EXPLANATORY MEMORANDUM TO

THE MONEY LAUNDERING AND TERRORIST FINANCING (HIGH-RISK COUNTRIES) (AMENDMENT) REGULATIONS 2023

2023 No. 704

1. Introduction

1.1 This explanatory memorandum has been prepared by HM 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 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.

2.2 Schedule 3ZA was originally 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") and was subsequently amended by:

- The Money Laundering and Terrorist Financing (Amendment) (No. 2) (High-Risk Countries) Regulations 2021 (S.I. 2021/827) ("HRTC Amendment No. 2 SI")
- The Money Laundering and Terrorist Financing (Amendment) (No. 3) (High-Risk Countries) Regulations 2021 (S.I. 2021/1218) ("HRTC Amendment No. 3 SI")
- The Money Laundering and Terrorist Financing (High-Risk Countries) (Amendment) Regulations 2022 (S.I. 2022/393) ("HRTC Amendment No. 4 SI")
- The Money Laundering and Terrorist Financing (High-Risk Countries) (Amendment) (No. 2) Regulations 2022 (S.I. 2022/782) ("HRTC Amendment No. 5 SI") and
- the Money Laundering and Terrorist Financing (High-Risk Countries) (Amendment) (No. 3) Regulations 2022 (S.I. 2022/1183) ("HRTC Amendment No. 6 SI").

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) ("the Act").

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 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 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. This is to avoid delays in aligning the UK's list with that of the Financial Action Task Force ("FATF"), and to ensure UK regulated firms are not subject to unnecessary regulatory requirements given updates in country risk. Prior to this SI coming into force, the supervised sectors will be notified in writing that the UK's list will be updated to align with removals from the FATF lists. As a result, it is not anticipated that they will face any great challenge in implementing the SI at short notice, as this SI is only removing countries, rather than creating any additional regulatory requirements.

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 Treasury Lords Minister, Baroness Penn, 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 2023 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 *any* business relationships and *any* relevant transactions involving "high-risk third countries".

6.2 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, reflects those countries identified by the FATF, the global anti-money laundering and counter terrorist financing ("AML/CTF") standard setter, in their public documents as having strategic deficiencies in their AML/CTF regimes. Schedule 3ZA had originally been inserted into the MLRs by the HRTC Amendment No. 1 SI to replace retained EU law and was subsequently amended by the HRTC Amendment No. 2 SI, the HRTC Amendment No .3 SI, the HRTC Amendment No.4 SI, the HRTC Amendment No. 5 SI and the HRTC Amendment No. 6 SI.

6.3 Regulation 20(3) requires relevant persons to ensure third-country branches and subsidiaries in countries with weaker AML requirements than the UK apply measures equivalent to those in the UK. Regulation 33(1)(b) and 20(3) taken together create a requirement for UK relevant persons to ensure any of their branches or subsidiaries based in countries set out in Schedule 3ZA apply measures equivalent to the enhanced customer due diligence measures set out in regulation 33(3A) that the branch or subsidiary would be required to implement were they based in the UK.

6.4 These Regulations amend the MLRs by substituting the List of High-Risk Third Countries in Schedule 3ZA for a new list of countries which aligns with that of FATF, by removing two countries which FATF agreed to remove from its own list in February 2023. The FATF makes periodic changes to its lists (up to three times a year) to reflect changes in global money laundering, terrorism financing and proliferation financing (AML/CTF/CPF) risk. The government will introduce a separate SI shortly to reflect, in the UK list, those countries which FATF added to its own list in February and June 2023. The reason for keeping these SIs separate is that the country additions require more time to complete a full impact assessment, and therefore rather than delay the removals which could risk unnecessary regulatory requirements, this SI implements these changes now. In the meantime, all reporting entities also have a general requirement under the MLRs to consider geographic risks and FATF assessments when considering whether to apply enhanced due diligence on customers or relevant transactions.

6.5 Section 49 of the Act 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/CPF regime up to date. This includes the 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 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 to ensure the UK aligns with the global standard setter on AML/CTF/CPF.

7.2 This new list of countries removes two countries which the FATF agreed to remove from its 'Jurisdictions under increased monitoring' public statement released after its Plenary meeting of 20 – 24 February 2023. These countries have been removed from the FATF's list as they have made significant progress in addressing the deficiencies identified in their AML/CTF regimes. The instrument will therefore give effect to reduced enhanced due diligence requirements in respect of these countries.

7.3 The UK is a founding member and strong supporter of the FATF. 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's public lists the UK system remains responsive to evolving risks and is underpinned by the FATF's methodology and robust assessment processes.

7.4 '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 and the FATF advises its members to consider the risks relation to these countries. 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 countries under increased monitoring.

7.5 '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 countries 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 countries subject to a call for action.

7.6 The FATF standards recommend that financial institutions and designated non-financial businesses and professions apply enhanced due diligence where money laundering and terrorist financing risks are higher, including transactions and business relationships involving countries identified by the FATF in its public statement on 'High-risk jurisdictions subject to a call for action'.

7.7 Schedule 3ZA consolidates both the FATF's 'Jurisdictions under increased monitoring' and 'High-risk jurisdictions subject to a call for action' documents into a single, freestanding list of countries as all countries included in either of the FATF's lists have significant shortcomings in their AML/CTF/CPF controls, which poses higher risks to the international financial system and the UK. For the purposes of the High Risk Third Countries List, countries include territories and jurisdictions.

7.8 Enhanced due diligence is defined by regulation 33 of the MLRs, which sets out the additional measures that must be taken to mitigate this higher risk. This includes measures such as obtaining additional information on the customer and the customer's beneficial owner; and on the intended nature of the business relationship 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?

7.9 Prior to the amendments made by this SI, the list of countries in respect of which enhanced customer due diligence measures must be taken by relevant persons under the MLRs was specified by Schedule 3ZA as the following countries: Albania, Barbados, Burkina Faso, Cambodia, Cayman Islands, Democratic People's Republic of Korea, Democratic Republic of Congo, Gibraltar, Haiti, Iran, Jamaica, Jordan, Mali, Morocco, Mozambique, Myanmar, Panama, Philippines, Senegal, South Sudan, Syria, Tanzania, Turkey, Uganda, United Arab Emirates, and Yemen.

Why is it being changed?

7.10 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/CPF regimes, including removals where countries make significant progress in addressing deficiencies. By making this change, this will reflect the reduced risk presented by these countries which have made significant improvements towards their AML/CFT regimes and ensure that the MLRs align with the reduced risk presented by these countries. The government will introduce a separate SI shortly

to reflect the recent additions to the FATF list, accompanied by a full impact assessment.

What will it now do?

7.11 The new Schedule 3ZA lists the following countries for the purposes of enhanced customer due diligence requirements in regulation 33(3): Albania, Barbados, Burkina Faso, Cayman Islands, Democratic People's Republic of Korea, Democratic Republic of the Congo, Gibraltar, Haiti, Iran, Jamaica, Jordan, Mali, Mozambique, Myanmar, Panama, Philippines, Senegal, South Sudan, Syria, Tanzania, Turkey, Uganda, United Arab Emirates, and Yemen.

7.12 As a result of these Regulations, Cambodia and Morocco are being removed from the list, to reflect the same change to FATF's list.

8. European Union Withdrawal and Future Relationship

8.1 This instrument is not being made under the European Union (Withdrawal) Act 2018 (c. 16) 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.

8.2 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

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. As this SI will only be removing countries from the list, the change will result in an overall reduction in costs for businesses subject to the MLRs.

12.4 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 (S.I. 2019/1511).

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 it is not anticipated that it will have a significant impact on those it affects, nor is it controversial. A Post Implementation Review of the MLRs was completed in 2022. 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 Penn 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 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 Ailsa Hart at HM Treasury can be contacted with any queries regarding the instrument (Ailsa.Hart@hmtreasury.gov.uk).

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 Baroness Penn, the Treasury Lords Minister 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 1A

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 powers under sections 8(1) or 23(1) to make a Negative S.I.	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 powers under sections 8(1) or 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 powers under sections 8(1) or 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 powers under sections 8(1) or 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 powers under sections 8(1) or 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 IP completion 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 powers under sections 8(1) or 23(1) or jointly exercising powers in Schedule 2 to create a criminal offence	Set out the good reasons for creating a criminal offence, and the penalty attached.
Sub-delegation	Paragraph 30, Schedule 7	Ministers of the Crown exercising powers under section 8 or 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 5 or 19, Schedule 7	Statement of the reasons for the Minister's opinion that the S.I. is urgent.
Scrutiny statement where amending regulations under 2(2) ECA 1972	Paragraph 14, Schedule 8	Anybody making an S.I. after IP completion day under powers conferred before the start of the 2017-19 session of Parliament 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.
Explanations where amending regulations under 2(2) ECA 1972	Paragraph 15, Schedule 8	Anybody making an S.I. after IP completion 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 IP completion day, and explaining the instrument's effect on retained EU law.

Part 1B

Table of Statements under the 2020 Act

This table sets out the statements that may be required under the 2020 Act.

Statement	Where the requirement sits	To whom it applies	What it requires
Sifting	Paragraph 8 Schedule 5	Ministers of the Crown exercising powers under section 31 to make a Negative S.I.	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.

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

1.1 The Treasury Lords Minister, Baroness Penn, 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 (High-Risk Countries) (Amendment) Regulations 2023 to amend 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."

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

1.3 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, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (S.I. 2017/692) 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, counter terrorism financing and proliferation financing controls.

1.4 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

1.5 Section 6 of this memorandum sets out the law which is relevant to the amendment, specifically regulation 33 of the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (S.I. 2017/692), Commission Delegated Regulation (EU) 2016/1675 and the powers given by section 49 of the Sanctions and Anti-Money Laundering Act 2018 (c. 13). 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).

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