose of—

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(5) [S.I. 1999/2979](#). The definition of “default arrangements” was amended by [S.I. 2006/50](#), [2010/2993](#) and [2013/504](#); “designated system” by [S.I. 2019/341](#) (with effect from IP completion day) and “participant” by [S.I. 2010/2993](#).

(6) [2000 c. 8](#). Section 313 was amended by [S.I. 2017/1064](#) and [2013/504](#). There are other amendments which are not relevant to these Regulations.

(7) [S.I. 2001/544](#).

- (a) enabling or facilitating a transaction effected for genuine commercial reasons; or
- (b) protecting or enforcing rights relating to such a transaction,

where the use of the trust is incidental to the principal purpose of the transaction.

### Registration of assets

**15.** A trust created on the transfer or disposal of an asset where the purpose of the trust is to hold the legal title to the asset on trust for the person to whom the transfer or disposal is being made until the time when the procedure required by law to effect the transfer or disposal of legal title is completed.

### Trusts meeting legislative requirements

**16.** A trust holding property to which section 71A or 71D of the Inheritance Tax Act 1984<sup>(8)</sup> applies.

**17.** A trust of property in respect of which a direction under paragraph 1 of Schedule 4 to the Inheritance Tax Act 1984<sup>(9)</sup> has effect.

**18.** A trust of funds derived from a payment—

- (a) made for the benefit of a person in consequence of a personal injury to that person, and
- (b) disregarded from capital under regulation 46(2) of, and paragraph 12 of Schedule 10 to, the Income Support (General) Regulations 1987<sup>(10)</sup>.

**19.** A trust holding tenants' contributions for the purposes of section 42 of the Landlord and Tenant Act 1987<sup>(11)</sup>.

**20.** The plan trust of a share incentive plan which meets the requirements of Part 9 of Schedule 2 to the Income Tax (Earnings and Pensions) Act 2003<sup>(12)</sup>.

**21.** A trust created under a share option scheme that meets the requirements of Parts 2 to 7 of Schedule 3 to the Income Tax (Earnings and Pensions) Act 2003.

**22.** A trust holding property for a beneficiary who is a disabled person within the meaning given by Schedule 1A to the Finance Act 2005<sup>(13)</sup>.

### Public authorities

**23.** A trust created for the purposes of enabling or assisting—

- (a) a public authority, within the meaning of section 3(1) of the Freedom of Information Act 2000<sup>(14)</sup>, or a body specified in section 80(2) of that Act;

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(8) 1984 c. 51. Sections 71A and 71D were inserted by section 156 of, and Schedule 20 to, the Finance Act 2006 (c. 25). Both sections were amended by section 48 of, and Schedule 2 to, the Crime and Security Act 2010 (c. 17) and section 216 of, and Schedule 44 to, the Finance Act 2013 (c. 29).

(9) Schedule 4 was amended by section 94 of, and Schedule 26 to, the Finance Act 1985 (c. 54); section 59 of, and Schedule 9 to, the Finance Act 1987 (c. 16); section 142 of, and Schedule 25 to, the Finance Act 1998 (c. 36), and section 12 of the Finance (No. 2) Act 2015 (c. 33). There are other amendments to Schedule 4 but none are relevant to these regulations.

(10) S.I. 1987/1967. Paragraph 12 of Schedule 10 was substituted by S.I. 1990/1776 and amended by S.I. 2006/2378.

(11) 1987 c. 31. Section 42 was amended by section 157 of, and Schedule 10 to, the Commonhold and Leasehold Reform Act 2002 (c. 15).

(12) 2003 c. 1. Part 9 of Schedule 2 was amended by section 139 of, and Schedule 21 to, the Finance Act 2003 (c. 14); section 882 of, and Schedule 1 to, the Income Tax (Trading and Other Income) Act 2005 (c. 5); section 1177 of, and Schedule 1 to, the Corporation Tax Act 2010 (c. 4); section 14 of, and Schedule 2 to, the Finance Act 2013 (c. 29), and section 51 of, and Schedule 8 to, the Finance Act 2014 (c. 26).

(13) 2005 c. 7. Schedule 1A was inserted by section 216 of, and Schedule 44 to, the Finance Act 2013. It was relevantly amended by section 291 of the Finance Act 2014.

(14) 2000 c. 36.

- (b) a Scottish public authority, within the meaning of section 3(1) of the Freedom of Information (Scotland) Act 2002<sup>(15)</sup>;
- (c) the Security Service, the Secret Intelligence Service, the Government Communications Headquarters or the National Crime Agency; or
- (d) the Welsh Assembly Government,

to carry out its functions, including any functions as a court or tribunal and, in the case of the Bank of England, any of its functions as a monetary authority within the meaning of section 244(2)(c) of the Banking Act 2009<sup>(16)</sup>.

### Interpretation

**24.** In this Schedule, “relevant supervised person” means—

- (a) a relevant person; or
- (b) a person who is subject to requirements in national legislation having an equivalent effect to those laid down in the fourth money laundering directive on an obliged entity (within the meaning of that directive) and supervised for compliance with those requirements in a manner equivalent to section 2 of Chapter VI of the fourth money laundering directive.”.

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### Commencement Information

**II** Reg. 11 in force at 6.10.2020, see [reg. 1\(2\)](#)

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<sup>(15)</sup> 2002 asp. 13.

<sup>(16)</sup> 2009 c. 1. Section 244 was amended by section 5 of, and Schedule 2 to, the Financial Services Act 2012 (c. 21) and by S.I. 2014/3329 and 2018/1115.

**Changes to legislation:**

There are currently no known outstanding effects for the The Money Laundering and Terrorist Financing (Amendment) (EU Exit) Regulations 2020, Section 11.