EXPLANATORY MEMORANDUM TO

THE MONEY LAUNDERING AND TERRORIST FINANCING (AMENDMENT) (HIGH-RISK COUNTRIES) REGULATIONS 2021

2021 No. 392

1. Introduction

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

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

2. Purpose of the instrument

2.1 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"). It replaces references to the European Commission's list of high-risk third countries (in respect of which extra customer due diligence measures must be taken by relevant persons under the MLRs) with a list of such countries identified instead in a new Schedule 3ZA to the MLRs.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 This is the first exercise of the powers in section 49 (money laundering and terrorist financing etc.) of the Sanctions and Anti-Money Laundering Act 2018 (c.13).

3.2 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.

3.3 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 February plenary meeting. It is not anticipated that they will face any great challenge in implementing the S.I at short notice due to this forewarning, 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)

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

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 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) (High-Risk Countries) Regulations 2021 are compatible with the Convention rights."

6. Legislative Context

6.1 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".

6.2 A "high-risk third country" was, prior to the amendments made by this S.I, a reference to a country identified in Commission Delegated Regulation (EU) 2016/1675 of 14 July 2016 supplementing Directive (EU) 2015/849 of the European Parliament and of the Council by identifying high-risk third countries with strategic deficiencies ("the Commission Delegated Regulation"). The Commission Delegated Regulation became retained EU law under the European Union (Withdrawal) Act 2018 (c.16) on 31st December 2020. Since then, amendments by the European Commission to it have no effect under the MLRs. As such, this list will become outdated, leaving the UK financial system at risk from those countries which have strategic deficiencies in their anti-money laundering and counter terrorism financing ("AML/CTF") controls. In addition, the change is intended to allow the UK to take its own view on which countries are high-risk and has chosen to mirror FATF lists, without reference to EU legislation.

6.3 These Regulations therefore revoke the Commission Delegated Regulation and replace references to it in the MLRs with reference to a freestanding list of countries in a new Schedule 3ZA to the MLRs. This Schedule will be periodically updated by way of further regulations, for example to reflect changes made by FATF to their relevant lists after each Plenary.

6.4 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?

7.1 As explained above, the principal policy objective behind this legislation is for the Department to be able independently 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.

7.2 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 23-26 February 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.

7.3 The new Schedule 3ZA lists the following countries: Albania, Barbados, Botswana, Burkina Faso, Cambodia, The Cayman Islands, Democratic People's Republic of Korea (DPRK), Ghana, Iran, Jamaica, Mauritius, Morocco, Myanmar, Nicaragua, Pakistan, Panama, Senegal, Syria, Uganda, Yemen and Zimbabwe. Albania, Burkina Faso, Cayman Islands, Morocco and Senegal are each newly defined as a "high-risk third country" as a result of these Regulations. Afghanistan, The Bahamas, Trinidad and Tobago and Vanuatu no longer fall within this definition.

7.4 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.

7.5 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".

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

8.1 This instrument does not trigger the statement requirements under the European Union (Withdrawal) Act 2018. It relates to the withdrawal of the United Kingdom from the European Union however as, since the end of the transition period, the UK has become free from the EU legal obligation to refer to the Commission Delegated Regulation list of high-risk third countries. It is therefore, via this instrument, now creating its own list in the new Schedule 3ZA of the MLRs.

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 guidance to accompany this instrument.

11.2 This instrument and the MLRs are part of an implementation system that includes guidance from supervisors and industry. 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 leverages the supervisors' and industry's in-depth knowledge of individual sectors and risks associated with the sector.

12. Impact

12.1 There is no significant impact on business, charities or voluntary bodies. The obligations required as a result of these changes are similar to existing legal obligations regarding high-risk third countries.

12.2 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 enhanced due diligence framework already required of these businesses.

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

12.4 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.

12.5 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

13.1 The legislation applies to activities that are regulated under the MLRs regardless of the size of the business. We do not anticipate that the requirements of the Instrument will have a significant impact on 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 business and therefore no additional assistance for small business is required.

14. Monitoring & review

14.1 No disparate 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.

14.2 The instrument does not include a statutory review clause and, in line with the requirements of the Small Business, Enterprise and Employment Act 2015, The Economic Secretary to the Treasury, 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

15.1 Jennifer Haslett 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 John Glen MP, the Economic Secretary to the Treasury at HM Treasury can confirm that this Explanatory Memorandum meets the required standard.