



Compliance

The Money Laundering, Terrorist Financing and Transfer of Funds (information on the payer) Regulations 2017

- Guide -

Applicable to companies based in the UK that deal with overseas property, as well as companies based abroad if they are doing business with the UK

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For more information, you can contact AIPP at admin@aipp.org.uk

OVERVIEW

The Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations, SI 2017/692, came into force on 26 June 2017, replacing the Money Laundering Regulations 2007 and implement, in part, the requirements of the EU fourth money laundering directive (4MLD).

The regulations apply to financial institutions, including money service businesses (MSBs), as well as to other 'gatekeepers' to the financial system, including auditors, legal advisers, insolvency practitioners, external accountants, tax advisers, estate agents, casinos, high value dealers (HVDs) and trust or company service providers.

Estate agency work to include: 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. "

The main changes are:

- the HVDs' cash transaction threshold is reduced to €10,000 (down from €15,000) and extended to receiving as well as making payments in cash;
- the threshold for the inclusion of persons engaged in financial activity is increased to £100,000 (from £64,000);
- simplified due diligence checks for areas of lower risk will be based on a non-exhaustive list of factors;
- the enhanced due diligence checks requirement is extended to all financial institutions engaged in cross-border correspondent relationships with non-EEA countries;
- 'politically exposed persons' are to be risk assessed on a case by case basis for enhanced due diligence;
- estate agents will have to apply customer due diligence checks to both buyers and sellers in a transaction;
- pooled client accounts will be subject to a risk-based approach, rather than automatic qualification for simplified due diligence;
- customers spending more than €250 on e-money transactions in a single month will be subject to due diligence checks;
- low risk e-money products, such as gift cards and store vouchers, will be subject to the maximum threshold for simplified due diligence;
- customer due diligence information and transaction data will have to be retained for five years at the end of a relationship (the UK will not require the additional five-year option allowed under the directive);
- trustees of express trusts (other than low risk trusts) must hold beneficial ownership information (information for trusts with tax consequences is to be held through HMRC's trust register);
- HMRC is to act as registering authority for all trust or company service providers (TCSPs) and will require professional body supervisors to provide details of their members who carry out TCSP activity and their 'fit and proper' status;
- a new requirement is introduced for supervisors of TCSPs and MSBs to carry out fit and proper tests on managers and owners;
- the 'criminality test' for beneficial owners, officers or managers of supervised businesses will also cover HVDs; and
- supervisors will have to be able to demonstrate that they can impose effective sanctions and may consider the use of HMRC/FCA powers where they are unable to impose suitable pecuniary penalties.

The Treasury must provide reviews of these regulations every five years – first due 22 June 2022.

Purpose of the instrument

These Regulations came into force on 26 June 2017 and replace the Money Laundering Regulations 2007 and the Transfer of Funds (Information on the Payer) Regulations 2007 with updated provisions that implement in part the Fourth Money Laundering Directive (4MLD or “the Directive”) 2015/849/EU and the Funds Transfer Regulation (FTR) 2015/847/EU. 4MLD seeks to give effect to the updated Financial Action Task Force (FATF) global standards which promote effective implementation of legal, regulatory and operational measures for combating money laundering,

Policy background

1. The principal policy objective behind 4MLD is to update and enhance European legislation to bring it in line with the international standards on combating money laundering and terrorist financing as set out in the revision to the FATF standards in 2012.
2. There are over 100,000 businesses covered under the Regulations which require that these businesses know their customers and manage their risks. The Regulations are deliberately not prescriptive, providing flexibility in order to promote a proportionate and effective risk-based approach.

Scope

3. The Regulations apply to financial institutions, including money service businesses, and to those sectors that are seen as ‘gatekeepers’ to the financial system including auditors, legal advisers, insolvency practitioners, external accountants, tax advisers, estate agents, casinos, high value dealers (HVDs) and trust or company service providers (TCSPs).
4. Important change applies to HVDs, where the threshold for eligible transactions in cash (either in one transaction or a series of transactions that appear to be linked) will come down from £12,544 (EUR 15,000) to £8,361 (EUR 10,000); and will be extended to receiving as well as making payments in cash.
5. Businesses covered by the regulations (or “relevant persons”) are required to have policies, controls and procedures to mitigate and manage effectively the risks of money laundering and terrorist financing. These businesses will be in the best position to understand the risks within their sectors and take a proportionate approach when implementing the Regulations.
6. 4MLD allows member states to exempt persons that engage in financial activity on an occasional or very limited basis. Under the Regulations, the government is increasing the existing threshold limit from £64,000 to £100,000. The aim is to reduce the administrative burden on businesses whilst retaining a “sufficiently low” figure as required by the Directive and in line with proper risk assessment. Supervision and the risk based-approach.
7. Underpinning all supervisory action is the risk based approach, which depends on a supervisory authority (supervisor) understanding risk across the businesses it regulates and taking appropriate action such as reviewing risk profiles at regular intervals, especially if circumstances change.

8. An estate agent is to be considered as entering into a “business relationship” with a purchaser as well as with a seller. This means that estate agents must apply customer due diligence checks to both contracting parties in a transaction. This clarification has been made because evidence suggests that the purchase of real estate is an attractive and lucrative option for money laundering purposes. It also became clear that many estate agents did not consider the purchaser to be their customer, consequently not doing customer due diligence.

Application of customer due diligence

9. Businesses need to apply different levels of due diligence measures (e.g. identifying and verifying the customer’s identity) to manage the risk of money laundering and terrorist financing. This may entail either simplified due diligence (SDD), customer due diligence (CDD), or enhanced due diligence (EDD), based on the level of perceived risk.
10. These Regulations bring in a greater emphasis on taking a risk-based approach when assessing what type of checks to undertake on a customer.
11. The Regulations allow relevant businesses to apply SDD measures for areas of lower risk. Annex II of the Directive sets out a non-exhaustive list of factors that should be considered when deciding whether SDD is appropriate and these have also been set out in these Regulations.
12. 4MLD requires firms to apply EDD (more stringent due diligence checks) to business relationships with politically exposed persons (PEPs), their family members and their known close associates. Note: Refusing to establish a business relationship or carry out a transaction with a person simply on the basis that they are a PEP is contrary to the letter and the spirit of the law. The Financial Ombudsman Service may assess complaints from PEPs, family members or known close associates where they have been treated unreasonably by financial institutions.
13. Significant tightening of regulation for e-money. Customers that now wish to spend more than €250 in a single month will be required to undergo CDD checks. To ensure a balanced approach, the government is putting in place the maximum exemption for e-money products that present low risks such as gift cards and store vouchers to continue to benefit from SDD measures.
14. In Part 4 of the Regulations, there has been significant expansion of the third parties that can be relied upon for carrying out CDD checks, with the Regulations now allowing reliance on all of the regulated sector captured under these Regulations.

15. The Directive requires that businesses retain CDD information and transaction data for a period of five years at the end of a relationship. The UK has chosen not to require businesses to retain data for an additional period and in order to avoid a potentially open-ended requirement for the retention of transaction data in the Directive, the government has included a maximum limit of ten years for the retention of this data.
16. The Regulations also introduce a new requirement that businesses must delete data once the five-year period has elapsed. This change will align the UK framework with the 4MLD and international standards on data protection.

Beneficial Ownership

17. The requirements of transparency of beneficial ownership for legal arrangements apply to trustees in express trusts, and therefore not to partners in partnerships or trustees in statutory, constructive or resulting trusts. Under the Regulations (Part 5), trustees of express trusts must hold accurate and up-to-date information on the trust's beneficial owners and any potential beneficiaries named in a letter of wishes or other relevant document. "Potential beneficiary" refers to someone named in such a document who clearly stands to benefit from the trust as a result of the settlor's expressed wishes. It does not include a person who is unlikely to benefit from the asset despite being named in a letter of wishes (if, for example, they are named as a potential beneficiary only if other named potential beneficiaries predecease them).
18. To provide law enforcement with timely access to beneficial ownership information, HMRC will maintain a register of trusts with tax consequences. The register has been built on the existing tax reporting framework to minimise administrative costs for trustees.
19. Under Part 6 of the Regulations, all supervisory authorities are subject to a duty to cooperate with other supervisory authorities, the Treasury and law enforcement authorities, and have a duty to collect and share information.
20. From 26 June 2017, HMRC will act as the registering authority for all TCSPs as required by the Directive. The new Regulations will require professional body supervisors to inform HMRC of their members who carry out TCSP activity and their 'fit and proper' status so that they can be added or removed from the register.
21. Under the Regulations, there is a new requirement for supervisors of TCSPs and MSBs to carry out fit and proper tests on managers and owners of these entities.