EXPLANATORY MEMORANDUM TO

THE ECONOMIC CRIME (ANTI-MONEY LAUNDERING) LEVY (AMENDMENT) REGULATIONS 2023

2023 No. [XXXX]

1. Introduction

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

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

2. Purpose of the instrument

2.1 This instrument amends the Economic Crime (Anti-Money Laundering) Levy Regulations 2022 (S.I. 2022/269)[1] ("ECLR1") to make further provision relating to the Economic Crime (Anti-Money Laundering) Levy ("the levy"), including levy enforcement frameworks, appeals, provisions for collection authorities to require information from their population, record preservation obligations, cooperation between collection agencies and information sharing, recovery of overpayments, penalties and a consequential amendment to other legislation. Administration of the levy is by the appropriate collection authorities: the Financial Conduct Authority (the "FCA"), the Gambling Commission and the Commissioners of His 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 ECLR1 were reported by the Select Committee on Statutory Instruments for defective drafting and unusual or unexpected use of the enabling power in its First Report of Session 2022-23[2]. This instrument directly addresses the concern as to the use of the enabling power in providing for the Gambling Commission to include information on a public register regarding persons who have notified the Commission of their liability to pay the levy, by revoking regulation 10 of ECLR1 (regulation 10 allowed for certain information to be noted on a public register). This instrument also directly addresses the matter of defective drafting, by including an express right to amend returns submitted to the Gambling Commission (see regulation 5 inserting new regulation 9A into ECLR1).

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.

[1] https://www.legislation.gov.uk/uksi/2022/269/contents/made

[2] https://committees.parliament.uk/publications/22331/documents/165141/default/

5. European Convention on Human Rights

5.1 The Treasury Lords Minister, Baroness Penn, has made the following statement regarding Human Rights:

"In my view the provisions of the Economic Crime (Anti-Money Laundering) Levy (Amendment) Regulations 2023 are compatible with the Convention rights.

6. Legislative Context

6.1 The levy was established by Part 3 of the Finance Act 2022 ("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. The Act also provides that the first levy payments will be made in the financial year 1 April 2023 to 31 March 2024.

6.2 ECLR1 was laid in March 2022, setting out provisions relating to the assessment, payment, collection and recovery of the levy. This instrument builds on ECLR1 to complete the core components of levy policy.

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 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 2021'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 to enable collection of the levy, ahead of the collection of the first levy payments in 2023. This includes levy enforcement frameworks including financial penalties, reviews and appeals, provisions for the FCA and Gambling Commission to require information from their populations (HMRC already have such powers as a result of section 61 of the Act), record keeping and preservation obligations, recovery of overpayments, and a consequential amendment to the Financial Services and Markets Act 2000 in relation to the FCA.

7.3 In line with the core principle of simplicity, outlined at consultation, levy policy has been developed in such a way as to limit, where possible, additional administrative burdens on relevant entities: both those entities liable to pay the levy and the three collection authorities. Therefore, whilst this instrument sets out processes which are significantly aligned across the three collectors, levy policy diverges in certain areas where alignment with existing collector processes and functions was considered more conducive to simplicity for levy collectors and in-scope populations. One such divergence relates to the method of challenging collector authority decisions. Key levy decisions by HMRC or the Gambling Commission can be appealed to the First-tier

Tribunal; decisions by the Financial Conduct Authority will be subject to judicial review. This aligns with the processes the FCA maintains for the other fees and levies it collects, and reflects the high degree of communication maintained between the FCA and its population with respect to its decisions in the event of disagreement.

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 second instrument under these powers. These Regulations amend ECLR1, such that the Economic Crime (Anti-Money Laundering) Levy Regulations 2022 (as amended) can be read as a contiguous whole. A consolidation is not required at this time.

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 Each collection authority is expected to publish information prior to the coming into force of this instrument, detailing how levy processes will work.

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 (TIIN) 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 2021.

12.3 A full Impact Assessment has not been prepared for this instrument. The TIIN of 27 October 2021 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.

14.2 The instrument does not include a statutory review clause due to the tax exemption in section 28(3)(a) of the Small Business, Enterprise and Employment Act 2015.

15. Contact

15.1 Hugh Thomas (hugh.thomas@hmtreasury.gov.uk) and Hazel Stevens (hazel.stevens@hmtreasuy.gov.uk) at HM Treasury can be contacted with any queries regarding the instrument.

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

15.3 The Treasury Lords Minister, Baroness Penn can confirm that this Explanatory Memorandum meets the required standard.