



**An Bille um Cheartas Coiriúil (Sciúradh Airgid agus Maoiniú
Sceimhlitheoireachta) (Leasú), 2020**

**Criminal Justice (Money Laundering and Terrorist Financing) (Amendment)
Bill 2020**

Mar a tionscnaíodh

As initiated



**AN BILLE UM CHEARTAS COIRIÚIL (SCIÚRADH AIRGID AGUS MAOINIÚ
SCEIMHLITHEOIREACHTA) (LEASÚ), 2020
CRIMINAL JUSTICE (MONEY LAUNDERING AND TERRORIST FINANCING)
(AMENDMENT) BILL 2020**

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Criminal Justice (Money Laundering and Terrorist Financing) Acts 2010 to 2018

European Parliament Elections Act 1997 (No. 2)

Property Services (Regulation) Act 2011 (No. 40)



**AN BILLE UM CHEARTAS COIRIÚIL (SCIÚRADH AIRGID AGUS MAOINIÚ
SCEIMHLITHEOIREACHTA) (LEASÚ), 2020
CRIMINAL JUSTICE (MONEY LAUNDERING AND TERRORIST FINANCING)
(AMENDMENT) BILL 2020**

Bill

5

entitled

An Act to amend the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010 to give effect to Directive (EU) 2018/843 of the European Parliament and of the Council of 30 May 2018¹ amending Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, and amending Directives 2009/138/EC and 2013/36/EU; and to provide for related matters. 10

Be it enacted by the Oireachtas as follows:

Definitions

1. In this Act— 15
- “Act of 2010” means the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010;
- “Act of 2018” means the Criminal Justice (Money Laundering and Terrorist Financing) (Amendment) Act 2018;
- “Regulations of 2019” means the European Union (Money Laundering and Terrorist Financing) Regulations 2019 (S.I. No. 578 of 2019). 20

Amendment of section 2 of Act of 2010

2. Section 2 (amended by section 3 of the Act of 2018) of the Act of 2010 is amended—
- (a) in subsection (1), by the insertion of the following definition before the definition of “Minister”: 25
- “ ‘Fifth Money Laundering Directive’ means Directive (EU) 2018/843 of the European Parliament and of the Council of 30 May 2018¹ amending Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, and amending Directives 2009/138/EC and 2013/36/EU;”, 30

and

¹ OJ No. L 156, 19.6.2018, p. 43

(b) by the insertion of the following subsection after subsection (2):

“(3) In this Act a reference to an Appeal Tribunal shall be construed as a reference to the Appeal Tribunal established under section 101A (inserted by *section 23* of the *Criminal Justice (Money Laundering and Terrorist Financing) (Amendment) Act 2020*).”

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Amendment of section 24 of Act of 2010

3. Section 24 (amended by section 4 of the Act of 2018) of the Act of 2010 is amended, in subsection (1)—

(a) by the substitution of the following definition for the definition of “property service provider”:

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“(c) ‘property service provider’ means a person who provides a property service within the meaning of the Property Services (Regulation) Act 2011;”,

and

(b) by the insertion of the following definitions:

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“ ‘custodian wallet provider’ means an entity that provides services to safeguard private cryptographic keys on behalf of its customers, to hold, store and transfer virtual currencies;

‘Electronic Identification Regulation’ means Regulation (EU) No. 910/2014 of the European Parliament and of the Council of 23 July 2014² on electronic identification and trust services for electronic transactions in the internal market and repealing Directive 1999/93/EC;

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‘virtual currencies’ means a digital representation of value that is not issued or guaranteed by a central bank or a public authority, is not necessarily attached to a legally established currency and does not possess a legal status of currency or money, but is accepted by natural or legal persons as a means of exchange and which can be transferred, stored and traded electronically;

25

‘virtual currency service provider’ means an entity that provides services in respect of virtual currencies;”.

30

Amendment of section 25 of Act of 2010

4. Section 25 (amended by section 5 of the Act of 2018) of the Act of 2010 is amended in subsection (1)—

(a) in paragraph (c), by the substitution of “, tax adviser or any other person whose principal business or professional activity is to provide, directly or by means of other persons to which that other person is related, material aid, assistance or advice on tax matters” for “or tax adviser”,

35

(b) by the substitution of the following paragraph for paragraph (f):

2 OJ No. L 257, 28.8.2014, p. 73

- “(f) a property service provider including a property service provider acting as an intermediary in the letting of immovable property, but only in respect of transactions for which the monthly rent amounts to a total of at least €10,000,”,
- (c) in paragraph (i), by the deletion of “or” where it lastly occurs, and 5
- (d) by the insertion of the following paragraphs after paragraph (i):
 - “(ia) a provider engaged in exchange services between virtual currencies and fiat currencies,
 - (ib) a person trading or acting as an intermediary in the trade of works of art (including when carried out by an art gallery or an auction house) but only in respect of transactions of a total value of at least €10,000 (whether in one transaction or in a series of transactions that are or appear to be linked to each other), 10
 - (ic) a person storing, trading or acting as an intermediary in the trade of works of art when this is carried out in a free port but only in respect of transactions of a total value of at least €10,000 (whether in one transaction or as a series of transactions that are or appear to be linked to each other), or”. 15

Amendment of section 33 of Act of 2010

5. Section 33 (amended by section 11 of the Act of 2018) of the Act of 2010 is amended— 20
- (a) in subsection (1)—
 - (i) in paragraph (e), by the substitution of “application, or” for “application.”, and
 - (ii) by the insertion of the following paragraph after paragraph (e):
 - “(f) at any time where the designated person is obliged by virtue of any enactment or rule of law, including the European Union (Administrative Cooperation in the Field of Taxation) Regulations 2012 (S.I. No. 549 of 2012), to contact a customer for the purposes of reviewing any relevant information relating to the beneficial owner connected with the customer.”, 25
 - and
 - (b) in subsection (2)—
 - (i) in paragraph (a)—
 - (I) in subparagraph (i), by the deletion of “or” where it lastly occurs, and
 - (II) by the insertion of the following subparagraph after subparagraph (i): 35
 - “(ia) information from relevant trust services as specified in the Electronic Identification Regulation, or”,
 - and
 - (ii) in paragraph (b)—

- (I) in subparagraph (i), by the deletion of “and”,
- (II) in subparagraph (ii), by the substitution of “concerned, and” for “concerned.”, and
- (III) by the insertion of the following subparagraph after subparagraph (ii):
 - “(iii) where the beneficial owner is the senior managing official referred to in Article 3(6)(a)(ii) of the Fourth Money Laundering Directive, a designated person shall take the necessary measures to verify the identity of that person and shall keep records of the actions taken to verify the person’s identity including any difficulties encountered in the verification process.”.

Amendment of section 33A of Act of 2010

6. Section 33A (inserted by section 12 of the Act of 2018) of the Act of 2010 is amended—

- (a) in subsection (1)—
 - (i) by the substitution of “subsection (2), (2A) or (2B)” for “subsection (2) or (2A)”,
 - (ii) in subparagraph (ii) of paragraph (a), by the substitution of “€150” for “€250”,
 - (iii) by the substitution of the following paragraph for paragraph (b):
 - “(b) the monetary value that may be stored electronically on the payment instrument concerned does not exceed €150.”,
 - (iv) in paragraph (e), by the deletion of “and”,
 - (v) in paragraph (f), by the substitution of “€50, and” for “€100.”, and
 - (vi) by the insertion of the following paragraph after paragraph (f):
 - “(g) the transaction concerned is not a remote payment transaction (within the meaning of Article 4 of Directive (EU) 2015/2366 of the European Parliament and of the Council of 25 November 2015³ on payment services in the internal market, amending Directives 2002/65/EC, 2009/110/EC and 2013/36/EU and Regulation (EU) No. 1093/2010, and repealing Directive 2007/64/EC) of an amount exceeding €50.”,

and

- (b) by the insertion of the following subsections after subsection (2):
 - “(3) A credit institution or financial institution acting as an acquirer shall not accept a payment carried out with an anonymous prepaid card issued in a state other than a Member State unless the payment instrument concerned complies with the requirements of subsections (1) and (2).”

3 OJ No. L 337, 23.12.2015, p. 35

- (4) A person who fails to comply with subsection (3) commits an offence and is liable—
- (i) on summary conviction, to a class A fine or imprisonment for a term not exceeding 12 months, or both, or
 - (ii) on conviction on indictment, to a fine or imprisonment for a term not exceeding 5 years, or both.” 5

Amendment of section 35 of Act of 2010

7. Section 35 (amended by section 14 of the Act of 2018) of the Act of 2010 is amended by the insertion of the following subsections after subsection (3):

- “(3A) Prior to the establishment of a business relationship with a customer to which the European Union (Anti-Money Laundering: Beneficial Ownership of Trusts) Regulations 2019 (S.I. No. 16 of 2019) apply, a designated person shall ascertain that information concerning the beneficial ownership of the customer is entered in the express trust (beneficial ownership) register. 10 15
- (3B) Notwithstanding subsection (3A), a designated person that is a credit institution or a financial institution may allow an account to be opened with it by a customer before ascertaining that the information concerning the beneficial ownership of the customer is entered in the express trust (beneficial ownership) register in accordance with subsection (3A) so long as the designated person ensures that transactions in connection with the account are not carried out by or on behalf of the customer or beneficial owner before ascertaining that information. 20
- (3C) Prior to the establishment of a business relationship with a customer to which the European Union (Anti-Money Laundering: Beneficial Ownership of Corporate Entities) Regulations 2019 (S.I. No. 110 of 2019) (modified by the European Union (Modifications of Statutory Instrument No. 110 of 2019) (Registration of Beneficial Ownership of Certain Financial Vehicles Regulations 2020) (S.I. No. 233 of 2020) apply, a designated person shall ascertain that information concerning the beneficial ownership of the customer is entered in the Central Register of Beneficial Ownership of Companies and Industrial Provident Societies or, as the case may be, the Central Register of Beneficial Ownership of Irish Collective Asset-management Vehicles, Credit Unions and Unit Trusts. 25 30 35
- (3D) Notwithstanding subsection (3C), a designated person that is a credit institution or a financial institution may allow an account to be opened with it by a customer before ascertaining that information concerning the beneficial ownership of the customer is entered in the Central Register of Beneficial Ownership of Companies and Industrial Provident Societies or, as the case may be, Central Register of Beneficial Ownership of Irish Collective Asset-management Vehicles, Credit Unions and Unit Trusts in accordance with subsection (3C) so 40

long as the designated person ensures that transactions in connection with the account are not carried out by or on behalf of the customer or beneficial owner before ascertaining that information.”.

Amendment of section 36A of Act of 2010

8. Section 36A (inserted by section 15 of the Act of 2018) of the Act of 2010 is amended by the substitution of the following subsection for subsection (1): 5

“(1) A designated person shall, as far as possible, in accordance with policies and procedures adopted in accordance with section 54, examine the background and purpose of all transactions that—

- (a) are complex, 10
- (b) are unusually large,
- (c) are conducted in an unusual pattern, or
- (d) do not have an apparent economic or lawful purpose.”.

Amendment of section 37 of Act of 2010

9. Section 37 (amended by section 16 of the Act of 2018) of the Act of 2010 is amended— 15

- (a) by the insertion of the following subsection after subsection (4):

“(4A) A designated person shall continue to apply the measures referred to in subsection (4) to a politically exposed person for as long as is reasonably required to take into account the continuing risk posed by that person and until such time as that person is deemed to pose no further risk specific to politically exposed persons.” 20

- (b) in the definition of “politically exposed person” in subsection (10), by—

(i) the substitution of “any of the following individuals” for “either of the following individuals”, and

- (ii) by the insertion of the following paragraph after paragraph (b): 25

“(c) any individual performing a prescribed function;”,

and

- (c) by the insertion of the following subsection after subsection (11):

“(12) The Minister may, with the consent of the Minister for Finance, issue guidelines to the competent authorities in respect of functions in the State that may be considered to be prominent public functions and each competent authority shall have regard to any such guidelines.” 30

Amendment of section 38 of Act of 2010

10. Section 38 (amended by section 17 of the Act of 2018) of the Act of 2010 is amended, in subsection (1), by the insertion of “involving the execution of payments” after “correspondent relationship”. 35

Amendment of section 38A of Act of 2010

11. Section 38A (inserted by section 18 of the Act of 2018) of the Act of 2010 is amended by the substitution of the following subsection for subsection (1):

“(1) Subject to subsection (2), a designated person shall apply the following measures to manage and mitigate the risk of money laundering and terrorist financing additional to those specified in this chapter, when dealing with a customer established or residing in a high-risk third country: 5

- (a) obtaining additional information on the customer and on the beneficial owner; 10
- (b) obtaining additional information on the intended nature of the business relationship;
- (c) obtaining information on the source of funds and source of wealth of the customer and of the beneficial owner;
- (d) obtaining information on the reasons for the intended or performed transactions; 15
- (e) obtaining the approval of senior management for establishing or continuing the business relationship;
- (f) conducting enhanced monitoring of the business relationship by increasing the number and timing of controls applied and selecting patterns of transaction that need further examination.”. 20

Amendment of section 40 of Act of 2010

12. Section 40 (amended by section 20 of the Act of 2018) of the Act of 2010 is amended, in paragraph (b) of subsection (4), by the insertion of “including any information from relevant trust services as set out in the Electronic Identification Regulation” after “customer”. 25

Amendment of section 42 of Act of 2010

13. Section 42 (amended by section 22 of the Act of 2018) of the Act of 2010 is amended by the insertion of the following subsection after subsection (10):

“(11) FIU Ireland shall, where practicable, provide timely feedback to a designated person who is required to make a report under this section on the effectiveness of any follow-up to reports made to it under this section.”. 30

Amendment of section 51 of Act of 2010

14. Section 51 (amended by section 24 of the Act of 2018) of the Act of 2010 is amended by the substitution of the following subsection for subsection (2): 35

“(2) It is a defence in any proceedings against a person for an offence under section 49, in relation to a disclosure, for the person to prove that, at the time of the disclosure—

- (a) the person was a credit institution or financial institution or a majority-owned subsidiary, or a branch, of a credit institution or financial institution, or made the disclosure on behalf of a credit institution or a financial institution or a majority-owned subsidiary, or a branch, of a credit institution or financial institution, and 5
- (b) the disclosure was to—
 - (i) a credit institution or financial institution incorporated in a Member State, where both the institution making the disclosure, or on whose behalf the disclosure was made, and the institution to which it was made belonged to the same group, or 10
 - (ii) a majority-owned subsidiary or branch situated in a third country of a credit institution or financial institution incorporated in a Member State, where the subsidiary or branch was in compliance with group-wide policies and procedures adopted in accordance with section 54, or, as the case may be, Article 45 of the Fourth Money Laundering Directive.” 15

Amendment of section 55 of Act of 2010

- 15. Section 55 (amended by section 27 of the Act of 2018) of the Act of 2010 is amended, in subsection (2), by the insertion of “(including information from relevant trust services as set out in the Electronic Identification Regulation)” after “customers”. 20

Amendment of section 58 of Act of 2010

- 16. Section 58 of the Act of 2010 is amended by the substitution of “anonymous passbook or safe-deposit box” for “anonymous passbook” in each place that it occurs.

Amendment of section 60 of Act of 2010

- 17. Section 60 (amended by section 15 of the Central Bank Reform Act 2010) of the Act of 2010 is amended in subsection (2)— 25
 - (a) by the substitution of the following paragraphs for paragraph (d):
 - “(d) in the case of a designated person who is a barrister, the Legal Services Regulatory Authority;
 - (da) in the case of a designated person that is a provider engaged in exchange services between virtual currencies and fiat currencies or a custodian wallet provider, the Central Bank of Ireland; 30
 - (db) in the case of a designated person that is a property services provider, the Property Services Regulatory Authority;”;
 - and 35
 - (b) in paragraph (e), by the substitution of “, (d), (da) or (db)” for “or (d)”.

Amendment of section 63B of Act of 2010

18. Section 63B (inserted by the Regulations of 2019) of the Act of 2010 is amended by the insertion of the following subsection after subsection (2):

- “(2A) Co-operation with Member State competent authorities under this section by a competent authority may include the sharing of information which the competent authority is not prevented from disclosing by the law of the State and the provision of assistance shall not be refused on the basis that:
- (a) the request for the sharing of information or the provision of assistance is also considered to involve tax matters;
 - (b) the law of the State requires the competent authority to maintain secrecy or confidentiality except in those cases where the relevant information that is sought is protected by legal privilege;
 - (c) there is an inquiry, investigation or proceeding underway in the State, unless the sharing of such information or the provision of assistance would impede the inquiry, investigation or proceeding; or
 - (d) the nature or status of the requesting competent authority is different from that of the competent authority of whom the request is made.”.

Amendment of section 63D of Act of 2010

19. Section 63D (inserted by the Regulations of 2019) of the Act of 2010 is amended, in paragraph (c) of subsection (1), by the substitution of “including standards of confidentiality and data protection and standards addressing conflicts of interest” for “including standards of confidentiality and data protection”.

Reporting breaches to competent authority

20. The Act of 2010 is amended by the insertion of the following section after section 63D:

- “63E.(1) Each competent authority shall establish effective and reliable mechanisms to encourage the reporting of potential and actual breaches of this Act.
- (2) Each competent authority shall provide one or more secure communication channels for persons reporting the matters referred to in subsection (1).
 - (3) Each competent authority shall ensure that the channels of communication referred to in subsection (2) can also be used by persons to report any threats or retaliatory or hostile actions they are subjected to for reporting suspected breaches of this Act.”.

Amendment of section 65 of Act of 2010

21. Section 65 of the Act of 2010 is amended by—

(a) the designation of that section as subsection (1), and

(b) the insertion of the following subsection:

“(2) Where a competent authority is not a State competent authority, each annual report published by the authority shall include information regarding the measures taken by the authority to monitor compliance by designated persons with the provisions of this Part.”. 5

Amendment of section 84 of Act of 2010

22. Section 84 of the Act of 2010 is amended, in subsection (1), by the deletion of the definition of “Appeal Tribunal”.

Appeal Tribunal

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23. The Act of 2010 is amended—

(a) by the repeal of section 101, and

(b) by the insertion of the following section after section 101:

“101A. (1) On the commencement of *section 23 of the Criminal Justice (Money Laundering and Terrorist Financing) (Amendment) Act 2020* there shall stand established a tribunal which shall be known as the Appeal Tribunal to consider and determine appeals made pursuant to this Act. 15

(2) The Appeal Tribunal shall be independent in the exercise of its functions under this Act and shall regulate its own procedures.

(3) The Appeal Tribunal may sit in divisions of itself to consider appeals. 20

(4) The Appeal Tribunal shall consist of a chairperson and such number of ordinary members as the Minister considers necessary from time to time for the efficient discharge of its functions.

(5) The chairperson and the ordinary members of the Appeal Tribunal shall be appointed by the Minister and the appointment shall be subject to such terms and conditions, including terms and conditions relating to remuneration, as the Minister may determine with the consent of the Minister for Public Expenditure and Reform. 25

(6) Each member of the Appeal Tribunal shall be a practising barrister or solicitor of not less than 10 years’ practice. 30

(7) The term of office of a member of the Appeal Tribunal shall be 5 years and a member of the Appeal Tribunal shall be eligible for re-appointment as such member for a second term not exceeding 5 years.

(8) A member of the Appeal Tribunal may at any time resign his or her office as such member by giving notice in writing to the Minister and the resignation shall take effect on and from the date of receipt of the notice. 35

(9) A member of the Appeal Tribunal may be removed from office by the Minister for stated misbehaviour or if, in the opinion of the Minister,

the member has become incapable through ill-health or otherwise of effectively performing the functions of the Appeal Tribunal.

- (10) If a member of the Appeal Tribunal dies, resigns, becomes disqualified or is removed from office, the Minister may appoint another person to be a member of the Appeal Tribunal to fill the casual vacancy so 5 occasioned and the person so appointed shall be appointed in the same manner as the member of the Appeal Tribunal who occasioned the vacancy and shall hold office for the remainder of the term of office for which his or her predecessor was appointed.
- (11) Where a member of the Appeal Tribunal is— 10
- (a) nominated as a member of Seanad Éireann,
 - (b) elected as a member of either House of the Oireachtas or to be a member of the European Parliament,
 - (c) regarded pursuant to Part XIII of the second Schedule to the European Parliament Elections Act 1997 as having been elected to 15 that Parliament,
 - (d) elected or co-opted as a member of a local authority,
 - (e) appointed to judicial office, or
 - (f) appointed Attorney General,
- he or she shall thereupon cease to be a member of the Tribunal.”. 20

Amendment of Schedule 3 to Act of 2010

24. Paragraph 3 of Schedule 3 (inserted by section 38 of the Act of 2018) to the Act of 2010 is amended by the substitution of “Geographical risk factors - registration, establishment, residence in:” for “Geographical risk factors:”.

Amendment of Schedule 4 to Act of 2010

25. Schedule 4 (inserted by section 39 of the Act of 2018) to the Act of 2010 is amended— 25
- (a) in paragraph (1)—
 - (i) in subparagraph (g) by the substitution of “business;” for “business.”, and
 - (ii) by the insertion of the following subparagraph after subparagraph (g):
 - “(h) the customer is a third country national who applies for residence 30 rights or citizenship in the State in exchange for capital transfers, purchase of property or government bonds or investment in corporate entities in the State.”,
- and
- (b) in paragraph (2)— 35
 - (i) by the substitution of the following for subparagraph (c):
 - “(c) non face-to-face business relationships or transactions, without

certain safeguards, such as electronic identification means, relevant trust services as defined in the Electronic Identification Regulation or any other secure, remote or electronic, identification process regulated, recognised, approved or accepted by the relevant national authorities;”,

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(ii) in subparagraph (e), by the substitution of “products;” for “products.”, and

(iii) by the insertion of the following after subparagraph (e):

“(f) transactions related to oil, arms, precious metals, tobacco products, cultural artefacts and other items of archaeological, historical, cultural and religious importance, or of rare or scientific value, as well as ivory and protected species.”.

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Short title, commencement and collective citation

26. (1) This Act may be cited as the Criminal Justice (Money Laundering and Terrorist Financing) (Amendment) Act 2020.

(2) This Act shall come into operation on such day or days as the Minister for Justice and Equality may appoint by order or orders either generally or with reference to any particular purpose or provision and different days may be so appointed for different purposes or provisions.

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(3) The Criminal Justice (Money Laundering and Terrorist Financing) Acts 2010 to 2018 and this Act may be cited together as the Criminal Justice (Money Laundering and Terrorist Financing) Acts 2010 to 2020.

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An Bille um Cheartas Coiriúil (Sciúradh
Airgid agus Maoiniú Sceimhlitheoireachta)
(Leasú), 2020

BILLE

(mar a tionscnaíodh)

dá ngairtear

Acht do leasú an Achta um Cheartas Coiriúil (Sciúradh Airgid agus Maoiniú Sceimhlitheoireachta), 2010 chun éifeacht a thabhairt do Threoir (AE) 2018/843 ó Pharlaimint na hEorpa agus ón gComhairle an 30 Bealtaine 2018 lena leasaítear Treoir (AE) 2015/849 maidir le cosc a chur le húsáid an chórais airgeadais chun críoch sciúrtha airgid nó maoinithe sceimhlitheoireachta, agus lena leasaítear Treoracha 2009/138/CE agus 2013/36/AE; agus do dhéanamh socrú i dtaobh nithe gaolmhara.

*An tAire Dlí agus Cirt agus Comhionannais a
thíolaic,*

8 Meán Fómhair, 2020

Criminal Justice (Money Laundering and
Terrorist Financing) (Amendment) Bill 2020

BILL

(as initiated)

entitled

An Act to amend the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010 to give effect to Directive (EU) 2018/843 of the European Parliament and of the Council of 30 May 2018 amending Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, and amending Directives 2009/138/EC and 2013/36/EU; and to provide for related matters.

Presented by the Minister for Justice and Equality,

8th September, 2020

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ARNA FHOILSIÚ AG OIFIG AN tSOLÁTHAIR
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