

Anti-money Laundering – What Is the Issue?

In June 2017, money laundering regulations came into effect in the UK implementing the Fourth EU Money Laundering Directive and replacing their 2007 predecessor. The regulations apply widely and, for the first time, imposed duties on trustees of occupational pension schemes set up under trust. These duties can be found in regulations 44, 45 and 45ZA of the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (the Regulations). The Regulations were updated in 2020 and 2022 to take account of the requirements of the Fifth EU Money Laundering Directive.

What Are the Duties?

Trustees are subject to two main duties: (1) the record-keeping duty (which applies universally) and (2) the reporting duty (which only applies in specific circumstances).

The Regulations also require trustees to provide, on request, information about “beneficial owners” of their scheme to those providers who are required to carry out anti-money laundering checks on new clients and to UK law enforcement agencies.

What Is the Record-keeping Duty?

Regulation 44 of the Regulations requires trustees to identify all beneficial owners of the scheme and to maintain certain information about those beneficial owners and other persons.

Beneficial owners will include:

- All trustees
- The original principal employer, current principal employer and all current participating employers
- All identifiable beneficiaries, e.g. active members, deferred members, persons in receipt of pension and pension credit members
- Any other beneficiaries under the scheme
- Any other individuals who could be said to exercise “control” over the scheme

Trustees must keep the following information in writing about individual beneficial owners:

- Full name
- Date of birth
- Nature of role in relation to the scheme
- National insurance number or unique taxpayer reference

- If the individual does not have a national insurance number or unique taxpayer reference, the individual’s usual residential address
- If there is no national insurance number or unique taxpayer reference and the address is outside of the UK, passport number/identification card number with the country of issue and expiry date

There is no need to keep detailed records of those beneficiaries who have not yet been determined – the trustees should instead keep a note of the class of beneficial ownership of such persons.

Trustees must keep the following information in writing about corporate beneficial owners:

- Corporate/firm name
- Unique taxpayer reference
- Registered principal office
- Legal form of the entity and the law by which it is governed
- Registration information (where applicable)
- Nature of role in relation to the scheme

Trustees must also keep a written record of a contact address for all trustees and the full names of any professional advisers.

What Is the Reporting Duty?

Regulations 45 and 45ZA of the Regulations require trustees of an express trust to make a report on HMRC’s Trust Registration Service (TRS).

Trustees of registered pension schemes and life assurance only schemes are exempt from the reporting requirement.

A report must be made on the TRS within 90 days of the trust first being established.

Where applicable, the first report will be detailed, while reports in respect of subsequent years will take the form of an update.

If you are in any doubt as to whether the reporting requirement applies, please get in touch with us.

It is worth stressing that the record-keeping duties described on the previous page will apply even when the reporting duty does not.

Some Practical Points

Do	Don't
Do take time to identify all individuals who exercise control over the scheme, as they will constitute "beneficial owners". This might include, for example, the trustee directors of a corporate trustee, or a scheme actuary whose consent is required to amend the scheme.	Don't put off ensuring compliance with the Regulations – trustees' duties came into force in June 2017 with further duties applicable to unregistered trusts from 6 October 2022.
Do request missing beneficial ownership information because failure to take reasonable steps to obtain missing information and keep adequate written records can result in criminal sanctions.	Don't forget to update the trustees' risk register.
Do agree with the scheme's administrator who will bear the responsibility for, and cost of ensuring compliance with, the record-keeping requirements and (if applicable) HMRC reporting requirements.	Don't delay putting in place a system for monitoring continued compliance with the record-keeping duties for all schemes, whether registered or not.

What Are the Consequences of Failing to Comply?

Failure to comply with Regulations 44, 45 and 45ZA of the Regulations without reasonable excuse is a criminal offence, which can result in a fine and/or up to two years in prison for individual trustees.

Contact

Matthew Giles

Partner, Birmingham

T +44 121 222 3296

E matthew.giles@squirepb.com