

AMPS Consultation Response to ‘Transposition of the Fifth Money Laundering Directive’

As the trade body representing the Self Invested Pensions sector we have a particular interest in Chapter 9 of the consultation paper. HMRC through the Pensions Tax Manual refers to these schemes as ‘member directed’ and we have used this term in our response below.

AMPS engaged on several occasions with HM Trusts in 2017 and 2018 around the impact of the 4AMLD interpretation that led to the requirement of all UK pension schemes registering with the current Trust Registration Service (TRS).

Through these discussions HM Trusts agreed that UK pension schemes registered through Pension Schemes Online and through the Manage Pension Schemes service would not be required to additionally register the scheme through TRS. This exemption was confirmed through HMRC’s own Trust Registration Service Newsletter published in August 2018 and through HMRC Pension Scheme Newsletters 98 and 103 published in May 2018 and September 2018 respectively.

It is therefore disappointing that the exemption has not been recognised in this consultation although we note statements in the consultation referring to ‘additional requirement will apply to trusts which are not already subject to a registration obligation.’ and ‘The government is also considering whether there are other registration services already in existence for particular trust types that could fulfil the 5th AMLD registration requirement, to avoid duplicate registration wherever possible.’

Whilst the exemption referred to above does not, as we understand it, form part of the legislation implementing the 4th AMLD, we would hope that given the public declarations from HMRC that these will remain in place and form part of the assurances highlighted above that UK registered pension schemes do form part of another register and therefore inclusion for the purpose of the 5th AMLD would create unnecessary duplication. We hope to see therefore an exemption to be placed into the legislation implementing the 5th AMLD.

Ahead of our discussions with HM Trusts, our industry spent a considerable amount of time registering schemes on TRS and we believe we can provide some valuable feedback on the user journey and experience. We have commented on this in our response.

We have also responded to the questions in Chapter 8, as the impact of discrepancies of beneficial owner data we believe will impact on pensions administration.

Key Response to the Consultation

Detailed responses are given below in our answers to the specific consultation questions raised. However, our key response to this consultation is that given existing mechanisms to register UK pension schemes we are of the very strong view that UK registered pension schemes should not be admitted to the Trust Registration Service and should be exempted from registration under the 5th AMLD.

Consultation Questions

Chapter 8 - Mechanisms to report discrepancies in beneficial ownership information

Q61 Do you have any views on the proposal to require obliged entities to directly inform Companies House of any discrepancies between the beneficial ownership information they hold, and information held on the public register at Companies House?

We would see this as part and parcel of obliged entities legislative duties to inform Companies House where we identify a discrepancy. However, we would encourage the government to provide guidelines as to how this is to be undertaken in the simplest and most efficient way.

Q62 Do you have any views on the proposal to require competent authorities to directly inform Companies House of any discrepancies between the beneficial ownership information they hold, and information held on the public register at Companies House?

Our views would be of the same opinion as held in the response of Q61.

Q63 How should discrepancies in beneficial ownership information be handled and resolved, and would a public warning on the register be appropriate?

As it will be the responsibility of Companies House to investigate, we would request that the reporting duties are not onerous on the reporting entity and that consideration is given to a short pro-forma to highlight the information that is incorrect.

Depending on the level of discrepancy would determine whether or not a public warning would be warranted. It would seem inappropriate to register a public warning on the register if basic individual details are incorrect, such as a change of surname from marriage or divorce.

However, where a company registers details that have materially changed over time and have not been kept up to date on an annual basis, we can see that this could be cause for concern. If several repeated attempts by the government have not enabled the register to be updated, a public warning might be the only option.

Could this create tipping off issues?

If the government has made repeated attempts over a certain timeframe, say of up to 12 months, it would seem less likely to create tipping off issues.

However, we feel that this would have to be a decision for Companies House to make on a case by case basis and any reporting obligation should sit with them along with investigation of any discrepancies reported.

Given that there are possible concerns around tipping off, clear guidance needs to be forthcoming for practitioners to understand how they can meet their obligations to notify companies house, whilst at the same time not request clarification from the beneficial owner which in itself may give rise to tipping off.

Chapter 9 - Trust registration service

Q64 Do respondents have views on the UK's proposed approach to the definition of express trusts? If so, please explain your view, with reference to specific trust type. Please illustrate your answer with evidence, named examples and propose your preferred alternative approach if relevant.

Express trusts are those defined as a trust that was expressly created by a settlor, as opposed to those being created through other ways. The settlor's intention is to enter in to a transaction and can be created by written trust deed or under a will.

We do not see any reason to dispute the governments definition and certainly where pension schemes are set up in the UK by a Trust Deed and Rules by trustees that are also members, with the sole purpose of accumulation of benefits by way of investment growth from contributions and decumulation by way of tax free cash and taxable income drawdown, they would seem to fit this category.

Q65 Is the UK's proposed approach proportionate across the constituent parts of the UK? If not, please explain your view, with reference to specific trust types and their function in particular countries.

As explained in our introduction we do not consider the approach proportionate for the pensions industry within the UK. In order for pension schemes to benefit from the tax advantages as set out in relevant pensions legislation, e.g. Finance Act 2004, they must be a 'Registered Pensions Scheme'. This is a recognised legal term and relates to pension schemes that have been registered with HMRC. Obtaining registration and retaining the registered status of pension schemes is the cornerstone of the UK pensions system, for which HMRC mandate use of their Pension Schemes Online and Managing Pension Schemes service. Hence, with an existing, well established and essential registration process already in place, it would not be proportionate to impose a further registration process on 'Registered Pensions Schemes'. Incorporating new requirements into the existing pensions registration process to meet 5AMLD requirements would be a more proportionate approach.

In attendance at a meeting with Treasury officials on 13th May 2019 we became aware that the requirement to register will apply to a significant number of life policies, which will create a tremendous strain on this part of the financial services industry. Additionally, we understand that there are a number of bare trust structures that whilst created, will not become truly effective for many years to come.

These are two examples which AMPS has no vested interest in, but we felt it important to mention as we had become aware of it.

Q66 Do you have any comments on the government's proposed view that any obligation to register an acquisition of UK land or property should mirror existing registration criteria set by each of the UK's constituent parts?

We agree that it would make sense for the TRS to mirror the various UK registration criteria. This means that as we understand it, HM Land Registry could be used as the appropriate register for UK land and property without requiring further input to the Trust Register.

Q67 Do you have views on the government's suggested definition of what constitutes a business relationship between a non-EU trust and a UK obliged entity?

We have no issues with the suggested definition.

Q68 Do you have any comments on the government's proposed view of an 'element of duration' within the definition of 'business relationship'?

We have no issues with the proposed view from within the definition and agree 12 months or more seems reasonable

Q69 Is there any other information that you consider the government should collect above the minimum required by 5MLD? If so, please detail that information and give your rationale.

We do not feel that there is the necessity for gold plating what has been already been laid out in the legislation.

We would prefer the government to confirm that in relation to these requirements and in respect of the self invested pension scheme sector, it would seem appropriate that the “corporate entity” requirements would cover professional trustee companies that are linked to our specific types of trusts. “Individual” would then cover member trustees of self invested trusts where appropriate.

If this is the case, then we do not feel that any additional information will need to be collected than is proposed, but again we stress that we do not believe UK registered pension schemes need to be included.

Q70 What is the impact of this requirement for trusts newly required to register? Will there be additional costs, for example paying agents to assist in the registration process, or will trustees experience other types of burdens? If so, please describe what these are and how the burden might affect you.

In relation to the impact on trusts, member directed pension schemes can only register with HMRC once they have all the appropriate member trustee information. Collation of “Know Your Client” (KYC) information is paramount to our industry for setting up pension entitlement and this covers personal details, such as full name, date of birth, address and national insurance number, which are used to anti-money launder individuals. Additionally, scheme administrators or professional trustees might hold passport and/or driving licence information.

However, in relation to the registration process and the burden that this can have, the extra resource time to enter details on to TRS can have a high impact on a professional trustee or scheme administrator firm that has to undertake this duty. Where pension schemes are not operated by members themselves as trustees, they cannot deal with this element of scheme administration. Therefore, the default position is that the professional firm has no option but to input the details and transactions of the many hundreds or thousands of members in their pension schemes. A scheme with say 4 members can take approximately an hour to register on the TRS and therefore the burden would mean extra staff having to be employed simply to process data in to a system, when the data is already held

It would be uneconomical for trustee companies to employ extra resource to process this data in to the TRS, considering the already above necessity of data collation and AML checks.

Ultimately those resource costs must be passed on to the consumer, as the legislative requirements become cumbersome to the operation of the company.

We should stress once again that given existing mechanisms to register UK pension schemes we are of the very strong view that UK registered pension schemes should not be admitted to the Trust Registration Service and should be exempted from registration under the 5th AMLD.

Q71 What are the implications of requiring registration of additional information to confirm the legal identity of individuals, such as National Insurance or passport numbers?

As discussed above, National Insurance numbers are collated as part of the KYC data when a pension scheme is set up.

Q72 Does the proposed deadline for existing unregistered trusts of 31 March 2021 cause any unintended consequences for trustees or their agents? If so, please describe these, and suggest an alternative approach and reasons for it.

This very much depends on when the legislation is implemented. For example, the proposed deadline is 22 months away, which is a very long lead in time.

However, based on the requirements of the current TRS, implementation of the legislation next Spring would provide only c12 months, which might not be long enough for trusts that were set up decades ago and have had numerous trustee changes since inception.

We know that there is to be a technical consultation on data collection requirements and much thought needs to be given to whether current information is required as opposed to information applying on establishment of the Trust.

Thought needs to be given to guidance on what information is relevant and what it needs to reflect as this caused unnecessary delays and frustration with the existing TRS.

Q73 Does the proposed 30 day deadline for trusts created on or after 1 April 2020 cause any unintended consequences for trustees or their agents? If so, please describe these, and suggest an alternative approach and reasons for it.

As described under previous questions, as obtaining personal details for member trustees is key to setting up our types of trusts, the information should already be readily available to ensure that trusts are registered within 30 days although this information will have been already supplied to HMRC as part of the application to register the new pension scheme.

Q74 Given the link with tax-based penalties is broken, do you agree a bespoke penalty regime is more appropriate? Do you have views on what a replacement penalty regime should look like?

Currently HMRC issues late filing penalties to pension scheme trustees for late submission of data. The penalty should be paid within a certain timeframe, otherwise interest is added on, daily, until the penalty is paid.

It would therefore seem appropriate that where the TRS identifies that the date of registration on the system versus the date that the trust is set up is out-with the 30 day deadline, the trustees are issued the same type of penalty structure.

Q75 Do you have any views on the best way for trustees to share the information with obliged entities? If you consider there are alternative options, please state what these are and the reasoning behind it.

The extraction of information from the TRS seems an acceptable way of providing information with obliged entities.

A print out sent via secure email would seem sensible in the current climate of email exchange and for speed of response.

For ease, the AML industry should consider putting together a proforma of information requirements, so that trustees provide the fullness of information required, without the necessity of repeated dialogue.

Q76 Do you have any comments on the proposed definition of legitimate interest? Are there any further tests that should be applied to determine whether information can be shared?

It has been important that both the variety of trusts that are widely used and the need to protect children and vulnerable clients from data being unnecessarily issued has been identified.

In respect of pension trusts, it is important that the criterion is sufficiently precise and in line with the aims of the Directive (EU) 2018/843. Point 26 of the Directive states that:-

“The specific factor determining which Member State is responsible for the monitoring and registration of beneficial ownership information of trusts and similar legal arrangements should be clarified. Due to the differences in the legal systems of Member States, certain trusts and similar legal arrangements are not monitored or registered anywhere in the Union.”

There are 3 types of government led bodies that authorise and regulate UK pension schemes. These are as follows:-

- The Pensions Regulator records the beneficial ownership information of some types of trust, which includes small self administered schemes (SSAS). The personal details of the member trustees (beneficial owners) to these schemes are updated on an annual basis.
- HMRC ensures that for a pension scheme to claim and maintain its tax relievable status it must be registered. This is required under the Finance Act 2004. Prior to April 2006 UK pension schemes applied for discretionary approval from HMRC. Schemes existing at April 2006 were transitioned across to the new registered basis and maintained their exempt tax status.
- The FCA regulates self invested personal pension schemes (SIPPs) and provides the legislative provisions that the scheme must adhere to, which involves anti-money laundering regulation for underlying members (beneficial owners).

In addition, point 28 of the Directive states:-

“With a view to the different characteristics of trusts and similar legal arrangements, Member States should be able, under national law and in accordance with data protection rules, to determine the level of transparency with regards to trusts and similar legal arrangements that are not comparable to corporate and other legal entities. The risks of money laundering and terrorist financing involved can differ, based on the characteristics of the type of trust or similar legal arrangement and the understanding of those risks can evolve over time, for instance as a result of the national and superannuation risk assessments.”

Having an interconnection between the 3 UK regulators mentioned above and the EU would clearly show that the UK is adhering to its 5th AMLD requirements, without the need to enter personal details on to another government led trust registration system.

Evidence can be provided in easy formats where necessary to parties that have a legitimate interest, either by the trustees or the scheme administrator of the registered pension scheme.

Pension companies are acutely aware of their obligations to ensure that pension scheme members are legitimately funding their pensions via source of funds questions, both from the pension provider and the underlying pension scheme's bank account provider.

Q77 Do the definitions of ‘ownership or control’ and ‘corporate and other legal entity’ cover all circumstances in which a trust can indirectly own assets through some kind of entity? If not, please set out the additional circumstances which you believe should be included, with rationale and evidence.

Utilising the definition in line with Article 3(6) of 4MLD and also PSCs 2016 and 2107 statutory guidance, produces clear circumstances and we have no further circumstances that we feel should be included.

Q78 Do you have any views on possible definitions of ‘other legal entity’? Should this be defined in legislation?

In respect of the concept of “other legal entity”, the government has included “trusts and their equivalents from other legal systems”, which could be deemed to include registered pension schemes.

Member directed pension schemes can invest in UK corporate entities by way of a third party investment loan, or shares in a sponsoring or participating employer’s company (SSAS)/unconnected company (SIPP). This therefore means that self invested pension trusts could indirectly own company assets.

However, these types of schemes must ensure that they do not obtain control of the company by way of the investment or purchase of the shares and therefore could not be considered to have any ownership or control of a non-EEA company.

It would be appropriate therefore for the government to consider the exclusion of UK registered pension schemes specifically from the policy.

Q79 Does the proposed use of the PSC test for ‘corporate and other legal entity’, which are designed for corporate entities, present any difficulties when applied to non-corporate entities?

Using the PSC’s 2016 and 2017 statutory guidance, seems to be the most appropriate means of establishing the definition of “corporate or other legal entity”.

In respect of pension trusts, which would be classed as non-corporate entities, the definitions would not apply as a pension trust does not operate in any way of the same manner.

Therefore, as commented in Q78, a specific exemption would ensure that there are clear guidelines that the pension “entity” cannot operate as a corporate entity would do.

Q80 Do you see any risks or opportunities in the proposal that each trust makes a self-declaration of its status? If you prefer an alternative way of identifying such trusts, please say what this is and why.

From a pension trust perspective, a self declaration would not be an issue, as pension trusts accumulate funds only after AML checks have been made on both the individual and their employer (where payments are being made into the scheme).

Q81 The government is interested in your views on the proposal for sharing data. If you think there is a best way to share data, please state what this is and how it would work in practice.

This would depend on the type of data. For instance, the sharing of an individual’s personal data from anyone out-with an AML or counter terrorist financing agency should not be allowable.

However, if there were low level aspects that could be shared, which were touched upon earlier in the response, such as is the trust registered legitimately with a government led body such as the FCA, TPR or HMRC, then this would not be deemed to be an issue.

About AMPS:

History:

- Founded in 2005 to provide a collective voice and lobbying forum for representatives of the self-invested pensions industry (Self-Invested Personal Pensions, SIPPs, and Small Self-Administered Schemes, SSAS)
- Formed by merging the Association of Pensioner Trustees and SIPP Provider Group in anticipation of the simplified pensions regime introduced on 6 April 2006 ("A Day").

Structure:

- Managed by a Committee of elected members
- Monthly Committee meetings with a formal agenda
- Sub-Committees dealing with various key areas: Compliance, HMRC Technical, Legal and Platforms

Membership*:

- Approximately 150 SIPP Operators including Curtis Banks, Embark James Hay and AJ Bell
- Membership operates/administers the vast majority of both SIPPs and SSAS
- Number of SIPPs under administration: 1m+
- SIPP assets under administration: £125bn+
- Number of SSAS under administration: 16,000
- SSAS assets under administration: £26.5bn+
- Law firms which specialise in pensions and compliance issues
- Information technology firms which provide ancillary services to SIPP/SSAS operators
- Independent compliance firms

Objectives:

- To provide an industry forum for the exchange of views and knowledge for our members
- To interact with government departments and regulators on industry issues
- To liaise with other Industry bodies in areas of mutual interest
- To provide a source of informed comment to the media

Activities:

- Engagement with HM Revenue & Customs, Department for Work and Pensions, The Pensions Regulator, HM Treasury and Financial Conduct Authority
- Providing training to our membership through regular targeted conferences and workshops
- Issuing newsletters to our membership
- Reporting items of interest on the membership website and facilitating open discussion and forums
- Responding to government-led and regulator-led consultations
- Maintaining close links with other industry bodies including the Association of British Insurers (ABI), Tax Incentivised Savings Association (TISA), Investment and Life Assurance Group (ILAG) and Personal Investment Management and Financial Advice Association (PIMFA).

Distribution

This is a public document available on the AMPS website: www.ampsonline.co.uk

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