

The impact of new Money Laundering Regulations 2017 on trustees and their advisers

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Private Client analysis: Ross Dixon, chair of partners at Hickman & Rose, London examines the impact of new Money Laundering Regulations 2017, and how they will affect registration, disclosure and reporting deadlines.

Why have these Regulations been introduced?

The Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 ('the 2017 Regulations') came into force on 26 June 2017. They transpose into UK Law the requirements of the Fourth Money Laundering Directive, in which the European Union has updated standards in the fight against money laundering. The Regulations should deliver an up-to-date, effective and proportionate UK anti-money laundering (AML) and counter-terrorist financing regime.

The 2017 Regulations introduce both new requirements and changes to obligations which existed under the old Regulations. This includes a register of beneficial ownership information to which trustees must supply relevant information. They will enhance customer due diligence obligations for regulated entities more generally, including lawyers who act as trust service providers.

This note considers the obligations placed on trustees in Part 5 of the Regulations, whereby trustees will have to hold adequate, accurate and up-to-date information on beneficial ownership of their trust, make it available to law enforcement and the UK Financial Intelligence Unit, and disclose their trustee status when entering business relationships or conducting transactions in such capacity.

How do the Regulations apply to trusts and trustees?

Most of the 2017 Regulations have general application to the regulated sector, which includes lawyers acting as trust service providers. However, Part 5 creates a new and separate set of obligations for trustees as distinct from their advisors. These new obligations apply to all UK express trusts, and to non-UK express trusts which either receive income from a source in the UK or hold assets in the UK ('relevant trusts'). A UK trust is a trust for which all the trustees are resident in the UK or at least one trustee is resident in the UK and the settlor was resident and domiciled in the UK either when the trust was set up or when the settlor added funds to the trust.

Trustee obligations

Record keeping

Trustees of relevant trusts are now required to keep accurate written records of the details of the trust, including:

- the full name of the trust and the date on which it was set up
- a statement of account for the trust describing its assets and their value
- the country where the trust is considered to be resident for tax purposes
- a contact address for the trustees
- the full name of any advisors who are being paid to provide legal, financial or tax advice

Trustees are also required to keep accurate written records of the trustees' details, including:

- their full name
- date of birth
- national insurance number or unique tax payer reference (UTR)
- their role in relation to the trust

If they do not have a NI or UTR number, then trustees can provide their usual residential address. But, if that address is not in the UK then:

- that individual's passport number or ID card number, with country of issue and expiry date
- if the individual does not have either document, then the same information must be provided from any equivalent form of identification

Written records of any legal entities who are beneficial owners of the trust must be kept, including:

- the legal entity's corporate or firm name
- its UTR if any
- the registered principal office
- its legal form and the law by which it is governed
- its role in relation to the trust
- if applicable, the name of the register of companies in which the legal entity is entered

Disclosure to other persons

When a trustee enters into a transactional or business relationship with a person who is required to apply Customer Due Diligence (CDD) measures under the Regulations, the trustee must inform that person that they are acting as a trustee.

If requested, they must then provide that person with information identifying all the beneficial owners of the trust. Where the beneficial owners, or potential beneficial owners, are a class of persons the trustee may discharge this obligation by describing the class.

Disclosure to law enforcement

The 2017 Regulations introduce a new disclosure obligation to assist law enforcement authorities. Trustees of a relevant trust must, on request, provide information about the beneficial owners to the trust and about any other individual referred to as a potential beneficiary in a document from the settlor.

This must be provided within the time-period set by the law enforcement authority, as long as that period is 'reasonable'.

The information can be requested by:

- HMRC
- the Financial Conduct Authority (FCA)
- the National Crime Agency (NCA)
- Police forces, including the Metropolitan Police, the City of London Police and the police forces of Scotland and Northern Ireland
- the Serious Fraud Office

Register of beneficial interests

The 2017 Regulations create a register of all beneficial owners of taxable relevant trusts. HMRC is authorised to keep this register. It will be available for inspection by the law enforcement authorities listed above, but it will not be made public.

A 'taxable relevant trust' is any relevant trust with UK tax consequences. That is, a trust deliberately created by a settlor expressly transferring property to a trustee for a valid purpose and, in relation to which, trustees are liable to pay either:

- income tax
- capital gains tax (CGT)
- inheritance tax
- stamp duty land tax (SDLT)
- land and buildings transactions tax
- stamp duty reserve tax

There is no need to submit details of statutory, resulting or constructive trusts or investment trusts where there is no transfer of legal ownership.

This information must be provided to the Commissioner's register no later than 31 January 2018. This applies to trusts already reported to HMRC prior to the Regulations coming into force (Form 41G). HMRC has set up a new online services system to receive the information.

It is important to note that the new online portal also serves as the means for trustees to register trusts for general tax purposes and the deadline for registration in the Regulations does not replace other relevant tax deadlines that trustees must meet.

For example, if a relevant trust with tax consequences was settled during the 2016/17 tax year and has yet to be registered with HMRC using the old 41G form that trust would need to register before 5 October 2017, that being six months after the end of the 2016/17 tax year, as required by the [Taxes Management Act 1970](#).

If a trustee becomes aware that any information listed above has changed after it is submitted to the register then they must notify HMRC of the change and the date on which it occurred on or before 31 January after the tax year in which it occurred, or if no tax is due in that year, then after the tax year in which the trustees are liable to pay any UK taxes.

If no changes have occurred the trustees are required to confirm this to HMRC after any tax year in which the trustees are liable to pay any UK taxes.

It is an express provision that the register be made available to the NCA for the purposes of responding to requests for information made by the tax authorities or financial intelligence units of any EEA state.

Confidentiality and liability

The provision of information under this Regulation will not be taken to breach any restriction on the disclosure of information. The Regulation also shields trustees from civil liability for any disclosure made in good faith, and in accordance with the regulations.

Obligations on trust service providers that may affect trustees

The 2017 Regulations have enhanced the requirements for regulated persons conducting CDD in respect of trusts.

Regulated persons must now undertake 'reasonable measures', rather than 'adequate measures on a risk sensitive basis', to verify the identity of the beneficial owner and, in the case of a legal person, to understand the ownership and control structure of that person, trust or arrangement.

The Regulations have introduced a more prescriptive set of rules for CDD which are beyond the scope of this note. This will undoubtedly lead to more probative enquiries from regulated service providers in the future.

Information offences

The 2017 Regulations introduce two new offences which may apply to anyone who is dealing with the provision of information as a consequence of the 2017 Regulations, or who discloses information in contravention of them.

The first offence is the provision of false or misleading information in purported compliance with a requirement imposed under the 2017 Regulations. To commit this offence, the provider must know, or be reckless as to whether the information is false or misleading.

The second offence is of disclosing information in contravention of a relevant regulation. There are two defences in the Regulations, either where the person making the disclosure reasonably believed the disclosure was lawful, or where the information had already been lawfully made available to the public.

Both are either way offences and can be dealt with in either the magistrates' or the Crown Court. Each carries a maximum sentence of two years' imprisonment and an unlimited fine.

Trustees and the lawyers acting for them will therefore need to take due care when providing information to law enforcement, to the register or to other persons in purported compliance with the Regulations so as not to risk committing either offence.

What guidance has been produced by the government?

The government published a plethora of guidance documents on the 26 June 2017 that are available [here](#).

The government is also in the process of establishing a new watchdog to support the enforcement of the Money Laundering Regulations. The Office for Professional Body Anti-Money Laundering Supervision (OPBAS) will sit within the FCA from the beginning of 2018. The OPBAS has a mandate to issue comprehensive guidance.

Interviewed by Tracey Clarkson-Donnelly

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