

EXPLANATORY MEMORANDUM TO
THE MONEY LAUNDERING AND TERRORIST FINANCING (HIGH-RISK COUNTRIES) (AMENDMENT) REGULATIONS 2024

2024 No. 69

1. Introduction

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

2. Purpose of the instrument

- 2.1 This statutory instrument ("SI") amends regulation 33(3)(a) of the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (S.I. 2017/692) ("the MLRs") to redefine "high-risk third countries" ("HRTCs") as those countries identified by the Financial Action Task Force ("FATF") in the lists the FATF publish from time to time, as "High-Risk Jurisdictions Subject to a Call for Action" and "Jurisdictions Under Increased Monitoring".
- 2.2 This instrument also removes Schedule 3ZA, which set out 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).

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 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; "SAMLA"). Power to make this direct reference to the FATF lists is provided for in paragraph 4(3) Schedule 2 of the SAMLA, introduced by section 187 of the Economic Crime and Corporate Transparency Act 2023 (c. 56; "ECCTA").
- 3.2 This instrument contains only regulations under section 49 which make provision about high-risk countries. In accordance with sections 55(2) (as amended) and 55(3) of the SAMLA 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 it is made, (subject to extension for periods of dissolution, prorogation, or adjournment) unless approved by a resolution of each House of Parliament.
- 3.3 The Department recognises the importance in general of there being a 21-day period between the making and coming into force of an SI. This SI however comes into force a day after it is laid, and is laid after having been made. This ability to use the made affirmative procedure is specified by section 55 of the SAMLA and was extended by Parliament for a limited period to implement these changes to the definition of high-risk third countries as soon as possible, given the impending FATF plenary in February 2024.

4. Extent and Territorial Application

- 4.1 The 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 The Treasury Lords Minister, Baroness Vere, has made the following statement regarding Human Rights:

“In my view the provisions of the Money Laundering and Terrorist Financing (High-Risk Countries) (Amendment) Regulations 2024 are compatible with the Convention rights.”

6. Legislative Context

- 6.1 The UK’s High-Risk Third Countries list has been an important part of the government’s anti-money laundering, counter-terrorism financing and proliferation financing (AML/CTF/CPF) regime.
- 6.2 Regulation 33(1)(b) of the MLRs requires regulated businesses (“relevant persons”) to apply enhanced customer due diligence measures and enhanced ongoing monitoring in any business relationships with a person established in an HRTC, or in relation to any relevant transaction where either of the parties to the transaction is established in a HRTC.
- 6.3 An HRTC is currently defined for the purposes of the MLRs as those countries specified in Schedule 3ZA. Government policy has been that this list should reflect the lists published by the FATF, the global AML, CTF and CPF standard setter. These lists, of “High-Risk Jurisdictions Subject to a Call for Action” and “Jurisdictions Under Increased Monitoring”, are updated up to three times a year, following FATF Plenary meetings.
- 6.4 Since its introduction in 2021 under The Money Laundering and Terrorist Financing (Amendment) (High-Risk Countries) Regulations 2021, Schedule 3ZA has been updated eight times to reflect changes to the FATF, by amendments under the made affirmative procedure. The latest change was made on 4 December 2023 by The Money Laundering and Terrorist Financing (High-Risk Countries) (Amendment) (No. 2) Regulations 2023; as a result, Schedule 3ZA currently mirrors the FATF lists.
- 6.5 Following recent amendments through section 187(2)(a) of the ECCTA, paragraph 4(2) of Schedule 2 of the SAMLA provides for “the imposition of requirements relating to enhanced customer due diligence measures by reference to prescribed high-risk countries”, and paragraph 4(3) that such provision “may refer to a list of countries published by the Financial Action Task Force as it has effect from time to time”.
- 6.6 This instrument is being made to exercise this provision, by updating regulation 33(3)(a) of the MLRs so that HRTCs are defined as those countries identified by the FATF in its lists. It will remove the need to amend a separate UK list of HRTCs each time that the FATF lists change, whilst retaining the ability to add or remove countries by exception, via secondary legislation, if Government policy changes and Parliament so decides.

7. Policy background

What is being done and why?

- 7.1 The Government remains committed to aligning HRTCs, as defined by the MLRs, with the set of countries identified by the FATF as having significant shortcomings in their AML/CTF/CPF regimes. The FATF's decisions to identify countries with poor AML controls are underpinned by a robust, technical methodology and are the result of high levels of scrutiny during the multilateral process.
- 7.2 The objective behind this legislation is to streamline updates to the HRTCs in respect of which regulated businesses must carry out enhanced due diligence ("EDD"). Referring businesses directly to the jurisdictions published in the FATF lists, rather than a separate schedule in the MLRs, removes the need for up to three SIs per year in order to keep the UK's list of HRTCs in alignment with the FATF lists. It allows the Government to respond more quickly to international findings and to provide greater clarity to businesses on which jurisdictions are deemed to be high-risk at the speed necessary, allowing businesses to protect themselves and their customers more effectively from money laundering and terrorism financing exposures.
- 7.3 The current administrative and parliamentary process for amending Schedule 3ZA via secondary legislation can prolong the time taken for necessary, routine updates and delay the implementation of mandatory requirements for the regulated sector to apply enhanced due diligence relating to HRTC by several months. This may have had a knock-on effect of delaying the obligation for regulated business to implement EDD, which may have led to inadequate consideration of risks associated with these countries – although it is noted that there are other geographical risk factors noted in the MLRs which should have mitigated this. There may also have been the converse effect, of prolonging EDD obligations for longer than may have been necessary, placing an unnecessary burden on businesses.
- 7.4 This change will also reduce pressure on parliamentary time, by removing the need for up to six parliamentary debates per annum for routine updates. This instrument, however, does not change the Government's ability to add or remove countries, in divergence with the FATF lists, via secondary legislation. Parliament will retain the ability to scrutinise, if the UK designates as high-risk countries otherwise than in accordance with FATF findings, or conversely does not designate as high-risk countries that are so deemed by FATF.
- 7.5 Through this amendment, the onus will be on regulated businesses to refer directly to the FATF lists for updates in respect of the countries to which EDD obligations apply. The FATF publishes any updates to the lists promptly at the end of its Plenary meetings in February, June and October, the dates of which are published publicly well in advance on the FATF website. This is in addition to existing requirements for businesses to consider findings published by the FATF, when assessing geographic risk factors as part of their approach to due diligence.
- 7.6 The FATF process for evaluating countries against global standards on AML, CTF and CPF, and the decision to add or remove a country from the FATF list of "Jurisdictions Under Increased Monitoring", is a structured and predictably paced process. As such, there is generally time before a country is listed or delisted, in which to consider what the implications will be for the UK. The Treasury will continue to work closely with other government departments, AML supervisors and the regulated

sector to communicate changes to the FATF lists and understand the impacts of a particular country being listed or removed.

Explanations

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

- 7.7 The SAMLA previously set out the procedure which was used to update the UK’s list of HRTCs contained in Schedule 3ZA of the MLRs. Schedule 3ZA was amended via SI to update it when necessary. The government’s policy was that countries would be added or removed from the UK’s list (and, therefore, Schedule 3ZA) in line with decisions made at the FATF Plenary meetings, about which countries should be on the FATF lists of “High-Risk Jurisdictions Subject to a Call for Action” and “Jurisdictions Under Increased Monitoring”. As these plenary meetings take place three times a year, up to three SIs were needed per year to make corresponding changes to the UK’s list in Schedule 3ZA, and trigger the legal obligation for enhanced customer due diligence and enhanced ongoing monitoring for businesses and customers operating in or transacting with those countries.

Why is it being changed?

- 7.8 The statutory instrument is being laid to enact measures provided for in section 187 of the ECCTA, to speed up and streamline updates to the list of countries in respect of which firms are obliged to conduct EDD for businesses and customers operating in or transacting with HRTCs.
- 7.9 The current process of keeping the list up to date has placed a burden on parliamentary time and has sometimes led to delays in updating the UK list. This is inconvenient for businesses, who do not have certainty over when the list will be updated, and also means that the list of countries they consider when applying a risk-based approach to EDD is not necessarily as current as it could be.

What will it now do?

- 7.10 This legislation will mean that, in future, the definition in the MLRs of HRTCs will be “a country named on either of the following lists published by the Financial Action Task Force as they have effect from time to time— (i) High-Risk Jurisdiction subject to a Call for Action; or (ii) Jurisdictions under Increased Monitoring”. There will be no separate schedule of HRTCs, and the UK-defined HRTCs will by default mirror the FATF lists. At the time of making this instrument, the UK list mirrors the FATF list, so the actual countries deemed HRTCs will not be amended by this legislation.
- 7.11 The list of High-Risk Jurisdictions Subject to a Call for Action and the list of Jurisdictions under Increased Monitoring published by the Financial Action Task Force as they have effect from time to time are available at <https://www.fatf-gafi.org/en/topics/high-risk-and-other-monitored-jurisdictions.html>.¹

8. European Union Withdrawal and Future Relationship

- 8.1 This instrument does not trigger statement requirements under the European Union (Withdrawal) Act 2018 (c. 16).

¹ A hard copy of the lists is available on request from HM Treasury at 1 Horse Guards Road, London SW1A 2HQ or an electronic copy via email at anti-moneylaunderingbranch@hmtreasury.gov.uk.

9. Consolidation

9.1 There are no current plans to consolidate the MLRs.

10. Consultation outcome

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

11. Guidance

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

11.2 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 MLRs. This approach utilises the supervisors' and industry's in-depth knowledge of individual sectors and risks associated with the sector.

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 the public sector.

12.3 A full 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. This SI is not changing the countries in scope of EDD, nor the processes and requirements for doing so. A de minimis impact assessment is submitted with this memorandum and published 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 The basis for the final decision on what action to take to assist small businesses is that there is no disproportionate impact on small businesses, as smaller businesses with fewer customers will feel a proportionately smaller impact from these measures and therefore no additional assistance for small businesses is required.

14. Monitoring & review

14.1 The approach to monitoring of this legislation is that no separate monitoring of the impact of this legislation is intended as the MLRs are already subject to a review clause (regulation 108). The first post-implementation review was published by HM Treasury on 22 June 2022, and another review will be required prior to the 26 June 2027. This instrument does not include a statutory review clause and, in line with the requirements of the Small Business, Enterprise and Employment Act 2015 (c.26), Baroness Vere has made the following statement:

14.2 "It would not be appropriate to carry out a formal review just of the high-risk countries list because the Financial Action Task Force 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, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (S.I. 2017/692) themselves were

reviewed on the 22nd June 2022 and this includes the enhanced due diligence requirements in regulation 33.”

15. Contact

- 15.1 Jennifer Haslett at HM Treasury can be contacted with any queries regarding the instrument (Jennifer.haslett@hmtreasury.gov.uk).
- 15.2 Emily Bayley, Deputy Director for Sanction and Illicit Finance, at HM Treasury can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Baroness Vere, the Treasury Lords Minister, can confirm that this Explanatory Memorandum meets the required standard.