

2012 No. 2298

FINANCIAL SERVICES

The Money Laundering (Amendment) Regulations 2012

Made - - - - *6th September 2012*

Laid before Parliament *10th September 2012*

Coming into force - - *1st October 2012*

The Treasury are a government department 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 on them by section 2(2) of the European Communities Act 1972, make the following Regulations:

Citation and commencement

1. These Regulations may be cited as the Money Laundering (Amendment) Regulations 2012 and come into force on 1st October 2012.

Amendment of the Money Laundering Regulations 2007

2. The Money Laundering Regulations 2007(c) are amended as follows.

3. In regulation 3—

(a) in paragraph (3)(a), renumber paragraph (ii) as paragraph (iii) and insert after paragraph (i)—

“(ii) an undertaking whose only listed activity is as a creditor under an agreement which—

(aa) falls within section 12(a) of the Consumer Credit Act 1974(d) (debtor-creditor-supplier agreements),

(bb) provides fixed sum credit (within the meaning given in section 10 of the Consumer Credit Act 1974 (running-account credit and fixed-sum credit)(e) in relation to the provision of services, and

(cc) provides financial accommodation by way of deferred payment or payment by instalments over a period not exceeding 12 months;”;

(a) S.I. 2007/2133.

(b) 1972 c.68. Section 2(2) was amended by section 27(1)(a) of the Legislative and Regulatory Reform Act 2006 (c.51) and the European Union (Amendment) Act 2008 (c.7), Schedule, Part 1.

(c) S.I. 2007/2157; relevant amending instruments are S.I. 2007/3299, S.I. 2009/56, S.I. 2009/209, S.I. 2011/99, S.I. 2011/2699 and S.I. 2011/2833.

(d) 1974 c.39.

(e) Section 10 was amended by section 5(2)(a) of the Consumer Credit Act 2006 (c.14) and by S.I. 2010/1010.

(b) in paragraph (11), omit “(within the meaning given by section 1 of the Estate Agents Act 1979 (estate agency work))”(a);

(c) after paragraph (11), insert—

“(11A) For the purposes of paragraph (11) “estate agency work” is to be read in accordance with section 1 of the Estate Agents Act 1979 (estate agency work), but for those purposes references in that section to disposing of or acquiring an interest in land are (despite anything in section 2 of that Act) to be taken to include references to disposing of or acquiring an estate or interest in land outside the United Kingdom where that estate or interest is capable of being owned or held as a separate interest.”.

4. In regulation 4—

(a) for paragraph (1)(f), substitute—

“(f) a person, when he prepares a home report.”;

(b) for paragraph (4), substitute—

“(4) In paragraph (1)(f), “home report” means the documents prescribed for the purposes of section 98, 99(1) or 101(2) of the Housing (Scotland) Act 2006(b).”.

5. In regulation 17(2)—

(a) after sub-paragraph (a), insert—

“(aa) a consumer credit financial institution;”;

(b) in sub-paragraph (b)(ii), omit “Part 1 of”.

6. Omit regulation 18.

7. In regulation 22(1), at the end insert the following definition—

““recognised investment exchange” has the same meaning as in section 285 of the 2000 Act (exemption for recognised investment exchanges and clearing houses).”.

8. In regulation 23(1)(a), after paragraph (vi), insert—

“(vii) recognised investment exchanges;”.

9. After regulation 24, insert—

“Disclosure by supervisory authorities

24A.—(1) A supervisory authority may disclose to another supervisory authority information it holds relevant to its functions under these Regulations, provided the disclosure is made for purposes connected with the effective exercise of the functions of either supervisory authority under these Regulations.

(2) Information disclosed to a supervisory authority under paragraph (1) may not be further disclosed by that authority, except—

(a) in accordance with paragraph (1);

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

(c) as otherwise required by law.”.

10. In regulation 28—

(a) in paragraph (1), at the end insert “with regard to the risk of money laundering or terrorist financing”;

(a) 1979 c.38; section 1 was amended by the Planning (Consequential Provisions) Act 1990 (c.11) section 4 and Schedule 2, paragraph 42; the Planning (Consequential Provisions) (Scotland) Act 1997 (c.11) section 4 and Schedule 2, paragraph 28; and by S.I. 1991/1220 and S.I. 2001/1283.

(b) 2006 asp 1.

(b) omit paragraphs (2) and (3).

11. In regulation 30—

(a) in paragraph (1), for “28(2)” substitute “28”;

(b) for paragraph (2), substitute—

“(2) The Commissioners may cancel a person’s registration in a register maintained by them under regulation 25 if, at any time after registration—

(a) it appears to them that that any condition in regulation 29(1) is met; or

(b) the person has failed to comply with any requirement of a notice given under regulation 37.”.

12. For regulation 34(7), substitute—

“(7) The Authority or the OFT may cancel a person’s registration in a register maintained by them under regulation 32 if, at any time after registration—

(a) it appears to them that any condition in paragraph (3) is met; or

(b) the person has failed to comply with any requirement of a notice given under regulation 37.”.

13. For regulation 37(2), substitute—

“(2) For the purposes of paragraph (1)—

(a) “relevant person” includes a person whom a designated authority believes, or has reasonable grounds to suspect, is or has at any time been a relevant person; and

(b) a person is connected with a relevant person if the person is, or has at any time been, in relation to the relevant person, a person listed in Schedule 4 to these Regulations.”.

14. In regulation 42—

(a) in paragraph (1)—

(i) omit “relevant”;

(ii) omit the words from “or a direction” to the end;

(b) in paragraph (1A), omit the words “and, for this purpose,” to the end;

(c) after paragraph (1A), insert—

“(1B) A designated authority may impose a penalty of such amount as it considers appropriate on a person who fails to comply with any requirement of a notice given under regulation 37(1).

(1C) In paragraphs (1), (1A) and (1B), “appropriate” means effective, proportionate and dissuasive.”;

(d) in paragraph (2), for “or (1A)”, substitute “; (1A) or (1B)”.

15. In regulation 43(1), before sub-paragraph (a), insert—

“(za) regulation 28, to the effect that a person is not a fit and proper person;”.

16. In regulation 45(1) omit “, or a direction made under regulation 18,”.

17. For Schedule 3, substitute the text contained in the Schedule to these Regulations.

Review

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

(a) carry out a review of the Money Laundering Regulations 2007 as amended by regulations 2 to 17,

(b) set out the conclusions of the review in a report, and

(c) publish the report.

(2) In carrying out the review the Treasury must, so far as is reasonable, have regard to how Directive 2005/60/EC(a) of the European Parliament and of the Council on the protection of the use of the financial system for the purpose of money laundering and terrorist financing (which is implemented in part by the Money Laundering Regulations 2007) is implemented in other member States.

(3) The report must in particular—

- (a) set out the objectives intended to be achieved by the regulatory system established by the Money Laundering Regulations 2007 as amended by regulations 2 to 17,
- (b) assess the extent to which those objectives are achieved, and
- (c) assess whether those objectives remain appropriate and, if so, the extent to which they could be achieved with a system that imposes less regulation.

(4) The first report under this regulation must be published before the end of the period of five years beginning with the day on which these Regulations come into force.

(5) Reports under this regulation are afterwards to be published at intervals not exceeding five years.

James Duddridge
Angela Watkinson

6th September 2012

Two of the Lords Commissioners of Her Majesty's Treasury

SCHEDULE

Regulation 17

“SCHEDULE 3 Regulations 17(2)(b), 23(1)(c) and 32(4)

Professional Bodies

1. Association of Accounting Technicians
2. Association of Chartered Certified Accountants
3. Association of International Accountants
4. Association of Taxation Technicians
5. Chartered Institute of Management Accountants
6. Chartered Institute of Public Finance and Accountancy
7. Chartered Institute of Taxation
8. Council for Licensed Conveyancers
9. Faculty of Advocates
10. Faculty Office of the Archbishop of Canterbury
11. General Council of the Bar
12. General Council of the Bar of Northern Ireland
13. Insolvency Practitioners Association

(a) OJ L 309, 25.11.2005, p.15.

14. Institute of Certified Bookkeepers
15. Institute of Chartered Accountants in England and Wales
16. Institute of Chartered Accountants in Ireland
17. Institute of Chartered Accountants of Scotland
18. Institute of Financial Accountants
19. International Association of Book-keepers
20. Law Society
21. Law Society of Northern Ireland
22. Law Society of Scotland”

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Money Laundering Regulations 2007 (S.I. 2007/2157) (“the 2007 Regulations”). The 2007 Regulations implement in part Directive 2005/60/EC (OJ No L 309, 25.11.2005, p.15) of the European Parliament and of the Council on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing.

Regulation 3 excludes from the scope of the 2007 Regulations an undertaking which provides credit by allowing time to pay for services, where payment is made over a period of no more than 12 months. The definition of “estate agent” is amended, to include estate agents selling property outside the UK within the scope of the 2007 Regulations.

Regulation 4 replaces references to home information packs, which have been discontinued in England and Wales, with references to home reports in Scotland. The preparation of such reports is excluded from the scope of the 2007 Regulations, as was the preparation of home information packs.

Regulation 5 adds consumer credit financial institutions to the list of persons who may be relied upon for the purposes of carrying out customer due diligence under the 2007 Regulations, and provides that members of all professional bodies listed in Schedule 3 to those Regulations may now be relied upon for those purposes. Regulation 17 amends Schedule 3 accordingly.

Regulation 6 removes regulation 18 of the 2007 Regulations, which has been superseded by the provisions of Schedule 7 to the Counter-Terrorism Act 2008 (c.28). Regulations 14 and 16 make minor amendments consequential on regulation 6.

Regulation 8 adds a recognised investment exchange to the list of relevant persons supervised by the Financial Services Authority for the purposes of the 2007 Regulations. Regulation 7 inserts a definition of recognised investment exchange.

Regulation 9 introduces a power for supervisory authorities to share information with each other, subject to certain conditions.

Regulation 10 amends regulation 28 of the 2007 Regulations, which sets out the matters the Commissioners of Her Majesty’s Revenue and Customs (“the Commissioners”) may take into account in deciding whether certain persons are “fit and proper” in order that a money service business or trust and company service provider may be registered for the purposes of the 2007 Regulations.

Regulations 11 and 12 clarify that registration may be cancelled by the Commissioners, the Financial Services Authority or the Office of Fair Trading if a relevant person who has been registered subsequently fails to meet the conditions for registration.

Regulation 13 amends regulation 37 of the 2007 Regulations, which provides a power for an enforcement officer to require information from, and attendance of, relevant and connected persons, to clarify that the power may be exercised in respect of persons who are believed to be, or reasonably suspected of being, a relevant person for the purposes of the 2007 Regulations.

Regulation 14 provides a power for enforcement authorities to impose a fine on persons who fail to comply with the requirements of a notice requiring the provision of information.

Regulation 15 provides a right of appeal for a person who is deemed by HMRC not to be “fit and proper” for the purposes of registration under the 2007 Regulations.

Regulation 18 requires the Treasury to review the operation and effect of the 2007 Regulations as amended by these Regulations and publish a report within five years after these Regulations come into force and within every five years after that. Following a review it will fall to the Treasury to consider whether the Regulations should remain as they are, or be revoked or be amended. A further instrument would be needed to revoke the Regulations or to amend them.

An Impact Assessment of the effect that these Regulations (and the Terrorism Act 2000 and Proceeds of Crime Act 2002 (Business in the Regulated Sector) (No.2) Order 2012) will have on the costs of business and the voluntary sector is available on HM Treasury’s website (www.hm-treasury.gov.uk) and is published with the Explanatory Memorandum alongside these Regulations on the legislation.gov.uk website.

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STATUTORY INSTRUMENTS

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