HOUSE OF LORDS

In Focus

Politically Exposed Persons: Current Regime and Reforms

Summary

Banks and other financial institutions are required under the UK's anti-money laundering regulations to conduct enhanced customer due diligence when dealing with people identified as Politically Exposed Persons (PEPs). This is intended to help trace, and put a stop to, the financing of terrorism. Some UK parliamentarians have complained that financial institutions have declined to handle their accounts and those of their family members as a result. This process of withdrawing financial services for UK PEPs has been described as 'de-risking'. The Government has stated that MPs and Members of the House of Lords affected by de-risking should complain to the Financial Ombudsman Service.

Further information on the current regime is provided in the House of Commons Library briefing, *Politically Exposed Persons Regime*.[1]

Background

Current Rules and Proposed Reforms

The current anti-money laundering rules define PEPs as persons "entrusted with prominent public functions", in: a state other than the UK; an EU institution; or an international body, as well as their immediate family members and known close associates.[2] This includes heads of state, members of parliament, and other individuals listed in the Regulations.[3] This does not include "middle-ranking or more junior officials". Financial institutions dealing with PEPs are required by the Regulations to conduct enhanced customer due diligence and ongoing monitoring.[4] Although the current rules do not effect domestic PEPs accessing financial services in the UK, corresponding rules may affect UK PEPs accessing financial services in other countries.

It has been proposed that enhanced due diligence measures should be extended to cover domestic PEPs, their family members and close associates.[5] The inter-governmental body, the Financial Action Task Force recommended this change in 2013, in a guidance document entitled *Politically Exposed Persons (Recommendations 12 and 22)*. Following these recommendations, the European Union adopted the Fourth Money Laundering Directive in June 2015 to implement this change. This directive has yet to be agreed in the European Parliament. The UK Government has stated its intention to implement new money-laundering regulations by June 2017.[6]

Issues Raised in Parliament

Concerns have been raised in Parliament about the way in which rules on PEPs were being implemented by financial institutions. On 14 October 2014, Lord Clement-Jones (Liberal Democrat) stated that he, a number of other Members, and their family members, had been denied access to certain services by

banks.[7] The then Commercial Secretary to the Treasury, Lord Deighton, stated that the issue was whether or not financial institutions were carrying out their due diligence "appropriately". He stated the following regarding the status of UK parliamentarians:

> […] domestic PEPs should be assessed in terms of their level of risk, and in the main UK parliamentarians should be assessed as low risk and, frankly, treated in precisely the same way as any other customer. The problem is when banks do not apply the right kind of risk-based assessment and instead revert to inappropriate box-ticking approaches.[8]

Lord Deighton provided the following guidance about the appropriate action that should be taken by Members affected:

> I would encourage Members to follow up with their banks when there is a problem. It is appropriate to complain to the Financial Ombudsman Service, which is a facility that we have in place. I took the liberty of looking at the number of complaints about PEPs received by the financial ombudsman. I think that there were around 50 in 2013 and 30 this year out of a total of half a million complaints. However, I encourage Members to pursue their interests.[9]

New Guidance on Politically Exposed Persons

Section 30(3) of the Bank of England and Financial Services Act 2016 requires the UK's Financial Conduct Authority (FCA) to issue new guidance on the definition of PEPs. The FCA said in May 2016 that it would "work with HM Treasury to deliver this requirement alongside the transposition of the [Fourth Money Laundering Directive]".[10]

Section 30(3) originated as an amendment to the Bank of England and Financial Services Bill, tabled by Charles Walker (Conservative MP for Broxbourne) at report stage in the Commons.[11] The amendment received Government support. During the debate to agree this amendment in the Lords, Government Whip, Lord Ashton of Hyde, stated that several Members of the House of Lords and the House of Commons had experienced difficulties with their bank accounts, and argued that the amendment would "ensure that a strong message is sent out about applying the rules in a proportionate and sensible manner".[12]

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[1] House of Commons Library, *Politically Exposed Persons Regime*, 18 January 2016.
[2] Financial Conduct Authority, *Financial Crime: A Guide for Firms—Part 1*, July 2016, p 30. The current rules are set out in the Money Laundering Regulations 2007, which implement the EU's Third Money Laundering Directive in the UK.
[3] Money Laundering Regulations 2007, schedule 2, para 4.
[4] Money Laundering Regulations 2007, 14(4).
[5] HM Treasury, *Impact Assessment: Transposition of the Directive on the Prevention of the Use of the Financial System for Money Laundering or Terrorist Financing*, 16 February 2016, p 15.
[6] HL *Hansard*, 3 May 2016, col 1328. On 15 September 2016, the UK Government published a consultation on how the Fourth Money Laundering Directive will be transposed into UK law. This consultation closed on 10 November 2016.
[7] HL *Hansard*, 14 October 2014, cols 113–6.
[8] ibid.
[9] ibid.
[10] Financial Conduct Authority, 'FCA Research into the Issue of De-risking', 24 May 2016.
[11] HC *Hansard*, 19 April 2016, cols 839–58.
[12] HL *Hansard*, 3 May 2016, col 1329.