

# **THE MONEY LAUNDERING REGULATIONS 2007 SUPERVISION BY THE OFT**

## **Frequently Asked Questions Version 2 – October 2009**

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## 1. INTRODUCTION

The OFT has been given a role under the Regulations to supervise the anti-money laundering controls of:

- estate agents – those businesses engaged in estate agency work as defined by section 1 of the Estate Agents Act 1979 (this includes property finders and property auctioneers)
- consumer credit financial institutions (CCFIs) – those businesses engaged in consumer credit lending which are not either authorised by the Financial Services Authority (FSA) or supervised by HM Revenue and Customs (HMRC) as a money service business.

**Businesses supervised by the OFT will need to be registered with the OFT under the Money Laundering Regulations by 31 January 2010**

Other businesses to which the Regulations apply may be supervised by the FSA, HMRC or certain professional bodies that are listed in Schedule 3 to the Regulations.

The OFT has sought in these FAQs to address the main questions which may arise as businesses consider whether they need to comply with the Regulations and if so, whether they are supervised by (and therefore need to register with) the OFT. The answers to these FAQs represents the views of the OFT as a Supervisory Authority under the Regulations.

If these FAQs do not answer your question email your query to us at [aml3@oft.gsi.gov.uk](mailto:aml3@oft.gsi.gov.uk) or you can ring us on 020 7211 8200.

Further information is available on the Regulations from the OFT's website: [www.oft.gov.uk/mlr](http://www.oft.gov.uk/mlr).

## **2. WHO IS MY SUPERVISOR?**

### **General**

**Q1. I trade in the UK but my company is registered abroad – am I supervised by the OFT?**

Yes. If you are either an estate agent or CCFI and you are acting in the course of your business within the UK then the Regulations will apply to that business and you will be supervised by the OFT.

**Q2. What responsibility does a franchise company have towards ensuring compliance by the franchisees?**

As separate legal entities the franchisees are responsible for their own compliance with the Regulations.

### **Estate Agency**

**Q3. I only carry out commercial estate agency work– am I supervised by the OFT?**

Yes. For the purposes of the Regulations there is no distinction between residential and commercial estate agency work.

**Q4. I am a member of the Property Ombudsman scheme and/or the Royal Institute of Chartered Surveyors (RICS)/Surveyors Ombudsman Scheme – will I still be supervised by the OFT?**

Yes. The Ombudsman schemes are separate from the need to be supervised under the Regulations and the need to register with the OFT for AML purposes.

**Q5. I am a lettings/property management agent – am I supervised by the OFT?**

No. If you are a lettings or property management agent and do not carry out any estate agency work within the meaning of section 1 of the Estate Agents Act 1979 then you are not supervised by the OFT.

**Q6. I am a Housing Association am I supervised by the OFT?**

If you carry out estate agency work or are a CCFI in respect of, for instance, granting second charge shared equity mortgages then you will be supervised by the OFT.

You may be engaging in estate agency if you act on behalf of another Housing Association in respect of the sale of a property or if you act on behalf of the home occupier with whom you co-own a property in respect of the sale of their interest.

**Q7. I am a re-location agent am I supervised by the OFT?**

If you act as an agent for a buyer and carry out estate agency work within the meaning of section 1 of the Estate Agents Act 1979, you are covered by the Regulations and will be supervised by the OFT.

**Q8. I am a solicitor practicing in England and I carry out estate agency work – am I supervised by the OFT?**

If you are a solicitor engaged in estate agency as part of your work as a solicitor then the OFT is not your supervisory authority.

If, however, you engage in estate agency work outside your practice as a solicitor then that business will be supervised by the OFT.

**Q9. How do the Regulations affect Scottish estate agents?**

In Scotland, if you are a Solicitors' Property Centre or a free standing estate agent you come under the Estate Agents Act and are therefore subject to the Money Laundering Regulations (and will be supervised by the OFT).

If you are a solicitors' practice which carries out estate agency work as part of that practice but not as a separate business you will be supervised by the Law Society of Scotland.

The Regulations apply to any business operating in the UK (irrespective of whether it is a limited company, sole trader or partnership) that carries on estate agency work as defined by Section 1 of the Estate Agents Act 1979. This will include estate agents in Scotland unless they are solicitors regulated by the Law Society of Scotland and the estate agency work is carried out in the course of their practice as a solicitor.

**Q10. I am an estate agent and all my customers have bank accounts and their transactions are handled by solicitors - why should I be covered by the Regulations?**

This is not a decision made by the OFT. It stems from a European Directive implemented in the UK through Treasury. This reflects the fact that estate agents are involved in large value property transactions. It is not just about handling cash.

**Q11. Do I have to carry out customer due diligence measures on the executor of a will under which a property is being sold?**

An executor of the estate of a deceased person is the beneficial owner for the purposes of the Regulations, and therefore falls within the customer due diligence obligations even where the executor is a solicitor. It makes no difference that a solicitor is subject to AML supervision by a professional body such as the SRA. When they are acting as executor, it is perfectly reasonable that their identity should be subject to checks by the estate agent

to ensure they are who they say they are in order to avoid the risks of money laundering.

## **Consumer Credit Financial Institutions (CCFIs)**

CCFIs are businesses that provide consumer credit. This includes lending money and providing for payment for goods or services by instalments (except where the credit is repayable within 12 months by no more than four instalments) It also includes being a creditor under regulated consumer creditor agreements. The Regulations do **not** cover credit brokerage, that is, the introduction of a consumer to a third party who provides credit.

### **Q12. I hold a category A licence – am I supervised by the OFT?**

If your business provides **consumer credit** you will be supervised by the OFT - providing you are not authorised by the FSA or supervised by HMRC as a money service business.

If your business is engaged in **credit brokerage** (where your business does not offer the consumer credit itself but 'introduces' the consumer to the financial institution that does) then you will not be required to register with the OFT for Anti Money Laundering supervision purposes.

In providing consumer credit the business should hold a consumer credit licence for category A. However, the OFT will supervise those businesses that **require** a category A licence whether they hold a current licence or not. The requirement to hold a consumer credit licence is separate to the obligation to be registered for AML supervision purposes.

If you are engaged in providing consumer credit but do not hold a current consumer credit licence for category A you should apply for one immediately.

**Q13. What if I hold a category A licence but I'm not in the business of lending?**

If you hold a category A licence but do not provide consumer credit then you will not be a CCFI and will not be supervised by the OFT.

**Q14. I am a consumer credit lender whose parent company is supervised by the FSA as it is an authorised firm - am I also supervised by them?**

Not necessarily. As a separate legal entity it will depend on whether your company is authorised by the FSA, and if it is, then it will be supervised by them. If it is only your parent company that is authorised and your company (even if it is an Appointed Representative) is not then you will be supervised by the OFT.

If you are an **appointed representative** of an FSA-authorized firm and you do not provide any sort of credit/lending (only as a broker) then you will not be supervised by the OFT. However if you do, then you will be required to register with the OFT.

**Q15. I am a pawnbroker – am I supervised by the OFT**

If you carry out pawn broking and/or payday lending then you will be providing consumer credit and therefore supervised by the OFT. However, if you also

- carry out third party cheque cashing
- carry out money transmission or
- act in any other way as a money service business

you will be supervised by HMRC and not the OFT. For more information see HMRC's website at [www.hmrc.gov.uk/mlr](http://www.hmrc.gov.uk/mlr).

**Q16. I am a payday lender – am I supervised by the OFT?**

Some payday lenders will be supervised by the OFT (see Q15 above) but the majority will be supervised by HMRC because you are likely to be carrying out third party cheque cashing, money transmission or act in other ways as a money service business. For more information see HMRC's website at [www.hmrc.gov.uk/mlr](http://www.hmrc.gov.uk/mlr).

**Q17. I am a debt collector – am I supervised by the OFT?**

Yes, but only if you are a debt purchaser. If you purchase books of debts under regulated consumer credit agreements, then you will require a category A consumer credit licence as you will be carrying on a consumer credit business and in consequence will be supervised by the OFT.

If you are collecting only your own debts or collecting debts on behalf of a third party then you are not covered by the Regulations and so not supervised by any of the Supervisory Authorities.

**Q18. I am an asset leasing company with a category A consumer credit licence and I am authorised by the FSA but only for insurance purposes – am I supervised by the OFT?**

No. You will be supervised by the FSA as you are an authorised firm.

### **3. HOW WILL I BE SUPERVISED?**

#### **Q19. How will the OFT approach compliance?**

Like other supervisors under the Regulations, the OFT operates a risk based supervisory regime. We will identify the highest risk businesses and target our level of supervision accordingly. In order to effectively supervise our businesses we have introduced a registration scheme and require businesses to be registered by 31 January 2010.

The OFT will help business to reduce the risks of being used for money laundering by producing guidance, giving advice to business and raising awareness levels generally.

We have powers to take enforcement action where appropriate against those businesses that fail to put in place the required anti-money laundering system and controls – we have powers to prosecute and to impose civil financial penalties. See the OFT's Enforcement Principles on our website OFT1094 for more details of our approach to enforcement.

#### **Q20. Do Local Authority Trading Standards Services (TSS) have a role in compliance?**

The OFT is to agree an enforcement approach with TSS which will enable TSS to act as the OFT in monitoring and enforcement. Until such agreements are in place the OFT will be responsible for supervision. Trading Standards Officers may mention the Regulations to you when visiting your business for other purposes.

#### **Q21. Will there be future fees for businesses supervised by the OFT?**

Yes. The fee this year is a registration fee, but in future years there will be annual fees. Future fees will be determined once we have consulted with businesses later in the year on our supervisory approach, fee levels and structures.

**Q22. Do I need to register with the OFT?**

All businesses supervised by the OFT are required to register with us before the 31 January 2010. We suggest that businesses apply for registration no later than the end of November 2009 to enable the OFT to process applications within the 45-day period set out in the registration policy.

More information is available on our website including the level of fees payable: [www.oft.gov.uk/mlr](http://www.oft.gov.uk/mlr)

The FSA and HMRC require businesses that they supervise to register and are currently registering firms.

#### **4. WHERE CAN I FIND MORE INFORMATION**

##### **Q23. Where can I find more information on the OFT regime?**

More information is available on our website at [www.offt.gov.uk/mlr](http://www.offt.gov.uk/mlr)

or

if you cannot find the answer to your question on the website you can email us at [aml3@oft.gsi.gov.uk](mailto:aml3@oft.gsi.gov.uk).

Your trade association may also be able to assist you with further information and the Joint Money Laundering Steering Group has also produced guidance for credit businesses which can be found at [www.jmlsg.org.uk/bba/jsp/polopoly.jsp?d=754](http://www.jmlsg.org.uk/bba/jsp/polopoly.jsp?d=754) .

##### **Q24. Where can I find more information on the FSA regime?**

This will be available at [www.fsa.gov.uk](http://www.fsa.gov.uk)

##### **Q25. Where can I find more information on the HMRC regime?**

This will be available at [www.hmrc.gov.uk](http://www.hmrc.gov.uk)