

Subsidiary Legislation made under s.184(2).

National Coordinator for Anti-Money Laundering and Combatting Terrorist Financing Regulations 2016

LN.2016/148

		<i>Commencement</i>	7.7.2016
Amending enactments	Relevant current provisions		Commencement date
LN. 2017/120	rr. 8(a), (e), 10(1)(a), 12-14		26.6.2017
2020/110	rr. 7(3), 8(f)-(g), 10(1)(a), 12(2)(a), (d)-(f), (3)		13.3.2020
Act.2021-08	rr. 3, 5(2), (5), 7(1)-(2), 8(a)-(e), (g), 11(2), 12(1), (2)(b)		9.2.2021

Transposing –
Directive (EU) 2015/849

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**National Coordinator for Anti-Money Laundering and
Combatting Terrorist Financing Regulations 2016**

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**National Coordinator for Anti-Money Laundering and
Combatting Terrorist Financing Regulations 2016****2016/148**

In exercise of the powers conferred upon it by section 184(2) of the Proceeds of Crime Act 2015 and section 23(g) of the Interpretation and General Clauses Act, and for the purpose of transposing, in part, Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC, and as amended by Directive (EU) 2018/843 of the European Parliament and of the Council of 30 May 2018, the Government has made the following Regulations—

Title.

1. These Regulations may be cited as the National Coordinator for Anti-Money Laundering and Combatting Terrorist Financing Regulations 2016.

Commencement.

2. These Regulations come into operation on the day of publication.

Interpretation.

3. In these Regulations-

“Act” means the Proceeds of Crime Act 2015;

“Directive” means Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC, as the same may be amended from time to time;

“European Banking Authority” means the body established by Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC;

“European Insurance and Occupational Pensions Authority” means the body established by Regulation (EU) No 1094/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Insurance

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and Occupational Pensions Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/79/EC;

“European Securities and Markets Authority” means the body established by Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC;

“Minister” means the Minister for Financial Services;

“money laundering” has the meaning attributed to it by section 7(2) of the Act;

“National Coordinator” means the person appointed under regulation 4;

“proliferation financing” has the meaning attributed to it by section 38A of the Terrorism Act 2018;

“Supervisory Authority” has the meaning attributed to it by section 29 of the Act; and

“terrorist financing” has the meaning attributed to it by section 1ZA of the Act.

Appointment of National Coordinator.

4. The Minister must, by Notice published in the Gazette, appoint a person as National Coordinator for the purposes of these Regulations.

Tasks of National Coordinator.

5.(1) The National Coordinator must undertake a risk assessment and ensure that risk assessment or any subsequent risk assessment is kept up to date.

(2) In producing the risk assessment provided for under subregulation (1) the National Coordinator must take appropriate steps to identify, assess and understand the risks of money laundering, terrorist financing, and proliferation financing affecting Gibraltar and any related data protection issues.

(3) The National Coordinator must provide advice on policy and operational matters designed to mitigate the risks, referred to in subregulation (2), identified in producing the risk assessment.

(4) The advice referred to in subregulation (3) must be provided in the form of policy and guidance notes and must be based on current information and be kept up to date.

(5) The National Coordinator shall ensure that policy and operational decisions taken as a result of advice or a report provided under these Regulations are reflected in any relevant strategies implemented to mitigate the risks of money laundering, terrorist financing, and proliferation financing affecting Gibraltar.

Powers of the National Coordinator.

6.(1) Subject to the provisions of these Regulations or any Act the National Coordinator shall have power to do all things necessary for and ancillary and reasonably incidental to the discharge of his functions, and the carrying out of his duties under these Regulations or any Act.

(2) Without prejudice to the generality of the provisions of subregulation (1), the National Coordinator may discharge his duties through such persons (including advisors and consultants) as are made available to him and which he thinks fit for the proper discharge by him of his functions or duties.

Review and report.

7.(1) The National Coordinator may, from time to time, carry out a review of the risks of money laundering, terrorist financing, and proliferation financing affecting Gibraltar and, where he does so, must send a report on the outcome of his review to the Minister as soon as reasonably practicable after completing the review.

(2) In carrying out the review and report he must take account of the risk assessment produced by the European Commission, under Article 6(1) of the Directive, dealing with the risks of money laundering, terrorist financing, and proliferation financing affecting the internal market of the European Union and relating to cross-border activities, once such risk assessment is available.

(3) On receiving a report under this regulation, the Minister must ensure that a copy of it is sent to the European Commission, European Banking Authority, European Insurance and Occupational Pensions Authority and European Securities and Markets Authority. A summary of the report shall be made publicly available. That summary shall not contain classified information.

(4) The review and report referred to in this regulation must accord with the Data Protection Act 2004.

Uses of Report.

8. The report, referred to in regulation 7, must be used to-
- (a) improve the regime that combats money laundering, terrorist financing, and proliferation financing, in particular by identifying any areas where a relevant financial business is to apply enhanced measures, and where appropriate, specifying the measures to be taken;
 - (b) identify, where appropriate, sectors or areas of lower or greater risks of money laundering, terrorist financing, or proliferation financing;
 - (c) assist in the allocation and prioritisation of resources to combat money laundering, terrorist financing, and proliferation financing;
 - (d) ensure that appropriate rules are drawn up for each sector or area, in accordance with the risks of money laundering, terrorist financing, and proliferation financing;
 - (e) make appropriate information available promptly to a relevant financial business to facilitate the carrying out of their own money laundering, terrorist financing, and proliferation financing risk assessments.
 - (f) report the institutional structure and broad procedures of the anti-money laundering and counter-terrorism financing regime, including, inter alia, the GFIU, tax authorities and prosecutors, as well as the allocated human and financial resources to the extent that this information is available;
 - (g) report on national efforts and resources (labour forces and budget) allocated to combat money laundering, terrorist financing, and proliferation financing.

Immunity.

9.(1) The National Coordinator and a person acting under his directions or instructions under regulation 6, in their personal capacity, shall be immune from suit in respect of any action taken, or omission made, by them acting in good faith in the execution of their functions or duties under these Regulations.

(2) The National Coordinator and a person acting under his directions or instructions under regulation 6 shall, where they have been found to have taken any action or made any omission acting in good faith, be indemnified for the costs of defending any action brought by a third party in respect of anything they are alleged to have done or omitted in the discharge or purported discharge their functions or duties under these Regulations.

Gateways of communication.

10.(1) It shall be the duty of the Commissioner of Police, the Collector of Customs, the Head of the Gibraltar Financial Intelligence Unit and the Supervisory Authorities-

- (a) to provide the National Coordinator with information and documents specified or described in a notification given by the National Coordinator to the Commissioner of Police, the Collector of Customs, the Head of the Gibraltar Financial Intelligence Unit, the Commissioner of Income Tax or a relevant financial business in relation to notifications made only for the purposes of carrying out duties under these Regulations; and
- (b) to produce or deliver up to the National Coordinator all such evidence and other things so specified and described as appear to be required by the National Coordinator for the purposes of carrying out his reviewing functions under regulation 7.

(2) The National Coordinator must not disclose or reproduce in the report, referred to in regulation 7, or otherwise, any classified information or any details which may lead the public to identify a person or specific event.

Amendments.

11.(1) The Financial Services (Information Gathering and Co-operation) Act 2013 is amended in Schedule 1 by-

- (a) inserting after “HM Customs”-

“The National Coordinator for anti-money laundering and combatting terrorist financing;” and

- (b) substituting the words “Attorney General’s Chambers” for-

“Office of Criminal Prosecutions & Litigation”.

(2) The Act is amended in section 33(3) by inserting “and includes the National Coordinator for anti-money laundering and combatting terrorist financing” after the word “offender”.

Statistics.

12.(1) The National Coordinator, for the purposes of contributing to the preparation of risk assessment referred to in regulation 5(1), must ensure it is able to review the effectiveness of the systems to combat money laundering, terrorist financing, or proliferation financing by maintaining comprehensive statistics on matters relevant to the effectiveness of such systems.

(2) The statistics referred to in subregulation (1) shall include-

- (a) data measuring the size and importance of the different sectors which fall within the scope of the Directive, including the number of entities and persons and the economic importance of each sector;
- (b) data measuring the reporting, investigation and judicial phases of the national anti-money laundering and counter-terrorism financing regime, including the number of suspicious transaction reports made to the GFIU, the follow-up given to those reports and, on an annual basis, the number of cases investigated, the number of persons prosecuted, the number of persons convicted for money laundering, terrorist financing, and proliferation financing offences, the types of predicate offences, where such information is available, and the value in euro of property that has been frozen, seized or confiscated;
- (c) if available, data identifying the number and percentage of reports resulting in further investigation, together with the annual report to a relevant financial business obliged entities detailing the usefulness and follow-up of the reports they presented;
- (d) data regarding the number of cross-border requests for information that were made, received, refused and partially or fully answered by the GFIU, broken down by counterpart country;
- (e) human resources allocated to competent authorities responsible for anti-money laundering and counter-terrorism financing supervision as well as human resources allocated to the GFIU to fulfil the tasks specified in Article 32 of the Directive;
- (f) the number of on-site and off-site supervisory actions, the number of breaches identified on the basis of supervisory actions and sanctions/administrative measures applied by supervisory authorities.

(3) The National Coordinator must ensure that a consolidated review of the statistics is published on an annual basis.

(4) The Minister must ensure that the statistics referred to in subregulation (2) are transmitted to the European Commission.

Maintenance of records.

13. The Royal Gibraltar Police, H. M. Customs, a government department and a supervisory authority must maintain records where the information contained in those records corresponds with the information that the National Coordinator requires for the purposes of compiling the statistics referred to in regulation 12.

Provision of information.

14. Where the National Coordinator requests information that is maintained pursuant to regulation 13, that information must be provided as soon as is reasonably practicable.