
Guidance to HMRC Trust registration requirements



Regulations implementing the Fifth Anti-Money Laundering Directive came into force on 6 October 2020.¹

The new Regulations brought in two major changes:

- Access to the trust register – this is not open to the public, but rather those with a legitimate interest such as organisations fighting money laundering and terrorist financing. This is very important because of the following expansion to the scope of the Trust Register.
- Trustees of all UK express trusts (and some non-UK trusts) must now register irrespective of whether they have a tax liability, unless they are excluded. Non-taxable trusts should be referred to as “registerable express trusts” and taxable trusts as “registerable taxable trusts”.

The new obligations catch a lot of trusts which had not previously had to register. When considering whether your trust needs to register, we would recommend that your starting point should be that your trust is caught unless it falls into one of the exceptions set out below.

1 Which trusts do not have to register?

1.1 **Legislative Trusts** e.g. a trust set up under the intestacy rules or bankruptcy.

1.2 **Trusts imposed by court order** e.g. a trust set up under a court order to hold a compensation payment.

1.3 **Pension scheme trusts** e.g. registered for the purposes of Part 4 Finance Act 2004.

1.4 **Trusts of insurance policies and death benefits** - Trusts of life or retirement policies are, subject to certain conditions, excluded from registration as express trusts during the lifetime of the person assured. The trust continues to be excluded from registration if, following the death of the person assured, the trust receives the pay-out from the policy. The exclusion applies for two years following the date of death. This gives the trustees two years from the death of the person assured to distribute the funds to the beneficiaries of the deceased's estate before registration on TRS is required.

HMRC has confirmed that 'the exclusion in Sch3A(4) can be properly interpreted as including trusts holding policies which have surrender values, and that those trusts would remain excluded until such time as the policy is actually surrendered. It follows from this that pay-outs received from such policies on death would continue to benefit from the exclusion at Sch3A(8).

¹ The Money Laundering Terrorist Financing Amendment EU exit Regulation 2020 introduced a Schedule 3a into the Money Laundering Terrorist Financing Transfer of Funds (Information on the Payer) Regulations 2017.

- 1.5 **Charitable trusts** e.g. a trust for charitable purposes which is a registered charity or exempt from charitable registration in England & Wales.
- 1.6 **Pilot trusts** if holding less than £100 and created before the 6 October 2020 when the Regulations came into force.
- 1.7 **Will trusts** holding only the property comprised in the death estate, where less than 2 years has passed since death. If the trust is still in existence after that date it will then need to register from that date. However, these trusts may have to register from the date of death for taxable purposes, if they have a UK tax liability.
- 1.8 **Trusts of jointly held property** but only where the legal owners and the beneficiaries are the same persons. This category is designed to exclude trusts which arise when joint owners hold property for themselves in simple arrangements.
- 1.9 **Financial & commercial trusts** e.g. those created in the course of professional services or business transactions for holding client money or other assets, such as an escrow arrangement.
- 1.10 **Commercial transactions** where a trust is created for the purpose of:
- 1.10.1 enabling or facilitating a transaction effected for genuine commercial reasons; or
 - 1.10.2 protecting or enforcing rights relating to such a transaction
- where the use of the trust is incidental to the principal purpose of the transaction.
- 1.11 **Registration of assets** - A trust created on the transfer or disposal of an asset where the purpose of the trust is to hold the legal title to the asset on trust for the person to whom the transfer or disposal is being made until the time when the procedure required by law to effect the transfer or disposal of legal title is completed.
- 1.12 **Trusts for bereaved minors or bereaved young persons** (IHTA 1984, s71A or 71D).
- 1.13 **Heritage Funds** e.g. property in respect of which a direction under paragraph 1 of Schedule 4 to the Inheritance Tax Act 1984(30) has effect.
- 1.14 **Personal injury trusts** e.g. those established to receive compensation payments.
- 1.15 **Trusts for tenants' service charges** e.g. holding tenants' contributions for the purposes of s.42 Landlord & Tenant Act 1987.
- 1.16 The **plan trust of a share incentive plan** which meets the requirements of Part 9 Schedule 2 to the Income Tax (Earnings & Pensions) Act 2003.
- 1.17 A **trust created under a share option scheme** that meets the requirements of Parts 2-7 of Schedule 3 to the Income Tax (Earnings & Pensions) Act 2003.
- 1.18 **Trusts for a disabled beneficiary** who is a disabled person within the meaning given by Schedule 1A to the Finance Act 2005. Note that whilst they may not have to register on TRS as registerable express trusts, they may have to register for taxable purposes if they have a UK tax liability.

2 When will an excluded trust have to register?

- 2.1 If it becomes liable to any of the following taxes:

- 2.1.1 Capital Gains Tax
- 2.1.2 Income Tax
- 2.1.3 Inheritance Tax
- 2.1.4 Stamp Duty Land Tax
- 2.1.5 Stamp Duty Reserve Tax
- 2.1.6 Land and Buildings Tax (in Scotland)
- 2.1.7 Land Transaction Tax (in Wales)

2.2 Note that even if a trust has a tax liability which is covered by a relief, you will still need to register the trust if you need to claim the relief through Self-Assessment.

2.3 Excluded trusts that need to register only because they have a tax liability will not be subject to information access rights as mentioned above.

3 Are pilot trusts affected?

3.1 Yes. The regulations catch all pilot trusts:

- 3.1.1 holding more than £100 and created before the 6 October 2020; and
- 3.1.2 pilot trusts created from 6 October 2020 containing any amount. This even includes a pilot trust set up with a nominal amount such as £10.

4 Are bare trusts affected?

4.1 There is no specific exclusion from registration for bare trusts. In general, if a bare trust is an express trust it should register on TRS. However, there are several exclusions (see above) that may apply to common bare trust arrangements.

5 Non-UK Trusts

5.1 Broadly, non-UK express trusts which:

- 5.1.1 acquire UK land after 6 October 2020; or
- 5.1.2 have at least one UK trustee, enter into a business relationship with a UK “obliged entity” and are not an EEA registered trust

must have registered by 1 September 2022 or 90 days from the date the relationship commences or the acquisition is recorded in the Land Registry.

5.2 An “obliged entity” is a financial or credit institution, accountant, tax advisor, legal professional, estate agent, art dealer or other person dealing in goods or providing particular services.

5.3 If the trust is not resident in the UK, you must register the trust if it becomes liable for tax on income coming from the UK or on UK assets.

6 What information will need to be collected about registerable express trusts for the Register?

6.1 The trustees or agents will have to give some basic information about the trustees, settlors and beneficiaries (the 'beneficial owners').

6.2 For individuals this is their:

6.2.1 full name;

6.2.2 date of birth;

6.2.3 date of death (if settlor has died);

6.2.4 National Insurance Number and address (if UK citizen);

6.2.5 passport details and address (if not UK citizen);

6.2.6 telephone number (if lead trustee);

6.2.7 email address (if lead trustee);

6.2.8 country of residence;

6.2.9 country of nationality;

6.2.10 role in the trust; and

6.2.11 mental capacity at the time of registration and if for example, a settlor has died since the trust was created but before registration, if they had mental capacity at the time of their death.

Please note that for registerable express trusts that were in existence on or after 6 October 2020, all individuals who have been beneficial owners for any period of time on or after 6 October 2020 should be recorded on TRS at the point of registration. Those individuals who have since ceased to be beneficial owners can be immediately removed from the record. This is to ensure that TRS contains a record of all beneficial owners from the point that the trust became liable for registration.

6.3 For companies and other legal entities this is their:

6.3.1 corporate or firm name;

6.3.2 registered or principal office address;

6.3.3 organisation UTR (if lead trustee);

6.3.4 telephone number (if lead trustee);

6.3.5 email address (if lead trustee);

6.3.6 country of residence and

6.3.7 role in the trust.

6.4 If the trust controls a company or other legal entity, the trustees or agents must give the entity's corporate or firm name, the country by whose law the entity is governed, its registered or main office address and the start date from which the trust controls the company.

6.5 Trustees or agents will also have to give some other details to check that they should be registering the trust and determine whether the information on the register can be made available in certain situations). This includes:

6.5.1 whether the trust has started receiving financial services, or professional or legal advice from a UK based business;

6.5.2 if the trust has acquired land and property in the UK; and

6.5.3 whether any of the people associated with the trust lack mental capacity.

7 Was there a deadline for registering registerable express trusts with HMRC?

7.1 There was/is an obligation to register:

7.1.1 registerable express trusts in existence on or after 6 October 2020 and created before 4 June 2022 should have been registered by 1 September 2022;

7.1.2 registerable express trusts created after 4 June 2022 within 90 days; and

7.1.3 changes to the trust details or circumstances, within 90 days of the change.

7.2 Don't forget, you must register on TRS for registerable taxable trusts.

7.2.1 For taxable trusts that are created on or after 6 April 2021, you must register your trust within 90 days of the trust becoming liable for tax or on or before 1 September 2022 (whichever was/is later);

7.2.2 For taxable trusts that were created before 6 April 2021, generally, this must have been done by 31 January of the tax year following the one in which the tax liability arose, unless trusts are liable for Income Tax or Capital Gains Tax for the first time and then the trust should have been registered by 5 October in the tax year after the one in which the trust starts to receive any income or has capital gains, and becomes liable for Income Tax and Capital Gains Tax.

8 What penalties could Trustees face for non-compliance?

8.1 Trustees and personal representatives who fail to comply with the requirements risk fines and criminal convictions.

8.2 That said, in terms of penalties, HMRC's guidance indicates that a warning letter will be issued for a first offence of failing to register or for late registration (providing that this is not as a result of deliberate behaviour on the part of the trustees). If, following the receipt of a warning letter, the trust is registered within the time period given, HMRC are unlikely to issue any penalties. It is only if the trustees fail to register the trust within the time period stated within the HMRC warning letter, or fail to explain why their trust is not liable for registration, that HMRC may issue a penalty to the lead trustee.

8.3 HMRC guidance states that non-compliance of the TRS rules due to deliberate behaviour may result in a penalty of £5,000 per offence. This will be applied on a case-by-case basis.

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