Changes to legislation: *The Oversight of Professional Body Anti-Money Laundering and Counter Terrorist Financing Supervision Regulations 2017 is up to date with all changes known to be in force on or before 13 February 2020. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

STATUTORY INSTRUMENTS

2017 No. 1301

FINANCIAL SERVICES

The Oversight of Professional Body Anti-Money Laundering and Counter Terrorist Financing Supervision Regulations 2017

Made - - - -	*14th December 2017*
Laid before Parliament	*18th December 2017*
Coming into force - -	*18th January 2018*

The Treasury are designated [F1] for the purposes of section 2(2) of the European Communities Act 1972 [F2] in relation to the prevention of money laundering and terrorist financing.

The Treasury, in exercise of the powers conferred by section 2(2) of that Act and by sections 168(4)(b) and 402(1)(b) of the Financial Services and Markets Act 2000 [F3], make the following Regulations.

F1 S.I. 2007/2133.

F2 1972 c.68. Section 2(2) was amended by section 27 of the Legislative and Regulatory Reform Act 2006 (c.51) and by section 3 of, and the Schedule to, the European Union (Amendment) Act 2008 (c.7). By virtue of the amendment to section 1(2) by section 1 of the European Economic Area Act 1993 (c.51), an order may be made under section 2(2) of the European Communities Act 1972 to implement obligations of the United Kingdom created or arising by or under the Agreement on the European Economic Area signed at Oporto on 2nd May 1992 (Cm 2073) and the Protocol adjusting the Agreement signed in Brussels on 17th March 1993 (Cm 2183).

F3 2000 c.8. Section 168(4)(b) was amended by the Financial Services Act 2012 (c.21), **Schedule 12**, Part 1. Section 402(1) was amended by the Financial Services Act 2012, Schedule 9, Parts 1 and 7.

PART 1

Introduction

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Oversight of Professional Body Anti-Money Laundering and Counter Terrorist Financing Supervision Regulations 2017 and come into force on 18th January 2018.

(2) Regulation 28 extends to Scotland only.

Interpretation

2. In these Regulations—

"The European Supervisory Authorities" means—

(a) the European Securities and Markets Authority;

(b) the European Banking Authority; and

(c) the European Insurance and Occupational Pensions Authority;

"the FCA" means the Financial Conduct Authority;

"fourth money laundering directive" means Directive 2015/849/EU of the European Parliament and of the Council of 20th May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing [F4];

"FSMA" means the Financial Services and Markets Act 2000 [F5];

"the MLR" means the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 [F6];

"self-regulatory organisation" means one of the professional bodies listed in Schedule 1 to the MLR;

"supervision requirement" means any requirement imposed by the MLR on a self-regulatory organisation (whether imposed on a self-regulatory organisation in terms or in its capacity as a supervisory authority within the meaning given by regulation 3 of the MLR).

F4 OJ L 141, 05.06.15, p. 73.
F5 2000 c.8.
F6 S.I. 2017/692.

Duties of the FCA

3. The FCA must have regard to the importance of ensuring that self-regulatory organisations comply with any supervision requirement—

(a) when discharging the FCA's functions under these Regulations; and

(b) in drafting any guidance in relation to self-regulatory organisations that the FCA may issue under section 139A of FSMA [F7] in relation to the MLR.

F7 Section 139A was inserted by section 24(1) of the Financial Services Act 2012 (c.21).

PART 2

Applications

Application to be added to Schedule 1 to the MLR

4.—(1) This Part applies where a person ("the applicant") wishes to be added to the list of self-regulatory organisations in Schedule 1 to the MLR.

(2) The applicant must make an application to the FCA in such manner as the FCA may specify, setting out how the applicant proposes to meet the supervision requirements and providing such other information as the FCA may specify as part of the application.

(3) At any time after receiving an application and before making a recommendation to the Treasury concerning the application, the FCA may require the applicant to provide such further information as the FCA reasonably considers necessary to enable it to make the recommendation.

(4) Any information to be provided to the FCA under this regulation must be in such form and verified in such manner as the FCA may reasonably specify.

Determination of applications

5.—(1) Before the end of the period of 6 months beginning with the date on which the FCA receives the completed application, the FCA must make a recommendation to the Treasury as to whether the applicant should be added to Schedule 1 to the MLR.

(2) The FCA may consider an incomplete application if, in the FCA's opinion, it is appropriate to do so, but must in any event make a recommendation to the Treasury concerning such an application within 12 months beginning with the date on which it receives the incomplete application.

(3) The Treasury must take the FCA's recommendation into account when deciding whether to make regulations which add the applicant to Schedule 1 to the MLR.

PART 3

Information and directions

Interpretation

6. In this Part—

"body corporate"—

(a) includes—

(i) a body corporate incorporated under the laws of the United Kingdom or any part of the United Kingdom, and

(ii) a body corporate constituted under the law of a country or territory outside the United Kingdom;

(b) but does not include—

(i) a corporation sole, or

(ii) a partnership that, whether or not a legal person, is not regarded as a body corporate under the law by which it is governed;

"connected person", in relation to a self-regulatory organisation, means—

(a) if the self-regulatory organisation is a body corporate, any person who is or has been—

(i) an officer or manager of the body corporate;

(ii) an employee of the body corporate;

(iii) an agent of the body corporate;

(iv) an officer, manager or agent of a parent undertaking of the body corporate;

(b) if the self-regulatory organisation is a partnership, any person who is or has been a member, manager, employee or agent of the partnership;

(c) if the self-regulatory organisation is an unincorporated association of persons (other than a partnership), any person who is or has been a member, officer, manager, employee or agent of the association;

"manager", in relation to a body corporate, partnership or other unincorporated association, means a person who has control, authority or responsibility for managing the business of that body, partnership or association;

"officer" means—

(a) in relation to a body corporate or a parent undertaking of a body corporate—

(i) a director, secretary, chief executive, member of the committee of management, or a person purporting to act in such a capacity, or

(ii) an individual who is a controller of the body, or a person purporting to act as a controller;

(b) in relation to an unincorporated association, any officer of the association or any member of its governing body, or a person purporting to act in such a capacity;

"officer of the FCA" means an officer or agent of the FCA or a member of the FCA's staff;

"skilled person" means a person appointed under regulation 13(2).

Power to require information

7.—(1) The FCA may, by notice in writing to a person who is (or was at any time) a self-regulatory organisation or a connected person, require that person to—

(a) provide specified information, or information of a specified description;

(b) produce specified documents, or documents of a specified description; or

(c) attend before an officer of the FCA at a time and place specified in the notice and answer questions.

(2) The information or documents must be provided or produced—

(a) before the end of such reasonable period as may be specified; and

(b) at such place as may be specified.

(3) An officer of the FCA who has written authorisation from the FCA to do so may require a person who is (or was at any time) a self-regulatory organisation or a connected person without delay to—

(a) provide the officer with specified information or information of a specified description; or

(b) produce to the officer specified documents or documents of a specified description.

(4) The powers in this regulation may only be exercised in relation to information or documents which are reasonably required by the FCA in connection with the exercise by the FCA of any of its functions under these Regulations.

(5) Where the FCA or an officer of the FCA requires information to be provided or documents to be produced under paragraph (1) or (3), the FCA or the officer must give the reasons why the information is required to be provided or the documents produced, unless the disclosure of those reasons would be likely to prejudice any criminal investigation or criminal proceedings.

(6) An officer of the FCA may require—

(a) information contained in a computer or other storage device, or recorded in any other way otherwise than in legible form to be produced to it in legible form or in a form from which the information can readily be produced in visible and legible form, and

(b) any information provided under this regulation to be provided in such form as the officer may reasonably require.

(7) The production of a document does not affect any lien which a person has on the document.

Retention of documents provided under regulation 7

8.—(1) The FCA may retain any material which was provided under regulation 7 for so long as it is necessary to retain it (rather than copies of it) in connection with the exercise of the functions of the FCA under these Regulations for the purposes for which the information was required under regulation 7.

(2) If an officer of the FCA has reasonable grounds for suspecting that—

(a) the material may need to be produced for the purposes of legal proceedings, and

(b) it might otherwise be unavailable for those purposes,

it may be retained until the proceedings are concluded.

(3) A person claiming to be the owner of any material provided under regulation 7 may apply to the Crown Court or (in Scotland) the sheriff or the summary sheriff for an order for the delivery of the material to the person appearing to the court, the sheriff or the summary sheriff to be the owner.

(4) If on an application under paragraph (3) the court or (in Scotland) the sheriff or the summary sheriff cannot ascertain who is the owner of the material the court, the sheriff or the summary sheriff may make such order as the court, the sheriff or the summary sheriff thinks fit.

(5) An order under paragraph (3) or (4) does not affect the right of any person to take legal proceedings against any person in possession of material for the recovery of the material.

Provision of information: safeguards

9.—(1) A person may not be required under regulation 7—

(a) to produce excluded material, or

(b) to provide information, produce documents or answer questions which that person would be entitled to refuse to provide, produce or answer on grounds of legal professional privilege in proceedings in the High Court.

(2) The provision of information in accordance with regulation 7 is not to be taken to breach any restriction on the disclosure of information, however imposed.

(3) Where a disclosure is made in good faith in accordance with regulation 7 no civil liability arises in respect of the disclosure on the part of the person by whom, or on whose behalf, it is made.

(4) In the application of this regulation to Scotland, the references in paragraph (1)—

(a) to proceedings in the High Court are to be read as references to proceedings in the Court of Session, and

(b) to an entitlement on grounds of legal professional privilege are to be read as references to an entitlement on the grounds of confidentiality of communication—

(i) between professional legal advisers and their clients, or

(ii) made in connection with or in contemplation of legal proceedings and for the purposes of those proceedings.

(5) For the purposes of paragraph (1)—

"excluded material" means personal records which a person has acquired or created in the course of any trade, business, profession or other occupation or for the purposes of any paid or unpaid office and which is held subject—

(a) to an express or implied undertaking to hold it in confidence; or

(b) to a restriction on disclosure or an obligation of secrecy contained in any enactment, including an enactment contained in, or made under, an Act passed after these Regulations;