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STATUTORY INSTRUMENTS

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**2007 No. 2157**

**The Money Laundering Regulations 2007**

**PART 4**

**SUPERVISION AND REGISTRATION**

*Interpretation*

**Interpretation**

**22.**—(1) In this Part—

“Annex I financial institution” means any undertaking which falls within regulation 3(3)(a) other than—

- (a) a consumer credit financial institution;
- (b) a money service business; or
- (c) an authorised person;

“consumer credit financial institution” means any undertaking which falls within regulation 3(3)(a) and which requires, under section 21 of the Consumer Credit Act 1974(1) (businesses needing a licence), a licence to carry on a consumer credit business, other than—

- (a) a person covered by a group licence issued by the OFT under section 22 of that Act (standard and group licences);
- (b) a money service business; or
- (c) an authorised person.

(2) In paragraph (1), “consumer credit business” has the meaning given by section 189(1) of the Consumer Credit Act 1974 (definitions) and, on the entry into force of section 23(a) of the Consumer Credit Act 2006(2) (definitions of “consumer credit business” and “consumer hire business”), has the meaning given by section 189(1) of the Consumer Credit Act 1974 as amended by section 23(a) of the Consumer Credit Act 2006.

*Supervision*

**Supervisory authorities**

**23.**—(1) Subject to paragraph (2), the following bodies are supervisory authorities—

- (a) the Authority is the supervisory authority for—
  - (i) credit and financial institutions which are authorised persons;
  - (ii) trust or company service providers which are authorised persons;

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(1) 1974 c. 39.  
(2) 2006 c. 14.

- (iii) Annex I financial institutions;
- (b) the OFT is the supervisory authority for—
  - (i) consumer credit financial institutions;
  - (ii) estate agents;
- (c) each of the professional bodies listed in Schedule 3 is the supervisory authority for relevant persons who are regulated by it;
- (d) the Commissioners are the supervisory authority for—
  - (i) high value dealers;
  - (ii) money service businesses which are not supervised by the Authority;
  - (iii) trust or company service providers which are not supervised by the Authority or one of the bodies listed in Schedule 3;
  - (iv) auditors, external accountants and tax advisers who are not supervised by one of the bodies listed in Schedule 3.
- (e) the Gambling Commission is the supervisory authority for casinos;
- (f) DETI is the supervisory authority for—
  - (i) credit unions in Northern Ireland;
  - (ii) insolvency practitioners authorised by it under article 351 of the Insolvency (Northern Ireland) Order 1989;
- (g) the Secretary of State is the supervisory authority for insolvency practitioners authorised by him under section 393 of the Insolvency Act 1986(3) (grant, refusal and withdrawal of authorisation).

(2) Where under paragraph (1) there is more than one supervisory authority for a relevant person, the supervisory authorities may agree that one of them will act as the supervisory authority for that person.

(3) Where an agreement has been made under paragraph (2), the authority which has agreed to act as the supervisory authority must notify the relevant person or publish the agreement in such manner as it considers appropriate.

(4) Where no agreement has been made under paragraph (2), the supervisory authorities for a relevant person must cooperate in the performance of their functions under these Regulations.

### **Duties of supervisory authorities**

24.—(1) A supervisory authority must effectively monitor the relevant persons for whom it is the supervisory authority and take necessary measures for the purpose of securing compliance by such persons with the requirements of these Regulations.

(2) A supervisory authority which, in the course of carrying out any of its functions under these Regulations, knows or suspects that a person is or has engaged in money laundering or terrorist financing must promptly inform the Serious Organised Crime Agency.

(3) A disclosure made under paragraph (2) is not to be taken to breach any restriction, however imposed, on the disclosure of information.

(4) The functions of the Authority under these Regulations shall be treated for the purposes of Parts 1, 2 and 4 of Schedule 1 to the 2000 Act (the Financial Services Authority) as functions conferred on the Authority under that Act.

*Registration of high value dealers, money service businesses and trust or company service providers*

**Duty to maintain registers**

- 25.**—(1) The Commissioners must maintain registers of—
- (a) high value dealers;
  - (b) money service businesses for which they are the supervisory authority; and
  - (c) trust or company service providers for which they are the supervisory authority.
- (2) The Commissioners may keep the registers in any form they think fit.
- (3) The Commissioners may publish or make available for public inspection all or part of a register maintained under this regulation.

**Requirement to be registered**

- 26.**—(1) A person in respect of whom the Commissioners are required to maintain a register under regulation 25 must not act as a—
- (a) high value dealer;
  - (b) money service business; or
  - (c) trust or company service provider,
- unless he is included in the register.
- (2) Paragraph (1) and regulation 29 are subject to the transitional provisions set out in regulation 50.

**Applications for registration in a register maintained under regulation 25**

- 27.**—(1) An applicant for registration in a register maintained under regulation 25 must make an application in such manner and provide such information as the Commissioners may specify.
- (2) The information which the Commissioners may specify includes—
- (a) the applicant's name and (if different) the name of the business;
  - (b) the nature of the business;
  - (c) the name of the nominated officer (if any);
  - (d) in relation to a money service business or trust or company service provider—
    - (i) the name of any person who effectively directs or will direct the business and any beneficial owner of the business; and
    - (ii) information needed by the Commissioners to decide whether they must refuse the application pursuant to regulation 28.
- (3) At any time after receiving an application and before determining it, the Commissioners may require the applicant to provide, within 21 days beginning with the date of being requested to do so, such further information as they reasonably consider necessary to enable them to determine the application.
- (4) If at any time after the applicant has provided the Commissioners with any information under paragraph (1) or (3)—
- (a) there is a material change affecting any matter contained in that information; or
  - (b) it becomes apparent to that person that the information contains a significant inaccuracy,

he must provide the Commissioners with details of the change or, as the case may be, a correction of the inaccuracy within 30 days beginning with the date of the occurrence of the change (or the discovery of the inaccuracy) or within such later time as may be agreed with the Commissioners.

(5) The obligation in paragraph (4) applies also to material changes or significant inaccuracies affecting any matter contained in any supplementary information provided pursuant to that paragraph.

(6) Any information to be provided to the Commissioners under this regulation must be in such form or verified in such manner as they may specify.

### **Fit and proper test**

**28.**—(1) The Commissioners must refuse to register an applicant as a money service business or trust or company service provider if they are satisfied that—

- (a) the applicant;
- (b) a person who effectively directs, or will effectively direct, the business or service provider;
- (c) a beneficial owner of the business or service provider; or
- (d) the nominated officer of the business or service provider,

is not a fit and proper person.

(2) For the purposes of paragraph (1), a person is not a fit and proper person if he—

- (a) has been convicted of—
  - (i) an offence under the Terrorism Act 2000<sup>(4)</sup>;
  - (ii) an offence under paragraph 7(2) or (3) of Schedule 3 to the Anti-Terrorism, Crime and Security Act 2001<sup>(5)</sup> (offences);
  - (iii) an offence under the Terrorism Act 2006<sup>(6)</sup>;
  - (iv) an offence under Part 7 (money laundering) of, or listed in Schedule 2 (lifestyle offences: England and Wales), 4 (lifestyle offences: Scotland) or 5 (lifestyle offences: Northern Ireland) to, the Proceeds of Crime Act 2002<sup>(7)</sup>;
  - (v) an offence under the Fraud Act 2006<sup>(8)</sup> or, in Scotland, the common law offence of fraud;
  - (vi) an offence under section 72(1), (3) or (8) of the Value Added Tax Act 1994<sup>(9)</sup> (offences); or
  - (vii) the common law offence of cheating the public revenue;
- (b) has been adjudged bankrupt or sequestration of his estate has been awarded and (in either case) he has not been discharged;
- (c) is subject to a disqualification order under the Company Directors Disqualification Act 1986<sup>(10)</sup>;
- (d) is or has been subject to a confiscation order under the Proceeds of Crime Act 2002;
- (e) has consistently failed to comply with the requirements of these Regulations, the Money Laundering Regulations 2003<sup>(11)</sup> or the Money Laundering Regulations 2001<sup>(12)</sup>;

<sup>(4)</sup> 2000 c. 11.

<sup>(5)</sup> 2001 c. 24.

<sup>(6)</sup> 2006 c. 11.

<sup>(7)</sup> 2002 c. 29.

<sup>(8)</sup> 2006 c. 35.

<sup>(9)</sup> 1994 c. 23.

<sup>(10)</sup> 1986 c. 46.

<sup>(11)</sup> S.I. 2003/3075.

- (f) has consistently failed to comply with the requirements of regulation 2006/1781/EC of the European Parliament and of the Council of 15th November 2006 on information on the payer accompanying the transfer of funds<sup>(13)</sup>;
- (g) has effectively directed a business which falls within sub-paragraph (e) or (f);
- (h) is otherwise not a fit and proper person with regard to the risk of money laundering or terrorist financing.

(3) For the purposes of this regulation, a conviction for an offence listed in paragraph (2)(a) is to be disregarded if it is spent for the purposes of the Rehabilitation of Offenders Act 1974<sup>(14)</sup>.

### **Determination of applications under regulation 27**

**29.**—(1) Subject to regulation 28, the Commissioners may refuse to register an applicant for registration in a register maintained under regulation 25 only if—

- (a) any requirement of, or imposed under, regulation 27 has not been complied with;
- (b) it appears to the Commissioners that any information provided pursuant to regulation 27 is false or misleading in a material particular; or
- (c) the applicant has failed to pay a charge imposed by them under regulation 35(1).

(2) The Commissioners must within 45 days beginning either with the date on which they receive the application or, where applicable, with the date on which they receive any further information required under regulation 27(3), give the applicant notice of—

- (a) their decision to register the applicant; or
- (b) the following matters—
  - (i) their decision not to register the applicant;
  - (ii) the reasons for their decision;
  - (iii) the right to require a review under regulation 43; and
  - (iv) the right to appeal under regulation 44(1)(a).

(3) The Commissioners must, as soon as practicable after deciding to register a person, include him in the relevant register.

### **Cancellation of registration in a register maintained under regulation 25**

**30.**—(1) The Commissioners must cancel the registration of a money service business or trust or company service provider in a register maintained under regulation 25(1) if, at any time after registration, they are satisfied that he or any person mentioned in regulation 28(1)(b), (c) or (d) is not a fit and proper person within the meaning of regulation 28(2).

(2) The Commissioners may cancel a person's registration in a register maintained by them under regulation 25 if, at any time after registration, it appears to them that they would have had grounds to refuse registration under regulation 29(1).

(3) Where the Commissioners decide to cancel a person's registration they must give him notice of—

- (a) their decision and, subject to paragraph (4), the date from which the cancellation takes effect;
- (b) the reasons for their decision;

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<sup>(12)</sup> S.I. 2001/3641.

<sup>(13)</sup> OJ No L 345, 8.12.2006, p.1.

<sup>(14)</sup> 1974 c. 53.

- (c) the right to require a review under regulation 43; and
- (d) the right to appeal under regulation 44(1)(a).
- (4) If the Commissioners—
  - (a) consider that the interests of the public require the cancellation of a person's registration to have immediate effect; and
  - (b) include a statement to that effect and the reasons for it in the notice given under paragraph (3),
 the cancellation takes effect when the notice is given to the person.

*Requirement to inform the Authority*

**Requirement on authorised person to inform the Authority**

**31.**—(1) An authorised person whose supervisory authority is the Authority must, before acting as a money service business or a trust or company service provider or within 28 days of so doing, inform the Authority that he intends, or has begun, to act as such.

(2) Paragraph (1) does not apply to an authorised person who—

- (a) immediately before 15th December 2007 was acting as a money service business or a trust or company service provider and continues to act as such after that date; and
- (b) before 15th January 2008 informs the Authority that he is or was acting as such.

(3) Where an authorised person whose supervisory authority is the Authority ceases to act as a money service business or a trust or company service provider, he must immediately inform the Authority.

(4) Any requirement imposed by this regulation is to be treated as if it were a requirement imposed by or under the 2000 Act.

(5) Any information to be provided to the Authority under this regulation must be in such form or verified in such manner as it may specify.

*Registration of Annex I financial institutions, estate agents etc.*

**Power to maintain registers**

**32.**—(1) The supervisory authorities mentioned in paragraph (2), (3) or (4) may, in order to fulfil their duties under regulation 24, maintain a register under this regulation.

(2) The Authority may maintain a register of Annex I financial institutions.

(3) The OFT may maintain registers of—

- (a) consumer credit financial institutions; and
- (b) estate agents.

(4) The Commissioners may maintain registers of—

- (a) auditors;
- (b) external accountants; and
- (c) tax advisers,

who are not supervised by the Secretary of State, DETI or any of the professional bodies listed in Schedule 3.

(5) Where a supervisory authority decides to maintain a register under this regulation, it must take reasonable steps to bring its decision to the attention of those relevant persons in respect of whom the register is to be established.

(6) A supervisory authority may keep a register under this regulation in any form it thinks fit.

(7) A supervisory authority may publish or make available to public inspection all or part of a register maintained by it under this regulation.

### **Requirement to be registered**

**33.** Where a supervisory authority decides to maintain a register under regulation 32 in respect of any description of relevant persons and establishes a register for that purpose, a relevant person of that description may not carry on the business or profession in question for a period of more than six months beginning on the date on which the supervisory authority establishes the register unless he is included in the register.

### **Applications for and cancellation of registration in a register maintained under regulation 32**

**34.**—(1) Regulations 27, 29 (with the omission of the words “Subject to regulation 28” in regulation 29(1)) and 30(2), (3) and (4) apply to registration in a register maintained by the Commissioners under regulation 32 as they apply to registration in a register maintained under regulation 25.

(2) Regulation 27 applies to registration in a register maintained by the Authority or the OFT under regulation 32 as it applies to registration in a register maintained under regulation 25 and, for this purpose, references to the Commissioners are to be treated as references to the Authority or the OFT, as the case may be.

(3) The Authority and the OFT may refuse to register an applicant for registration in a register maintained under regulation 32 only if—

- (a) any requirement of, or imposed under, regulation 27 has not been complied with;
- (b) it appears to the Authority or the OFT, as the case may be, that any information provided pursuant to regulation 27 is false or misleading in a material particular; or
- (c) the applicant has failed to pay a charge imposed by the Authority or the OFT, as the case may be, under regulation 35(1).

(4) The Authority or the OFT, as the case may be, must, within 45 days beginning either with the date on which it receives an application or, where applicable, with the date on which it receives any further information required under regulation 27(3), give the applicant notice of—

- (a) its decision to register the applicant; or
- (b) the following matters—
  - (i) that it is minded not to register the applicant;
  - (ii) the reasons for being minded not to register him; and
  - (iii) the right to make representations to it within a specified period (which may not be less than 28 days).

(5) The Authority or the OFT, as the case may be, must then decide, within a reasonable period, whether to register the applicant and it must give the applicant notice of—

- (a) its decision to register the applicant; or
- (b) the following matters—
  - (i) its decision not to register the applicant;
  - (ii) the reasons for its decision; and

(iii) the right to appeal under regulation 44(1)(b).

(6) The Authority or the OFT, as the case may be, must, as soon as reasonably practicable after deciding to register a person, include him in the relevant register.

(7) The Authority or the OFT may cancel a person's registration in a register maintained by them under regulation 32 if, at any time after registration, it appears to them that they would have had grounds to refuse registration under paragraph (3).

(8) Where the Authority or the OFT proposes to cancel a person's registration, it must give him notice of—

- (a) its proposal to cancel his registration;
- (b) the reasons for the proposed cancellation; and
- (c) the right to make representations to it within a specified period (which may not be less than 28 days).

(9) The Authority or the OFT, as the case may be, must then decide, within a reasonable period, whether to cancel the person's registration and it must give him notice of—

- (a) its decision not to cancel his registration; or
- (b) the following matters—
  - (i) its decision to cancel his registration and, subject to paragraph (10), the date from which cancellation takes effect;
  - (ii) the reasons for its decision; and
  - (iii) the right to appeal under regulation 44(1)(b).

(10) If the Authority or the OFT, as the case may be—

- (a) considers that the interests of the public require the cancellation of a person's registration to have immediate effect; and
- (b) includes a statement to that effect and the reasons for it in the notice given under paragraph (9)(b),

the cancellation takes effect when the notice is given to the person.

(11) In paragraphs (3) and (4), references to regulation 27 are to be treated as references to that paragraph as applied by paragraph (2) of this regulation.

### *Financial provisions*

#### **Costs of supervision**

**35.**—(1) The Authority, the OFT and the Commissioners may impose charges—

- (a) on applicants for registration;
- (b) on relevant persons supervised by them.

(2) Charges levied under paragraph (1) must not exceed such amount as the Authority, the OFT or the Commissioners (as the case may be) consider will enable them to meet any expenses reasonably incurred by them in carrying out their functions under these Regulations or for any incidental purpose.

(3) Without prejudice to the generality of paragraph (2), a charge may be levied in respect of each of the premises at which a person carries on (or proposes to carry on) business.

(4) The Authority must apply amounts paid to it by way of penalties imposed under regulation 42 towards expenses incurred in carrying out its functions under these Regulations or for any incidental purpose.



(5) In paragraph (2), “expenses” in relation to the OFT includes expenses incurred by a local weights and measures authority or DETI pursuant to arrangements made for the purposes of these Regulations with the OFT—

- (a) by or on behalf of the authority; or
- (b) by DETI.