EXPLANATORY MEMORANDUM TO

THE MONEY LAUNDERING AND TERRORIST FINANCING (AMENDMENT) (NO. 2) (HIGH-RISK COUNTRIES) REGULATIONS 2021

2021 No. 827

1. Introduction

This explanatory memorandum has been prepared by HM Treasury and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

This statutory instrument amends the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (S.I. 2017/692) ("the MLRs") by substituting the list of high-risk third countries (in respect of which extra customer due diligence measures must be taken by relevant persons under the MLRs) in Schedule 3ZA for a new list. Schedule 3ZA had originally been inserted into the MLRs by the Money Laundering and Terrorist Financing (Amendment) (High-Risk Countries) Regulations 2021 (S.I. 2021/392) ("HRTC Amendment No.1 SI").

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

This instrument exercises the powers in section 49 (money laundering and terrorist financing etc.) of the Sanctions and Anti-Money Laundering Act 2018 (c.13) ("the Act").

This instrument contains only regulations under section 49 which make provision about high-risk countries. In accordance with section 55(3) of the Act it is therefore laid before Parliament after being made and ceases to have effect at the end of the period of 28 days beginning with the day on which is made, (subject to extension for periods of dissolution, prorogation or adjournment) unless approved by a resolution of each House of Parliament.

The Department recognises the importance of there being a 21-day period between the making and coming into force of an S.I. This S.I however comes into force a day after it is laid. This urgency reflects the increased risks of money laundering associated with delaying the addition of 4 new countries to the list. The supervised sectors have all been notified in writing that the UK's list will be updated to align with the Financial Action Task Force (FATF) lists at short notice following the periodic FATF Plenary meetings. As a result of this prior notification it is not anticipated that they will face any great challenge in implementing the S.I. at short notice, and also due to the fact that there is already an analogous, but less prescriptive, obligation to take into account geographical risk factors when assessing the level of customer due diligence to apply.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

The territorial application of this instrument includes Scotland and Northern Ireland.

4. Extent and Territorial Application

The territorial extent of this instrument is all of the United Kingdom.

The territorial application of this instrument is all of the United Kingdom.

5. European Convention on Human Rights

The Economic Secretary to the Treasury, John Glen MP has made the following statement regarding Human Rights:

> "In my view the provisions of the Money Laundering and Terrorist Financing (Amendment) (No. 2) (High-Risk Countries) Regulations 2021 are compatible with the Convention rights."

6. Legislative Context

Regulation 33 of the MLRs requires enhanced due diligence measures to be taken by regulated businesses (referred to as "relevant persons") in respect of business relationships and transactions involving "high-risk third countries".

Under the MLRs, a 'high-risk third country' references a country which is specified in Schedule 3ZA. Schedule 3ZA is a freestanding list of countries which, in line with the UKs approach to high risk third countries, mirrors those countries identified by the FATF, the global anti-money laundering and counter terrorist financing ("AML/CTF") standard setter, in their public documents. Schedule 3ZA had originally been inserted into the MLRs by the HRTC Amendment No.1 SI to replace retained EU law.

The FATF make periodic changes to their lists (up to 3 times a year) to reflect changes in global AML/CTF risk. As such, the UK's list will become outdated and non-reflective of global risk profiles if not updated, leaving the financial system at risk of threats from those who have strategic deficiencies in their AML/CTF regimes. Furthermore, the UK has committed to updating Schedule 3ZA to reflect the updates made by the FATF to their lists.

These Regulations amend the MLRs by substituting the list of high-risk third countries in Schedule 3ZA for a new list of countries which mirrors the updates made by FATF to its lists following its June Plenary.

Section 49 of the Sanctions and Anti-Money Laundering Act 2018 enables the Treasury to make regulations for the purposes of combatting money laundering and terrorist financing, following the repeal of section 2(2) of the European Communities Act 1972 (c.68), and to keep the United Kingdom's AML/CTF regime up to date. This includes power to amend the MLRs and to require certain persons to take measures – for example, due diligence measures – in relation to their customers in prescribed circumstances.

7. Policy background

What is being done and why?

The principal policy objective behind this legislation is for the Department to be able to update the list of high-risk third countries in respect of which the regulated sector needs to apply enhanced due diligence in a timely manner in order to continue to be in line with international standards on combatting money laundering.

This new list of countries reflects the list identified by the FATF in the 'high risk jurisdictions subject to a call for action' and 'jurisdictions under increased monitoring' public statements released after the Plenary meeting of 21-25 June 2021. These countries are identified as having strategic deficiencies in their AML/CFT regimes. The instrument will therefore give effect to FATF global standards on high-risk third countries which promote effective implementation of legal and regulatory measures to combat money laundering and terrorist financing.

The UK is a founding member and strong supporter of the FATF, which sets global anti-money laundering, counter-terrorist financing and counter proliferation financing standards. The FATF has a detailed and extensive set of standards which countries are monitored against using a transparent and rigorous peer review mechanism. By aligning the UK's approach to the FATF the UK is in line with international standards, and the identification of countries is underpinned by the FATF's methodology and assessment processes.

Jurisdictions under increased monitoring are actively working with the FATF to address strategic deficiencies in their regimes to counter money laundering, terrorist financing, and proliferation financing. When the FATF places a jurisdiction under increased monitoring, it means the country has committed to resolve swiftly the identified strategic deficiencies within agreed timeframes and is subject to increased monitoring. After each FATF plenary, the FATF releases a public document identifying those jurisdictions under increased monitoring. The current list of Jurisdictions under increased monitoring is as follows: Albania, Barbados, Botswana, Burkina Faso, Cambodia, Cayman Islands, Haiti, Jamaica, Malta, Mauritius, Morocco, Myanmar, Nicaragua, Pakistan, Panama, Philippines, Senegal, South Sudan, Syria, Uganda, Yemen and Zimbabwe.

High-risk jurisdictions subject to a call for action have significant strategic deficiencies in their regimes to counter money laundering, terrorist financing, and financing of proliferation. For all countries identified as high-risk, the FATF calls on all members and urges all jurisdictions to apply enhanced due diligence, and in the most serious cases, countries are called upon to apply counter-measures to protect the international financial system from the ongoing money laundering, terrorist financing, and proliferation financing risks emanating from the country. After each FATF plenary, the FATF releases a public document identifying those high-risk jurisdictions subject to a call for action. The current list of High-risk jurisdictions subject to a call for action is as follows: Democratic People's Republic of Korea and Iran.

Schedule 3ZA mirrors both the FATF's 'Jurisdictions under increased monitoring' and 'High-risk jurisdictions subject to a call for action' documents and consolidates these lists into a single, freestanding list of countries.

The FATF standards recommend that financial institutions and designated non-financial businesses and professions apply enhanced due diligence to transactions and business relationships involving countries identified as high risk by the FATF in its public statement on High-Risk Jurisdictions subject to a Call for Action.

Enhanced due diligence is defined by regulation 33 of the MLRs as requiring measures such as obtaining additional information on the customer and customer's beneficial owner; and on the intended nature of the business relationship in order to establish with more care if money laundering is likely to be an issue. It must be carried out "in any business relationship with a person established in a high-risk third country or in

relation to any relevant transaction where either of the parties to the transaction is established in a high-risk third country".

Explanations

What did any law do before the changes to be made by this instrument?

Prior to the amendments made by this S.I, the list of countries in respect of which extra customer due diligence measures must be taken by relevant persons under the MLRs was specified by Schedule 3ZA as the following countries: Albania, Barbados, Botswana, Burkina Faso, Cambodia, Cayman Islands, Democratic People's Republic of Korea, Ghana, Iran, Jamaica, Mauritius, Morocco, Myanmar, Nicaragua, Pakistan, Panama, Senegal, Syria, Uganda, Yemen and Zimbabwe.

Why is it being changed?

The UK has committed to updating Schedule 3ZA to reflect the updates made by the FATF to their lists of countries identified as having strategic deficiencies in their AML/CTF regimes. Furthermore, if the list of countries specified in Schedule 3ZA as 'high risk third countries' is not amended, it will become outdated and non-reflective of global AML/CTF risk identified by the FATF, leaving the UK financial system at risk of threats from those who have strategic deficiencies in their AML/CTF regimes.

What will it now do?

The new Schedule 3ZA lists the following countries for the purposes of enhanced customer due diligence requirements in regulation 33(3): Albania, Barbados, Botswana, Burkina Faso, Cambodia, Cayman Islands, Democratic People's Republic of Korea (DPRK), Haiti, Iran, Jamaica, Malta, Mauritius, Morocco, Myanmar, Nicaragua, Pakistan, Panama, Philippines, Senegal, South Sudan, Syria, Uganda, Yemen and Zimbabwe. Haiti, Malta, Philippines and South Sudan are each newly defined as a "high-risk third country" as a result of these Regulations. Ghana no longer falls within this definition as a result of these Regulations.

8. European Union Withdrawal and Future Relationship

This instrument is not being made under the European Union (Withdrawal) Act 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.

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

There are no current plans to consolidate the MLRs.

10. Consultation outcome

No public consultation has been carried out in respect of this instrument.

11. Guidance

HM Treasury will not be issuing specific guidance to accompany this instrument.

This is because this instrument and the MLRs are part of an implementation system that includes guidance from supervisors and industry on the MLRs more broadly. One set

of guidance is prepared per regulated sector, which is then approved by HM Treasury to ensure consistency in compliance across sectors and accurate interpretation of the Money Laundering Regulations. This approach utilises the supervisors' and industry's in-depth knowledge of individual sectors and risks associated with the sector.

12. Impact

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

There is no, or no significant, impact on the public sector.

This instrument will mean that businesses regulated under the MLRs will be required to carry out enhanced due diligence when entering into a business relationship with a person established in a high risk third country or in relation to any relevant transaction where either of the parties to the transaction is established in a high risk third country. However, the impact of this additional check will be limited as this forms part of a wider risk-based due diligence framework already required of these businesses.

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.

A full Impact Assessment covering transposition of the EU 5th Anti-Money Laundering Directive (5MLD) was published alongside the Money Laundering and Terrorist Financing (Amendment) Regulations 2019.

13. Regulating small business

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

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

The approach to monitoring of this legislation is that no separate monitoring of the impact of this legislation is intended as it is not anticipated that it will have a significant impact on those it affects, nor is it controversial. A full statutory review of the MLRs will take place from Summer 2021.

The instrument does not include a statutory review clause and, in line with the requirements of the Small Business, Enterprise and Employment Act 2015, John Glen MP has made the following statement.

> "It would not be appropriate to carry out a formal review just of the high-risk countries list because the FATF list it mirrors is expected to be updated up to three times a year which is too frequent for a full review to be proportionate to its aims. The Money Laundering Regulations themselves are required to be reviewed by 26th June 2022 and this will include the enhanced due diligence requirements in regulation 33."

15. Contact

Jennifer Haslett at HM Treasury can be contacted with any queries regarding the instrument.

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

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 1
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), 9 and 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), 9 and 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), 9 and 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), 9 and 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), 9 and 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 exit 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 offences	Sub-paragraphs (3) and (7) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9, and	Set out the 'good reasons' for creating a criminal offence, and the penalty attached.

		23(1) or jointly exercising powers in Schedule 2 to create a criminal offence	
Sub-delegation	Paragraph 30, Schedule 7	Ministers of the Crown exercising sections 10(1), 12 and 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 4 or 14, Schedule 7.	Statement of the reasons for the Minister's opinion that the SI is urgent.
Explanations where amending regulations under 2(2) ECA 1972	Paragraph 14, Schedule 8	Anybody making an SI after exit 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 exit day, and explaining the instrument's effect on retained EU law.
Scrutiny statement where amending regulations under 2(2) ECA 1972	Paragraph 15, Schedule 8	Anybody making an SI after exit day under powers outside the European Union (Withdrawal) Act 2018 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.

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

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 view there are good reasons for The Money Laundering and Terrorist Financing (Amendment) (No.2) (High-Risk Third Countries) Regulations 2021 to amend This statutory instrument amends 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 be able to update the list of high-risk third countries in respect of which the regulated sector needs to apply enhanced due diligence in a timely manner in order to continue to be in line with international standards on combatting money laundering"

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

As noted in respect of the Money Laundering and Terrorist Financing (Amendment) (High-Risk Countries) Regulations 2021 (S.I. 2021/392) and the memorandum thereto, the Money Laundering Regulations originally referenced, in relation to a 'high-risk third country', a list of countries designated by the EU (in the Commission Delegated Regulation) as high-risk in respect of money laundering. Since the Commission Delegated Regulation was a part of retained EU law, it would become outdated and leave the UK financial system at risk from those countries which have strategic deficiencies in their anti-money laundering and counter terrorism financing controls.

Schedule 3ZA, containing the list of countries designated by the UK (following the Financial Action Task Force's recommendations) as high-risk, was therefore introduced in the Money Laundering and Terrorist Financing (Amendment) (High-Risk Countries) Regulations 2021 (S.I. 2021/392) to allow the list to be updated directly. In addition, the key policy objective behind the legislation is for the UK to be able to independently update, in a timely manner, the list of high-risk third countries in respect of which the regulated sector needs to apply enhanced due diligence in order to continue to be in line with international standards on combatting money laundering (paragraph 7.1).

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

Section 6 of this memorandum sets out the law which is relevant to the amendment, specifically regulation 33 of the Money Laundering Regulations, Commission Delegated Regulation (EU) 2016/1675 and the powers given by section 49 of the Sanctions and Anti-Money Laundering Act 2018. Commission Delegated Regulation (EU) 2016/1675, which provided the list of countries designated by the EU as high-risk and was part of retained EU law, has already been revoked by the Money Laundering and Terrorist Financing (Amendment) (High-Risk Countries) Regulations 2021 (S.I. 2021/392).

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