

MONEY LAUNDERING GUIDANCE
FOR PROPERTY PROFESSIONALS

National Federation of Property Professionals

Royal Institution of Chartered Surveyors

Association of Relocation Professionals

Consultation Draft

January 2010

GLOSSARY

AGENTS/AGENCY: Estate agents/estate agency, see below.

ARP: Association of Relocation Professionals.

AML: Anti Money Laundering.

EEA: Estate Agency Act 1979.

Estate Agents: as defined in the Estate Agency Act 1979, which including sales and buying agents and auctioneers.

FSA: Financial Services Authority.

ML: Money Laundering.

MLR: Money Laundering Regulations (2007).

NFOPP: National Federation of Property Professionals.

OFT: Office of Fair Trading.

PEP: A Politically Exposed Person is an individual who holds, or who has held in the previous year, had a prominent public function, entrusted by a foreign country , or community institution, or international body. Examples of PEPs include heads of state, head of government, ministers, members of parliaments, members of the supreme or constitutional courts or other high level judicial bodies, ambassadors and high ranking officers in the armed forces. The definition of PEPs extends to cover immediate family members and known close associates.

RICS: Royal Institution of Chartered Surveyors.

SAR: Suspicious Activity Report.

SOCA: Serious and Organised Crime Agency.

INTRODUCTION

This guidance has been jointly authored by the NFOPP, RICS and ARP. This guidance replaces all previous AML guidance published by the authors. This guidance is intended to provide a general introduction to AML with the primary purpose of helping property professionals develop their policies and procedures. However, this guidance does not ameliorate the necessity for legal advice if money laundering or terrorist financing is known or suspected.

Part 1 covers the Proceeds of Crime Act (2002) and the Terrorism Act (2000) and other associated legislation. The majority of the criminal offences arising from these pieces of legislation apply to all property professionals, and therefore all property professionals who belong to NFOPP, RICS, or ARP, must take Part 1 into consideration. This Part includes some Frequently Asked Questions

Part 2 covers the MLR. This guidance is intended to complement the Core Guidance on the ML Regulations 2007 published by the Office of Fair Trading (OFT) which is available from [OFT](#). Where appropriate web links are provided to the Core Guidance. The MLR came into force on 15 December 2007 and implemented the Third European Money Laundering Directive. The MLR apply to all estate agents (including real property auctioneers and buying agents), and therefore all estate agents who belong to the NFOPP, RICS, or ARP, must take Part 2, and the OFT's Core Guidance, into consideration. Part 2 may also assist other property professionals who may wish to comply with the MLR as a matter of best practice. This Part includes some Frequently Asked Questions.

Part 3 is sector specific guidance for a diverse range of disciplines. In common with the rest of the guidance, property professionals are encouraged to read this part widely whichever particular disciplines they or their firm undertakes.

It is very likely that this guidance will be taken into consideration by a prosecuting authority in their decision whether or not to prosecute a property professional who belongs to NFOPP, RICS, or ARP, for the relevant criminal offences, and by any court considering whether to convict a property professional of such an offence. However, to provide added security and certainty for property professionals, this guidance is currently being considered for formal approval by HM Treasury¹.

¹ For the purposes of section 330(8) and section 331(7) of the Proceeds of Crime Act, and ML Regulation 45 (8).

PART 1
LEGISLATION

There are two pieces of criminal law of which all property professionals need to be aware:

- 1. The Proceeds of Crime Act 2002**
- 2. The Terrorism Act**

1. PROCEEDS OF CRIME ACT (2002)

1.1.1 Definitions

An important first step in understanding POCA is understanding the breadth of definitions which are used in the Act:

Criminal conduct

For both UK conduct and overseas conduct it is irrelevant when the conduct occurred.

(1) UK conduct

Criminal conduct is conduct which constitutes an offence in any part of the United Kingdom, or

(2) Overseas conduct:

There are complicated provisions relating to when overseas conduct falls within POCA or outside of POCA.

If the property professional knows, or believes on reasonable grounds, that the activity which has been committed in a country or territory outside the UK is not unlawful under the criminal law then applying in the country or territory concerned, then it usually falls outside of the definition of criminal conduct and therefore outside of POCA, unless it is punishable by imprisonment for a maximum term in excess of 12 months in any part of the United Kingdom if the activity occurred in the UK.

However, the following remain outside of the scope of POCA:

- offences under the Gaming Act 1968;
- offence under the Lotteries and Amusements Act 1976; or
- offences under sections 23 or 25 of Financial Services and Markets Act

Criminal property

Criminal property is a person's benefit from criminal conduct, but because this definition is used in relation to the reporting obligations property is only criminal property if the alleged money launderer knows or suspects that it constitutes or represents such a benefit.

1.1.2 The principal offences

All property professionals are at risk of committing these offences, although there are defences available:

Section 327- Concealing, disguising, converting, transferring, and removing criminal property;

Section 328 - Entering into an arrangement which you know or suspect helps someone else to acquire, retain, use or control criminal property; or

Section 329 - Acquiring, using or taking possession of criminal property yourself.

Property professionals may commit these offences by facilitating transactions, including by conducting negotiations. A money laundering offence can be committed without actually handling the funds.

1.1.3 *Appropriate consent*

There is a defence of 'appropriate consent' to these offences. Who should apply for appropriate consent differs for property professionals who are inside or outside the regulated sector, and for MLROs and employees, see Appendices I and II. Although it is possible to make retrospective reports about money laundering that has already taken place if there is a reasonable excuse for not reporting earlier, it is better to report before the money laundering occurs in order to obtain consent in advance.

Appropriate consent can be requested on the standardised SAR form produced by SOCA. [web link to be added]

There is a statutory timetable for appropriate consent:

(i) Notice period

SOCA has 7 working days (excluding weekends and bank holidays) to either give or refuse appropriate consent for continuation with the transaction. If no response is received the transaction may continue.

(ii) Moratorium Period

If consent is refused by SOCA during the Notice Period the reporter must wait up to 31 days (including weekends and bank holidays), to complete the transaction. Again, if no response is received the transaction may continue.

As appropriate consent is structured around a strict timetable property professionals are advised to keep a record of when they submit a SAR to SOCA, see paragraph 1.3.13 for more information about how to make a SAR.

The vast majority of requests for appropriate consent for on-shore UK property transactions are granted. Details of how decisions are reached on appropriate consent is available from Home Office circular 029/2008 [Home Office circular](#).

Sanction: Maximum 14 years custody.

1.1.4 Failure to Report

The Section 330 and 331 failure to report offences apply to the regulated sector, which means those who are subject to the ML Regulations. These offences apply when knowledge or suspicion is formed as result of business conducted in the regulated sector (including conducting agency) but a report isn't made to the MLRO or SOCA. Those subject to these offences may also be prosecuted for failure to report when there are reasonable grounds for knowing or suspecting money laundering. Part of the reasoning behind applying this higher expectation to those in the regulated sector is that they should have benefitted from training because of the application of the MLR.

Section 332 is a failure to report offence which applies to MLROs outside of the regulated sector who are voluntarily appointed.

Section 330: Failure to disclose: regulated sector

A person commits an offence if he knows or suspects, or has reasonable grounds for knowing or suspecting that another person is engaged in money laundering but he does not make the required disclosure as soon as is practicable after the information or other matter comes to him. Incompetence or negligence are not sufficient excuses for failing to report

The objective definition of suspicion could be met when there are demonstrated to be facts or circumstances, known to the member of staff, from which a reasonable person engaged in a business subject to the ML Regulations would have inferred knowledge, or formed the suspicion, that another person was engaged in money laundering or terrorist financing.

To defend themselves against a charge that they failed to meet the objective test of suspicion, staff within regulated sector (including agents) would need to be able to demonstrate that they took reasonable steps in the particular circumstances, in the context of a risk-based approach, to know the customer and the rationale for the transaction, activity or instruction

The regulated sector is expected to have the knowledge that a reasonable person in their position/sector would have. However, agents are not expected to have the same knowledge on say tax affairs as an accountant would, nor the same legal knowledge as a solicitor, but they would be expected to exercise a reasonable level of care and diligence.

Section 331: Failure to disclose: nominated officers in the regulated sector

An MLRO commits an offence if he knows or suspects, or has reasonable grounds for knowing or suspecting that another person is engaged in money laundering but he does not make the required disclosure as soon as is practicable after the information or other matter comes to him.

Section 332: Failure to disclose: other nominated officers

An MLRO commits an offence if he knows or suspects that another person is engaged in money laundering (as a result of an internal disclosure made to him by a colleague) he does not make the required disclosure as soon as is practicable after the information or other matter comes to him.

Sanction : Maximum 5 years custody.

1.1.5 Tipping Off

These offences relate to the secrecy of SARs.

Section 333: Tipping Off

A person commits an offence if he knows or suspects that a money laundering report has been made, and he makes a disclosure which is likely to prejudice an investigation.

Section 342: Offences of prejudicing an investigation

It is an offence to prejudice an investigation by informing the person who you know or suspect is under suspicion, or any third party, that a disclosure has been made either internally or externally to the relevant authorities, or that the authorities are acting or are proposing to act in connection with an investigation into money laundering. It is also an offence to falsify, conceal, or destroy, documents relevant to such investigations.

Sanction: Maximum 5 years custody.

2. TERRORISM ACT (2000)

1.2.1 Definitions

An important first step in understanding the Terrorism Act is understanding the breadth of definitions which are used in the Act:

Terrorism

The definition used in the Terrorism Act (2000) is the use or threat of action where the use or threat is designed to influence the government or to intimidate the public or a section of the public, and the use or threat is made for the purpose of advancing a political, religious or ideological cause. This may involve:

- Serious violence against a person
- Serious damage to property
- Endangers a person's life, other than that of the person committing the action

- Creates a serious risk to the health or safety of the public or a section of the public, or
- Design to seriously interfere with or seriously disrupt an electronic system.

Terrorist property

The Terrorism Act includes an offence of money laundering which requires ‘terrorist property’ which is defined as:

- Money or other property which is likely to be used for the purposes of terrorism (even if its original source is legal)
- Proceeds of the commission of acts of terrorism

1.2.2 Principal Offences

Section 15: Fundraising

It is an offence to be involved in fundraising if you have knowledge or reasonable cause to suspect that the money or other property raised may be used for terrorist purposes. You can commit the offence by:

- Inviting others to make contributions
- Receiving contributions
- Making contributions towards terrorist funding, including making gifts and loans.

Section 16: Use of possession

It is an offence to use or possess money or other property for terrorist purposes, including when you have reasonable cause to suspect they may be used for these purposes.

Section 17: Arrangements

It is an offence to become involved in an arrangement which makes money or other property available to another if you know, or have reasonable cause to suspect it may be used for terrorist purposes.

Section 18: Money laundering

It is an offence to enter into or become concerned in an arrangement facilitating the retention or control of terrorist property by, or on behalf of, another person including, but not limited to the following ways, by:

- Concealment

- Removal from the jurisdiction
- Transfer to nominees

Sanction: Maximum 14 years custody.

1.2.3. Section 21: Co-operation with the police & Section 21ZA Arrangements with prior consent

These sections provide a similar mechanism to appropriate consent in POCA for the section 15-18 terrorism offences, see paragraph 1.1.3. However, this procedure only includes a Notice Period and not a Moratorium Period. It is possible to make retrospective reports, if there is a reasonable excuse for not reporting earlier.

1.2.3 Failure to disclose

Section 19- Failure to disclose

If a person believes or suspects that another person has committed an offence under any of sections 15 to 18, and bases his belief or suspicion on information which comes to his attention in the course of a trade, profession, business or employment, the person commits an offence if he does not disclose to a constable as soon as is reasonably practicable:

- His belief or suspicion, and
- The information on which it is based

Section 21A – Failure to disclose: regulated sector

A person commits an offence if he knows or suspects, or has reasonable grounds for knowing or suspecting that another person has committed an offence under any of Sections 15 to 18 of the Terrorism Act 2000, and the information or other matter on which knowledge of suspicion is based or which gives reasonable grounds for such knowledge or suspicion, came in the course of business in the regulated sector (agency), and a disclosure is not made as soon as is practicable. Incompetence or negligence are not sufficient excuses for failing to report

Sanction : Maximum 5 years custody.

1.2.4 Tipping Off

Section 21D: Tipping off regulated sector.

It is an offence to disclose to a third person that a SAR has been made by any person to the police, HM Revenue and Customs, SOCA or a nominated officer, if that disclosure might prejudice any investigation that might be carried out as a result of the SAR. It is also an offence to disclose that an investigation into allegations relating to terrorist property offences is being contemplated or carried out if that disclosure is likely to prejudice that investigation.

The offence can only be committed if the information on which the disclosure is based came to the person in the course of business in the regulated sector (including agency).

However, it is not an offence if an employee, officer or partner of a firm discloses that a SAR has been made if it is to an employee, officer or partner of the same undertaking.

Sanction: Maximum 3 months custody.

1.2.5 Corruption

Corruption is related to money laundering and to professional ethics. One of the best ways to avoid getting in trouble for corruption is to abide by the ethical rules which apply to your profession and/or your membership of a professional body.

The relevant legislation currently in force is the Prevention of Corruption Acts 1889-1916, and common law offences of corruption. At present the maximum sanction for corruption up to seven years in custody.

However, the Bribery Bill was introduced by the Government on 19 November 2009 and, if it is enacted, it will replace the current legislation.

If passed into legislation the Bill will:

- Make it a criminal offence to give, promise or offer a bribe and to request, agree to receive or accept a bribe either at home or abroad. The measures cover bribery of a foreign public official.
- Introduce a corporate offence of failure to prevent bribery by persons working on behalf of a business. A business can avoid conviction if it can show that it has adequate procedures in place to prevent bribery.
- Increase the maximum penalty for bribery from seven to 10 years' imprisonment, with an unlimited fine.

The Bill is available from: [Corruption Bill](#)

1.2.6 Financial Sanctions

Everybody in the UK is subject to the financial sanctions regime, whether they work inside or outside of the regulated sector.

Under The Al Qaida and Taliban (United Nations Measures) Order 2006 you must not:

- Deal with the funds or economic resources of designated persons
- Make funds and economic resources available, directly or indirectly for the benefit of designated persons.

Under the Terrorism (United Nations Measures) Order 2009, you must not:

- Deal with the funds or economic resources of a designated person
- Make funds, financial services or economic resources available, directly or indirectly to a designated person
- Make financial services or economic resources available to any person for the significant benefit of a designated person

Finally, you must not knowingly and intentionally participate in activities that would directly or indirectly circumvent the financial restrictions, enable, or facilitate the commission of any of the above offences.

It is a defence if you did not know nor had no reason to suspect that you were undertaking a prohibited act with respect to a designated person. Please see Appendix III for more information.

3. Frequently Asked Questions

1.3.1 What is money laundering?

Money laundering can be committed by sophisticated criminals intent on disguising significant proceeds which they have earned from acquisitive crimes. Money laundering can take place through a web of transactions, perhaps involving multiple accounts and overseas transactions, which it may be difficult for the police to follow. However, money laundering can be far less sophisticated, involving small amounts of dirty money arising from omissions and false disclosures, such as tax evasion or mortgage fraud, and involve a single transaction which doesn't alter the visibility or otherwise of the dirty money to law enforcement.

Remember that a money laundering offence can be committed by a property professional without actually handling the funds themselves. The involvement of others, such as lending institution or lawyer, will not necessarily be a complete defence for property professionals.

1.3.2 What is 'criminal property'?

POCA refers to the proceeds of crime as criminal property. Criminal property is often mixed with clean funds, but this does not alter its illegal status.

Any type of acquisitive crime which takes place in the UK gives rise to criminal property and therefore money laundering. Special rules apply if the underlying crime took place overseas, see the section on 'criminal conduct' below.

1.3.3 Is tax evasion relevant to money laundering?

Yes. Tax evasion is a criminal offence and therefore is one of the underlying crimes that lead to money laundering. Property professionals need to be wary when property prices are set just below a stamp duty threshold, perhaps by manipulating the purchase price for fixtures and fittings. Although purchasing property or land, especially woodland, can be a legitimate way to mitigate inheritance tax, property professionals need to be careful that this provision is being exercised legitimately. A good way for property professionals to make sure they aren't getting mixed up with anything illegal is to ask to see the tax advice which has been obtained, which has prompted the transaction.

1.3.4 How can money laundering occur in property transactions, or how can property professionals come to know or suspect money laundering?

The broad definition of money laundering in POCA increase the risk of property professionals being at risk of money laundering. For this reason it is necessary for property professionals to be wary of all types of crime that may be connected to the sale and purchase, or letting, of property, especially the crimes that may be related to the financing of these transactions. The examples given below are intended to assist property professionals with their own risk assessments but they are not exhaustive:

- Criminal property can be used as full or partial consideration for the purchase of a property, or to pay rent, e.g. proceeds of drug dealing, prostitution, or human trafficking. Funds held on deposit with financial institutions aren't necessarily clean.
- As mortgage fraud involves obtaining funds illegally from lenders this is also money laundering.
- If a landlord isn't complying with the legal requirements (which may amount to a criminal offence if breached) which may be saving him funds.

These broad risk areas apply to almost all property disciplines and may be subtle in their application, e.g. if somebody has not been paying their tax correctly, or has been improperly claiming welfare benefits, and this criminal activity has helped them pay their mortgage. Lettings agents need to take into consideration that landlords use mortgages and their own funds to buy-to-let.

Remember it doesn't matter when the crime occurred, so even if the crime occurred before a property professional was instructed it is a factor the professional must take into account.

The FAQ section below outlines some warning signs of money laundering, and agents should also take into consideration the information available on the OFT and SOCA's web site, e.g. SOCA's document entitled *Identifying Risks to your Business & Reporting Suspicious Activity* which is available from [OFT Leaflet](#).

1.3.5 What is the difference between the legislation and the regulations, and who do they apply to?

The majority of the criminal offences in the legislation, the Proceeds of Crime Act and Terrorism Act, which are outlined in Part 1 below apply to all individuals, including all property professionals. However, there are some specific offences which only apply to the 'regulated sector', which means those who must comply with the regulations including estate agents (which includes property auctioneers and buying agents). Part 1 outlines all of the offences, and when appropriate makes it clear that an offence only applies to the regulated sector/estate agents.

The MLR apply to estate agents as defined in the Estate Agents Act 1979. This includes all sales agents, property auctioneers, and buying agents. The sectors who must comply with the MLR are known as the 'regulated sector'. Lettings agents and block management agents are not subject to the MLR, although they may wish to comply with the MLR as a matter of best practice².

² It is possible that lettings agents who get involved in the sale of leases for a premium are all within the statutory definition of an estate agent, and therefore are subject to the Regulations.

1.3.6 Do I need to join the OFT's new anti money laundering register?

The OFT is the AML supervisor for estate agents, including sales agents, property auctioneers, and buying agents, who fall within the definition of estate agency in section 1 of the Estate Agents Act 1979. This definition excludes lettings agents. The registration fee for 2009/2010 is £115 per office premises, up to a cap of 20 offices premises.

If your firm already has an AML supervisor, for example the financial services element of your business is supervised by the FSA, then you should contact the OFT to ask for clarification as to whether you need to register: amld3@oft.gsi.gov.uk or 0207 211 8200. Since 31 January 2010 it has been a criminal offence if they continue to provide estate agency services without registration.

1.3.7 What is tipping off?

Provided matters are handled sensitively these offences are not committed by:

- Making normal enquiries
- A standard paragraph in all terms of business about money laundering
- Refusing to act for a client

Questions which are sensibly put and which do not refer to money laundering are unlikely to be tipping off. Failure to accept instructions, or failure or delay in progressing transactions, are similarly not tipping off.

1.3.8 Will my report remain confidential?

The Home Office Circular 53/2205 provides some assurances for reporters about the confidentiality of their reports. [Home Office circular](#)

1.3.9 What risks should I look out for to help me and my colleagues spot suspicious behaviour?

Risk can be categorised into country or geographic risk; customer risk; and transaction risk.

Some warning signs are set out below- this is by no means an exhaustive list but these warning signs are general indicators of what could be suspicious dependent upon the surrounding circumstances.

- Transactions which are not at arm's length /not between independent parties.
- No apparent reason for using the firm, for example the scale of the transaction or location of the property suggests that another firm would have been better placed to act;

- A transaction is carried out for less than the market value (for example the estate agent or auctioneer may be asked to offer a property at below its market value)
- Settlements in cash after, or as part of, a large transaction (could be tax evasion , or avoidance of a confiscation order/insolvency/a matrimonial settlement)
- A request that the estate agent or auctioneer hold large sums of money in their client account for no apparent reason, which is then refunded;
- A consumer declines services or facilities that you would normally expect them to find attractive. This may indicate a bogus transaction.
- Checking client identity proving to be difficult- is their reluctance justifiable or exaggerated?
- Clients or third parties are unable or reluctant to show, on request, the source of their funds/provenance of funds.
- Either party trying to use intermediaries to protect their identities or to hide their involvement, especially if the intermediary is not subject to adequate or any anti money laundering controls themselves.
- Funds from the sale of a property going overseas or to an unknown third party.
- A significant and unexpected improvement in financial position- particularly where buyers are unable to give any proper explanation for their increased funds.
- Purchases or sales at prices which are significantly above or below market price, or a transaction which appears uneconomic or inefficient;
- The pattern of the transaction inexplicably changes
- There is involvement of a high risk countries.
- The transaction progresses at an unusual speed- beware of requests for unusually expedited transactions;
- There are successive transactions, especially of the same property in a short period of time with unexplained changes in value
- There is introduction of unknown parties at a late stage of transactions
- The property value is not in the profile for the consumer
- There are unusual sources of funding – use of complex loans or other obscure means of finance, versus loans from regulated financial institutions;
- There are unexplained changes in financial arrangements

- PEPs.
- If an owner/landlord/builder is not fully complying with their legal obligations this may result in a saving. If the relevant legal obligation is criminalised if breached this saving may represent criminal property and therefore money laundering.

1.3.10 How can property professionals become involved in corruption?

Property professionals can be vulnerable to bribes because of the role they play in facilitating transactions and in checking that owners or builders are complying with the applicable legislation, e.g. property professionals may be offered bribes to provide false certifications of compliance, or to improperly influence planning decisions, or to over or under value a property, or in the case of block and facilities managers to unfairly award maintenance contracts. Overseas construction projects, including engineering projects, which involve countries where bribery is an acceptable way to do business, including bribery of public officials, may be particularly vulnerable.

Hydrographic, minerals, and waste management surveyors may need to be aware of the risks of corruption.

1.3.11 How can I minimise the risk of my client account being used for money laundering?

Money laundering is defined widely, and property professionals it is not necessary for property professionals to handle the funds for them to become to commit an offence of money laundering. One of the ways property professionals can try and minimise the risk of money laundering is to only hold monies that directly relate to property transactions they are handling.

1.3.12 Are there any considerations which need to be borne in mind if a report is made?

Yes. Firstly it's important not to tip off. Carefully consider who you talk to about the issue. Under no circumstances should the suspected person be told that a report has been made about them.

The circumstances of all other transactions involving the same suspected person, both historic and future, need to be reviewed and if necessary reports made. The MLRO should give very careful thought before agreeing to act in new transactions for the suspected person.

1.3.13 How to make a SAR?

On-line

The SOCA web site includes a section relating to on-line submission of SARs. The first step is registration. The benefit of on-line submission is that it automatically generates emailed confirmation of receipt, with a SAR Online reference number.

Hard copy

SARs can still be submitted in hard copy, although they should be typed and on the preferred form.

[web link to be provided]

If the form isn't used, agents should use their letter headed paper.

SARs submitted in this way aren't acknowledged.

If you require consent, you should send by fax not by post.

UK FIU
PO Box 8000
London SE11 5EN

Fax: 020 7238 8256

Limited Intelligence Value

If SARs fall relate to certain categories of crimes, and appropriate consent is not required a limited intelligence value report can be made. Further information about when and how to submit a LIV report is available from [add web link].

1.3.13 Will I receive feedback on my SAR?

SOCA should provide feedback to reporters on the first SAR they submit, and any further SARs made in the six months following their first SAR.

This approach helps SOCA monitor whether the feedback they have given has subsequently being followed.

1.3.14 What do I need to do if I know or suspect money laundering?

If you are an employee you should immediately make a report to your MLRO, if you have one, and talk to them about how you should handle the transaction. If you are an employee you need to consider making a report yourself, and you may benefit from confidentially speaking with your professional body, see Appendices I & II.

If you are the MLRO, and you form knowledge or suspicion yourself, or as a result of a report made to you by a colleague, then you should report to SOCA. Remember you will need to consider how to handle any ongoing transaction for the suspected person, including whether you need appropriate consent, and also consider whether you need to report an historic transactions which your firm has handled for the suspected person.

If you decide not to report for any reason, keep a confidential note of why you made this decision.

1.3.15 Although I belong to one of the authoring bodies I am based overseas, so are these requirements relevant to me?

If you are based overseas neither the regulations nor the legislation applies to you, but you should make yourself aware of the requirements of your host country.

1.3.16 I am based in the UK and I deal with clients who are also based in the UK, but in relation to property which is overseas. Are these requirements relevant to me?

As you are based in the UK the legislation applies to you. The Regulations may also apply to you if your activities fall within the relevant definitions.

1.3.17 I am based overseas and I deal with clients who are based in the UK. Are these requirements relevant to me?

No, but you should be aware of local AML requirements. [Cross reference Regulation 20]

1.3.18 Is fraud relevant?

Yes, particularly intermediary mortgage fraud. If property professionals suspect intermediary mortgage fraud it should be reported to SOCA as money laundering, and the property professional may also wish to use the FSA's whistle blowing line to report the intermediary direct to his regulator: 0207 066 9200.

PART 2

THE MONEY LAUNDERING REGULATIONS 2007

2.1 Requirements

The MLR outline compulsory preventative measures which are compulsory for some business activities, including for agents as defined by the EEA, which includes both sales agents, property auctioneers, and relocation agents.

The requirements of the regulations are:

- Customer Due Diligence
- Training
- Appointment of an MLRO
- Policies and procedures
- Records
- Ongoing Monitoring

The following guidance is intended to complement the Core Guidance on the ML Regulations 2007 published by the Office of Fair Trading (OFT) which is available from [OFT](#). Where appropriate web links are provided.

2.1.1. Customer Due Diligence

For the purposes of the ML Regulations your customer is the person or legal entity who instructs you, who you may refer to as your client. For sales agents this will usually be the vendor. For relocation agents this will be usually be the prospective buyer.

However both buyers and sellers can pose money laundering risks, and on this basis you may wish to conduct due diligence on the counterparty to the transaction, as well as in relation to your own customer/client. In fact sales agents often conduct due diligence on prospective buyers on behalf of their seller clients.

Although the material below is limited to identification, customer due diligence is a wider concept. As part of their risk assessments property professionals should make wider checks, and this is often best approached by including basic enquiries as part of the normal relationship, e.g. why do you wish to move? What do you do for a living? etc. Property professionals must use their professional judgement when determining the depth of their enquiries. It may be useful to use third party sources of information, e.g. the internet. It can

be helpful to combine all that is known about an individual or entity when making a judgement as to the level of risk they pose.

Individuals as clients

The OFT's guidance outlines the two stages of the identification process [paragraph 6.31-6.36]. Traditional checks on documents and/or the use of electronic software are both acceptable methods. The Joint Money Laundering Steering Group's guidance provides some useful hints on how to choose an electronic software provider if that is your preferred method, www.jmlsg.org.uk.

If documents are used, for most transactions and clients the following government issued documents will suffice:

- Valid passport
- Valid photo card driving licence
- National identity card
- Firearms certificate
- Identity card issued by the Electoral Office for Northern Ireland

If a client doesn't have any of these documents, then the OFT's guidance includes examples of alternative documents which may be used. If these documents are also unavailable property professionals are encouraged to take an imaginative approach in deciding whether what is available is acceptable in their professional judgement.

Organisations as clients

If you act for organisations then there are particular considerations which apply to the due diligence process.

Beneficial ownership

Beneficial owners are the individuals or entities who ultimately own or control the customer or on whose behalf a transaction or activity is being conducted. Different definitions apply to bodies corporate and partnerships, trusts, and legal entities or arrangements which administer or distribute funds. In the case of an estate of a deceased person in the course of administration, the beneficial owner means:

- The executor (original or by representation) or administrator for the time being of a
- Deceased person in England, Wales or Northern Ireland
- The executor for the purposes of the Executors (Scotland Act) 1900 in Scotland.

Further information can be obtained from paragraphs 6.4-6.8 of the OFT's Core Guidance, which is available from [OFT](#).

Simplified Due Diligence

It is not necessary to make identification checks on certain categories of customers. Some lenders may fall within the relevant definitions. Further information can be obtained from paragraphs 6.15-6.17 of the OFT's Core guidance which is available from [OFT](#).

Enhanced due diligence

Enhanced due diligence is required for a number of categories of clients, including if the customer isn't physically present, or where the customer is a Politically Exposed Person. Policies and procedures should outline the firm's approach to when they will check whether a client is PEP, how those checks will be carried out, and what will happen if it is established that a client is as PEP, which must include approval for the business relationship to be entered into by a senior manager.

These additional measures may include obtaining additional information, and /or ensuring that the first payment is made through a bank account held in the customer's name.

Reliance

For the purposes of Customer Due Diligence property professionals can rely upon an auditor, insolvency practitioner, external accountant, tax adviser or independent legal professional provided that they consents to being relied on. However, the property professional will remain liable for any failure to apply such measures. Property professionals cannot be relied upon by others because they are excluded from the relevant provisions.

2.1.2 Training

All relevant employees must be made aware of the law relating to money laundering and terrorist financing. Relevant employees include, as a minimum, all staff who deal with finances and who have contact with clients. It is likely that senior managers and directors will also need to have a broad understanding of the subject. The level of training provided to individuals needs to be appropriate to both the money laundering risk posed by individual's role. Where staff move between jobs, or change responsibilities, their training needs may change. Ongoing training should be given at appropriate intervals to all relevant employees

Staff must also be regularly given training in how to recognise and deal with transactions and other activities that may be related to money laundering and terrorist financing. It's possible that different staff may be trained to a different depth. MLROs need to be trained in significant depth.

We recommend that businesses should keep:

- A copy of the training materials or details of who has provided training if it is delivered externally
- A list of who has undergone training and their signature to that effect
- A schedule for refresher training.

2.1.3 Money Laundering Reporting Officer

The role of the MLRO is responsible for:

- Receiving internal suspicious activity reports from within the business
- Deciding whether these should be reported to SOCA; and
- If appropriate making such reports to SOCA.

Sole traders with no employees are not required to appoint a nominated officer but are still required to make suspicious activity reports to SOCA. Sole traders with no employees, will be, by default, the nominated officer.

As the availability of an MLRO is a continuous requirement firms need to ensure that an alternative MLRO is available is the primary MLRO is ever uncontactable.

2.1.4 Policies and procedures

This guidance gives advice as to the type of information that policies and procedures should contain but this is not an exhaustive list as business models vary. Documented policies and procedures are important as they ensure that the systems are applied consistently and they enable a business to demonstrate its knowledge of, and compliance with, the Regulations. Policies and procedures must be appropriate and risk-sensitive and achieve full compliance with the Regulations. The Regulations have established this approach so that the regulated persons and businesses who are subject to the Regulations can focus their efforts where the risk of money laundering and terrorist financing is highest. The starting point should be an overall risk assessment of the vulnerability of the products and services being misused for money laundering.

Policies

Policies should demonstrate the business's commitment to a culture that will detect, deter and disrupt money laundering and terrorist financing regardless of the commercial implications. A high-level policy will focus the minds of staff on the need to be constantly aware of the risks of money laundering and terrorist financing and how they are to be managed.

Policies should reflect a commitment to:

- A risk sensitive approach to combating and preventing money laundering and terrorist financing
- Carrying out adequate customer due diligence checks, including, but not limited to, basic identification checks
- On-going monitoring
- Accurate record keeping and retention of records
- The reporting by all staff of any knowledge or suspicion they may have, or reasonable grounds for suspicion, to the Money Laundering Reporting Officer
- Staff training to assist them with their obligations to make reports
- That there will be an MLRO who will take responsibility for reporting externally to the SOCA as appropriate, and who will monitor the effectiveness of the policies and procedures, and review them as necessary
- There should be in place a system to require the Money Laundering Officer to report in high level terms to their senior management structure for review and assessment of risks in order that they can be effectively managed.

Procedures

A business must put in place achievable procedures to implement its anti-money laundering and counter terrorist financing policies. These procedures must be sufficiently detailed to allow staff to easily follow and understand them, but also be flexible enough to allow the MLRO sufficient discretion so that access to services is not unnecessarily refused. They should also be easily accessible to staff and cover:

- How to carry out customer due diligence measures, including the various ways to identify customer, including beneficial owners.³ This must include:
 - (a) enhanced due diligence⁴ measures for those considered to be higher risk such as PEPs or non face to face transactions where appropriate; and
 - (b) organisational customers which need only be subject to simplified due diligence⁵.

³ Regulation 6 defines 'beneficial owner' in detail but in summary it the beneficial owners are the individuals or entities who ultimately own or control the customer/client or on whose behalf a transaction or activity is being conducted.

⁴ Regulation 14

⁵ Regulation 13

- Identification and scrutiny of unusual transactions and unusual customer behaviour in order to consider whether there are reasonable grounds for knowing or suspecting that money laundering or terrorist financing may be taking place including:
 - (a) complex or unusually large transactions
 - (b) unusual patterns of transactions which have no apparent economic or visible lawful purpose
 - (c) any other activity which you regard as particularly likely by its nature to be related to money laundering or terrorist financing
 - (d) the records to be kept, how long they should be kept and how to keep them. These records are detailed in Regulation 19 and include:
 - (i) a copy of, or the references to, the customer's identity documents , or evidence produced by electronic software used to check customer identity supporting records (originals or copies) of customers transactions
 - (ii) when and how to conduct ongoing monitoring of transactions and activity of customers
 - (iii) how to make an internal report to the Money Laundering Reporting Officer
 - (iv) how to make a report to SOCA
 - (v) when and how monitoring and review of the policy and procedures takes place.

2.1.5 Records

Records must be kept of the client's identity, and of the transaction, for five years after the business relationship ends. Property professionals are required to keep to certain records for tax purposes for six years.

2.1.6 Ongoing Monitoring

Ongoing monitoring is particularly relevant for relationships of a significant duration. Checks should not be made and then forgotten as risk levels can change over time. This means:

- (a) Scrutiny of transactions to ensure that the transactions are consistent with the relevant person's knowledge of the customer, his business and risk profile; and
- (b) Keeping the documents, data or information obtained for the purpose of applying customer due diligence measures up-to-date.

2.2 Risk

Businesses should ensure that policies and procedures used to prevent money laundering and terrorist financing are appropriate to the level of risk. This should allow businesses to be more efficient and effective in their use of resources and reduce unnecessary burdens on their customers.

Risk assessments should take into consideration the vulnerabilities posed by:

- The products and services provided
- Financing methods
- Customer/counterparty profile
- Geographical location of:
 - (i) the person or business providing the products and/or services,
 - (ii) the customers/counterparties, the transaction, and/or
 - (iii) the location of the source of finance.

Businesses must document the risks that they identify and how they intend to manage those risks, For estate agents this may include:

- The use of cash
- Customers who are reluctant to produce their identity documents
- Transactions which do not make economic sense

These examples are not exhaustive, and staff should be aware that there be logical explanations, and it is possible that management techniques can be applied which may either significantly reduce or extinguish the risk. MLROs should be consulted for advice and assistance by staff as necessary.

A UK entity must inform any overseas branches and subsidiaries of any policies and procedures which it has in place.

Sanction

Failing to comply with the regulations could lead to a prosecution which could result in unlimited fines and/or a prison term of up to two years. Failing to comply with the regulations could also result in civil financial penalties (a different sanction to prosecution leading to a fine)

2.3 Frequently Asked Questions

2.3.1 Is the provision of Home Information Packs covered by the Regulations?

No, HIPs are excluded. This exclusion is also very likely to apply to Home Reports in Scotland.

2.3.2. What is the risk based approach and how does it apply to me?

Property professionals who are subject to the Regulations must identify their customers. However, the extent of the identity checks, and the broader due diligence enquires made, may vary according to the risk. If the risk is lower then fewer checks are required, but of course if the risk is higher then more checks are required.

2.3.3 What is the enforcement policy of my supervisor?

Supervisory authorities such as the OFT are also expected to operate their compliance regimes in accordance with a risk based approach to supervision agreed by the Anti-Money Laundering Supervisors Forum available from [FSA](#)

The OFT has powers to require information from property professionals, to require their attendance, and of entry to premises with a warrant. Although these powers are limited to the OFT, the OFT intends to share its role with Trading Standards.

2.3.4 My firm provides financial services as well as estate agency. The FSA is the AML supervisor for the financial services part. Does the estate agency side of my business also need to register?

We are awaiting confirmation of the position from the OFT. Any firm in this situation should make contact with the OFT.

2.3.5 Where can I get help?

See Further Information section.

PART 3

SECTOR SPECIFIC GUIDANCE

Part 3 is sector specific guidance for a diverse range of disciplines. In common with the rest of the guidance, property professionals are encouraged to read this part widely whatever particular disciplines are undertaken by them or their firm.

3.1 Sales and Relocation Agents

3.1.1 Which property professionals are subject to the ML Regulations, and what are the registration requirements?

Estate agents (including real property auctioneers and buying agents) must comply with the ML Regulations, as defined in EEA section 1. This definition covers sales agents, buying (relocation agents), and auctioneers.

Those caught by the statutory definition of an estate agent need to register with the OFT.

3.1.2. Do I have to register if I'm already supervised for AML?

However, if property professionals are supervised by HMRC as an accountancy provider for letting this doesn't prevent you from having to register as a sales agent with OFT.

3.1.3. Can I leave everything to the solicitors who are going to process the transaction?

No. You must comply with the Money Laundering Regulations, and with POCA. Remember estate agents are often the first party to be instructed on a sale/purchase, and they also often meet sellers and buyers, which may help them assess whether the transaction is suspicious, e.g. not at arms length.

3.1.4 Are there specific risks which apply to overseas transactions?

Some countries pose a higher risk, see Transparency International Index. See further information section.

3.2 Auctioneers

3.2.1 Are real estate property auctioneers covered by the ML Regulations, and do they have to register with the OFT?

Property auctioneers must comply with the ML Regulations and they must register with the OFT.

3.2.2 Are personal property auctioneers covered by the ML Regulations, and do they have to register with HMRC as High Value Dealers?

Personal property auctioneers are High Value Dealers if they receive payment, or payments, in excess of 15,000 euro for a single transaction. High Value Dealers must comply with the Money Laundering Regulations when they deal with cash transactions of this value, and they must register with HMRC as High Value Dealers. Further information is available from [HMRC](#). There are initial registration fees of £120 plus £50.

3.2.3 Are there any specific money laundering risks which apply to personal property auctioneers?

Chattels auctioneers need to be aware that the chattels they are auctioning may be stolen or forgeries. The seller may also be attempting to deceive potential buyers about the provenance of the item to improperly inflate the price. In common with other high value goods, chattels may be used by criminals as a method of payment which it would be difficult for law enforcement to detect.

3.2.4 What are the implications of the Fraud Act for auctioneers?

The practice of auctioneers and third parties bidding on behalf of a seller on the seller's instructions may risk committing criminal offences under the Fraud Act (2006).

Certainly the practice of auctioneers and third parties bidding on behalf of sellers should not be applied to consecutive bids as this creates a false market.

3.3. Lettings Agents and Block Management

3.3.1 Do letting agents need to register with OFT or HMRC?

No.

3.3.2 Are lettings agents subject to the Regulations?

Letting agents who are involved in the sale of leases for a premium, as opposed to the payment of rent, may fall within the statutory definition of an estate agent and therefore may be subject to the Regulations.

3.3.3 What specific risks apply to lettings agents?

Letting agents should be aware of:

- Tenants using rented properties for illegal purposes, e.g. for prostitution, or the production of drugs.
- Landlords not complying with their legal obligations

3.3.4 What specific risks apply to block managers?

Block managers need to ensure that the way that they grant maintenance contracts is fair and transparent, to avoid allegations of corruption^[1], especially if the block manager has an interest in the company which is providing the maintenance services. Block managers need to be aware of the possibility of local cartels being formed which unfairly fix prices. Members of the NFOPP, ARP, and RICS, must comply with their rules of conduct in the way that they approach this issue.

3.3.5 Can lettings agents or block managers accept cash?

It is not illegal for agents to accept cash but this is discouraged because use of the banking system provides proof of payment and a clear audit trail. However, provided agents have adequate insurance, the decision whether or not to accept cash is a matter for letting agents' own discretion, albeit it is advisable to impose a sensible cash limit which is published.

^[1] Agents must be aware of their obligations to consult with leaseholders under the Commonhold and Leasehold Reform Act (2002).

3.4 Commercial Property

3.4.1 Do commercial agents need to register with the OFT?

Yes, because they fall within the statutory definition of an estate agent.

3.4.2 Are commercial agents subject to the Regulations?

Yes, because they fall within the statutory definition of an estate agent.

3.4.3 What particular risks does commercial property work pose?

Commercial property can range up to very high value projects. Emerging markets which are attractive to foreign investment may pose a higher risk.

3.5 Dispute Resolution

3.5.1 I conduct dispute resolution, e.g. as a mediator or arbitrator. Do I need to comply with the Regulations or join the OFT's register?

No, the Regulations and therefore the register do not apply to those who conduct dispute resolution. However, the legislation does apply.

3.5.2 What do I need to be aware of?

It is important to bear in mind that disputes may be fabricated as a cover for money laundering, or witnesses may be paid for giving false evidence. Of course you must not accept bribes yourself, and you must consider your position, including possibility reporting to the police, if you are offered a bribe

3.6 Machinery and Business Assets

3.6.1 I value machinery and business assets, e.g. when a company goes into administration or liquidation. Do I need to comply with the Regulations or join the OFT's register?

No, the Regulations and therefore the register do not apply. However, the legislation does apply.

3.6.2 I value machinery and business assets when firms go into administration. What do I need to be aware of?

Improper preference being given to some creditors which prejudices others, e.g. a new company buying assets to the detriment of other creditors.

3.7 Valuations

3.7.1 What particular risks apply to valuations?

Valuers need to conduct their work professionally and objectively, so that they cannot be accused of being improperly influenced in their decision making process. False valuations can provide a basis for mortgage fraud.

3.7.2 What's the best way to stay compliant?

Ideally, you should know your client, or at least as much about your client and the borrower as you can. You should be clear on the purpose of the valuation and the context of the transaction. Clear terms of engagement should assist in helping clients to understand the service on offer and the limitations of any ancillary services such as recommending other professions for further work. Instructions which come via an intermediary are generally considered to pose a greater risk than those coming direct from the lender. You should perform appropriate due diligence on any instructing intermediaries and the instruction itself.

3.7.3 Do different types of valuations pose different risk?

You should be aware of the risk posed by the types of valuations you undertake. Different levels of risk can be posed by the sector, lender and physical area of the valuation. You should re-examine any past files which you consider to have been high-risk and review which areas of work you will undertake in the future.

3.7.4. Is there anything else I should bear in mind?

Colleagues

You should be aware of the risks posed by staff and those wishing to infiltrate your firm. It is essential to perform due diligence on any new members of staff and ensure that an induction and monitoring programme is in place. Existing staff of all levels should be correctly supervised and employees should be vigilant colleagues who may be tempted to become involved with fraud. Staff receive regular training to ensure that they are aware of the potential for, and indicators of mortgage fraud.

If you are suspicious about a mortgage intermediary, you can report the individual to the FSA, who have set up confidential routes for lenders and valuers to report suspected cases of mortgage fraud involving intermediaries. Further details can be found at the following link:

[FSA](#)

Integrity of reports

You should take steps to prevent your reports from being altered. To protect the integrity of your reports, they should be signed and dated not have gaps where additional information can be inserted. Electronic reports should be appropriately protected, for example through the use of passwords, encryption and use of read-only format. You should keep a signed and dated version of the original report.

Members of the RICS can obtain further information from: [RICS](#).

3.8 Buying agents

3.8.1 What particular risks apply to buying agents?

All estate agents, including buying agents, need to be particularly conscious that individuals involved in high value transactions are more likely to be PEPs.

FURTHER INFORMATION

Members of the NFOPP may seek further assistance from :	Telephone: 01926 417790 Email : compliance@nfopp.co.uk
Members of RICS may seek further assistance from:	Telephone: 0207 695 1670 Email: regulation@rics.org
Members of ARP may seek further assistance from:	Telephone: 08700 737475.

Serious and organised crime agency

SOCA includes the Financial Intelligence Unit for the UK. Further information about the role of SOCA is available from: [SOCA](#)

International guidance

The Financial Action Task Force (FATF) is one of the International bodies which develops AML policy. The FATF has developed international guidance for real estate agents about how they can use they should take a risk based approach to AML. This guidance is available from: [FATF guidance](#).

High risk jurisdictions

Transparency International public a Corruption perception index available from:

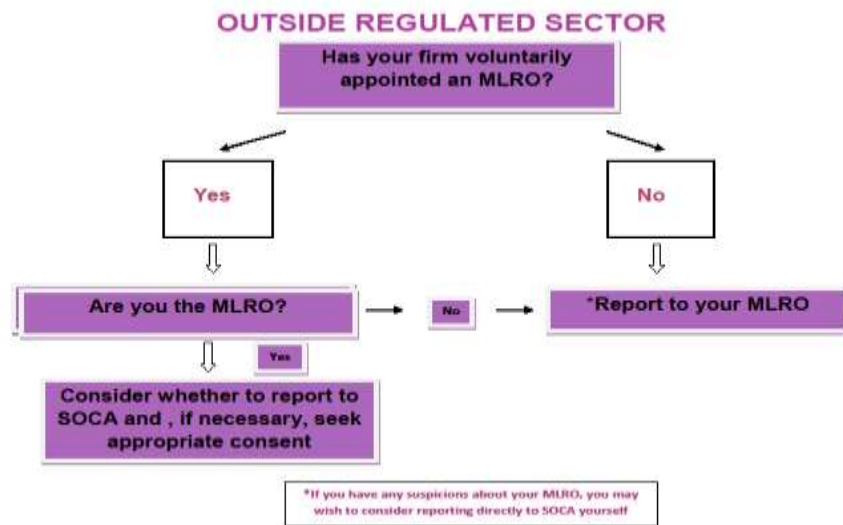
http://transparency.org/policy_research/surveys_indices/cpi/2009

The Financial Action Task Force also publishes information on its web site to do with Non Co-Operative Countries and Terrorities, www.fatf-gafi.org.

Appendix I



Appendix II



Appendix III

Financial Sanctions

The Treasury's Asset Freezing Unit maintains a consolidated list of financial sanctions targets (full list) who are designated persons. Access this list, register for updates and obtain further information on financial restrictions at:

[HMT financial crime](#) . The excel version of this list can be searched by using Control & F. The list includes persons and entities that are based in the UK as well as overseas. Most PEPs are not subject to financial sanctions (although they may be).

You must not proceed with a transaction without a licence from the HM Treasury Asset Freezing Unit where a client or the intended recipient of funds from the transaction is identified as a designated person.

You must do all of the following:

- Suspend the transaction pending advice from the Asset Freezing Unit
- Contact the Asset Freezing Unit to seek a licence to deal with the funds
- Consider whether you have a suspicion of money laundering or terrorist financing which requires a report to SOCA

You must not:

- Return funds to the designated person without the approval of the Asset Freezing Unit

The Asset Freezing Unit has the power to grant licences exempting certain transactions from the financial restrictions. Requests are considered on a case-by-case basis, to ensure that there is no risk of funds being diverted to terrorism.

Contact the Asset Freezing Unit to request a licence or obtain advice regarding financial restrictions at:

Asset Freezing Unit
1 Horse Guards Road
London SW1A 2HQ
Telephone 020 7270 5664 or 020 7270 5454

Fax 020 7451 7677

Email assetfreezingunit@hm-treasury.gov.uk

The Financial Services Authority has reviewed this area and concluded that some factors to take into account when assessing the likelihood of a person or entity being on the HMT list⁶:

- For individuals: place of residence, country of origin, citizenship, source of wealth, occupation, and countries to and from which transactions are to be made.
- For entities: location of business, country in which the business is incorporated, nature of business, beneficial owners of the business, directors, countries from which transactions are made and entities with which the transactions are effected.

The FSA has produced a leaflet for small firms which may help you better understand this area: [FSA](#)

HMT also provide a free email subscription service that will notify you of any additions, deletions and amendments to the HMT list.

⁶ Financial services' firms approach to UK financial sanctions, published April 2009.