

# THE MONEY LAUNDERING REGULATIONS 2007 SUPERVISION BY THE OFT

## Frequently Asked Questions

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## 1. INTRODUCTION

The aim of the Money Laundering Regulations (the Regulations) is to deter, detect and disrupt financial crime and the funding of terrorism through requirements placed on business to monitor and report suspicious activity to the Serious Organised Crime Agency (SOCA).

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, and
- 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.

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. If you are uncertain as to who acts as your supervisor see the flowchart attached at annexe A.

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 the OFT. The answers to these FAQs represents the views of the OFT as a Supervisory Authority under the Regulations. It is not a determinative statement of the law and should not be relied upon as a substitute for legal advice. Only the courts can interpret the law definitively.

As the OFT proceeds with registration it is likely that these FAQs on supervision will be updated on a regular basis. If these FAQs do not answer your question here then 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.offt.gov.uk/mlr](http://www.offt.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 lettings agent – am I supervised by the OFT?**

No. If you are a letting 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.

**Q5. 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.

**Q6. I am a re-location agent am I supervised by the OFT?**

Yes. 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.

**Q7. 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. Solicitors are regulated by the Solicitors Regulatory Authority (SRA) part of the Law Society of England and Wales.

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

**Q8. I am an estate agent and all my customers have bank accounts so why should I be covered by the Regulations?**

You are a central party to the property transaction and in general you meet both the buyer and seller face to face. This will enable you to be in a good position to spot any behaviour giving rise to suspicions of money laundering.

**Q9. 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 the Law Society.

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)**

### **Q10. 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. 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.

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.

### **Q11. 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 so you will not be supervised by the OFT.

### **Q12. I am a consumer credit lender whose parent company is supervised by the FSA so 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 is not then you will be supervised by the OFT.

**Q13. 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).

**Q14. I am a payday lender – am I supervised by the OFT?**

Some payday lenders will be supervised by the OFT (see Q13 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).

**Q15. 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.

**Q16. 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?**

#### **Q17. 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 will introduce a registration scheme at the end of July. 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 can seek to prosecute and we can impose civil financial penalties. See the OFT's Enforcement Principles on our website OFT1094 for more details of our approach to enforcement.

#### **Q18. 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.

#### **Q19. Do I need to register with the OFT?**

All businesses supervised by the OFT will be required to register with us from the 31 July this year. More information is available on our website including the level of fees payable: [www.of.gov.uk/mlr](http://www.of.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**

##### **Q20. Where can I find more information on the OFT regime?**

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

or

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

##### **Q21. Where can I find more information on the FSA regime?**

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

##### **Q22. Where can I find more information on the HMRC regime?**

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