

HOUSE OF LORDS

Secondary Legislation Scrutiny Committee

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2nd Report of Session 2017–19

**Money Laundering, Terrorist  
Financing and Transfer of Funds  
(Information on the Payer)  
Regulations 2017**

**Information about People with  
Significant Control (Amendment)  
Regulations 2017**

**Scottish Partnerships (Register of  
People with Significant Control)  
Regulations 2017**

Includes 4 Information Paragraphs on 5 Instruments

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### *Secondary Legislation Scrutiny Committee*

The Committee was established on 17 December 2003 as the Merits of Statutory Instruments Committee. It was renamed in 2012 to reflect the widening of its responsibilities to include the scrutiny of Orders laid under the Public Bodies Act 2011.

The Committee's terms of reference are set out in full on the website but are, broadly, to scrutinise —

(a) every instrument (whether or not a statutory instrument), or draft of an instrument, which is laid before each House of Parliament and upon which proceedings may be, or might have been, taken in either House of Parliament under an Act of Parliament;

(b) every proposal which is in the form of a draft of such an instrument and is laid before each House of Parliament under an Act of Parliament,

with a view to determining whether or not the special attention of the House should be drawn to it on any of these specified grounds:

(a) that it is politically or legally important or gives rise to issues of public policy likely to be of interest to the House;

(b) that it may be inappropriate in view of changed circumstances since the enactment of the parent Act;

(c) that it may inappropriately implement European Union legislation;

(d) that it may imperfectly achieve its policy objectives;

(e) that the explanatory material laid in support provides insufficient information to gain a clear understanding about the instrument's policy objective and intended implementation;

(f) that there appear to be inadequacies in the consultation process which relates to the instrument.

The Committee may also consider such other general matters relating to the effective scrutiny of secondary legislation as the Committee considers appropriate, except matters within the orders of reference of the Joint Committee on Statutory Instruments.

### *Members*

Lord Faulkner of Worcester	Lord Hodgson of Astley Abbots	Lord Sherbourne of Didsbury
Lord Goddard of Stockport	Rt Hon. Lord Janvrin	Rt Hon. Lord Trefgarne ( <i>Chairman</i> )
Baroness Gould of Potternewton	Lord Kirkwood of Kirkhope	Baroness Watkins of Tavistock
Lord Haskel	Baroness O'Loan	

### *Registered interests*

Information about interests of Committee Members can be found in the last Appendix to this report.

### *Publications*

The Committee's Reports are published on the internet at [www.parliament.uk/seclegpublications](http://www.parliament.uk/seclegpublications)

The National Archives publish statutory instruments with a plain English explanatory memorandum on the internet at <http://www.legislation.gov.uk/uksi>

### *Information and Contacts*

Any query about the Committee or its work, or opinions on any new item of secondary legislation, should be directed to the Clerk to the Secondary Legislation Scrutiny Committee, Legislation Office, House of Lords, London SW1A 0PW. The telephone number is 020 7219 8821 and the email address is [hseclegscrutiny@parliament.uk](mailto:hseclegscrutiny@parliament.uk).

# Second Report

## INSTRUMENTS DRAWN TO THE SPECIAL ATTENTION OF THE HOUSE

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### Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (SI 2017/692)

*Date laid: 22 June 2017*

*Parliamentary procedure: negative*

### Information about People with Significant Control (Amendment) Regulations 2017 (SI 2017/693)

*Date laid: 23 June 2017*

*Parliamentary procedure: negative*

### Scottish Partnerships (Register of People with Significant Control) Regulations 2017 (SI 2017/694)

*Date laid: 23 June 2017*

*Parliamentary procedure: negative*

*These three sets of Regulations serve to implement the EU Fourth Money Laundering Directive, which gives effect to updated global standards for combating money laundering, terrorist financing and other threats to the international financial system. The instruments will have a significant impact: in all, over three and a half million businesses are covered by them. No figures on the likely cost of the legislation were included in the Explanatory Memorandum laid with SI 2017/692 and HM Treasury only published the final Impact Assessment (IA) on 7 July 2017, more than two weeks after the Regulations were laid. The IA shows that implementing the Regulations will give rise to a net cost to business of £5.2 million per year. We question what assessment has been made of the effectiveness and value for money of the bureaucratic process proposed.*

*The Regulations were laid either on 22 or 23 June and brought into force on 26 June, in order to meet the transposition date in the Directive of 26 June. HM Treasury has provided additional information about the timetable followed. The handling of these instruments, leads us to question the seriousness with which the Government view the process of scrutiny of secondary legislation. It cannot be acceptable that, when Departments face unforeseen delays in progressing secondary legislation, their default solution is to reduce the period available for Parliamentary scrutiny. We have written to the Minister and we shall pursue this with the Cabinet Office.*

**We draw these Regulations to the special attention of the House on the ground that they give rise to issues of public policy likely to be of interest to the House.**

1. These sets of Regulations serve to implement the EU Fourth Money Laundering Directive (“the 2015 Directive”),<sup>1</sup> which, as stated by HM Treasury (HMT) in the Explanatory Memorandum (EM) to SI 2017/692,

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<sup>1</sup> 2015/849/EU, and also the Funds Transfer Regulation (FTR): 2015/847/EU.

seeks to give effect to updated global standards<sup>2</sup> which promote effective implementation of legal, regulatory and operational measures for combating money laundering, terrorist financing and other related threats to the integrity of the international financial system. HMT says that the UK Government's objective, through transposing the 2015 Directive, is to make the financial system a hostile environment for illicit finance while minimising the burden on legitimate businesses.

2. HMT has laid the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (SI 2017/692), with an EM and Transposition Note. In section 7 of the EM, HMT summarises the main features of the Regulations, dealing with scope, supervision and the risk-based approach, application of customer due diligence, reliance and record-keeping, beneficial ownership, supervision and registration, information and investigation, and enforcement. HMT says that over 100,000 businesses are covered by the Regulations, which 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).
3. The Department for Business, Energy and Industrial Strategy (BEIS) has laid the Information about People with Significant Control (Amendment) Regulations 2017 (SI 2017/693), and also the Scottish Partnerships (Register of People with Significant Control) Regulations 2017 (SI 2017/694). In the EM to SI 2017/693, BEIS says that the Regulations make minor changes to, and extend the scope of, Part 21A of the Companies Act 2006 ("the 2006 Act") which requires companies to keep a register of people with significant control over the company (a "PSC register"), its application to Limited Liability Partnerships, and the Register of People with Significant Control Regulations 2016,<sup>3</sup> to bring the UK's domestic regime into compliance with the Directive's requirements (specifically Article 30). In the EM to SI 2017/694, BEIS says that the instrument implements aspects of Article 30 in relation to Scottish partnerships, applying a modified version of the regime in Part 21A of the 2006 Act to limited partnerships governed by the law of Scotland and to qualifying general partnerships governed by the law of Scotland, collectively known as "eligible Scottish Partnerships". On 26 June of this year, Margot James, MP, Parliamentary Under Secretary of State at BEIS, made a Written Statement<sup>4</sup> about these two sets of Regulations, as well as the draft, updated statutory guidance on the meaning of "significant influence or control" over companies, in the context of the register of people with significant control.
4. We are concerned that the provisions relating to people with significant control of a partnership do not, as drafted, provide sufficient clarity to those affected. The "person with significant control" test is set as someone with the right to receive 25% of the assets on winding up. In many

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2 Developed by the Financial Action Task Force (FATF), an inter-governmental body whose objectives are to set standards and promote effective implementation of legal, regulatory and operational measures for combating money laundering, terrorist financing and other related threats to the integrity of the international financial system. See: <http://www.fatf-gafi.org/about/>

3 SI 2016/339.

4 HCWS7: see <https://www.parliament.uk/business/publications/written-questions-answers-statements/written-statement/Commons/2017-06-26/HCWS7/>

partnership agreements it is not clear in advance what percentage of assets will be received by an individual partner. Many partnerships provide for the priority repayment of subscribed capital, often to the original partners, with the remaining surplus distributed in different proportions, sometimes prioritising newer younger partners. The percentage of the total assets received by each partner will therefore depend not only on the individual percentages but also on the relative balance between subscribed and retained capital.

### *Consultation*

5. Both HMT and BEIS describe the consultation processes that were followed in preparing the secondary legislation. HMT says that it carried out consultation on “Transposition of the Fourth Money Laundering Directive” over eight weeks from 15 September 2016. There were 186 responses from a cross-section of stakeholders which were broadly supportive of the overall policy objectives of the Regulations. A summary of consultation responses was published by HMT<sup>5</sup> in March 2017, when it carried out a four-week consultation on the technical draft Regulations.
6. BEIS says that, in parallel, it published a separate public discussion paper in November 2016 on the approach to transposition of Article 30 for comment. In response to our queries, however, BEIS has said that, since the discussion paper focussed on the detailed implementation of the Directive, it took the view that a separate response document was unnecessary; and that the Written Statement, the two sets of Regulations and the guidance together set out the outcome to the feedback received to the discussion paper. We pointed out that in early July the relevant web-page for the discussion paper stated that BEIS was analysing feedback, and that it would “soon” be possible to download the outcome; BEIS has said that it will amend the web-page to point to the Statement, instruments and guidance.

### *Impact*

7. There is no doubt that these instruments will have a significant impact. As noted above, HMT has said of SI 2017/692 that over 100,000 businesses are covered by the Regulations. In the EM to SI 2017/693, BEIS says that the new measures introduced by the instrument will affect some 3.6 million companies that are already within the scope of the PSC Register, and will bring a further 840 companies into scope; in the EM to SI 2017/694, BEIS says that the Regulations will affect 74,000 Scottish partnerships.
8. No figures on the likely cost of the legislation were included in the EM laid with SI 2017/692 as the Impact Assessment (IA) was awaiting an opinion from the Regulatory Policy Committee (a government-imposed clearance process). HMT only published the final IA on 7 July 2017, more than two weeks after the Regulations were laid. The IA shows that implementing the Regulations will give rise to a net cost to business of £5.2 million per year. **We question what assessment has been made of the effectiveness and value for money of the bureaucratic process proposed, particularly as compliance costs are inevitably passed on to the customer.**

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5 See: <https://www.gov.uk/government/consultations/money-laundering-regulations-2017/money-laundering-regulations-2017>

9. The Government say that regulation 35 of SI 2017/692 will help to address concern about the behaviour of firms toward politically exposed persons (PEPs) and those close to them. Some financial institutions have taken a one-size-fits-all approach to PEPs, treating low-risk customers as though they posed high risks and asking them intrusive and disproportionate questions. To address this, Regulation 35(3) requires firms to assess the risk posed by each relevant customer on a case-by-case basis and tailor the enhanced measures they apply accordingly.
10. On 6 July, the Financial Conduct Authority (FCA) published detailed guidance to help firms differentiate between low- and high-risk PEPs and apply the right level of enhanced measures in each case. The FCA's guidance states that UK PEPs should be treated as low risk, unless the firm has identified indicators of high risk that are not linked to that person's status as a PEP.

*Timing of laying*

11. The three sets of Regulations were laid either on 22 or 23 June and brought into force on 26 June.<sup>6</sup> In the EM to SI 2017/692, HMT states that “the Regulations come into force in national law on 26 June as this is the transposition and implementation date in the Directive and FTR (Funds Transfer Regulation)”. Acknowledging that it is breaching the convention that 21 days are normally allowed between the laying of an instrument and its coming into force, HMT goes on to say that “due to the dissolution of Parliament for the General Election which was held on 8 June, and the need for new ministers to approve the Regulations it has not been possible to lay these Regulations any earlier”. BEIS refers to the need to meet the transposition deadline to explain its handling of the laying and bringing into force of SIs 2017/693 and 694.
12. We understand that the calling of the General Election in June of this year cannot have been foreseen when Departments started to plan implementation of the 2015 Directive. However, given that HMT closed its main consultation exercise in November 2016, the question arises of whether it could have moved sooner to finalise the Regulations than in April 2017 (after its technical consultation), which was in any case only two months before the transposition deadline.
13. We question the seriousness with which the Government view the process of scrutiny of secondary legislation. Presenting so significant an instrument as SI 2017/692 to Parliament without simultaneously providing a final IA suggests that the Government are rushing the preparation of such legislation. Leaving less than a week between laying Regulations and bringing them into force greatly inhibits the scope for effective Parliamentary scrutiny. **It cannot be acceptable that, when Departments face unforeseen delays in progressing secondary legislation, the default solution to their timing difficulties is to reduce the period available for Parliamentary scrutiny. We have written to the Minister and we shall pursue this with the Cabinet Office.**

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<sup>6</sup> In the case of SI 2017/694, all but two of the regulations were brought into force on 26 June; regulations 4 and 81 are to come into force on 24 July.

## INSTRUMENTS OF INTEREST

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### Draft Justice and Security (Northern Ireland) Act 2007 (Extension of Duration of Non-Jury Trial Provisions) Order 2017

14. This instrument provides for a fifth extension of the temporary provision that allows trial without jury for certain cases in Northern Ireland (the system that replaced “Diplock courts”). Current provision will run out on 31 July 2017 and this instrument would keep this option available for a further two years. The use of such courts is dependent on the Director of Public Prosecutions (DPP) in Northern Ireland issuing a certificate stating that certain conditions, set out in the Justice and Security (Northern Ireland) Act 2007 (“the 2007 Act”), are met, such as potential prejudice or witness intimidation. In 2015 these non-jury trials represented 1.6% of Crown Court trials in Northern Ireland, the provisional figure for 2016 is 0.7%.
15. When the legislation was last reviewed in 2015 there was some opposition to the further extension of the system, on the ground that the conditions in Northern Ireland were becoming no different to those in the rest of the UK. The Government undertook to conduct a public consultation on the matter:<sup>7</sup> of the ten responses received only one opposed the extension, however there was some wider criticism of a perceived lack of accountability in the DPP’s decision making process and suggestions that greater consideration should be given to alternative juror protection measures. In the light of the comments made, the Secretary of State has decided to introduce regular independent reviews of the operation of these provision as part of the annual report required under section 40(3) of the 2007 Act.

### Data Reporting Services Regulations 2017 (SI 2017/699)

### Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2017 (SI 2017/701)

16. These instruments are part of a series which transpose the new regulatory regime to create more robust and transparent financial market structures into UK law. In particular they deal with the government of data reporting service providers under MiFID II.<sup>8</sup> These instruments were laid on 22 June and some parts came into force on 3 July 2017. **Although HM Treasury state that this was a regrettable necessity due to the interruption caused by the general election, we again question the reasonableness of so short an implementation period.** Not only did this curtail Parliamentary scrutiny but it also allowed those firms affected only eight working days to adjust their systems to comply with the requirements.

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7 <https://www.gov.uk/government/consultations/non-jury-trial-provisions-justice-and-security-northern-ireland-act-2007>

8 Directive 2014/5/EU of 15 May 2014 on markets in financial instruments (recast) (OJ L173, 12/6/2014, p 349).

**Nursing and Midwifery Order (Legal Assessors) (Amendment) and the Nursing and Midwifery Council (Fitness to Practise) (Amendment) Rules Order of Council 2017 (SI 2017/703)**

17. Our 22nd Report of last Session<sup>9</sup> drew attention to the Draft Nursing and Midwifery (Amendment) Order 2017 which aimed to save money by streamlining the investigation of fitness to practice concerns. That Order was approved and made as SI 2017/321<sup>10</sup>. The current instrument transposes that legislation into the Nurses' and Midwives' professional rules of conduct. One of the concerns raised in our 22nd Report was that guidance was not available to Parliament during the scrutiny process on issuing disciplinary warnings where 'no case to answer' had been found, especially on the interpretation of specific terms or on how decisions should be made. That guidance has now been published.<sup>11</sup> It gives a clearer expression of the way that the legislation is intended to work, for example that a warning will only be appropriate where the nurse or midwife has accepted the regulatory concern, demonstrated sufficient insight into the concern and provided evidence of suitable remediation; and that a warning is not appropriate where there is any risk to patients as a result of the clinical practice in question. **This answers a number of the questions we raised in our 22nd Report and demonstrates our point that guidance that interprets the legislation, or sets out how decisions should be made, needs to be laid at the same time as the Statutory Instrument to which it relates.**

**Equality Act 2010 (General Qualifications Bodies) (Appropriate Regulator and Relevant Qualifications) (Amendment) (England) Regulations 2017 (SI 2017/705)**

18. Section 96 of the Equality Act 2010 places a duty on bodies awarding qualifications to make reasonable adjustments to take account of pupils' disabilities when they are taking certain qualifications. Section 96(7) of that Act allows the appropriate qualifications regulator, Ofqual in England, to set the appropriate limits. The original Regulations in 2010 included an extensive list of the types of general qualifications that students undertake in school (and which are not qualifications in relation to a particular trade or profession). The current Regulations update the list of relevant qualifications that are subject to these provisions by adding three types of qualifications to the list: Cambridge IGCSEs, International GCSEs and ESOL (English for Speakers of Other Languages) because they are typically used by schools and colleges as alternatives to qualifications on the existing list. In addition, the Regulations remove from the list a number of qualifications that are no longer offered in England (Certificates in Adult Literacy and Numeracy, General National Vocational Qualifications, Key Skills and the Welsh Baccalaureate Qualifications Core Certificate). The Government state that the overall effect of updating the list to reflect the current qualifications landscape in England will be to ensure that candidates are treated fairly across comparable qualifications.

<sup>9</sup> [22nd Report](#), Session 2016–17 (HL Paper 101).

<sup>10</sup> [Nursing and Midwifery \(Amendment\) Order 2017](#)

<sup>11</sup> [https://www.nmc.org.uk/globalassets/sitedocuments/ftp\\_information/ftp\\_committees/case-to-answer-and-disposal-guidance.pdf](https://www.nmc.org.uk/globalassets/sitedocuments/ftp_information/ftp_committees/case-to-answer-and-disposal-guidance.pdf)

## **INSTRUMENTS NOT DRAWN TO THE SPECIAL ATTENTION OF THE HOUSE**

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### **Draft instruments subject to affirmative approval**

International Headquarters and Defence Organisations  
(Designation and Privileges) Order 2017

Justice and Security (Northern Ireland) Act 2007 (Extension of  
duration of non-jury trial provisions) Order 2017

Unified Patent Court (Immunities and Privileges) Order 2017

### **Draft instrument subject to annulment**

Statutory Guidance on the Meaning of “Significant Influence  
or Control” over Companies in the Context of the Register of  
People with Significant Control

### **Instruments subject to annulment**

Cm 9463	Agreement establishing the EU-LAC International Foundation
SI 2017/697	Export Control (Amendment) (No. 3) Order 2017
SI 2017/699	Data Reporting Services Regulations 2017
SI 2017/701	Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2017
SI 2017/703	Nursing and Midwifery Council (Legal Assessors) (Amendment) and the Nursing and Midwifery Council (Fitness to Practise) (Amendment) Rules Order of Council 2017
SI 2017/705	Equality Act 2010 (General Qualifications Bodies) (Appropriate Regulator and Relevant Qualifications) (Amendment) (England) Regulations 2017
SI 2017/706	Antarctic (Amendment) Regulations 2017
SI 2017/709	National Health Service (Pharmaceutical and Local Pharmaceutical Services) (Amendment) Regulations 2017

## **APPENDIX 1: INTERESTS AND ATTENDANCE**

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Committee Members' registered interests may be examined in the online Register of Lords' Interests at [www.publications.parliament.uk/pa/ld/ldreg.htm](http://www.publications.parliament.uk/pa/ld/ldreg.htm). The Register may also be inspected in the Parliamentary Archives.

For the business taken at the meeting on 11 July 2017, a Member declared the following interest:

**Money Laundering, Terrorist Financing and Transfer of Funds  
(Information on the Payer) Regulations 2017 (SI 2017/692)**

**Data Reporting Services Regulations 2017 (SI 2017/699)**

**Financial Services and Markets Act 2000 (Markets in Financial  
Instruments) Regulations 2017 (SI 2017/701)**

Lord Janvrin

*Senior Adviser, HSBC Private Bank (UK) Ltd*

### **Attendance:**

The meeting was attended by Lord Faulkner of Worcester, Lord Goddard of Stockport, Lord Haskel, Lord Hodgson of Astley Abbots, Lord Janvrin, Lord Kirkwood of Kirkhope, Baroness O'Loan, Lord Sherbourne of Didsbury and Lord Trefgarne.