STATUTORY INSTRUMENTS

2018 No. 1337

FINANCIAL SERVICES

The Money Laundering and Terrorist Financing (Miscellaneous Amendments) Regulations 2018

Made - - - -	*11th December 2018*
Laid before Parliament	*13th December 2018*
Coming into force - -	*10th January 2019*

The Treasury are designated(**a**) for the purposes of section 2(2) of the European Communities Act 1972(**b**) in relation to the prevention of money laundering and terrorist financing.

The Treasury, in exercise of the powers conferred by section 2(2) of that Act, make the following Regulations:

PART 1

Introduction

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Money Laundering and Terrorist Financing (Miscellaneous Amendments) Regulations 2018.

(2) These Regulations come into force on 10th January 2019.

(3) Regulation 6 extends to Scotland only.

(**a**) S.I. 2007/2133.

(**b**) 1972 c. 68. Section 2(2) was amended by section 27 of the Legislative and Regulatory Reform Act 2006 (c. 51) and by section 3 of, and the Schedule to, the European Union (Amendment) Act 2008 (c. 7). By virtue of the amendment of section 1(2) by section 1 of the European Economic Area Act 1993 (c. 51), an order may be made under section 2(2) of the European Communities Act 1972 to implement obligations of the United Kingdom created or arising by or under the Agreement on the European Economic Area signed at Oporto on 2nd May 1992 (Cm 2073) and the Protocol adjusting the Agreement signed in Brussels on 17th March 1993 (Cm 2183).

PART 2

Money Laundering Regulations

Amendment of the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017

2. The Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017(**a**) are amended in accordance with regulations 3 and 4.

Additional customer due diligence measures: credit institutions and financial institutions

3. In regulation 29—

(a) in paragraph (6) for "an anonymous account or an anonymous passbook" substitute "an anonymous account, an anonymous passbook or an anonymous safe-deposit box";

(b) after paragraph (7) insert—

"(7A) The relevant person must apply customer due diligence measures to all anonymous safe-deposit boxes in existence on 10th January 2019, and in any event before such safe-deposit boxes are used in any way.".

Appeals against decisions of the Financial Conduct Authority and the Commissioners of Her Majesty's Revenue and Customs

4.—(1) In regulation 93 (appeals against decisions of the FCA) for paragraph (1) substitute—

"(1) A person may appeal to the Upper Tribunal a decision by the FCA under—

(a) regulation 25(2), to issue a direction;

(b) regulation 59(1), to refuse to register an applicant;

(c) regulation 60, to suspend or cancel the registration of a registered person;

(d) regulation 76, to impose a penalty or publish a censuring statement;

(e) regulation 77, to take a measure set out in paragraph (2)(a) or (b) of that regulation;

(f) regulation 78(2), to impose a prohibition.".

(2) In regulation 99 (appeals against decisions of the Commissioners) for paragraph (1) substitute—

"(1) A person may appeal to the tribunal in accordance with regulation 100 if the person is the subject of a decision by the Commissioners under—

(a) regulation 25(2), to issue a direction;

(b) regulation 58, to the effect that a person is not a fit and proper person (unless the decision is required by virtue of paragraph (3) of that regulation);

(c) regulation 59(1), to refuse to register an applicant;

(d) regulation 60, to suspend or cancel the registration of a registered person;

(e) regulation 76, to impose a penalty or publish a censuring statement;

(f) regulation 78(2), to impose a prohibition.".

(**a**) S.I. 2017/692, to which there are amendments not relevant to these Regulations.

PART 3

Oversight Regulations

Amendment of the Oversight of Professional Body Anti-Money Laundering and Counter Terrorist Financing Supervision Regulations 2017

5.—(1) The Oversight of Professional Body Anti-Money Laundering and Counter Terrorist Financing Supervision Regulations 2017(**a**) are amended as follows.

(2) For regulation 12 (disclosure) substitute—

"Disclosure

12.—(1) The FCA may disclose information it holds, provided the disclosure is made—

(a) for purposes connected with the effective exercise of the functions of the FCA under these Regulations;

(b) to a relevant authority, for purposes connected with the effective exercise of the functions of that relevant authority under these Regulations or the MLR;

(c) to a law enforcement authority, for purposes connected with the exercise of the functions of that authority; or

(d) with a view to the institution of, or otherwise for the purposes of, any criminal or other enforcement proceedings.

(2) Information disclosed under paragraph (1) may not be further disclosed by any person except where the further disclosure—

(a) has the consent of the person or persons mentioned in regulation 11(2)(a);

(b) is made by, or to, a relevant authority for purposes connected with the effective exercise of the functions under these Regulations or the MLR of—

(i) the relevant authority receiving the information, or

(ii) the relevant authority disclosing the information;

(c) is made by, or to, a law enforcement authority for purposes connected with the effective exercise of the functions of the law enforcement authority;

(d) is made by a relevant authority with a view to the institution of, or otherwise for the purposes of, any criminal or other enforcement proceedings;

(e) is made by, or to, the Secretary of State for purposes connected with the effective exercise of his or her functions under enactments relating to companies and insolvency; or

(f) is required by law.

(3) For the purposes of this regulation—

"law enforcement authority" means—

(a) the National Crime Agency;

(b) the police forces maintained under section 2 of the Police Act 1996(**b**) (maintenance of police forces);

(c) the Police of the Metropolis;

(d) the Police for the City of London;

(e) the Police Service of Scotland;

(f) the Police Service of Northern Ireland;

(**a**) S.I. 2017/1301.

(**b**) 1996 c. 16. Section 2 was amended by paragraph 3 and 4 of Schedule 16 to the Police Reform and Social Responsibility Act 2011 (c. 13).

(g) the Serious Fraud Office;

"relevant authority" means—

(a) the Commissioners for Her Majesty's Revenue and Customs;

(b) the Financial Reporting Council;

(c) the Gambling Commission;

(d) the Legal Services Board;

(e) an overseas authority, within the meaning of regulation 50(4) of the MLR, which undertakes to comply with such conditions in relation to the information as the FCA considers appropriate;

(f) a self-regulatory organisation;

(g) a skilled person;

(h) the Secretary of State;

(i) the Treasury.".

PART 4

Solicitors (Scotland) Act 1980

Amendment of the Solicitors (Scotland) Act 1980

6.—(1) The Solicitors (Scotland) Act 1980(**a**) is amended as follows.

(2) In section 34 (rules as to professional practice, conduct and discipline) for subsection (1D) substitute—

"(1D) Rules made under this section may make provision as to—

(a) the way in which solicitors and incorporated practices are to comply with the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017;

(b) the action which the Council may take to enable them to ascertain whether or not such rules are being complied with; and

(c) the recovery from solicitors of fees and other costs incurred by the Council in ascertaining whether or not a solicitor who has failed to comply with such rules has remedied that failure and is complying with the rules.".

(3) In section 40(1) (powers where failure to comply with accounts rules etc.) before paragraph (a) insert—

"(za) rules made by virtue of section 34(1D),";

(4) In section 40(4) after "the operation of" insert "section 34(4ZA),".

(5) In the introductory wording to section 41 (appointment of judicial factor) after "conferred on them by" insert "rules made by virtue of section 34(1D) or".

(**a**) 1980 c. 46. Section 40(1) was amended by the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c. 73), section 56, Schedule 1, paragraph 18(a) and by the Solicitors (Scotland) Act 1988 (c. 42), section 6, Schedule 1, paragraph 12. Section 34(4ZA) was inserted by the Legal Profession and Legal Aid (Scotland) Act 2007 (asp 5) Schedule 5, paragraph 1(6)(a). Section 41 was amended by the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985, section 56, Schedule 1, paragraph 19, and by the Solicitors (Scotland) Act 1988, section 6, Schedule 1, paragraph 13 and Schedule 2.

PART 5

Review

Review

7.—(1) The Treasury must from time to time—

(a) carry out a review of the regulatory provision contained in these Regulations, and

(b) publish a report setting out the conclusions of the review.

(2) The first report must be published before 26th June 2022.

(3) Subsequent reports must be published at intervals not exceeding 5 years.

(4) Section 30(3) of the Small Business, Enterprise and Employment Act 2015(**a**) requires that a review carried out under this regulation must, so far as is reasonable, have regard to how the following Articles of the fourth money laundering directive are implemented in other member States—

(a) Article 10.1, which is amended by Article 1(6) of Directive 2018/843/EU;

(b) Article 48.2 and 48.9.

(5) Section 30(4) of the Small Business, Enterprise and Employment Act 2015 requires that a report published under this regulation must, in particular—

(a) set out the objectives intended to be achieved by the regulatory provision referred to in paragraph (1)(a),

(b) assess the extent to which those objectives are achieved,

(c) assess whether those objectives remain appropriate, and

(d) if those objectives remain appropriate, assess the extent to which they could be achieved in another way which involves less onerous regulatory provision.

(6) In this regulation—

"the fourth money laundering directive" means Directive 2015/849/EU of the European Parliament and of the Council of 20th May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing;

"regulatory provision" has the same meaning as in sections 28 to 32 of the Small Business, Enterprise and Employment Act 2015 (see section 32 of that Act).

Craig Whittaker
Rebecca Harris

11th December 2018 — Two of the Lords Commissioners of Her Majesty's Treasury

(**a**) 2015 c. 26.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (S.I. 2017/692) ("the MLRs"); the Oversight of Professional Body Anti-Money Laundering and Counter Terrorist Financing Supervision Regulations 2017 (S.I. 2017/1301) ("the Oversight Regulations"); and the Solicitors (Scotland) Act 1980 (c. 46).

Regulation 3 adds restrictions on anonymous safe-deposit boxes to existing restrictions in regulation 29 of the MLRs on anonymous accounts and passbooks. It implements an amendment to Directive 2015/849/EU of the European Parliament and of the Council of 20th May 2015 on the prevention of the use of the financial system for the purpose of money laundering or terrorist financing (OJ L 141, 05.06.2015, p.72). That amendment was made by Directive 2018/843/EU of the European Parliament and of the Council of 30th May 2018 (OJ L 156, 19.06.2018, p.43).

Regulation 4 specifies, in the MLRs, the decisions of the Financial Conduct Authority ("FCA") and of Her Majesty's Revenue and Customs which are subject to appeal under the MLRs.

Regulation 5 amends the Oversight Regulations which give the FCA powers to oversee certain anti-money laundering supervisors. Regulation 12 of the Oversight Regulations originally prevented the FCA from disclosing information to anyone other than relevant authorities (such as other supervisors) and law enforcement authorities. The amendment now allows the FCA to disclose information to other persons, provided that the disclosure is for purposes connected with enforcement proceedings or with the FCA's functions under the Oversight Regulations.

Regulation 6 amends the Solicitors (Scotland) Act 1980 to extend, to breaches of anti-money laundering rules made under that Act, certain disciplinary powers which the Law Society of Scotland have in relation to accounts rules. This amendment extends only to Scotland.

Regulation 7 requires the Treasury to carry out a review of these Regulations by 26th June 2022.

A full impact assessment has not been produced for this instrument as no, or no significant, impact on the private, voluntary or public sector is foreseen.

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