EXPLANATORY MEMORANDUM TO

THE MONEY LAUNDERING AND TERRORIST FINANCING (MISCELLANEOUS AMENDMENTS) REGULATIONS 2018

2018 No. 1337

1. Introduction

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

2. Purpose of the instrument

2.1 These Regulations amend the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (S.I. 2017/692) ("the MLRs") in order to implement minor amendments to Directive 2015/849/EU ("the Fourth Anti-Money Laundering Directive" or "4AMLD") made by Directive 2018/843/EU ("the amending Directive") and to specify fully the appeal rights under the MLRs.

2.2 They also amend the Oversight of Professional Body Anti-Money Laundering and Counter Terrorist Financing Supervision Regulations 2017 (S.I. 2017/1301) ("the Oversight Regulations") in relation to the disclosure of information by the Financial Conduct Authority ("FCA") when carrying out its role under those Regulations.

2.3 Finally, they amend the Solicitors (Scotland) Act 1980 (c.46) to ensure that the Law Society of Scotland can act effectively as an anti-money laundering supervisor.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

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)

3.2 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

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 (Miscellaneous Amendments) Regulations 2018 are compatible with the Convention rights."

6. Legislative Context

6.1 The Fourth Anti-Money Laundering Directive was implemented in the UK in June 2017 largely through the MLRs. Those Regulations set out duties on regulated businesses known as relevant persons (see regulation 8 of the MLRs) who are each supervised by a specified supervisory authority (see regulation 7 of the MLRs).

6.2 Article 10 of 4AMLD, transposed in regulation 29 of the MLRs, introduced restrictions on anonymous accounts and passbooks. The amending Directive adds restrictions on anonymous safe-deposit boxes. The amendment to Article 10 of 4AMLD requires Member States to impose these restrictions within six months of the amending Directive coming into force on 9 July 2018. The transposition deadline therefore falls on 10 January 2019.

6.3 The amending Directive was cleared from scrutiny by the Commons European Scrutiny Committee on 22 November 2017, and the Lords European Scrutiny Committee on 19 December 2017. While both Scrutiny Committees raised questions at various stages of the amending Directive's passage through the EU legislative process over other parts of the amending Directive, the technical change to require credit and financial institutions to conduct customer due diligence ("CDD") on anonymous safe-deposit boxes was not raised as an issue.

6.4 In accordance with Article 48 of 4AMLD, some supervisory functions under the MLRs are exercised by the self-regulatory bodies listed in Schedule 1 to the MLRs. The Oversight Regulations confer powers on the FCA in relation to those bodies. This oversight role is carried out within the FCA by the Office of Professional Anti-Money Laundering Supervisors (known as "OPBAS").

6.5 The Law Society of Scotland is a self-regulatory body under the MLRs and functions are also conferred upon it by the Solicitors (Scotland) Act 1980.

7. Policy background

What is being done and why: safe deposit boxes

7.1 Amendments to 4AMLD aim to enhance the effectiveness and efficiency of Financial Intelligence Units ("FIUs") in combatting terrorist financing, by ensuring they have access to information which they can exchange without impediments. In the UK, the FIU is part of the National Crime Agency (NCA), and is responsible for receiving, reviewing and disseminating suspicious activity reports (SARs) so that recipient agencies can conduct analysis.

7.2 Delayed access to information by FIUs and other competent authorities on the identity of holders of safe-deposit boxes – particularly anonymous ones – hampers the detection of transfers of funds relating to terrorism.

7.3 Article 10 of 4AMLD has therefore been amended by the amending Directive to require that credit institutions and financial institutions subject the owners and beneficiaries of anonymous safe-deposit boxes to CDD measures within six months of the amending Directive coming into force.

7.4 This instrument transposes this requirement. As the requirement has a shorter transposition deadline than the other amendments to 4AMLD, the UK must transpose revised Article 10 into domestic legislation by 10 January 2019 to meet EU obligations.

7.5 This is a minor change, which clarifies the scope of existing CDD obligations on credit and financial institutions and is expected to have little impact on such businesses.

What is being done and why: Appeals

7.6 The rights of appeal in the MLRs apply to registration and enforcement decisions made by the main anti-money laundering supervisors under the MLRs: the FCA and Her Majesty's Revenue and Customs ("HMRC"). These Regulations will amend regulations 93 and 99 so as to specify exactly which decisions attract a right of appeal. The list broadly mirrors that in the Money Laundering Regulations 2007 (S.I. 2007/2157) ("the 2007 Regulations"), with the addition of directions given under regulation 25 of the MLRs to certain financial institutions which are parent undertakings.

7.7 The change gives clarity and certainty about which matters can be appealed and will not adversely affect any person currently awaiting a decision or seeking to bring an appeal. Where enforcement and penalty decisions have already been made under the MLRs the same rights of appeal will apply following these amendments.

7.8 A refusal either by HMRC or FCA to register an applicant on "fit and proper" grounds can be appealed as a decision under regulation 59 of the MLRs. The earlier right to appeal against a decision by HMRC under regulation 28 of the 2007 Regulations will also continue for decisions by HMRC under regulation 58 of the MLRs (and was explained in the memorandum to the instrument that introduced it in 2012; see www.legislation.gov.uk/uksi/2012/2298/memorandum/contents). A slightly different procedure is followed by the FCA, to align with the one it takes as a financial services regulator, which is why regulation 58 is not expressly referred to in regulation 93.

What is being done and why: Oversight Regulations

7.9 In order to facilitate the third-party information sharing ability of OPBAS through a secure information gateway, these Regulations make a change to the original disclosure provision in the Oversight Regulations. That provision, initially, allowed OPBAS to share information only with specified persons ("relevant authorities") such as supervisors, the Treasury or the police.

7.10 To carry out its role effectively, OPBAS may at times need to share information with other recipients: for instance, external legal counsel. The change is to allow OPBAS to share information with other persons, although still only for purposes connected with enforcement proceedings and with the effective performance of its functions under the Oversight Regulations. The approach is consistent with the regulation of disclosures of confidential information by the FCA under the Financial Services and Markets Act 2000 (c.8). A drafting change is also made to define "law enforcement authorities" and other "relevant authorities" separately, in line with information sharing powers in the MLRs.

What is being done and why: Law Society of Scotland

7.11 The MLRs require supervisors to effectively supervise relevant persons within their sectors. The Law Society of Scotland, a self-regulatory body under the MLRs, has made the Government aware of its concerns about deficiencies in the statutory provisions for anti-money laundering ("AML") regulation of legal professionals in Scotland. These matters were raised during debates on the Sanctions and Anti-Money

Laundering Bill earlier this year (at Commons Report, on 1 May 2018). Therefore, these Regulations are making minor additional amendments to the Solicitors (Scotland) Act 1980 which will mean that the Law Society of Scotland is able to ascertain AML compliance and use its existing suspension power in relation to AML breaches as it already can for breaches of accounts rules under that Act.

7.12 All supervisors should be able to demonstrate that they have provisions which enable them to impose effective, proportionate and dissuasive sanctions, and this amendment will help to ensure that is the case for the Law Society of Scotland.

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

8.1 This instrument does not relate to withdrawal from the European Union or trigger the statement requirements under the European Union (Withdrawal) Act.

9. Consolidation

9.1 The MLRs revoked and replaced the previous 2007 Regulations along with amendments and the changes made to transpose 4AMLD. There are no current plans for a further consolidation of the MLRs.

10. Consultation outcome

10.1 Informal discussions with both the FCA and representatives of the financial services sector took place in connection with the requirements on credit and financial institutions to conduct CDD on anonymous safe-deposit boxes. These discussions noted the limited number of anonymous safe-deposit boxes within the UK, and the consequential limited impact of this change. We have not consulted on the other provisions but have worked with the FCA to ensure that the appeals provision is clear; with OPBAS in relation to the Oversight Regulations; and, in relation to the Solicitors (Scotland) Act 1980, with the Law Society of Scotland which consults its members on its professional rules before they are formally approved.

11. Guidance

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

11.2 These Regulations and the MLRs are part of an implementation system that also includes guidance from the Joint Money Laundering Steering Group's guidance for financial services (available at: http://www.jmlsg.org.uk).

12. Impact

12.1 There is no significant impact on business, charities or voluntary bodies arising from the requirement on credit and financial institutions to conduct CDD on anonymous safe-deposit boxes; the clarification of appeal rights; the OPBAS information-sharing gateway or the strengthening of Law Society of Scotland AML powers.

12.2 There is no significant impact on the public sector arising from any of those measures.

12.3 A full Impact Assessment has not been prepared for this instrument because of the low level of impact per business, as industry feedback noted the very limited number of anonymous safe-deposit boxes. The other changes do not have any direct impact on business, resolving technical deficiencies in three areas: existing legislation relating to

the Law Society of Scotland, disclosure of information in the Oversight Regulations 2017, and appeals against FCA and HMRC decisions under the MLRs.

13. Regulating small business

13.1 This legislation applies to activities that are regulated by the MLRs, regardless of their size. The requirements of the amending Directive transposed by this instrument do not allow for the exemption of small businesses or any exemptions based on size.

13.2 No specific action is proposed to minimise regulatory burdens on small businesses as this is not permitted under the amending Directive.

14. Monitoring & review

14.1 This instrument requires the Treasury, from time to time, to carry out a review of the regulatory provisions contained in this instrument and publish a report setting out the conclusions of the review. The first report must be published before 26 June 2022 to align with the first review of the MLRs. Subsequent reports must be published at intervals not exceeding 5 years.

14.2 A statutory review clause is included in the Regulations.

15. Contact

15.1 Ben Fischer at HM Treasury Telephone: 0207 270 2425 or email: Benedict.Fischer@HMTreasury.gov.uk can answer any queries regarding the instrument.

15.2 Giles Thomson at HM Treasury can confirm that this Explanatory Memorandum meets the required standard.

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