

Registering Express Trusts: A necessary clarification or step too far?

Introduction

This article is concerned with the new registration rules for trusts. These rules were introduced recently, on 6 October 2020, pursuant to the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (the Regulations).¹ The rules require the registration of certain types of trusts, *viz* express trusts, with the “Trust Registration Service” (hereafter, the TRS);² this is the online service (known as the “Government Gateway”) that is used by Her Majesty’s Revenue & Customs (HMRC) to collect specific data on trusts and trustees, amongst other things.³ It is noteworthy that the TRS was first established in 2017, and this updated the trust registration system quite considerably at the time.⁴ But the new rules have now acted to extend the scope of registration.⁵ In consequence, the register now captures ‘all UK and some non-UK trusts that are currently open, whether or not the trust has to pay any tax, but with some specific exclusions.’⁶

In the aftermath of the extension of trust registration, this article questions whether registration (and ultimately the gathering of trusts’ data) is strictly necessary. Is, for example, registration worth the potential privacy issues that stem from the data collection? Is the need to provide data to the HMRC through the TRS likely to deter potential trustees from taking up the sacrosanct office of trusteeship in the future? These are but some of the questions that

¹ Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017, SI 2017/692.

² ‘TRSM10020 – Introduction to the Trust Registration Service: contents: what is the Trust Registration Service’ (*gov.uk*, 17 May 2021) <<https://www.gov.uk/hmrc-internal-manuals/trust-registration-service-manual/trsm10020>> accessed 12 April 2022.

³ E Agyemang, ‘1mn UK trusts must register on government list’ *Financial Times* (London, 22 March 2022) <<https://www.ft.com/content/6ff31673-d7f0-484a-99fb-c78fc76ad89c>> accessed 12 April 2022.

⁴ *ibid.*

⁵ n 2.

⁶ ‘Guidance: Trust Registration extension – an overview’ (*gov.uk*, 25 January 2021)

<<https://www.gov.uk/guidance/trust-registration-extension-an-overview>> accessed 12 April 2022.

are evaluated throughout this article. But, whilst this work's specific focus is on outlining the new registration rules, it should be remembered that a broader argument is also roughly echoed. Also of a concern are the issues surrounding the increased "codification" of the administration of trusts, and what such changes mean for trusts and trustees.

The increased regulatory governance of the trust is not entirely detrimental to the trusts law; after all, it ensures that trustees are compliant with their duties and act in the "best interests"⁷ of their beneficiaries. *Ergo* the desire to regulate trusts more thoroughly is seen as a prophylactic measure that prevents any prospective breaches that may be instigated by trustees. But it is submitted here that the increased control of trust administration by regulation requires a fine balance, and ultimately, an argument is proffered which suggests that the extension of trust registration and the ability to allow third parties access to the registered government list may indeed be a step too far. The requirement to register specific trust information is not necessarily an insidious act on the part of the government; this system has been designed to prevent the corruption of trusts by money laundering schemes, terrorist financing, and other criminal activities.⁸ Yet the recent changes represent even further governmental encroachment into the administration of trusts, and such an act must be questioned.

As described above, in recent years there has been an increased appetite to control trustees by way of regulatory intervention. Broadly speaking, the "duty of care"⁹ that trustees owe to their beneficiaries when exercising their investment powers – which was originally forged at common law and proclaimed in the case of *Speight v Gaunt* [1883]¹⁰ – was put on a statutory footing some twenty years ago by virtue of the Trustee Act 2000.¹¹ More

⁷ See, *Cowan v Scargill* [1985] Ch 270 (Sir Robert Megarry VC).

⁸ n 6.

⁹ Trustee Act 2000, s 1.

¹⁰ *Speight v Gaunt* [1883] UKHL 1.

¹¹ n 9.

specifically, however, regulation has now been established which directly influences the investment decision making powers of trustees.¹² This can be seen most clearly, for example, in the recent laws that have been enforced to deal with pension fund trustees and their assessment of the “environmental, social, and governance” (ESG) risks that may be present when exercising their general power of investment¹³ over occupational pension schemes.¹⁴ Thus this article understands that regulation is necessary and has existed in this area for many years.¹⁵

However, there is a point where a line must be drawn. The over-regulation of trustees’ administration can act to directly stymie the sacrosanct office of trusteeship by making it increasingly more difficult to find people that are willing to become trustees. Indeed, the war in Ukraine has led to the government rightfully imposing economic sanctions on UK-based Russian oligarchs that are linked to Putin’s malicious regime; and, in turn, this has encouraged a greater demand from society at large for clarity in the realm of private wealth. Thus, in the current climate it is perhaps an unpopular opinion to argue, as is done here, that the new registration rules are an unnecessary burden on trustees. But this is the thesis that is nevertheless presented. While there is a fear that trusts can be used for evil purposes, there is also the argument that many innocent trustees will experience stress and anxiety from the enforced changes.

Structurally speaking, the below section begins by outlining the new rules surrounding the extension of trust registration. It looks at when and what must be registered in the light of the extension. The section that follows the below goes on to outline some of the issues that the author has identified with the imposition of the new rules.

¹² Lloyd Brown, ‘The Pension Schemes Act 2021: new duties for trustees and managers of pension fund trusts’ (2021) 27(9) *Trusts & Trustees* 880.

¹³ *Trustee Act 2000*, s 3.

¹⁴ n 12.

¹⁵ See, for instance, *Trustee Act 1925*.

The new law surrounding trust registration

The new registration rules have been enforced to drive greater clarity and assist in implementing the Fifth Money Laundering Directive (5MLD).¹⁶ In respect to clarity the new system has allowed for trusts to be registered online since 2017.¹⁷ Since this time the ability to register trust information has been greatly improved: for example, the guidance states that the statutory changes have removed the need to complete the old, paper 41G Trust form.¹⁸ None the less there are inevitable concerns surrounding the necessity of the new changes, from 6 October. It is necessary to question the impact that the new rules have on the privacy of trusts together with the affect that the extended registration requirements will have upon certain types of trustees. In fact, the threat of penalties could directly affect the amount of people that may wish to become trustees in the future; this, in turn, may ultimately act to undermine the operation of trusts. The section sets out the new rules by looking at “when” a trust must be registered as well as “what” information must appear on the register.

When must registration be completed?

As already stated, new rules were first introduced on 6 October 2020 that greatly extended the previous registration requirements for trusts with the TRS.¹⁹ In the light of the above introduction date, the guidance suggests that some relief was given to trustees as the system was not ready to record the necessary data at that time, i.e., ‘trustees cannot register trusts under the new rules until later in 2021 when the new Trust Registration Service is ready.’²⁰

¹⁶ n 6

¹⁷ n 1

¹⁸ ‘TRSM31010 – Registration: contents: introduction: contents: introduction’ (*gov.uk*, 17 May 2021) <<https://www.gov.uk/hmrc-internal-manuals/trust-registration-service-manual/trsm31010>> accessed 12 April 2022.

¹⁹ ‘Guidance: Register a trust as a trustee’ (*gov.uk*, 19 May 2020) <<https://www.gov.uk/guidance/register-a-trust-as-a-trustee#what-youll-need>> accessed 12 April 2022.

²⁰ n 6.

However, the deadline for trust registration is ‘approximately 12 months... from when the new service is ready to accept registrations.’²¹ The time periods of registration are explored below.

In respect to the question of “when to register” a respective trust, this is explained in HMRC internal manual TRSM40010²² as well as other guidance documents supporting it. There are different deadlines depending upon whether the trust is a registrable taxable trust, or a registrable non-taxable express trust.²³ Where a trust is a registrable non-taxable express trust, the supporting guidance states that trustees, personal representatives, or their appointed agents must note that the rules differentiate between non-taxable trusts that were created on or before the above-stated date and ones that were created after the introduction date.²⁴ For the former the deadline of registration is on or before 1 September 2022; for the latter, registration must occur ‘within 90 days of it being create or becoming liable for tax, or on or before 1 September 2022 (whichever is later).’²⁵

In relation to the deadlines for registrable taxable trusts the guidance expresses the following: ‘Registrable taxable trusts are required to register by 31 January (or 5 October in some cases) following the end of the tax year in which the trust had a liability to UK taxation.’²⁶ In this case registration of this type of trust the guidance suggests that registration depends largely on three things: (i) the date of the trust’s creation; (ii) the tax liability imposed on the trust; and, (iii) whether the trust is or has been ‘liable for Income Tax or Capital Gains Tax before’.²⁷ If a taxable trust has been ‘created on or after 6 April 2021’,

²¹ Ibid.

²² ‘TRSM40010 – Deadlines: contents: introduction’ (*gov.uk*, 17 May 2021) <<https://www.gov.uk/hmrc-internal-manuals/trust-registration-service-manual/trsm40010>> accessed 12 April 2022.

²³ Ibid.

²⁴ n 19

²⁵ Ibid.

²⁶ n 22; see also, ‘TRSM40030 – Deadlines: contents: additional registrable taxable trust deadlines’ (*gov.uk*, 17 May 2021) <<https://www.gov.uk/hmrc-internal-manuals/trust-registration-service-manual/trsm40030>> accessed 12 April 2022.

²⁷ n 22.

registration must occur ‘within 90 days of the trust becoming liable for tax or on or before 1 September 2022 (whichever is later).’²⁸ However, if such a trust was in existence on or after the date of introduction (6 October 2020) the trust must be registered by 1 September 2022.²⁹ The guidance clearly opines that, ‘You may have to pay a penalty if you do not register the trust before the registration deadline.’³⁰

Therefore, the goal of the register is to effectively act to create a list of registered trusts for the HMRC.³¹ And this register must be kept up to date by trustees as and when they become aware of changes that require TRS notification.³² It is clear that the register will be used by various organisations and persons to ‘access details on the register about the people associated with a trust’.³³ The registered list is expected to be useful for assisting the “preventative work” of people and organisations in stopping ‘anti-money laundering, counter terrorist financing and associated offences.’³⁴ But the question is, to what expense?

What must be registered and by whom?

While it is clear why the registration requirement has been instituted, it is nevertheless surprising to discover just how many trusts are captured by extended rules and which will now appear on HMRC’s register. The TRS manual states that, ‘Most types of UK based trusts are required to register.’³⁵ However, non-UK trusts and ‘the personal representatives of large estates or of estates with UK tax liabilities’ are also captured by the new rules.³⁶

Indeed, the Financial Times has reported that it is predicted that, ‘As many as 1mn trusts in

²⁸ *ibid.*

²⁹ *ibid.*

³⁰ n 19.

³¹ n 6.

³² n 22.

³³ n 6.

³⁴ *ibid.*

³⁵ ‘TRSM10010 – Introduction to the Trust Registration Service: contents: who is the manual for’ (gov.uk, 17 May 2021) <<https://www.gov.uk/hmrc-internal-manuals/trust-registration-service-manual/trsm10010>> accessed 12 April 2022.

³⁶ *ibid.*

the UK could be caught by a new requirement to register on a government list, with the risk of fines and difficulties accessing professional advice.³⁷ To take the pressure off trustees (especially amateur trustees) the rules allow agents to act on the behalf of trustees or the personal representatives of large estates or estates subject to tax liabilities.³⁸

The reason why so many trusts are captured by the new rules is twofold. First, registration applies to express trusts (this is the most common type of trust).³⁹ Secondly, trust registration is assessed on the basis of the tax liabilities that may be imposed on UK trusts, which is legion.⁴⁰ The guidance states the following in relation to the types of trusts subject to the new rules:

‘Trustees or their agents must register a trust using the Trust Registration Service (TRS) if the trust is liable to pay any of the following taxes:

- Capital Gains Tax
- Income Tax
- Inheritance Tax
- Stamp Duty Land Tax
- Stamp Duty Reserve Tax
- Land and Buildings Transaction Tax (in Scotland)
- Land Transaction Tax (in Wales).’⁴¹

³⁷ n 3.

³⁸ n 35.

³⁹ ‘TRSM10030 – Introduction to the Trust Registration Service: contents: common types of trusts and interaction with the register’ (*gov.uk*, 17 May 2021) <<https://www.gov.uk/hmrc-internal-manuals/trust-registration-service-manual/trsm10030>> accessed 12 April 2022.

⁴⁰ n 6.

⁴¹ *ibid.*

Moreover, the guidance states that, unless excluded by the rules, “all UK express trusts” must be registered under the new system.⁴² Furthermore, ‘non-UK express trusts’ are also required to provide TRS registration where those trusts ‘acquire land or property in the UK’⁴³ and/or ‘have at least one trustee resident in the UK and enter into a “business relationship” within the UK.’⁴⁴ A “non resident trust”, being one that is not resident in the UK that is, must be registered if it should have tax liabilities imposed on any income from its UK or on UK assets.⁴⁵

Some trusts do not need to be registered unless they are liable to pay UK tax.⁴⁶ For instance, the guidance on registration suggests that, inter alia, charitable trusts or pension schemes are excluded from TRS registration.⁴⁷ Such exceptions can be explained because the new rules primarily target express private trusts, as described above. That is why, for instance, implied trusts created by a court or via legislation are not captured; they are not expressly created by a settlor in the traditional sense.⁴⁸ Despite the fact that several different types of trusts are excluded from the new rules, it goes without saying that a significant number of UK trusts are now going to have to comply with this burden, and this may be anxiety inducing for trustees.

The question of the type of trusts that need to register inevitably turns into the question of what needs to be registered on the TRS. The guidance suggests that: ‘The trustees or agents will have to give some basic information about the persons involved in the trust (the settlors and beneficiaries). This will apply to both taxable and non-taxable trusts.’⁴⁹ For both taxable

⁴² *ibid.*

⁴³ *ibid.*

⁴⁴ *ibid.*

⁴⁵ n 19.

⁴⁶ n 6.

⁴⁷ *ibid.*

⁴⁸ *ibid.*

⁴⁹ *ibid.*

and non-taxable trusts it is required that a “lead trustee” be nominated as the main point contact between the trust and HMRC.⁵⁰ As part of this nomination the nominee is required to produce their personal information, and the information required will depend upon whether the lead trustee is a person or organisation.⁵¹ The trust-specific information that needs to be presented by the lead trustee and recorded on the register includes the following:

- ‘the name of the trust
- the date the trust was created
- to say if the trust is an express trust or not
- details about whether a non-UK trust has a business relationship in the UK
- details about any UK land or property the trust has purchased.’⁵²

However, it is noteworthy that “taxable trusts” have some further requirements.⁵³ For these trusts the type of trusts need to be made known as well as the details of how the trust was set up and the trust’s Unique Taxpayer Reference (UTR).⁵⁴

Together with the trust-specific information the lead trustee must also provide further information on, amongst other things: the settlors, any individuals and organisations involved in the trust, beneficiaries (both named beneficiaries and the classes of beneficiaries), ownership or controlling interest in a company based outside of the European Union and the Free trade Agreement countries of Norway, Iceland or Liechtenstein, shares, property and land, money (being the total amount of money in the trust), and other assets that are included in the trust (e.g., any chattels).⁵⁵ Such a list of things that require registration is a significant

⁵⁰ n 19.

⁵¹ *ibid.*

⁵² *ibid.*

⁵³ *ibid.*

⁵⁴ *ibid.*

⁵⁵ *ibid.*

burden for trustees, and will be particularly difficult for amateur trusts that are not particularly *au fait* with trusts law.⁵⁶ The new system only serves to add further complexity to trusteeship, which is already onerous enough.

Issues surrounding extending the registration requirements

Following the discussion of the system of registration above, this section analyses the new rules and suggests that the new system is overly bureaucratic and, in consequence, could be directly harmful to the administration of trusts. It does this by first looking at the type of trusts that the system applies to, being express trusts. Here it is shown that the rules apply widely, since express trusts are the most numerous of trusts. Furthermore, a concern is raised in respect to how the law differentiates between professional and amateur trustees. The section ends by briefly discussing how privacy concerns under the new rules may directly impact peoples' appetite to become trustees.

Application to express trusts

While many attempts have been made to define the trust, it remains an elusive legal concept in comparison to some;⁵⁷ this is likely because its *fons et origo* was the historic system of Equity (as opposed to the Common Law), and it is now considered to be that system's greatest surviving progeny.⁵⁸

The registration rules apply to the particular type of trust known as an "express trust". This section briefly outlines what an express trust is, for the benefit of readers; but, more importantly, it demonstrates the plethora of trusts that are now going to be captured by the

⁵⁶ n 3.

⁵⁷ G Virgo, *The Principles of Equity & Trusts* (4th edn, OUP 2020) 39.

⁵⁸ *ibid.*

new system. The meaning of the extension to express trusts is well summarised by Agyemang, as follows:

‘Currently only trusts that have a tax liability must report information to the register. But under the incoming rules, all trusts – apart from those explicitly exempt – will need to sign up to the register by the deadline or within 90 days of the trust’s creation. All trustees will be jointly liable for fulfilling the obligation.’⁵⁹

Succinctly an express trust is described by the TSM internal guidance as a ‘trust created deliberately by a settlor, usually (but not always) in the form of a document such as a written deed or declaration of trust.’⁶⁰ The guidance furthermore states that, ‘Most trusts are express trusts.’⁶¹ It goes without saying that an express trust is so called because it is expressly created by a person known as a settlor; there is ‘a manifestation to create a trust.’⁶² Such a trust can be distinguished from implied trusts (since they occur, not expressly, but through the operation of law).⁶³ Express trusts are highly variable in themselves and their nature can be, for example: executed or executory, *inter vivos* or testamentary, public or private, amongst other things.⁶⁴

In an express trust the settlor (or the testator/ testatrix for testamentary trusts) creates the trust by way of deed or declaration and splits the ownership of the subject matter between the trustees and beneficiaries.⁶⁵ Therefore the trustees are said to hold the legal title to the

⁵⁹ n 3.

⁶⁰ n 39.

⁶¹ *ibid.*

⁶² J Glistler and J Lee, *Hanbury & Martin: Modern Equity* (20th edn, Sweet & Maxwell 2015) 58.

⁶³ n 57, 55-60.

⁶⁴ *ibid.*

⁶⁵ *ibid.*, 56.

property and the beneficiaries, in turn, hold the equitable title.⁶⁶ While the beneficiary is the intended recipient of the property at issue, the trustee nevertheless holds a significant power over the property and must act in a way that reflects the settlor's intentions, being paramount, for creating a trust.⁶⁷ The significant influence that trustees have is perhaps best demonstrated by their general power of investment as outlined in section 3 of the Trustee Act 2000.⁶⁸ Under this provision, and subject to the express wishes of the settlor and some provisions of the above-named Act, trustees can 'make any kind of investment that he could make if he were absolutely entitled to assets of the trust.'⁶⁹

Under the new registration rules the legal title holder of the trust property (i.e., the trustee or their agent properly obtained) is required to submit certain information on behalf of the trust to the TRS. Given the vast number of trusts that the new rules apply to, it is likely that the system is going to be inundated with the submission of data before the necessary deadline. This is also very likely to create a great deal of stress and anxiety for the trustees of express trusts. As noted, failure to register the trust with HMRC's online service will lead to the imposition of a penalty (although the details are yet unknown)⁷⁰ for the responsible parties.⁷¹ Following this discussion, the below section turns specifically to the trustees; succinctly, an argument is made which suggests that amateur trustees are going to much more vulnerable than professional trustees of falling foul of the registration requirements.

Professional and amateur trustees

⁶⁶ *ibid.*

⁶⁷ *ibid.*

⁶⁸ Trustee Act 2000, s 3.

⁶⁹ *ibid.*

⁷⁰ n 3.

⁷¹ *ibid.*

It is trite to say that trusteeship is “onerous”.⁷² For instance, in explaining the essence of trusteeship, Virgo⁷³ cites the judgment of Lord Hardwicke LC in *Knight v Earl of Plymouth* (1747):⁷⁴

a trust is an office necessary in the concerns between man and man and... if faithfully discharged, attended with no small degree of trouble and anxiety... it is an act of great kindness in any one to accept it.⁷⁵

Given the nature of this office as enunciated by Lord Hardwick LC, which is different to other types of professional relationships, the idea of registration raises questions of necessity. As above, “trouble and anxiety” are interwoven into the nature of trusteeship, and, where possible, these things should be suppressed to encourage people to undertake the position. This section raises the differences that exist between professional and amateur trustees. Its purpose, therefore, is to express how the registration requirements are going to be more harmful for latter group of trustees than the former. Agyemang has noted the impact that the new rules may create, stating:

‘Trustees can complete the form on their own. But they would need to be unfazed by the “complicated rules” and terminology... there could be some potentially “nightmare” circumstances for people faced with complying with the rules. For example, trusts that were in existence in October 6 2020, when the rules became law,

⁷² n 62, 475.

⁷³ n 57, 363.

⁷⁴ *Knight v Earl of Plymouth* (1747) Dick 120

⁷⁵ *ibid* 126

but which have since been would up, would still be required to register for the service.

After registering, trustees would immediately need to deregister the trust.’⁷⁶

Implementing Agyemang’s reasoning, this article goes further and suggests the type of trustee that is going to be most greatly affected by the requirement to register, i.e., amateur trustees. All trustees acquire several duties upon taking up the office.⁷⁷ These duties can be placed into two broad categories.⁷⁸ First, there are, what may be called, specific-trustee duties, which apply solely to trustees by virtue of being a trustee.⁷⁹ The other type of duties are broader than the ones that fall solely within the trustee-beneficiary relationship.⁸⁰ In consequence of holding the legal title to trust property, trustees are also seen by the law as “fiduciaries” to their “principals”, the beneficiaries.⁸¹ Trusteeship is therefore said to create a status based fiduciary relationship, and ultimately, the “irreducible core” of obligations that apply to fiduciaries must also be upheld by trustees.⁸² Being fiduciaries, trustees are unable to profit from their position,⁸³ and cannot place themselves in a position that conflicts with the trust.⁸⁴

There are several types of trustee,⁸⁵ but most important for this article is the distinction that is to be made between “professional” and “amateur” trustees.⁸⁶ The law understands that amateur trustees should be treated differently to those that have a professional status. The professional trustee is held to a higher standard of care.⁸⁷

⁷⁶ n 3.

⁷⁷ n 68, chapter 18.

⁷⁸ *ibid.*

⁷⁹ *ibid.*

⁸⁰ n 57, 363-366.

⁸¹ *ibid* 364.

⁸² *Armitage v Nurse* [1998] Ch 241, 253 (Millett LJ).

⁸³ n 57, 447.

⁸⁴ *ibid.*

⁸⁵ *ibid* 366-370.

⁸⁶ *ibid* 400.

⁸⁷ *ibid* 366.

Understandably this is because amateurs have a fundamental lack of expertise in trust administration and are unpaid;⁸⁸ it is noteworthy that professional trustees can be remunerated for any services rendered.⁸⁹ The new registration requirement captures trusts that are being governed by amateur trustees as well as professionals. As has been shown, amateur trustees are the most at risk of being penalised for respective breaches. This important category of trustees is also the most difficult to encourage to undertake the role, and incentives must be created to encourage this form of trusteeship. The law governing registration, which is complex, time consuming, and burdensome,⁹⁰ seems to do the opposite.

Given the clear differences between profession and amateur trustees, the courts have thought it right to treat the two categories of trustee differently. This can be seen in the duty of care that trustees owe to their beneficiaries when exercising their powers of investment.⁹¹ The source of this duty is to be found both at common law and on a statutory footing.⁹² At common law Lord Blackburn stated the duty of care in the case of *Speight v Gaunt* (1883)⁹³ as follows: ‘trustees are expected to exercise the same standard of diligence and care as an ordinary prudent person of business would exercise in the management of his or her own affairs.’⁹⁴ While the “business person” standard is said to apply to amateur trustees, the court will nevertheless take their non-professional status and lack of business knowledge into account.⁹⁵

With the enactment of the Trustee Act 2000, the duty of care was codified. It is outlined in section 1 of the above-named Act as:

⁸⁸ *ibid.*

⁸⁹ *ibid* 366 and 382.

⁹⁰ n 3.

⁹¹ n 57, 422

⁹² *ibid* 423

⁹³ *Speight v Gaunt* (1883) 9 App Case 727, 733 (Lord Blackburn)

⁹⁴ n 57, 423

⁹⁵ See, for instance, *Re Vickery* [1931] 1 Ch 572, 573 (Maugham J)

a trustee... must exercise such care and skill as is reasonable in the circumstances, having regard in particular –

- (a) to any special knowledge or experience that he has or holds himself out as having, and
- (b) if he acts as trustee in the course of a business or profession, to any special knowledge or experience that is reasonable to expect of a person acting in the course of that kind of business or profession.

The statutory duty of care – while being based on one’s level of “care and skill” – is applied to the circumstances through an objective test, and therefore, amateur trustees are likely to be treated differently to professionals.⁹⁶ It is unfortunate that the registration rules do not seek to greatly differentiate between the categories of trustee, as the law surrounding the duty of care does. This could be done in several ways. For instance, the penalty that is imposed could be obviated to account for the status of the trustee that failed to meet the registration requirements; or the time periods for compliance could be lengthened somewhat for amateurs.

Privacy

Worryingly the trust registered at the TRS will now be subject to external eyes. The guidance states that, from the data sharing date in 2022, ‘third parties interested in obtaining information held on the register (via legitimate interest/ third country requests)’ can choose to do so.⁹⁷ This is, of course, going to be a source of anxiety for many trustees and agents

⁹⁶ n 57, 402.

⁹⁷ n 35.

notwithstanding the fact that the personal data are held in accordance with current data protection laws.⁹⁸

Thus, a final issue that the registration extension brings is that relating to the privacy of trusts. Commercially speaking, a failure to register information could directly impact upon the attractiveness of certain trust funds with business professionals.⁹⁹ On another level however, the issue of privacy is nevertheless important for the effect it may have on the amount of people that would be willing to become a trustee. There is a delicate balance to be met. On the one hand, reducing the number of trusts that are used as a vehicle for criminal activities is important to protect the sanctity of the trust concept. However, it must be remembered, and as has been shown above, that the office of trustee is very onerous and reaps little rewards, financially or otherwise. The new requirements are presented as a *fait accompli* and do little to acknowledge the damage that registration could cause to the number of people willing to become a trustee.

There is, of course, the argument that any trustee that is put off from becoming a trustee because of the need to register is likely to be up to no good. Thus, by dissuading such characters from becoming trustees, the registration rules have acted as a deterrent for those that would use trusts to carry out some criminal act. And there is certainly some truth in this. However, this argument does not take into account the very many other *bona fide* trustees that will be anxious of registration and may incur a penalty for incorrectly registering information or failing to update TRS on relevant changes.

Conclusion

⁹⁸ n 3.

⁹⁹ *ibid.*

This article has addressed the new rules for registering express trusts. In short, while the article understands that registration is important as a prophylactic measure against money laundering and other criminal activities, it also highlights some of the issues that the new system may bring. A picture of trusteeship has been painted within this work. It has been shown that the duties that attach to trustees *ex officio* are highly onerous and carry with them risks of personal liability. There is a very great fear that the increased regulation of the administration of trusts may stymie the number of people that wish to become trustees. Ultimately, the registration rules now apply to a plethora of trusts, and do not appropriately distinguish professional from amateur trustees. Furthermore, there are very real privacy issues that must be noted, as the registration requirements act to usurp the autonomy that was once granted to certain express trusts. In short, the issues that the extended requirements bring are very concerning.

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