EXPLANATORY MEMORANDUM TO

THE ECONOMIC CRIME (ANTI-MONEY LAUNDERING) LEVY REGULATIONS 2022

2022 No. 269

1. Introduction

1.1 This explanatory memorandum has been prepared by HM Treasury and is laid before the House of Commons by Command of Her Majesty.

1.2 This memorandum contains information for the Select Committee on Statutory Instruments.

2. Purpose of the instrument

2.1 This instrument makes provision relating to the assessment, payment, collection and recovery of the Economic Crime (Anti-Money Laundering) Levy ("the levy"). The levy is a new levy introduced by Part 3 of the Finance Act 2022 ("the Act"). This instrument makes provision in respect of administration by each of the appropriate collection authorities: the Financial Conduct Authority (the "FCA"), the Gambling Commission and the Commissioners of Her Majesty's Revenue and Customs ("HMRC").

3. Matters of special interest to Parliament

Matters of special interest to the Select Committee on Statutory Instruments

3.1 These Regulations contain key provisions in relation to this new levy.

3.2 A further set of regulations will include aspects relating to appeals, debt transfers, information sharing and enforcement, as well as any amendments that are required to other legislation (see paragraph 7.4 below). Pursuant to the Act, that second set of regulations will need to be subject to the affirmative procedure and, therefore, in order to achieve the most efficient use of Parliamentary time it is desirable to split the regulations into two parts.

3.3 There has been strong feedback during the policy and technical consultations on the levy for clarity and certainty with respect to key processes as early as possible. The preference is therefore to have these in force prior to the commencement of the first levy year on 1 April 2022 – the date from which UK revenue, which determines liability to the levy, starts to accrue.

3.4 Certain aspects of the second set of regulations are in the process of being finalised, with the intention that they will be laid in draft later in 2022. Section 64(1)(c) of the Act enables regulations to have effect in relation to the financial year during which the regulations are made.

3.5 As permitted by section 64(2) of the Act these Regulations make provision for requirements to be set out in notices published by the FCA, the Gambling Commission and HMRC (the appropriate collection authorities for the levy). This power is used in these Regulations to delegate detailed requirements in respect of the contents, form and manner of notifications and returns by persons liable to pay the levy (in regulations 9, 13 and 14) and to delegate the contents, form and manner of notifications by the FCA (in regulation 6).

3.6 Provisions for late payment interest have been included in respect of levy collected by the FCA (regulation 7) and the Gambling Commission (regulation 11). There are no provisions for late payment interest in respect of levy collected by HMRC as the intention is that section 101 of the Finance Act 2009 will apply late payment interest to such sums due to HMRC but paid late. An appointed day order will be made in due course to appoint a day on which the interest regime in section 101 will come into force in relation to the levy.

4. Extent and Territorial Application

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

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

5. European Convention on Human Rights

5.1 As the instrument is subject to negative resolution procedure and is not subject to parliamentary procedure, no statement is required.

6. Legislative Context

6.1 The levy was established by Part 3 of the Act (sections 53 to 66). The primary legislation establishes that HMRC, the FCA and the Gambling Commission are responsible for the collection and management of the levy, establishes who is liable to pay the levy, the amount of levy which will be charged and how the levy will be calculated. It sets out definitions and includes regulation-making powers (most notably in section 58) to provide for details on assessment, payment, collection and recovery of the levy.

6.2 The Act also provides, at section 66, that the periods of calculation for the levy will start from the financial year beginning with April 2022. The first payments will be due in the financial year 1 April 2023 to 31 March 2024.

7. Policy background

What is being done and why?

7.1 The levy was announced at Budget 2020 and aims to raise approximately £100 million per annum to help fund new and uplifted anti-money laundering and economic crime capabilities. This will help to deliver the reforms committed to in the 2019 Economic Crime Plan, including by delivering on the Government's commitment to developing a sustainable private-public sector resourcing model for economic crime. Together with additional public spending announced at last year's Spending Review, the levy will contribute to £400 million of additional funding for tackling economic crime across the Spending Review period, which will support a step change in the UK's response to economic crime.

7.2 The principal policy objective behind this instrument is to establish processes associated with the levy in a timely manner and provide levy collectors and payers with clarity as to whom the levy should be paid (especially in the event that a person is jointly supervised by the FCA and the Gambling Commission), the steps payers of the levy will need to take, and how arrangements for payment of the levy will be established. This instrument effectively lays the groundwork for additional measures to be introduced later in the year to operationalise key levy processes. The instrument includes the dates by which payment must be made in the case of the Gambling Commission and HMRC. It is desirable to confirm these matters in relation to how the levy will operate a year before it is first due to be collected (from April 2023); such clarity was flagged by stakeholders as a priority during the consultation process.

7.3 This instrument therefore establishes the outline 'mechanics' of the levy, including assessment, payment, collection and certain aspects in relation to recovery.

7.4 These Regulations will be supplemented by further provisions, a number of which will need to be subject to the affirmative procedure, to set out remaining aspects of the levy design, in particular in relation to appeals, the enforcement framework, provisions for collection authorities to require information from their population, cooperation between collection agencies and information sharing, recovery of overpayments, penalties, consequential amendments to other legislation and any revenue that falls to be disregarded. Additional consultation with the levy collectors will be necessary on these areas.

8. European Union Withdrawal and Future Relationship

8.1 This instrument does not relate to withdrawal from the European Union/trigger the statement requirements under the European Union (Withdrawal) Act.

9. Consolidation

9.1 This is the first instrument made under these powers. As a result, there is no need to consolidate any legislation.

10. Consultation outcome

10.1 No public consultation has been carried out specifically in respect of this instrument. The levy itself was subject to a consultation before the key provisions on who should be included in the scope of the levy and the rates of the levy were included in the Act.

11. Guidance

11.1 Guidance is anticipated once both sets of regulations are in place in Autumn 2022.

12. Impact

12.1 There is no, or no significant, impact on business, charities or voluntary bodies beyond that already set out for the levy as a whole in the Tax Information and Impact Note dated 27 October 2021 and published in advance of provisions being included in the Act.

12.2 There is no, or no significant, impact on the public sector beyond that already set out for the levy as a whole in the TIIN of 27 October.

12.3 A full Impact Assessment has not been prepared for this instrument because the impact of the levy has been assessed and set out and published in advance of provisions being included in the Act via the TIIN of 27 October, which remains an accurate summary of the impacts of the levy.

13. Regulating small business

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

13.2 To minimise the impact of the requirements on small businesses (employing up to 50 people), the approach taken is to apply a de minimis revenue threshold of £10.2 million, under which persons will not be required to pay the levy. Whilst firms with fewer than 50 employees with UK revenue in excess of £10.2 million will be in scope, the levy notification and payment requirements have been aligned with existing requirements for other fees collected by the supervisors where possible, and the levy banding structure ensures that the levy liability is straight-forward to calculate.

13.3 The basis for the final decision on what action to take to assist small businesses is that there is no disproportionate impact on small, in-scope businesses therefore no additional assistance for small business is required.

14. Monitoring & review

14.1 The operation of the levy will be monitored by the Government. In due course, once the levy is established, the Government intends to prepare and publish an annual report on the levy, in addition to a more wide-ranging review by the end of 2027.These mechanisms will provide transparency to industry and levy payers on how the policy is performing, including matters such as the operation of the levy.

15. Contact

15.1 Hugh Thomas at HM Treasury email: hughthomas@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.