

Money Laundering and Terrorist Financing (Amendment) (EU Exit) Regulations 2020

Further to the changes brought in by the 5th Money Laundering Directive, additional changes have come in as part of the Money Laundering and Terrorist Financing (Amendment) (EU Exit) Regulations 2020.

These changes come into effect on 6th October 2020.

This document aims to set out the changes which will be most relevant to law firms and their internal procedures. Please use the key below to ascertain which amendments are relevant to which types of business.

Key:

Highlighted yellow text shows specific insertions / amendments to the regulations

Rows filled in light yellow are related to the trust changes

Rows filled in light grey are relevant to business other than law firms

You can view the full amendment regulations here:

<https://www.legislation.gov.uk/ukxi/2020/991/made/data.pdf>

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Previous requirement	New requirement	What this means
Regulation 3(A) was added in previous amendments: 'Where the customer is a legal person, trust, company, foundation or similar legal arrangement, the relevant person must take reasonable measures to understand the ownership and control structure of that legal person, trust, company, foundation or similar legal arrangement.'	Amendment 3 Customer due diligence measures This amendment verifies that paragraph 3(A) does not apply where the customer is a company which is listed on a regulated market.	After the January 2020 amendments to MLR2017, it was unclear whether regulation 5 applied to paragraph 3(A). This has now been clarified in the new amendments so firms should update their client due diligence procedures accordingly and inform their staff.
Regulation 19 was added in previous amendments: 'For the purposes of this regulation, information may be regarded as obtained from a reliable source which is independent of the person whose identity is being verified where: <ul style="list-style-type: none"> it is obtained by means of an electronic identification process, including by using electronic identification means or by using a trust service (within the meanings of those terms in Regulation (EU) No 910/2014 of the European Parliament and of the Council of 23rd July 2014 on electronic identification and trust services for electronic transactions in the internal market(a)); and that process is secure from fraud and misuse and capable of providing an appropriate level of assurance that the person claiming a particular identity is in fact the person with that identity.' 	Amendment 3 Customer due diligence measures This amendment rewords the second bullet point of paragraph 19 to: <p>'that process is secure from fraud and misuse and capable of providing assurance that the person claiming a particular identity is in fact the person with that identity, to a degree that is necessary for effectively managing and mitigating any risks of money laundering and terrorist financing.'</p>	This amendment clarifies further the level of assurance required on a firm's e-verification provider and allows them to focus on mitigating the risk of money laundering and terrorist financing. This may allow firms to consider new e-verification providers as part of their CDD procedures more robustly and they should risk assess e-verification processes to ensure they are able to manage and mitigate the risks of relying on their product.

Previous requirement	New requirement	What this means
<p>Regulation 30A was added in previous amendments:</p> <p>(2) The relevant person must report to the registrar any discrepancy the relevant person finds between information relating to the beneficial ownership of the customer:</p> <p>(a) which the relevant person collects under paragraph (1); and</p> <p>(b) which otherwise becomes available to the relevant person in the course of carrying out its duties under these Regulations.</p>	<p>Amendment 4</p> <p>Reporting discrepancies: general</p> <p>This amendment verifies section 2(b) by changing to:</p> <p>(b) which otherwise becomes available to the relevant person in the course of carrying out its duties under these Regulations, when establishing a business relationship with the customer.</p>	<p>The regulation to report discrepancies in Companies House has been amended to clarify this only has to be reported when establishing new relationships. Some minor further amendments regarding reporting these discrepancies clarify that:</p> <ul style="list-style-type: none"> Firms must also report any discrepancies found when conducting simplified due diligence. Firms can rely on a third party to carry out the measures required by 30A (reporting discrepancies) and must collect the relevant information from the third party accordingly (as per normal reliance procedures) however the firm remain liable for any failure to apply the necessary measures (as before). Firms must keep information regarding reporting discrepancies in line with the retention period of client due diligence data (MLR 2017 sets out 5 years from the completion of the transaction or end of business relationship). <p>Firms should update their client due diligence procedures accordingly and inform their staff.</p>

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Regulation 30A previously did not mention trusts.	<p>Amendment 5 Reporting discrepancies: trusts Regulation 30A now amended to include: ‘(1) Before establishing a business relationship with:...</p> <p>(e) a trust which is subject to registration under Part 5 of these Regulations’.</p> <p>a relevant person must collect proof of registration or an excerpt of the register from the company, the unregistered company or the limited liability partnership or the trust (as the case may be) or from the registrar (in the case of an eligible Scottish partnership)...</p> <p>(3) The discrepancy must be reported – (a) if it relates to a company, unregistered company, a limited liability partnership or an eligible Scottish partnership, to the registrar; or (b) if it relates to a trust, to the Commissioners.’</p>	<p>There are 2 changes here:</p> <p>A. A new requirement to obtain “proof of registration” from a trust prior to entering into a business relationship.</p> <p>Firms should:</p> <ul style="list-style-type: none"> • Update AML Policies and CDD procedures to reflect this new requirement • Advise all staff of new requirement (and ensure that they know how to obtain such a document) <p>B. A new duty to report discrepancies relating to beneficial ownership of a trust to the Commissioners (unless the information is legally privileged)</p> <p>Firms should:</p> <ul style="list-style-type: none"> • Update AML policies to reflect this and define an internal reporting procedure if necessary • Advise all staff of new requirement
	<p>Amendment 7 Beneficial ownership information</p>	Relevant to trusts, and solicitors advising clients on trusts. Please see additional trust registration requirement PDF.
	<p>Amendment 11 New schedule 3A: excluded trusts The list includes:</p> <ul style="list-style-type: none"> • Legislative trusts • Trusts imposed by court order 	Relevant to trusts, and solicitors advising clients on trusts. Please see additional trust registration requirement PDF.

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	<ul style="list-style-type: none"> • Pension scheme trusts • Trusts of insurance policies • Charitable trusts • Pilot trusts • Trusts having an effect on death • Co-ownership • Financial markets infrastructure • Professional services • Client money etc. • Capital markets etc. • Commercial transactions • Registration of assets • Trusts meeting legislative requirements • Public authorities <p>For the full Schedule 3A, please visit: https://www.legislation.gov.uk/ukxi/2020/991/made/data.pdf</p>	
	Amendment 12 Relevant requirements	Relevant to trusts.
Regulation 33 para 4(A) was added in previous amendment: “(4A) Where the customer— (a) is the beneficiary of a life insurance policy, (b) is a legal person or a legal arrangement, and (c) presents a high risk of money laundering or terrorist financing for any other reason, a relevant person who is a credit or financial institution must take reasonable measures to identify and verify the identity of the	Amendment 6 Enhanced due diligence Regulation 33 para 4(A) now changed to: “(4A) Where a relevant person provides a life insurance policy, the relevant person must consider the nature and identity of the beneficiary of the policy when assessing whether there is a high risk of money laundering or terrorist financing, and the extent of the measures which should be taken to manage and mitigate that risk. (4B) Where the beneficiary of a life insurance policy provided by a relevant person— (a) is a legal person or a legal arrangement, and	Relevant to providers of life insurance policies.

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beneficial owners of that beneficiary before any payment is made under the policy.”	(b) presents a high risk of money laundering or terrorist financing, the relevant person must take reasonable measures to identify and verify the identity of the beneficial owner of that beneficiary before any payment is made under the policy.”.	
Regulation 34(1) (Enhanced customer due diligence: credit institutions, financial institutions and correspondent relationships) previously read: ‘34.—(1) A credit institution or financial institution (the “correspondent”) which has or proposes to have a correspondent relationship with another such institution (the “respondent”) from a third country must, in addition to the measures required by regulation 33—...’	Amendment 6 Enhanced due diligence 34(1) now changed to: ‘34.—(1) A credit institution or financial institution (the “correspondent”) which has or proposes to have a correspondent relationship involving the execution of payments with another such institution (the “respondent”) from a third country must, in addition to the measures required by regulation 33—...’	Relevant to credit institutions, financial institutions and correspondent relationships. This amendment means that enhanced due diligence for correspondent relationships is further refined and now specifically involves the execution of payments.
	Amendment 8 Obligation of confidentiality	Relevant to supervisory authorities
	Amendment 9 Requirement for registration	Relevant to art market participants and letting agents – these ‘relevant persons’ have been given an extension until 10 th June 2021 to register with HMRC as their AML supervisor.
	Amendment 10 Directions: cryptoasset businesses	Relevant to cryptoasset businesses
	Amendment 13 Review	Relevant to The Treasury
	Amendment 14 EU exit amendments	Wording changed for EU exit.

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	<p>14.—(1) The Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 are amended as follows.</p> <p>(2) In regulation 42—</p> <p>(a) for paragraph (4) substitute—</p> <p>“(4) For the purposes of this Part, an “EEA registered trust” is a trust established in a country or territory other than the United Kingdom where national legislation applies having a broadly equivalent effect to the requirements laid down in the fourth money laundering directive.”;</p> <p>(b) for paragraph (6)(b) substitute—</p> <p>“(b) “third country entity” means a body corporate, partnership or other entity that—</p> <p>(i) is governed by the law of a country or territory other than the United Kingdom and (in each case) is a legal person under that law, and</p> <p>(ii) is not subject to national legislation having a broadly equivalent effect to the requirements laid down in Article 30 of the fourth money laundering directive.”.</p>	