Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (as amended) – The Amended Regulations

Key Changes Document

This guidance is intended to summarise the key changes in the new Anti-Money Laundering (AML) regulations (the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (as amended)), for legal professionals that are in scope. It is not exhaustive and should be read in the context of the amended legislation.

This guidance, which has been agreed by all members of the Legal Sector Affinity Group (LSAG) is interim and has not been approved by HM Treasury.

Information contained within this document will be incorporated into full revised guidance, to be released as soon as possible.

This guidance is valid from the date of publication.

While care has been taken to ensure that this guidance is accurate, up to date and useful, members of the LSAG will not accept any legal liability in relation to this guidance.

What are the changes that the amended regulations have introduced?

Definition of a tax adviser (r11(d)):

The definition of a "tax adviser" has been expanded to include providing material aid, or assistance or advice on tax affairs of other persons including where provided through a third party. Practices will need to be careful that if they are providing services which now fall under the definition, they comply with all the requirements of the regulations.

Policies, Controls and Procedures (*r19):*

Policies, controls and procedures (PCPs) now must:

- provide for identification and scrutiny of transactions that are **either** complex **or** unusually large (formerly only transactions that were both had to be identified and scrutinised) r19(4)(a)
- provide for the assessment and mitigation of the risks associated with new products and new business practices (including new delivery mechanisms) r19(4)(c)
- (for group parent undertakings) include policies on the sharing of information about customers, customer accounts and transactions between subsidiaries of a parent group r20(b).

Whether a transaction is "complex" or "unusually large" should be judged both in relation to the normal activity of the practice and the normal activity of the client.

When new technology is adopted, appropriate measures must be taken in order to assess and mitigate any money laundering or terrorist financing risks this adoption may cause. This requirement

has now been extended to require that this same process be followed when new products or business practices are introduced. This may be included in your Practice-Wide Risk Assessment.

New products or business practices (for example entry into new areas of legal practice or changes to the structure or operational model of the practice) must be assessed in terms of AML risk and incorporated into your practice-wide risk assessment and PCPs

Training Requirements (r24):

Under the amended regulations, the existing training requirements on staff under r24 are extended to include any agents a practice uses for the purpose of its business. The test for whether an agent or employee needs training is if their work is relevant to the AML compliance of the practice, or they are involved in the identification, mitigation, prevention or detection of money laundering or terrorist financing risk within the business. This may not include all staff in a practice (e.g. maintenance or catering staff) but should be considered on a risk basis.

How supervisors approve individuals (r26):

r26 now includes a more explicit statement that supervisory authorities must collect sufficient information to determine whether a sole practitioner, or a Beneficial Owner, Officer or Manager of a firm has been convicted of a relevant offence. In practice, this means obtaining a criminal record check. You should check your supervisor's process for this.

Client Due Diligence (r27 and 28)

For existing clients, Client Due Diligence must be renewed when a practice has any legal duty in the course of the calendar year to contact a client under the International Tax Compliance Regulations 2015 or to review information:

- relevant to their client risk assessment (or where appropriate practice-wide/matter risk assessment) or
- concerning beneficial ownership information of the customer, including information which helps them understand the ownership or control structure of any entity that is the beneficial owner of the client.

r28(3): In addition to existing requirements under r28(3) in relation to undertaking due diligence on a non-natural person (including trusts), the practice must now also take reasonable measures to understand the ownership and control structure of that person.

r28(8): There is an additional requirement that will apply in a narrow set of circumstances. Where a client is a body corporate and the practice has **exhausted all possible means** of identifying their beneficial owners but has not succeeded or is not satisfied that an individual is the beneficial owner, the practice must take reasonable measures to identify and verify the identity of the senior person responsible for managing the body corporate and record in writing all actions and difficulties encountered in doing so. This is further to previous requirements under r28(6).

Clarification is provided that an electronic identification process using electronic identification services means and trust services (as defined in EU Regulation 2014/910/EU) may be regarded as

reliable, where they are secure from fraud and misuse and capable of providing appropriate assurance customers are who they say they are.

Discrepancies on Registers (r30A)

Before establishing a business relationship with a:

- company (registered or unregistered as defined in the *Unregistered Companies Regulations 2009(**1**)*)
- Limited Liability Partnership or
- Scottish Partnership.

- a practice must collect proof of registration or an excerpt from the relevant register.

r30A(3) A significant change in the regulations is that practices will have a responsibility to report discrepancies between information collected (as above) from the relevant Register, and information collated while undertaking duties and responsibilities under the regulations (e.g. due diligence or ongoing monitoring).

Practices that encounter such discrepancies while fulfilling their AML duties, must report them, but it is not a requirement for practices to actively seek out such discrepancies.

This responsibility to report does not apply where the information is subject to Legal Professional Privilege.

Any discrepancy should be reported to Companies House (via the new online reporting tool available on the Companies House website) as soon as reasonably possible.

Enhanced Due Diligence (r33)

There are three key changes to enhanced due diligence requirements. The first two (red flag transactions and high risk third countries) expand the situations in which Enhanced Due Diligence must be applied. The final changes add additional factors to be considered in assessing risk, and therefore whether EDD should apply.

EDD - Red Flag Transactions

Changes to existing Enhanced Due Diligence (EDD) requirements mean that you must apply EDD in all the following circumstances (formerly it was only necessary if all the listed elements were met):

- where the transaction is complex
- where the transaction is unusually large or
- where there is an unusual pattern of transactions, **or** the transaction or transactions have no apparent economic or legal purpose (formerly both conditions had to be satisfied).

Whether a transaction is “complex” or “unusually large” should be judged in relation to the normal activity of the practice and the normal activity of the client.

EDD – Additional Factors to Consider

(**1**) S.I. 2009/2436.

When assessing whether something is high risk (and thus whether EDD should be applied), new factors to consider include:

- whether the person is a beneficiary of a life insurance policy
- whether the person is seeking residence/citizen rights in exchange for investments in that EEA state
- whether the firm operates without face to face meeting and without electronic identity systems to mitigate this or
- whether the person is involved in the trade of oil, arms, precious metals, tobacco products, cultural artefacts, ivory and other items related to protected species, and other items of archaeological, historical, cultural and religious significance, or of rare scientific value.

In our view, whether the person is a beneficiary of a life insurance policy is only likely to be indicative of higher AML risk where the retainer bears direct relevance to the policy.

EDD in relation to high risk third countries:

Enhanced due diligence and ongoing monitoring are now **required** when either the client or counterparty to a transaction is "established in" a high-risk third country r33(1)(b).

A "high-risk third country" means a country which has been identified by the European Commission in delegated acts adopted under Article 9.2 of the fourth money laundering directive as a high-risk third country. As at 10 January 2020, those countries are:*

**Please note that this definition and list of countries is no longer up to date following the end of the Brexit transition period. Please refer to this page for the updated definition and list of High Risk Third Countries for EDD.*

Afghanistan	Lao PDR	Yemen	Tunisia
Bosnia and Herzegovina	Syria	Ethiopia	Pakistan
Guyana	Uganda	Sri Lanka	Iran
Iraq	Vanuatu	Trinidad and Tobago	Democratic People's Republic of Korea

A client or counterparty is to be treated as "established in" a country, where any of the following apply:

- it was incorporated in the country;
- it has a principal place of business in the country;
- (if a financial institution or credit institution) its principal regulatory authority is based in the country or
- (if a natural person) being resident in, but not merely because they were born in the country.

r33(3A) stipulates that where EDD is to be applied due to a party to the transaction being "established in" a high risk third country, it must include:

- obtaining additional information on the client and on the client's beneficial owner
- obtaining additional information on the intended nature of the business relationship
- obtaining information on the source of funds and source of wealth of the client and of the client's beneficial owner
- obtaining information on the reasons for the transactions
- obtaining the approval of senior management of the practice for establishing or continuing the business relationship and
- conducting enhanced monitoring of the business relationship by increasing the number and timing of controls applied and selecting patterns of transactions that need further examination.

Trust Registration

While there had been indication via the consultation paper that there may be changes to the trust registration regime, these have not been included in this legislation. We anticipate HM Government may seek to implement changes at another time.

10 January 2020