

AML NEWSLETTER



April 2020

Fifth Anti-Money Laundering Directive

On 10 January 2020 the [Money Laundering and Terrorist Financing \(Amendment\) Regulations 2019](#) (the Regulations) came into force. The Regulations implemented most of the changes required as a result of the 5th EU Money Laundering Directive in the UK through amending the [Money Laundering, Terrorist Financing and Transfer of Funds \(Information on the Payer\) Regulations 2017](#). The Regulations bring letting agents, art dealers and crypto currencies into scope. Changes to the trust registration regime were not included in this legislation – see below.

The AML Guidance for the Accountancy Sector has been updated to cover relevant changes and we will let you know when this update has been approved by HM Treasury. The points outlined below have therefore been prepared in advance of HM Treasury approval and are based on our current understanding of the requirements.

There are a number of key areas that members will need to consider and address in their policies and procedures:

Customer Due Diligence (CDD)

- The Regulations confirm that electronic verification processes can be considered as reliable when undertaking CDD provided that the chosen means is secure from fraud and misuse and provides an appropriate level of assurance that the person claiming their identity is in fact that person. Nothing in the existing UK Regulations precluded the use of electronic means of identification, however the addition of this explicit reference provides greater clarity for members.
- In addition to existing CDD requirements, where the client is a non-natural person (including trusts) there is now an explicit requirement in all cases to take reasonable measures to understand the ownership and control structure of the client as part of the CDD obligations.
- Where a customer is a body corporate and the firm has exhausted all possible means of identifying the beneficial owner, the firm must instead take all reasonable measures to verify the identity of the senior managing official. The firm must keep written records detailing all actions it took to do this and any difficulties encountered in doing so.

- Firms are now required to reapply CDD measures:
 - Where the firm has any legal duty in the course of the calendar year to contact an existing client under the International Tax Compliance Regulations 2015; or
 - for the purpose of reviewing any information which:
 - is relevant to the risk assessment for that client (or where appropriate firm wide risk assessment); or
 - relates to the beneficial ownership of the client, including information which enables the firm to understand the ownership or control structure of a legal person, trust, foundation or similar arrangement who is the beneficial owner of the client;

Reporting discrepancies to Companies House

There is a new requirement for firms to report to Companies House discrepancies between the information the firm holds on their clients compared with the information on the Companies House people with significant control (PSC) register. A firm must collect proof of registration or an excerpt of the register from the company, the unregistered company, the limited liability partnership (as the case may be) or from the registrar (in the case of an eligible Scottish partnership). [Read further guidance on how to report a discrepancy.](#)

Enhanced Due Diligence (EDD)

Under the new Regulations EDD requirements **must** be carried out if **any** of the following apply:

- where either of the parties is established in a high-risk third country (Note that it is if either party to a transaction the firm is involved in is established in a high-risk country. In the past this only applied if the client was established in such a country);
- where the transaction is complex or unusually large; or
- where there is an unusual pattern of transactions or the transactions have no apparent economic or legal purpose

There are additional risk factors which must be considered to determine whether EDD should be applied:

- the customer is the beneficiary of a life insurance policy;
- the customer is a third-country national seeking residence rights or citizenship in exchange for transfers of capital, purchase of property, government bonds or investment in corporate entities;
- non-face to face business relationships or transactions without certain safeguards; and
- transactions related to oil, arms, precious metals, tobacco products, cultural artefacts, ivory or other items related to protected species, or archaeological, historical, cultural and religious significance.

For clients that are higher risk due to connections to a high-risk third country the following steps must be taken:

- Obtain additional information on the customer and its ultimate beneficial owners
- Obtain additional information on the intended nature of the business relationship
- Obtain information on the source of wealth and source of funds of the customer and the customer's beneficial owner
- Where there is a transaction, obtaining information on the reasons for the transactions
- Obtain the approval of senior management for establishing or continuing the business relationship
- Increase the monitoring of the business relationship, by increasing the number and timings of controls applied.

Policies, controls and procedures

Policies, controls and procedures 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).
- provide for the assessment and mitigation of the risks associated when new products or business practices are adopted. The Regulations already required this where new technology was being adopted and the same process must be followed when new products or business practices are introduced.
- (for group parent undertakings) include policies on the sharing of information about customers, customer accounts and transactions between subsidiaries of a parent group.

Training Requirements

The existing training requirements on staff are extended to include any **agents** a practice uses for the purpose of its business. We are seeking clarification on the definition of **agent**. Currently, an employee needs training 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.

Future changes on trusts

Changes to the trust registration regime were not included in this legislation but instead the requirement on the government under EU law to extend the trust registration scheme is being looked at separately. The HMRC Technical Consultation on the Fifth Money Laundering Directive and Trust Registration Service published on 24 January 2020 was responded to by both [CIOT](#) and [ATT](#) and we will keep you informed of progress.

CIOT/ATT pro forma risk assessment and policies and procedures documents

The pro forma documents provided by the CIOT and ATT are currently being worked on to reflect the changes set out in the Regulations and will be updated on the websites shortly. We will let supervised members know when the update has taken place.

NCA Magazines

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