



HM Revenue
& Customs



HM Treasury

Fifth Money Laundering Directive and Trust Registration Service

Technical consultation document

Publication date: 24 January 2020

Closing date for comments: 21 February 2020

Subject of this consultation:	Changes to the Trust Registration Service.
Scope of this consultation:	This consultation is to test whether the draft legislation transposes the Directive in a proportionate way, in particular with the types of trust that will be out of scope of registration. This consultation also invites comments on the process for legitimate interest requests and the proposed penalty regime.
Who should read this:	<ul style="list-style-type: none"> • Any trustee or their representatives. • Any organisation that will be affected by the obliged entity rules. • Anyone who is interested in making a legitimate interest request.
Duration:	From 24 January to 21 February 2020.
Lead official:	Assets and Residence Team
How to respond or enquire about this consultation:	<p>Assets & Residence Policy Team HM Revenue and Customs Room 3C/03 100 Parliament Street London SW1A 2BQ</p> <p>Or by email to: asres.consult@hmrc.gov.uk</p>
Additional ways to be involved:	Meetings with HMRC will occur upon request from the respondent.
After the consultation:	HMRC will use the information received to amend the draft legislation as appropriate and to write the guidance accompanying the changes.
Getting to this stage:	This consultation builds on the HM Treasury consultation on the whole of the Directive. This consultation is purely about the detail of the TRS changes.
Previous engagement:	HM Treasury and HMRC previously met with stakeholders following the consultation on the whole of the Directive.

Contents

1. Introduction.....	4
2. Background	5
3. What information is required	7
Who is required to register.....	7
What information will be collected	10
Deadlines for registration and data retention.....	10
Penalties for non-compliance	11
4. Who can access the information.....	13
Legitimate interest & third country entity requests.....	13
Obligated entities	17
Law enforcement agencies.....	18
5. Summary of consultation questions	19
6. The consultation process	20
Appendix A: draft legislation	24

1. Introduction

This technical consultation follows an HM Treasury consultation on the 'Transposition of the Fifth Money Laundering Directive', which ran from 15 April 2019 to 10 June 2019. It provides more detail on the Trust Registration Service covered in Chapter 9 of that consultation and invites comments and further evidence from interested parties. This consultation closes on 21 February 2020.

Chapter 2 provides a brief background to the Fifth Money Laundering Directive and describes the intention of the technical consultation.

Chapter 3 considers the information required at registration, sets out who is required to register, what information will be collected and the deadlines and penalties for non-compliance.

Chapter 4 considers who can access the information on the trust register. This sets out the proposed processes for obliged entities, legitimate interest and third country entity enquiries.

Chapter 5 summarises the technical consultation questions.

Chapter 6 sets out the process for responding.

Appendix A provides the proposed draft regulations.

2. Background

HM Treasury held a consultation (“the HM Treasury consultation”) on the transposition of the Fifth Money Laundering Directive (“5MLD” or “the Directive”), which closed on 10 June 2019. The consultation response was published on 23 January 2020. That consultation and response - “Transposition of the Fifth Money Laundering Directive” - confirmed that there would be a technical consultation on the expansion of the Trust Registration Service (TRS).

The amendments to the Money Laundering and Terrorist Financing (Information on the Payer) Regulations 2017 implementing 5MLD came into force on 10 January 2020. However, so as to allow for further consultation, this did not include changes required to the registration of the beneficial ownership information of trusts.

A draft of the regulations that will amend the Money Laundering and Terrorist Financing (Information on the Payer) Regulations 2017 which relate to the central register of the beneficial ownership of trusts is included at Appendix A.

This consultation provides information and seeks views on how the Directive is to be transposed and on how certain processes may work for the expanded TRS.

The government is interested in views on whether the draft regulations adequately reflect the Directive in terms of the scope of registration, the information to be collected and the framework for making data sharing requests.

Following the implementation of the Fourth Money Laundering Directive (“4MLD”), TRS was created and is used to register taxpaying trusts and estates. It is important to note that trusts required to register under 4MLD, such as for trustees to submit a trust tax return, should continue to do so on the existing TRS system.

The overall objective of the transposition of 5MLD into UK law is to ensure that the UK’s anti-money laundering and counter terrorist financing regime is up-to-date, effective and proportionate. 5MLD contains amendments to 4MLD which will improve transparency and the existing preventative framework to more effectively counter money laundering and terrorist financing. Transposition of the Directive will enable the UK to have a comprehensive regime, responsive to emerging threats, and in line with evolving international standards set by the Financial Action Task Force (FATF).

If you have any comments on the contents of this consultation, please send these by 21 February 2020 to:

Assets & Residence Policy Team
HM Revenue and Customs
Room 3C/03
100 Parliament Street
London
SW1A 2BQ

Or by email to: asres.consult@hmrc.gov.uk

Please also contact this address if you are interested in meeting to discuss this paper. The government will publish its response and will use the responses to finalise the policy and write the guidance accompanying these changes.

3. What information is required

- 3.1 Trusts are an integral aspect of the UK legal system. They are part of the personal, commercial and public life of the UK. Increasing the transparency of trust ownership is intended to ensure that the UK's anti-money laundering and counter terrorist financing regime is up-to-date, effective and proportionate. TRS was introduced to fulfil the requirements of 4MLD, registering UK express trusts with a taxable consequence. 5MLD removes this link with taxation, widening the definition of those trusts required to register and changing the registration deadline requirements.

Who is required to register

- 3.2 The Directive requires express trusts to be registered. In many cases a trust is created through the intention of the settlor, so it is an 'express trust'. There are, however, many situations in which trusts are implied by law. In such cases the beneficial owners will not necessarily be aware that a trust exists. In a small number of cases trusts arise directly by operation of statute, or more often as required by statute. The use of trusts can also be necessary to manage assets being held for the benefit of vulnerable individuals.
- 3.3 FATF, an inter-governmental body which aims to set standards in combatting money laundering and terrorist financing, defines an 'express trust' as one clearly created by the settlor, usually in the form of a document, such as a written deed of trust. This type of trust can be contrasted with trusts that come into being through the operation of the law and that do not result from the clear intent or decision of a settlor to create a trust or similar legal arrangement (for example, an implied trust). Therefore, implied trusts do not meet this definition and so they are outside the scope of the register.
- 3.4 The existing TRS will be expanded to include UK express trusts and some non-EU resident express trusts irrespective of whether the trust has incurred a tax liability. The Directive recognises that EU member states' measures to implement the Directive should be proportionate to the risks and have due regard to an individual's right to the protection of personal data. The government proposes to define the scope in a way that is proportionate to the risk and to therefore not bring into scope trusts where:
- their purpose and structure mean payments to beneficiaries are predetermined and highly controlled
 - they are already supervised by HMRC or other regulatory bodies

Trusts to be included

- 3.5 It is proposed that all express trusts that are not mentioned as out of scope below will be required to be registered on TRS under 5MLD. However, should a trust out of scope become a taxpaying trust, the requirement to register on TRS will continue in order for the trust tax return to be issued.

- 3.6 The HM Treasury consultation set out the government's view on when a business relationship would require a trust to register on TRS. This stated that where a trust is not required to register in another EU member state but enters into a business relationship with an obliged entity in the UK, or acquires real estate in the UK, they will be required to register on TRS. The government acknowledges that some respondents to the HM Treasury consultation did not agree with this interpretation of the Directive and will continue to explore this with stakeholders as part of this consultation.
- 3.7 The definition of business relationship is set out in the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017. This requires there to be 'an element of duration' to the relationship between the relevant person and the trust. What is meant by 'an element of duration' will not be defined further in legislation as this may vary depending on the circumstances. However, 'an element of duration' will exist if there is an ongoing and repetitive nature to the relationship, which at the outset is expected to last more than 12 months. Further detail will be set out in guidance.
- 3.8 Where the conditions for registration have ceased the trust will be able to notify this through TRS and close their record. For UK trusts this will typically be on the closure of the trust. For non-UK trusts this could be where the business relationship has ceased, or the UK held property has been disposed of.

Trusts to be out of scope

A. Statutory Trusts & Statutory Requirements

- 3.9 Statutory trusts are sometimes regarded as express trusts in the sense that they are not implied, resulting or constructive trusts. However, they do not result from the clear intention of the settlor and are therefore not within scope, for example, a statutory trust arising on intestacy.
- 3.10 Where a trust arises as a result of statutory requirements, the risk of the beneficial owners being able to manipulate the trust for money laundering or terrorist financing purposes is deemed to be low. Therefore, it is proposed that these trusts are not in scope of the requirement to register on TRS. This will include arrangements such as tenants' service charge contributions protection trusts.
- 3.11 The same considerations apply where a joint ownership trust exists solely for the purpose of jointly owning a home with a partner, relation or friend. This is the only way that a property can be held by more than one individual and does not arise from the intention of the settlors. It is proposed that these types of trusts will not be required to register. Any other trust set up to hold property, unless it falls within one of the other proposed categories that are out of scope, will need to be registered on TRS.

B. Other trusts

- 3.12 Where two or more people co-own an asset (for example, a bank account or shareholding) legally and beneficially for themselves with concurrent and not

successive interests, it is proposed that these trusts will not be required to register. As the legal and beneficial owners of the assets are the same, these arrangements do not meet the intention of the Directive, which is to capture arrangements that have the structure of a trust.

- 3.13 Bare trusts often exist by way of a contract between a nominee and the person with a beneficial interest, as well as in many commercial situations. In line with international anti-money laundering standards, more information is needed to ascertain the risk of bare trusts being used for money laundering or terrorist financing purposes. The government will continue to consider this in light of further representations from affected groups as part of this consultation.
- 3.14 Some express trusts are established in a specific form to meet the conditions of legislation but are not imposed by that legislation, for example, to meet the qualifying conditions for beneficial tax treatment. The government proposes that some of these types of trust will not be required to register. This is because they are limited by conditions prescribed in legislation restricting the use of trust property, with specified beneficiaries or types of assets held, so as to continue to qualify. This means there is less flexibility than in other trusts since any deviation from the restrictions would result in the loss of benefits and consequently the purpose of the trust. The inclusion of these trusts in TRS would therefore be disproportionate to the risk of them being used for money laundering or terrorist financing activity. For example:
- maintenance fund trusts for historic buildings
 - approved share option and profit-sharing schemes
 - vulnerable beneficiary trusts
 - personal injury trusts
- 3.15 The use of trusts to hold life insurance policies, income protection policies or policies solely for the payment of retirement death benefits is often for estate planning purposes. Where the trust consists solely of a policy which is a pure protection policy and payment is not made until the death or terminal illness of the insured, it is proposed that these trusts will not be required to be registered on TRS as that would be disproportionate to the risk of them being used for money laundering or terrorist financing activity.
- 3.16 Registered pension schemes held in trust are already subject to regulation by either the Financial Conduct Authority or the Pensions Regulator. There are also income tax controls on sums going into and out of the fund, and the benefits that can be provided by the funds. These controls reduce the risk of them being used for money laundering and terrorist financing and it is therefore proposed that they are not in scope for registration. Pension scheme trusts that are not registered with HMRC on 'Pension Schemes Online' or 'Manage and Register Pension Schemes' will be required to register on TRS.
- 3.17 Charitable trusts are subject to different rules depending on where in the UK they operate. Although many charitable trusts will be registered with a charity regulator (The Charity Commission, The Charity Commission Northern Ireland, The Scottish Charity Regulator) there are several exceptions. The government proposes that charitable trusts are not in scope to register because the risk of these kinds of trusts being used for money laundering or terrorist financing activity is low.

- 3.18 Where a trust is already registered in another EU member state there is no requirement to also register on the UK's TRS for 5MLD purposes. An extract from that other register may be required to demonstrate registration when entering into a business relationship or buying property in the UK under the general due diligence rules applying to obliged entities.

Questions: Who is required to register

Question 1 – Are there other express trusts that should be out of scope? Please provide examples and evidence of why they meet the criteria of being low risk for money laundering and terrorist financing purposes or supervised elsewhere.

Question 2 – Do the proposed definitions and descriptions give enough clarity on those trusts not required to register? What additional areas would you expect to see covered in guidance?

What information will be collected

- 3.19 The current TRS has a dual purpose: it is a central register containing beneficial ownership details for taxpaying express trusts to meet the requirements of 4MLD and it also serves to notify HMRC of a tax liability. The information collected enables HMRC to set up a tax record for the trust, provide a Unique Taxpayer Reference and issue a trust tax return where required.
- 3.20 Where a trust is already registered on TRS under 4MLD some additional information will be required to fulfil the requirements of 5MLD. Trustees will be required to access the updated TRS system, once launched, to do so.
- 3.21 Where a newly registered trust has no liability to tax, the trustees will only need to provide information about the beneficial owners of the trust - settlors, trustees and beneficiaries - in line with 5MLD requirements.

Deadlines for registration and data retention

- 3.22 The government has taken note of the responses received to the HM Treasury consultation. The regulations will come into force in 2020 and it is expected that TRS will be ready for these trusts to register in 2021. Therefore, the government proposes that:
- trusts in existence at 10 March 2020 (in line with the Directive) must register by 10 March 2022
 - trusts that are set up after 10 March 2020 must register within 30 days or by 10 March 2022, whichever is the later
 - trusts that are set up on or after 10 March 2022 will have 30 days to register

- once registered on the updated system, trustees will have 30 days from when they are aware of any changes to update the details

Until 10 March 2022, all trusts that incur a tax liability for the first time should register on TRS under the current process in place for 4MLD and tax registration purposes. Communications will be issued to keep trustees informed of progress on updating the TRS system.

3.23 5MLD requires the government to keep data for between five and ten years from the date it is no longer required to be collected. In line with this, it is proposed to retain the information submitted on TRS for no more than ten years following the date HMRC ceases to have the right to collect it.

3.24 In practice this means:

- For trusts that are closed and the TRS record ceased, all information will be deleted between six and ten years following the date of closure
- For continuing trusts where there is simply a change of details, such as to a trustee or beneficiary, the previous information replaced by current details will be deleted between six and ten years after the date the change takes effect

Penalties for non-compliance

3.25 5MLD requires the government to have a penalty regime that is effective, persuasive and proportionate.

3.26 There are two administrative offences set out in the Directive that relate to TRS – the failure to register on time and the failure to keep the record up-to-date and correct. The government recognises the need for a proportionate approach and that initially many lay trustees may not be aware of their obligations.

3.27 TRS currently has penalties based on the self-assessment penalty regime for failure to register on time. As 5MLD extends registration to non-taxpaying trusts, the government proposes to introduce a new penalty regime for TRS.

3.28 The proposed penalty regime is:

- For the offence of failure to register there is no financial penalty, but a notification (nudge letter) would be sent to the trustee setting out their responsibilities
- For the first offence of the failure to update details within the time limit there would be no financial penalty, but a notification would be sent to the trustee reminding them of their obligations and the time limit for updating the register
- For a second and each subsequent offence of a failure to update details within the time limit, there would be a proposed set penalty of £100 per offence

3.29 In addition, it is proposed that:

- Any trustee found to have failed to register or failed to register on time deliberately, rather than as a result of a genuine mistake through lack of awareness, may be subject to a financial penalty in the first instance rather than a notification
- Any trustee found to have deliberately failed to update details on the register or failed to update their details on time may be subject to a financial penalty rather than a notification
- There will be an appeals process against any penalty issued, which trustees will be able to follow if they consider they have a reasonable excuse for not complying with the requirements to register on or update the trust register

3.30 This penalty regime relates to the registration and updating of details on TRS. Any trustee found to be involved in money laundering or terrorist financing may in addition be subject to separate penalties under the Money Laundering (Information on the Payer) Regulations 2017 and the Proceeds of Crime Act 2002.

Question: Deadlines, data retention and penalties for non-compliance

Question 3 – Do the proposed registration deadlines and penalty regime have any unintended consequences that would lead to unfair outcomes for specific groups?

4. Who can access the information

- 4.1 4MLD requires access to the trust register for law enforcement agencies to aid their work in countering money laundering and terrorist financing. 5MLD broadens this access to third parties in certain instances.
- 4.2 There will be three distinct processes for the sharing of TRS data. These will be:
- An application process for ‘legitimate interest’ and ‘third country entity’ requests, for third parties to gain access to trust data
 - A mechanism for obliged entities (those entering into a business relationship with the trust) to receive the required extract from the register, managed by trustees through TRS
 - The existing and continuing arrangements for law enforcement agencies

Legitimate interest & third country entity requests

Legitimate interest requests

- 4.3 The Directive requires that access to the beneficial ownership information of a trust on the register is given to those who have a legitimate interest.
- 4.4 The government recognises the need to balance the beneficial owner’s right to privacy against the need for transparency. Whilst anyone can make a legitimate interest request, the nature of the request must necessarily be in relation to a specified instance of suspected money laundering or terrorist financing activity and form part of an investigation into this instance. This will enable those involved in investigating and tackling money laundering and terrorist financing to access the beneficial ownership information needed to enhance the picture they are building around a suspected individual or organisation.
- 4.5 As the Directive does not define a legitimate interest the government proposes to use the definition of a legitimate interest as set out in the draft regulations.
- 4.6 The proposed definition aims to ensure that each request will be rigorously reviewed on its own merits, and access given only where there is evidence that it furthers work to counter money laundering or terrorist financing activity.
- 4.7 The government proposes that potential applicants asserting a legitimate interest will be required to provide standardised information to ensure that all the information required to consider the request is provided. This is expected to include:
- Information on the applicant, including their name, address, contact number, any organisation they are requesting the information on behalf of and credentials for that organisation
 - Information on the trust data requested, including the name of the trust, any additional information to identify exactly what trust is referred to, the time period the beneficial ownership information is required for, any connection

the applicant or their organisation has to the trust, and any association with vulnerable persons the requester is aware of

- Any information to support the request, including how this substantiates the suspicion the trust has been used for money laundering or terrorist financing, and, if this is a repeat request, what additional information has been provided
- Information on any previous enquiries, including whether anyone else has been contacted to obtain the information requested, and whether law enforcement have been contacted
- Information on the intended use of the trust data, including how this will help to detect or prevent money laundering or terrorist financing, whether there is an expectation this data will be shared with another third party, and whether and how the information may be made public
- A declaration on data security

4.8 The definition refers to the information produced by the applicant and is based on a reasonableness test. It is expected that the type of information provided to substantiate a request will differ depending on the nature of the circumstances. The information provided will be used to ascertain whether it is reasonable for the requester to suspect the trust of being used for money laundering or terrorist financing. Requesters will not need to substantiate that money laundering or terrorist financing has taken place. It is recognised that the beneficial ownership details could be a part of a bigger picture that helps to establish the money laundering or terrorist financing link.

Third country entity requests

4.9 Access to the beneficial ownership information on TRS may also be granted to a third party where a trust holds a controlling interest in a non-EEA legal entity. These “third country entity” requests apply where a trust registered on TRS:

- holds a controlling interest in any corporate or other legal entity, and
- that entity is not required to be registered on a corporate beneficial ownership register in an EU member state

4.10 Whilst anyone can make a third country entity request, the Directive states that the request may be refused where there are reasonable grounds to believe that the request is not in line with the objectives of the Directive. A third country entity request provides more straightforward access to the beneficial ownership information in a specific trust arrangement than those under a legitimate interest request.

4.11 The government proposes to use the definition of a ‘corporate or other legal entity’ as set out in the draft regulations.

4.12 The HM Treasury consultation asked for views on the definition of a ‘controlling interest’. Taking into consideration responses to that consultation, it is proposed that a ‘controlling interest’ will take the definition as commonly referred to in company law and general practice that a person holds, directly or indirectly, more than 50% of the shares or voting rights in the corporate or other legal entity.

- 4.13 Additionally, to align the definition of ‘control’ with the People With Significant Control (PSC) register, a person will be considered to meet this definition where they have the right, directly or indirectly, to appoint or remove a majority of the board of directors of the company, or where they have the right to exercise or actually exercise control over the company.
- 4.14 To better identify trusts holding third country entities, the government proposes that trustees will be required to declare this as part of their registration on TRS.
- 4.15 As with legitimate interest requests, the government proposes that potential applicants under a third country entity request will be required to fill out a standardised form to ensure that all the information required to consider the request is provided. This will be tailored to third country entity requests and is expected to include:
- Information on the applicant, including their name, address, contact number, any organisation they are requesting the information on behalf of and credentials for that organisation
 - Information on the trust data requested, including the name of the trust, any additional information to identify exactly what trust is referred to, the time period the beneficial ownership information is required for, any connection the requester or their organisation has to the trust, any association with vulnerable persons the requester is aware of
 - Any information to support the request, including the name of the corporate or other legal entity and how the trust holds a controlling interest in the corporate or other legal entity in question
 - Information on the intended use of the trust data, including how this intended use will help to detect or prevent money laundering or terrorist financing, whether there is an expectation this data will be shared with another third party, and whether and how the information may be made public
 - A declaration on data handling

Question: Legitimate interest & third country entity requests

Question 4 – Do you consider that the revised definitions and application process for legitimate interest and third country entity requests set the right boundaries for access to the register? If not, please provide specific examples of where you would consider this not to be the case.

When information won’t be provided

- 4.16 The Directive sets out exemptions for providing access to the beneficial ownership information, where to grant access to that information in full or in part would create a disproportionate risk to the beneficial owner. It is proposed that these exemptions will be considered as part of the process for reviewing the request. Even where a legitimate interest is demonstrated or the third country entity definitions are met, information will not be provided where:

- there would be a disproportionate risk to the beneficial owner due to the risk of fraud, kidnapping, blackmail, extortion, harassment, violence or intimidation
- there would be a disproportionate risk to the beneficial owner as they are a minor or otherwise legally incapable

4.17 Where an exemption from sharing information applies to one or more of the beneficial owners, the remaining beneficial ownership information will be made available separately.

4.18 Information will not be provided when it is known at the time of the request that the information on TRS is not up-to-date or does not correspond to the actual beneficial ownership of the trust.

Question: Exemptions to providing beneficial ownership information

Question 5 - Does the proposed handling of exemptions for legitimate interest and third country entity requests provide the right access to the beneficial ownership data whilst protecting beneficial owners from potential risk of harm?

Information to be made available

4.19 It is proposed that the information provided through a legitimate interest or third country entity request will be the following for each beneficial owner:

- Name
- Month and year of birth
- Country of residence of beneficial owner
- Nationality of beneficial owner
- Nature and extent of the beneficial interest held (The nature of the beneficial interest being whether that person is a settlor, trustee or beneficiary. The extent giving the context of that beneficial interest. For example, one of three trustees for the period in question.)

4.20 Where the beneficial owner is a corporate or other legal entity it is proposed that the following will be provided:

- The legal entity's corporate or firm name
- The registered or principal office of the legal entity
- The nature of the entity's role in relation to the trust

4.21 The government proposes that information on the beneficial ownership of a trust will only be provided where it is clear which specific trust the request relates to. Typically, this will be by trust name, although trust arrangements do not necessarily require a formalised name. Any additional information on the trust's beneficial owners that is already known to the requester can be provided as part of the application process to establish the specific trust being referenced. If there is a situation where the request cannot be tied to a specific trust, then

information will not be shared. For example, this would apply where there are various trusts with similar names and there is nothing in the information provided to distinguish which trust the request relates to.

- 4.22 Additionally, information via a third country entity request will only be provided where it is clear which specific corporate entity the request is being made in relation to and where it can be seen that the definition of controlling interest is met in that instance. Trustees will be asked on registration to provide details of any corporate or other legal entity that the trust holds a controlling interest in. However, in cases where this is not identified but information that demonstrates this link is provided by the requester, the beneficial ownership information will still be provided.

Process, reviews and appeals

- 4.23 Recital 51 to the Directive respects the fundamental rights and observes the principles recognised by the Charter of Fundamental Rights of the European Union ('the Charter'), in particular the right to respect for private and family life (Article 7 of the Charter), the right to the protection of personal data (Article 8 of the Charter) and the freedom to conduct a business (Article 16 of the Charter).
- 4.24 The process for handling data sharing requests is being designed to be as thorough as possible, to ensure that both beneficial owners and requesters have confidence and certainty in data sharing decisions made.
- 4.25 As specified above, both legitimate interest and third country entity requests will be standardised to ensure that the correct information is provided so that the application can be properly considered.
- 4.26 It is proposed that an administration fee will be chargeable for handling the request. The government recognises that this fee must not be prohibitive or more than the cost of administering requests.
- 4.27 The Directive requires EU member states to establish appeal mechanisms against decisions to grant or deny access. Further guidance on the data sharing and appeals process will be issued in due course.

Question: Process, reviews and appeals

**Question 6 - Are there any instances where the above proposals would not give investigators access to the information they require to follow a specific lead in suspected money laundering or terrorist financing?
Please be specific and provide examples.**

Obligated entities

- 4.28 The Directive requires that, when entering into a new business relationship with a trust, obliged entities must collect either:

- proof of registration on the trust register, or
- an excerpt of the register

4.29 The government proposes that the onus will be on the trustee to provide this information rather than the obliged entity having direct access to the register. This means the trustee has control over who sees the information.

4.30 It is intended that there will be a facility within TRS to download this information into a PDF form. This facility will allow trustees to share the relevant information when it is requested by the obliged entity.

4.31 It is proposed that the PDF will include the date when it is issued to ensure that the obliged entity has confidence that the information is up-to-date. It will also contain a digital HMRC signature, which provides additional verification.

4.32 There will be help for customers who are unable to use digital services.

Law enforcement agencies

4.33 There is currently a procedure in place for HMRC to share information with other law enforcement authorities. 5MLD does not change this process.

5. Summary of consultation questions

Question 1 – Are there other express trusts that should be out of scope? Please provide examples and evidence of why they meet the criteria of being low risk for money laundering and terrorist financing purposes or supervised elsewhere.

Question 2 – Do the proposed definitions and descriptions give enough clarity on those trusts not required to register? What additional areas would you expect to see covered in guidance?

Question 3 – Do the proposed registration deadlines and penalty regime have any unintended consequences that would lead to unfair outcomes for specific groups?

Question 4 – Do you consider that the revised definitions and application process for legitimate interest and third country entity requests set the right boundaries for access to the register? If not, please provide specific examples of where you would consider this not to be the case.

Question 5 - Does the proposed handling of exemptions for legitimate interest and third country entity requests provide the right access to the beneficial ownership data whilst protecting beneficial owners from potential risk of harm?

Question 6 - Are there any instances where the above proposals would not give investigators access to the information they require to follow a specific lead in suspected money laundering or terrorist financing? Please be specific and provide examples.

6. The consultation process

This consultation is being conducted in line with the Tax Consultation Framework. There are 5 stages to tax policy development:

Stage 1 Setting out objectives and identifying options.

Stage 2 Determining the best option and developing a framework for implementation, including detailed policy design.

Stage 3 Drafting legislation to effect the proposed change.

Stage 4 Implementing and monitoring the change.

Stage 5 Reviewing and evaluating the change.

This consultation is taking place during stage 3 of the process. The purpose of the consultation is to seek views on draft legislation to confirm, as far as possible, that it will achieve the intended policy effect with no unintended effects.

How to respond

If you have any comments on the contents of this note or the draft consequential amendments, please send these by 21 February 2020 to:

Assets & Residence Policy Team
HM Revenue and Customs
Room 3C/03
100 Parliament Street
London
SW1A 2BQ

Or by email to: asres.consult@hmrc.gov.uk

Please also contact this address if you are interested in meeting to discuss this paper.

Please do not send consultation responses to the Consultation Coordinator.

Paper copies of this document or copies in Welsh and alternative formats (large print, audio and Braille) may be obtained free of charge from the above address. This document can also be accessed from [HMRC's GOV.UK pages](#). All responses will be acknowledged, but it will not be possible to give substantive replies to individual representations.

When responding please say if you are a business, individual or representative body. In the case of representative bodies please provide information on the number and nature of people you represent.

Confidentiality

Information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to information regimes.

These are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 2018, General Data Protection Regulation (GDPR) and the Environmental Information Regulations 2004.

If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals with, amongst other things, obligations of confidence. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on HM Revenue and Customs.

Consultation Privacy Notice

This notice sets out how we will use your personal data, and your rights. It is made under Articles 13 and/or 14 of the General Data Protection Regulation.

Your Data

The data

We will process the following personal data:

- Name
- Email address
- Postal address
- Phone number

Purpose

The purpose for which we are processing your personal data is for the responses to the technical consultation on the implementation of the fifth anti-money laundering directive.

Legal basis of processing

The legal basis for processing your personal data is that the processing is necessary for the exercise of a function of a government department.

Recipients

Your personal data will be shared by us with HM Treasury.

Retention

Your personal data will be kept by us for six years and will then be deleted.

Your Rights

- You have the right to request information about how your personal data are processed, and to request a copy of that personal data
- You have the right to request that any inaccuracies in your personal data are rectified without delay

- You have the right to request that any incomplete personal data are completed, including by means of a supplementary statement
- You have the right to request that your personal data are erased if there is no longer a justification for them to be processed
- You have the right in certain circumstances (for example, where accuracy is contested) to request that the processing of your personal data is restricted

Complaints

If you consider that your personal data has been misused or mishandled, you may make a complaint to the Information Commissioner, who is an independent regulator. The Information Commissioner can be contacted at:

Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF
0303 123 1113
casework@ico.org.uk

Any complaint to the Information Commissioner is without prejudice to your right to seek redress through the courts.

Contact details

The data controller for your personal data is HM Revenue and Customs. The contact details for the data controller are:

HMRC
100 Parliament Street
Westminster
London SW1A 2BQ

The contact details for HMRC's Data Protection Officer are:

The Data Protection Officer
HM Revenue and Customs
7th Floor, 10 South Colonnade
Canary Wharf, London E14 4PU
advice.dpa@hmrc.gsi.gov.uk

Consultation Principles

This call for evidence is being run in accordance with the government's Consultation Principles.

The Consultation Principles are available on the Cabinet Office website: <http://www.cabinetoffice.gov.uk/resource-library/consultation-principles-guidance>

If you have any comments or complaints about the consultation process, please contact:

John Pay, Consultation Coordinator, Budget Team
HM Revenue and Customs
100 Parliament Street
London
SW1A 2BQ

Email: <mailto:hmrc-consultation.co-ordinator@hmrc.gsi.gov.uk>

Please do not send responses to the consultation to this address.

Appendix A: draft legislation

The following proposed amendments relate to Part 5 of the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017:

Beneficial ownership information

1.—(1) In regulation 45 (register of beneficial ownership)⁽¹⁾—

(a) for paragraph (3) substitute—

“(3) The information required under paragraph (2) must be provided—

- (a) on or before 31st January after the tax year in which the trustees were first liable to pay any of the taxes referred to in paragraph 14 (“UK taxes”), in the case of a trust which is set up before 6th April 2021;
- (b) on or before 10th March 2022, in the case of a trust which is set up after 5th April 2021 and before 9th February 2022;
- (c) within 30 days of the trust being set up, in any other case.

(b) in paragraph (4), for “paragraph (2)” substitute “paragraphs (2) and (9)”;

(c) for paragraph (10) substitute—

“(10) The register must contain the information referred to in—

- (a) regulation 44(2)(b) and (5)(b) in relation to taxable relevant trusts;
- (b) paragraphs (10A) to (10C) in relation to taxable relevant trusts which are UK trusts;
- (c) regulation 45ZA(4) and (5) in relation to the additional types of trust mentioned in that regulation.”;

(d) after paragraph (10) insert—

“(10A) The trustees of a taxable relevant trust which is a UK trust must, within the time specified in paragraph (10D), provide the Commissioners with the following information in relation to each of the beneficial owners of the trust who is an individual, and in relation to any other individual referred to as a potential beneficiary in a document from the settlor relating to the trust such as a letter of wishes—

- (a) the individual’s country of residence;
- (b) the individual’s nationality;
- (c) the nature and extent of the individual’s beneficial interest,

but if paragraph (10B) applies, this information does not need to be provided in relation to the beneficiaries of the trust.

(10B) Where the beneficial owners include a class of beneficiaries, not all of whom have been determined, the information to be provided under paragraph (10A) is a description of the class of persons who are beneficiaries or potential beneficiaries under the trust.

(10C) The trustees of a taxable relevant trust which is a UK trust and whose trustees have a controlling interest in a third country entity (within the meaning given in regulation 45ZB(4)) must, within the time specified in paragraph (10D), provide the Commissioners with the following information—

- (a) the third country entity’s corporate or firm name;
- (b) the country or territory by whose law the third country entity is governed;
- (c) the registered or principal office of the third country entity.

(10D) The information required under paragraphs (10A) to (10C) must be provided—

- (a) on or before 10th March 2022, in the case of a trust which is set up before 9th February 2022;
- (b) within 30 days of the trust being set up, in any other case.

⁽¹⁾ Regulation 45 was amended by S.I. 2018/1237.

(10E) The trustees of a taxable relevant trust which is a UK trust must, if the trustee becomes aware that any of the information provided to the Commissioners under paragraph (10A) to (10C) has changed, notify the Commissioners of the change and the date on which it occurred within 30 days.

(10F) The information required under paragraphs (10A) to (10C) and (10E) must be provided in such form as the Commissioners reasonably require.

(10G) The Commissioners must keep the information referred to in paragraph (10) on the register for at least five years, and no more than 10 years, after the trust to which it relates has ceased to exist.”;

(e) in paragraph (13), after “regulation 44(2)(b) and (5)(b)” insert “, paragraphs (10A) to (10C) and regulation 45ZA(4) and (5)”.

(2) After regulation 45 insert—

“Register of beneficial ownership: additional types of trust

45ZA.—(1) The information to be contained in the register maintained under this Part, in relation to additional types of trust, is the information referred to in paragraphs (4) and (5) in relation to—

- (a) “type A trusts” which means UK trusts that are express trusts, other than trusts excluded by paragraph (2) and taxable relevant trusts within the meaning given in regulation 45; and
- (b) “type B trusts” which means non-UK trusts that are express trusts, other than trusts excluded by paragraph (3), where the trustees of that trust, in their capacity as such—
 - (i) enter into a business relationship in the United Kingdom with a relevant person, or
 - (ii) acquire an interest in land in the United Kingdom.

(2) A trust is not a type A trust if it is—

- (a) a trust imposed or required by an Act or subordinate legislation;
- (b) a trust created by or in order to satisfy the terms of an order of a court or tribunal;
- (c) a trust holding sums or assets for the purposes of a pension scheme which is a registered pension scheme for the purposes of Part 4 of the Finance Act 2004⁽²⁾;
- (d) a trust of a life insurance policy or retirement policy paying out only on the death, terminal illness or permanent disablement of the person assured;
- (e) a trust for charitable purposes which is registered as a charity in Scotland or Northern Ireland or which is registered, exempt or excepted from the requirement to register as a charity in England and Wales;
- (f) a trust arising out of, or in connection with, a provision of a facilities agreement (or of a document ancillary to the facilities agreement) under which a credit facility is, or is to be, made available by an authorised person;
- (g) a trust arising out of, or in connection with, a provision of a subscription agreement (or of a document ancillary to the subscription agreement) under which bonds are, or are to be, issued, to—
 - (i) an authorised person;
 - (ii) subscribers procured by an authorised person; or
 - (iii) a subscriber through a central securities depository which is authorised under Article 16 of the CSDR or which has made an application for authorisation pursuant to Article 17 of the CSDR that has not been determined;
- (h) a trust set up for the purposes of enabling or assisting the Bank of England to carry out its functions as a monetary authority, within the meaning of section 244(2)(c) of the Banking Act 2009⁽³⁾; or
- (i) a trust set up for the purposes of enabling or assisting the Treasury, the Public Works Loan Commissioners or the National Debt Commissioners to carry out their functions under any enactment.

⁽²⁾ 2004 c. 12.

⁽³⁾ 2009 c. 1. Section 244 was amended by section 5 of the Financial Services Act 2012 (c.21) and by S.I. 2018/1115.

(3) A trust is not a type B trust if it is—

- (a) a taxable relevant trust within the meaning in regulation 45, or
- (b) a trust whose beneficial ownership information is required, by Article 31.3a of the fourth money laundering directive, to be held in a central register set up by an EEA state other than the United Kingdom.

(4) The trustees of a type A trust or a type B trust must, within the time specified in paragraph (6), provide the Commissioners with—

- (a) the information specified in paragraphs (i) to (v) in relation to each of the beneficial owners of the trust who is an individual, and in relation to any other individual referred to as a potential beneficiary in a document from the settlor relating to the trust such as a letter of wishes—
 - (i) the individual’s full name;
 - (ii) the individual’s month and year of birth;
 - (iii) the individual’s country of residence;
 - (iv) the individual’s nationality;
 - (v) the nature and extent of the individual’s beneficial interest,but if sub-paragraph (b) applies, this information does not need to be provided in relation to the beneficiaries of the trust;
- (b) where the beneficial owners include a class of beneficiaries, not all of whom have been determined, a description of the class of persons who are beneficiaries or potential beneficiaries under the trust;
- (c) the information specified in paragraphs (i) to (iii) in relation to each of the beneficial owners of the trust who is a legal entity—
 - (i) the legal entity’s corporate or firm name;
 - (ii) the registered or principal office of the legal entity;
 - (iii) the nature of the entity’s role in relation to the trust.

(5) The trustees of a type A trust or a type B trust who have a controlling interest in a third country entity (within the meaning given in regulation 45ZB(4)) must, within the time specified in paragraph (6), provide the Commissioners with the following information—

- (a) the third country entity’s corporate or firm name;
- (b) the country or territory by whose law the third country entity is governed;
- (c) the registered or principal office of the third country entity.

(6) The information required under paragraphs (4) and (5) must be provided—

- (a) on or before 10th March 2022, in the case of a trust which is set up before 9th February 2022;
- (b) within 30 days of the trust being set up, in any other case.

(7) If a trustee becomes aware that any of the information provided to the Commissioners under paragraph (4) or (5) has changed, the trustee must notify the Commissioners of the change within 30 days.

(8) The information required under paragraphs (4), (5) and (7) must be provided in such form as the Commissioners reasonably require.

(9) In this regulation, “the CSDR” means Regulation (EU) No 909/2014 of the European Parliament and of the Council of 23rd July 2014 on improving securities settlement in the European Union and on central securities depositories⁽⁴⁾.

(10) For the purposes of this regulation, the trustees acquire an interest in land in the United Kingdom where at least one of the trustees becomes registered—

- (a) in the register of title kept under the Land Registration Act 2002⁽⁵⁾ as the proprietor of—
 - (i) a freehold estate in land; or

⁽⁴⁾ OJ L 257 28.08.2014, p.1-72.

⁽⁵⁾ 2002 c. 9.

- (ii) a leasehold estate in land granted for a term of more than 7 years from the date of the grant,
- (b) in the Land Register of Scotland as the proprietor or as the tenant under a lease (“lease” and “proprietor” having the meanings given by section 113(1) of the Land Registration etc. (Scotland) Act 2012⁽⁶⁾), or
- (c) in the register kept under the Land Registration Act (Northern Ireland) 1970⁽⁷⁾ as the owner of—
 - (i) a freehold estate in land; or
 - (ii) a leasehold estate in land granted for a term of more than 21 years from the date of the grant.

Access to information on the register

45ZB.—(1) The Commissioners must make the accessible information available on request to a person who can demonstrate to the Commissioners a legitimate interest in the beneficial ownership of a trust.

(2) The Commissioners must make available on request to any trustee of an express trust which is a UK trust, and any trustee of a type B trust within the meaning given in regulation 45ZA(1)(b), such information as the trustee reasonably requires in order to enable a relevant person to meet the relevant person’s obligations under Part 3, where that relevant person proposes to—

- (a) form a business relationship with the trust, or
- (b) enter into a transaction with the trust in relation to which the relevant person is required to apply customer due diligence measures under regulation 27.

(3) The Commissioners must make the accessible information available to a person who makes a written request about—

- (a) a UK trust which is a taxable relevant trust or a type A trust within the meaning given in regulation 45ZA(1)(a), or
- (a) a type B trust within the meaning given in regulation 45ZA(1)(b),

where the trustees of that trust have a controlling interest in a third country entity, within the meaning given in paragraph (4).

(4) For the purposes of paragraph (3)—

- (a) the trustees have a controlling interest in a third country entity if (in their capacity as such) the trustees meet, or would meet if they were individuals, any of the specified conditions in Part 1 of Schedule 1A to the Companies Act 2006 (people with significant control over a company)⁽⁸⁾ in relation to the third country entity, but with the following modifications to that Schedule—
 - (i) the substitution of “50%” for “25%” wherever it occurs in each of paragraphs 2 (ownership of shares), 3 (voting rights), 13 (calculating shareholdings), and 14 (voting rights);
 - (ii) the omission of paragraph 24 (significant influence or control: guidance);
- (b) “third country entity” means a body corporate, partnership or other entity that is governed by the law of a country or territory outside the EEA and (in each case) is a legal person under that law.

(5) The Commissioners may—

- (a) charge a fee to any person making a request for accessible information under paragraph (1) or (3), which must not exceed such amount as the Commissioners consider will enable them to meet any expenses reasonably incurred by them in dealing with such requests, including expenses incurred in maintaining the register;

⁽⁶⁾ 2012 asp. 5.

⁽⁷⁾ 1970 c. 18 (N.I.).

⁽⁸⁾ 2006 c. 46. Schedule 1A was inserted by section 81 of, and Schedule 3 to, the Small Business, Enterprise and Employment Act 2015 (c.26).

- (b) require the person to submit the request in such a manner as the Commissioners may require, including by requiring the person to register in a manner specified by the Commissioners; and
 - (c) require the person to provide such information to support the request as the Commissioners may require.
- (6) Paragraphs (1) and (3) do not apply to the accessible information in a case where, and to the extent that, the Commissioners consider that the information should be exempt because—
- (a) the Commissioners consider that providing or making the information available would expose the beneficial owner to a disproportionate risk of fraud, kidnapping, blackmail, extortion, harassment, violence or intimidation;
 - (b) the beneficial owner is under the age of 18; or
 - (c) the beneficial owner—
 - (i) lacks capacity within the meaning of section 2 of the Mental Capacity Act 2005⁽⁹⁾;
 - (ii) is incapable within the meaning of section 1 of the Adults with Incapacity (Scotland) Act 2000⁽¹⁰⁾; or
 - (iii) is incapable by reason of mental disorder within the meaning of Article 3(1) of the Mental Health (Northern Ireland) Order 1986⁽¹¹⁾,
 and in this paragraph, references to the beneficial owner include references to any other individual referred to as a potential beneficiary in a document from the settlor relating to the trust such as a letter of wishes.
- (7) Where the Commissioners decide to exempt any of the accessible information in accordance with paragraph (6), the Commissioners must inform the person requesting the information of the decision, explain that the person is entitled to seek a review, and specify the period in which the person must inform the Commissioners that the person wishes to seek a review.
- (8) If the person seeks a review, the Commissioners may uphold or cancel the decision to exempt the information or may decide to alter the scope of the exemption.
- (9) For the purposes of this regulation, the “accessible information” means the details specified in paragraph (10) or (11) which are held on the register in relation to a beneficial owner of—
- (a) a UK trust which is a taxable relevant trust or a type A trust within the meaning given in regulation 45ZA(1)(a), or
 - (b) a type B trust within the meaning given in regulation 45ZA(1)(b),
- or in relation to an individual referred to as a potential beneficiary in a document from the settlor relating to the trust such as a letter of wishes.
- (10) The details are, in relation to an individual—
- (a) the individual’s full name;
 - (b) the individual’s month and year of birth;
 - (c) the individual’s country of residence;
 - (d) the individual’s nationality;
 - (e) the nature and extent of the individual’s beneficial interest.
- (11) The details are, in relation to a legal entity—
- (a) the legal entity’s corporate or firm name;
 - (b) the registered or principal office of the legal entity;
 - (c) the nature of the entity’s role in relation to the trust.
- (12) For the purposes of this regulation, the Commissioners must take account of the following when determining whether a person has a legitimate interest in the beneficial ownership of a trust—
- (a) whether the person is involved in an investigation into money laundering or terrorist financing activity;

⁽⁹⁾ 2005 c. 9.

⁽¹⁰⁾ 2000 asp. 4.

⁽¹¹⁾ 1986 No. 595 (N.I. 4).

- (b) whether the person is making the request for accessible information in order to further an investigation into a specified suspected instance of money laundering or terrorist financing;
- (c) whether the disclosure of the information to that person would be likely to prejudice—
 - (i) any criminal investigation or criminal proceedings,
 - (ii) any other investigation mentioned in section 342(1) of the Proceeds of Crime Act 2002 (offences of prejudicing investigation)⁽¹²⁾, or
 - (iii) any investigation into a potential contravention of a relevant requirement by a relevant officer (within the meaning given in regulation 87(10)),
which is or are being, or is or are about to be, conducted;
- (d) whether, having regard to the information produced by the person making the request, it is reasonable for that person to suspect that the trust is being used for money laundering or terrorist financing.”.

⁽¹²⁾ 2002 c. 29. Section 342(1) was amended by section 77 of the Serious Crime Act 2007 (c.27), section 169 of the Coroners and Justice Act 2009 (c.25) and section 53 of the Criminal Finances Act 2017 (c.22).