In a pensions context, are death benefit trusts for the benefit of minors exempted from TRS registration under Schedule 3A of the Money Laundering and Terrorist Financing (Amendment) (EU Exit) Regulations 2020?

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For an understanding of what was intended by the government in relation to the proposed exemptions, as set out in its response to the consultation ('Fifth Money Laundering Directive and Trust Registration Services', published on 15 July 2020), it is necessary to introduce some technical terminology.

By way of background, it is true that 13 respondents advocated an exemption for 'where a trust is established to hold a lump sum death benefit for minors' (see consultation response, paragraph 2.4). It was argued by these respondents that such trusts were 'regulated elsewhere', although it is not clear where and how the respondents thought this regulation occurred, given that the assets would by definition no longer be in the wrapper of a registered pension scheme. Death benefit trusts for minors would appear to be outside the scope of the oversight of the Pensions Regulator: see section 5 of the Pensions Act 2004.

The government did not in terms propose an exemption for 'where a trust is established to hold a lump sum death benefit for minors'. In other words, it did not in terms accept the suggestion advocated by the respondents. It did, however, propose an exemption 'for vulnerable beneficiaries or bereaved minors' (paragraph 2.12). These are concepts taken from tax legislation, and it is necessary to look at these in detail.

The term 'vulnerable beneficiary' comes from part of the income/capital gains tax code, namely, certain special treatment for the purposes of those taxes set out in the Finance Act 2005 (FA 2005). While a 'vulnerable beneficiary' is defined as a 'disabled person' or a 'relevant minor' (FA 2005, s 23(7)) and 'relevant minor' is defined as a person who has not yet attained the age of 18 and at least one of whose parents have died, it must be emphasised that the special income/capital gains tax treatment for relevant minors set out in FA 2005 is limited to 'qualifying trusts', and these are generally speaking not inter vivos trusts, but rather trusts arising under a Will or on an intestacy (FA 2005, s 35). So too with the reference to 'bereaved minors'. This comes from section 71A of the Inheritance Tax Act 1984 (IHTA 1984). The special tax treatment is again generally limited to trusts arising under a Will or on an intestacy.

An exemption for 'trusts for vulnerable beneficiaries or bereaved minors' is duly found in the proposed Schedule 3A of the draft Regulations: see in particular paragraph 16, which refers inter alia to IHTA 1984, s 71A. The overlap between the inheritance tax and income/capital gains tax legislation means that there was no need for an express reference to the FA 2005 in the context of relevant minors. This exemption is limited in the general case to trusts set up by Will or on an intestacy and cannot extend to death benefit trusts arising under pension schemes, which are derived from an inter vivos trust, being a pension scheme.

Accordingly, the government does not appear to have promised to exempt death benefit trusts in its response to the consultation and the draft Regulations do not therefore deviate from that response. The draft Regulations do not contain a blanket exemption for lump sum death benefit trusts for minors emerging from pension schemes. Nor do they contain any blanket exemption for bare trusts.

That is not to say that it is impossible for a death benefit trust for minors to fall within an exemption in Schedule 3A on the particular facts. For example, some historic death benefit trusts might fall within IHTA 1984, s 71D(4) and therefore within Schedule 3A, para 16. Some may hold insurance policies on exempt trusts or relate to disabled minors. However, the general position is that death benefit trusts are not exempt.

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