



**An Bille um Cheartas Coiriúil (Sciúradh Airgid agus
Maoiniú Sceimhlitheoireachta) (Leasú), 2020
Criminal Justice (Money Laundering and
Terrorist Financing) (Amendment) Bill 2020**

*Meabhrán Mínitheach
Explanatory Memorandum*



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

EXPLANATORY MEMORANDUM

Primary Purpose of the Bill

The primary purpose of the Bill is to amend the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010 ('the Act of 2010') in order to transpose, in part, Directive (EU) 2018/843 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, into national law. It improves the safeguards for financial transactions to and from high-risk third countries and sets new limits on the use of anonymous pre-paid cards; brings a number of new 'designated bodies' under the existing legislation; enhances the customer due diligence requirements; prohibits credit and financial institutions from creating anonymous safe-deposit boxes; provides for the issuing of Ministerial guidance in relation to 'prominent public functions' in respect of politically exposed persons (PEPs) and includes a number of technical amendments to other provisions of the Act.

Provisions of the Bill

Sections 1 to 3 contain provisions, which amend and insert definitions into the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010 to reflect definitions used in the Directive. In particular, section 3 provides for the definitions of the new entities that will be considered 'designated persons' under the Act. This includes new definitions of 'property service provider', 'virtual currency service provider' and 'custodian wallet provider.'

Section 4 amends section 25 of the 2010 Act and creates new 'designated persons' who will be required to apply specific criteria relating to anti-money laundering in the course of their business including certain letting agents, virtual currency service providers and high-value art dealers.

Section 5 amends section 33 of the 2010 Act and provides for a number of technical amendments including an obligation to carry out customer due diligence when required to contact the customer under any other enactment.

Section 6 amends section 33A of the 2010 Act and provides for lowering the value limits for carrying out simplified due diligence on e-money instruments. This means that a person supplying e-money instruments, such as a pre-paid card, will be required to conduct customer due diligence when the value of the requested card is €150 or higher. The existing threshold is €250.

Section 7 amends section 35 of the 2010 Act and provides that where a designated person is entering a business relationship with another entity, they must take steps to obtain the relevant information from the appropriate register of beneficial ownership and must not engage in that business relationship until the relevant information is obtained. By way of derogation, a financial institution is allowed to open an account ahead of obtaining the information but cannot allow any transactions on that account.

Section 8 amends section 36A of the 2010 Act to give effect to a technical amendment to the wording of the Directive.

Section 9 amends section 37 of the 2010 Act to provide for the Minister for Justice and Equality, with the consent of the Minister for Finance, to issue guidance to competent authorities on the prominent public functions that will give rise to a person being designated as a ‘politically exposed person.’ The amendments will also allow a designated person to continue to monitor someone who was previously designated a PEP so long as a money laundering risk exists in connection with their previous designation.

Section 10 makes a technical amendment to section 38 of the 2010 Act.

Section 11 amends section 38A of the 2010 Act and provides for a detailed list of enhanced due diligence measures that the designated person is required to apply when dealing with a customer established, or residing, in a high-risk third country.

Section 12 makes a technical amendment to section 40 of the 2010 Act.

Section 13 is a technical amendment to section 42 of the 2010 Act in relation to feedback from FIU Ireland to designated persons in respect of suspicious transaction reports made to them. This places existing administrative practice onto a legislative basis.

Section 14 amends section 51 of the 2010 Act and provides for a defence to proceedings in relation to ‘tipping-off’ where the designated person can prove that the entity to whom the information was disclosed was a specified financial institution, which is connected to the designated person or part of the same group structure.

Section 15 makes a technical amendment to section 55 of the 2010 Act.

Section 16 amends section 58 of the 2010 Act and prohibits credit or financial institutions from creating anonymous safe deposit boxes.

Section 17 amends section 60 of the 2010 Act and assigns the supervising competent authority for the new designated persons under the amendments to section 25. The amendment also provides for the Legal Services Regulatory Authority to become the competent authority for barristers following an agreement with the Bar Council.

Section 18 amends section 63B of the 2010 Act and provides for additional measures in respect of cooperation between competent authorities in different Member States.

Section 19 amends section 63D of the 2010 Act and updates the provisions relating to the persons employed by competent authorities in line with updates in the Directive.

Section 20 inserts a new section 63E into the 2010 Act. The new section provides that each competent authority establish effective and reliable mechanisms to encourage the reporting of breaches of the Act. The section also requires competent authorities to provide a secure communication channel for such reporting.

Section 21 amends section 65 of the 2010 Act and provides for additional detail which is to be included in the annual money-laundering reports of self-regulating bodies, e.g. the Law Society or relevant accounting bodies.

Section 22 makes a technical amendment to section 84 of the 2010 Act.

Section 23 repeals and replaces section 101 of the 2010 Act. The section inserts new provisions for the establishment of a Trust or Company Service Provider Appeal Tribunal. This is designed to establish a permanent Appeal Tribunal, improve independence and transparency of the recruitment process for members of the Tribunal and strengthen the independence and impartiality of the Tribunal. The winding down of the current Appeal Tribunal and its replacement will be managed in the context of the commencement of this section.

Sections 24 and 25 amend and update the risk factors set out in Schedules 3 and 4 to the 2010 Act. The amendments are to provide for the relevant updates in the Directive.

Section 26 provides for the short title and commencement provisions of the Act. This is a standard provision.

*Roinn Dlí agus Cirt agus Comhionannais,
Meán Fómhair, 2020.*

