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STATUTORY INSTRUMENTS

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**2007 No. 2157**

**The Money Laundering Regulations 2007**

**PART 1**

**GENERAL**

**Citation, commencement etc.**

1.—(1) These Regulations may be cited as the Money Laundering Regulations 2007 and come into force on 15th December 2007.

(2) These Regulations are prescribed for the purposes of sections 168(4)(b) (appointment of persons to carry out investigations in particular cases) and 402(1)(b) (power of the Authority to institute proceedings for certain other offences) of the 2000 Act.

(3) The Money Laundering Regulations 2003<sup>(1)</sup> are revoked.

**Interpretation**

2.—(1) In these Regulations—

“the 2000 Act” means the Financial Services and Markets Act 2000;

“Annex I financial institution” has the meaning given by regulation 22(1);

“auditor”, except in regulation 17(2)(c) and (d), has the meaning given by regulation 3(4) and (5);

“authorised person” means a person who is authorised for the purposes of the 2000 Act<sup>(2)</sup>;

“the Authority” means the Financial Services Authority;

“the banking consolidation directive” means Directive [2006/48/EC](#) of the European Parliament and of the Council of 14th June 2006 relating to the taking up and pursuit of the business of credit institutions<sup>(3)</sup>;

“beneficial owner” has the meaning given by regulation 6;

“business relationship” means a business, professional or commercial relationship between a relevant person and a customer, which is expected by the relevant person, at the time when contact is established, to have an element of duration;

“cash” means notes, coins or travellers’ cheques in any currency;

“casino” has the meaning given by regulation 3(13);

“the Commissioners” means the Commissioners for Her Majesty’s Revenue and Customs;

“consumer credit financial institution” has the meaning given by regulation 22(1);

“credit institution” has the meaning given by regulation 3(2);

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<sup>(1)</sup> [S.I. 2003/3075](#).

<sup>(2)</sup> See section 31(2) of the 2000 Act.

<sup>(3)</sup> OJ No L 177, 30.6.2006, p. 1.

“customer due diligence measures” has the meaning given by regulation 5;

“DETI” means the Department of Enterprise, Trade and Investment in Northern Ireland;

“the electronic money directive” means Directive [2000/46/EC](#) of the European Parliament and of the Council of 18th September 2000 on the taking up, pursuit and prudential supervision of the business of electronic money institutions<sup>(4)</sup>;

“estate agent” has the meaning given by regulation 3(11);

“external accountant” has the meaning given by regulation 3(7);

“financial institution” has the meaning given by regulation 3(3);

“firm” means any entity, whether or not a legal person, that is not an individual and includes a body corporate and a partnership or other unincorporated association;

“high value dealer” has the meaning given by regulation 3(12);

“the implementing measures directive” means Commission Directive [2006/70/EC](#) of 1st August 2006 laying down implementing measures for the money laundering directive<sup>(5)</sup>;

“independent legal professional” has the meaning given by regulation 3(9);

“insolvency practitioner”, except in regulation 17(2)(c) and (d), has the meaning given by regulation 3(6);

“the life assurance consolidation directive” means Directive [2002/83/EC](#) of the European Parliament and of the Council of 5th November 2002 concerning life assurance<sup>(6)</sup>;

“local weights and measures authority” has the meaning given by section 69 of the Weights and Measures Act 1985<sup>(7)</sup> (local weights and measures authorities);

“the markets in financial instruments directive” means Directive [2004/39/EC](#) of the European Parliament and of the Council of 12th April 2004<sup>(8)</sup> on markets in financial instruments;

“money laundering” means an act which falls within section 340(11) of the Proceeds of Crime Act 2002<sup>(9)</sup>;

“the money laundering directive” means Directive [2005/60/EC](#) of the European Parliament and of the Council of 26th October 2005<sup>(10)</sup> on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing;

“money service business” means an undertaking which by way of business operates a currency exchange office, transmits money (or any representations of monetary value) by any means or cashes cheques which are made payable to customers;

“nominated officer” means a person who is nominated to receive disclosures under Part 7 of the Proceeds of Crime Act 2002<sup>(11)</sup> (money laundering) or Part 3 of the Terrorism Act 2000<sup>(12)</sup> (terrorist property);

“non-EEA state” means a state that is not an EEA state;

“notice” means a notice in writing;

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(4) OJ No L 275, 27.10.2000, p. 39.

(5) OJ No L 214, 4.8.2006, p. 29.

(6) OJ No L 345, 19.12.2002, p.1.

(7) [1985 c. 72](#). Section 69(3) was amended by the Local Government etc. (Scotland) Act [1994 \(c. 39\)](#), Schedule 13, paragraph 44.

(8) OJ No L 145, 30.4.2004, p. 1, amended by Directive [2006/31/EC](#) (OJ No L 114, 27.4.06, p. 60).

(9) [2002 c. 29](#).

(10) OJ No L 309, 25.11.2005, p. 15.

(11) [2002 c. 29](#). Part 7 was amended by the Serious Organised Crime and Police Act [2005 \(c.15\)](#) sections 102 to 106, Schedule 4, paragraphs 168, 173 and 174 and Schedule 17, Part 2, and [S.I. 2006/308](#).

(12) [2000 c. 11](#). Part 3 was amended by the Anti-Terrorism, Crime and Security Act [2001 \(c.24\)](#) Schedule 2, Part 3, paragraph 5 and the Serious Organised Crime and Police Act 2005, Schedule 4, paragraphs 125 to 129.

“occasional transaction” means a transaction (carried out other than as part of a business relationship) amounting to 15,000 euro or more, whether the transaction is carried out in a single operation or several operations which appear to be linked;

“the OFT” means the Office of Fair Trading;

“ongoing monitoring” has the meaning given by regulation 8(2);

“regulated market”—

- (a) within the EEA, has the meaning given by point 14 of Article 4(1) of the markets in financial instruments directive; and
- (b) outside the EEA, means a regulated financial market which subjects companies whose securities are admitted to trading to disclosure obligations which are contained in international standards and are equivalent to the specified disclosure obligations;

“relevant person” means a person to whom, in accordance with regulations 3 and 4, these Regulations apply;

“the specified disclosure obligations” means disclosure requirements consistent with—

- (a) Article 6(1) to (4) of Directive [2003/6/EC](#) of the European Parliament and of the Council of 28th January 2003(**13**) on insider dealing and market manipulation;
- (b) Articles 3, 5, 7, 8, 10, 14 and 16 of Directive [2003/71/EC](#) of the European Parliament and of the Council of 4th November 2003(**14**) on the prospectuses to be published when securities are offered to the public or admitted to trading;
- (c) Articles 4 to 6, 14, 16 to 19 and 30 of Directive [2004/109/EC](#) of the European Parliament and of the Council of 15th December 2004(**15**) relating to the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market; or
- (d) Community legislation made under the provisions mentioned in sub-paragraphs (a) to (c);

“supervisory authority” in relation to any relevant person means the supervisory authority specified for such a person by regulation 23;

“tax adviser” (except in regulation 11(3)) has the meaning given by regulation 3(8);

“terrorist financing” means an offence under—

- (a) section 15 (fund-raising), 16 (use and possession), 17 (funding arrangements), 18 (money laundering) or 63 (terrorist finance: jurisdiction) of the Terrorism Act 2000;
- (b) paragraph 7(2) or (3) of Schedule 3 to the Anti-Terrorism, Crime and Security Act 2001(**16**) (freezing orders);
- (c) article 7, 8 or 10 of the Terrorism (United Nations Measures) Order 2006(**17**); or
- (d) article 7, 8 or 10 of the Al-Qaida and Taliban (United Nations Measures) Order 2006(**18**);

“trust or company service provider” has the meaning given by regulation 3(10).

(2) In these Regulations, references to amounts in euro include references to equivalent amounts in another currency.

(3) Unless otherwise defined, expressions used in these Regulations and the money laundering directive have the same meaning as in the money laundering directive and expressions used in

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(13) OJ No L 96, 12.4.2003, P. 20.

(14) OJ No L 345, 31.12.2003, P. 69.

(15) OJ No L 390, 31.12.2004, P. 43.

(16) [2001 c. 24](#).

(17) [S.I. 2006/2657](#).

(18) [S.I. 2006/2952](#).

these Regulations and in the implementing measures directive have the same meaning as in the implementing measures directive.

### **Application of the Regulations**

**3.—(1)** Subject to regulation 4, these Regulations apply to the following persons acting in the course of business carried on by them in the United Kingdom (“relevant persons”)—

- (a) credit institutions;
- (b) financial institutions;
- (c) auditors, insolvency practitioners, external accountants and tax advisers;
- (d) independent legal professionals;
- (e) trust or company service providers;
- (f) estate agents;
- (g) high value dealers;
- (h) casinos.

(2) “Credit institution” means—

- (a) a credit institution as defined in Article 4(1)(a) of the banking consolidation directive; or
- (b) a branch (within the meaning of Article 4(3) of that directive) located in an EEA state of an institution falling within sub-paragraph (a) (or an equivalent institution whose head office is located in a non-EEA state) wherever its head office is located,

when it accepts deposits or other repayable funds from the public or grants credits for its own account (within the meaning of the banking consolidation directive).

(3) “Financial institution” means—

- (a) an undertaking, including a money service business, when it carries out one or more of the activities listed in points 2 to 12 and 14 of Annex 1 to the banking consolidation directive (the relevant text of which is set out in Schedule 1 to these Regulations), other than—
  - (i) a credit institution;
  - (ii) an undertaking whose only listed activity is trading for own account in one or more of the products listed in point 7 of Annex 1 to the banking consolidation directive where the undertaking does not have a customer,

and, for this purpose, “customer” means a third party which is not a member of the same group as the undertaking;

- (b) an insurance company duly authorised in accordance with the life assurance consolidation directive, when it carries out activities covered by that directive;
- (c) a person whose regular occupation or business is the provision to other persons of an investment service or the performance of an investment activity on a professional basis, when providing or performing investment services or activities (within the meaning of the markets in financial instruments directive<sup>(19)</sup>), other than a person falling within Article 2 of that directive;
- (d) a collective investment undertaking, when marketing or otherwise offering its units or shares;
- (e) an insurance intermediary as defined in Article 2(5) of Directive 2002/92/EC of the European Parliament and of the Council of 9th December 2002<sup>(20)</sup> on insurance

<sup>(19)</sup> See Article 4(1) of the directive.

<sup>(20)</sup> OJ No L 9, 15.1.2003, p. 3.

mediation, with the exception of a tied insurance intermediary as mentioned in Article 2(7) of that Directive, when it acts in respect of contracts of long-term insurance within the meaning given by article 3(1) of, and Part II of Schedule 1 to, the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001(21);

(f) a branch located in an EEA state of a person referred to in sub-paragraphs (a) to (e) (or an equivalent person whose head office is located in a non-EEA state), wherever its head office is located, when carrying out any activity mentioned in sub-paragraphs (a) to (e);

(g) the National Savings Bank;

(h) the Director of Savings, when money is raised under the auspices of the Director under the National Loans Act 1968(22).

(4) “Auditor” means any firm or individual who is a statutory auditor within the meaning of Part 42 of the Companies Act 2006(23) (statutory auditors), when carrying out statutory audit work within the meaning of section 1210 of that Act.

(5) Before the entry into force of Part 42 of the Companies Act 2006 the reference in paragraph (4) to—

(a) a person who is a statutory auditor shall be treated as a reference to a person who is eligible for appointment as a company auditor under section 25 of the Companies Act 1989(24) (eligibility for appointment) or article 28 of the Companies (Northern Ireland) Order 1990(25); and

(b) the carrying out of statutory audit work shall be treated as a reference to the provision of audit services.

(6) “Insolvency practitioner” means any person who acts as an insolvency practitioner within the meaning of section 388 of the Insolvency Act 1986(26) (meaning of “act as insolvency practitioner”) or article 3 of the Insolvency (Northern Ireland) Order 1989(27).

(7) “External accountant” means a firm or sole practitioner who by way of business provides accountancy services to other persons, when providing such services.

(8) “Tax adviser” means a firm or sole practitioner who by way of business provides advice about the tax affairs of other persons, when providing such services.

(9) “Independent legal professional” means a firm or sole practitioner who by way of business provides legal or notarial services to other persons, when participating in financial or real property transactions concerning—

(a) the buying and selling of real property or business entities;

(b) the managing of client money, securities or other assets;

(c) the opening or management of bank, savings or securities accounts;

(d) the organisation of contributions necessary for the creation, operation or management of companies; or

(e) the creation, operation or management of trusts, companies or similar structures,

and, for this purpose, a person participates in a transaction by assisting in the planning or execution of the transaction or otherwise acting for or on behalf of a client in the transaction.

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(21) S.I. 2001/544. There are amendments to this Order not relevant to these Regulations.

(22) 1968 c. 13.

(23) 2006 c. 46.

(24) 1989 c. 40.

(25) 1990 No.593 (N.I. 5).

(26) 1986 c. 45; s388 was amended by section 4 of the Insolvency Act 2000 (c.45), section 11 of the Bankruptcy (Scotland) Act 1993 (c.6), and S.I. 1994/2421, 2002/1240 and 2002/2708.

(27) 1989 No. 2405 (NI 19); article 3 was amended by the Insolvency (Northern Ireland) Order 2002 No. 3152 (N.I. 6) and S.R. 1995/225, 2002/334, 2003/550, 2004/307.

(10) “Trust or company service provider” means a firm or sole practitioner who by way of business provides any of the following services to other persons—

- (a) forming companies or other legal persons;
- (b) acting, or arranging for another person to act—
  - (i) as a director or secretary of a company;
  - (ii) as a partner of a partnership; or
  - (iii) in a similar position in relation to other legal persons;
- (c) providing a registered office, business address, correspondence or administrative address or other related services for a company, partnership or any other legal person or arrangement;
- (d) acting, or arranging for another person to act, as—
  - (i) a trustee of an express trust or similar legal arrangement; or
  - (ii) a nominee shareholder for a person other than a company whose securities are listed on a regulated market,

when providing such services.

(11) “Estate agent” means—

- (a) a firm; or
- (b) sole practitioner,

who, or whose employees, carry out estate agency work (within the meaning given by section 1 of the Estate Agents Act 1979<sup>(28)</sup> (estate agency work)), when in the course of carrying out such work.

(12) “High value dealer” means a firm or sole trader who by way of business trades in goods (including an auctioneer dealing in goods), when he receives, in respect of any transaction, a payment or payments in cash of at least 15,000 euros in total, whether the transaction is executed in a single operation or in several operations which appear to be linked.

(13) “Casino” means the holder of a casino operating licence and, for this purpose, a “casino operating licence” has the meaning given by section 65(2) of the Gambling Act 2005<sup>(29)</sup> (nature of licence).

(14) In the application of this regulation to Scotland, for “real property” in paragraph (9) substitute “heritable property”.

## Exclusions

4.—(1) These Regulations do not apply to the following persons when carrying out any of the following activities—

- (a) a society registered under the Industrial and Provident Societies Act 1965<sup>(30)</sup>, when it—
  - (i) issues withdrawable share capital within the limit set by section 6 of that Act (maximum shareholding in society); or
  - (ii) accepts deposits from the public within the limit set by section 7(3) of that Act (carrying on of banking by societies);

<sup>(28)</sup> 1979 c. 38. Section 1 was amended by the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c. 73), section 56, Schedule 1, Part I, paragraph 40, the Planning (Consequential Provisions) Act 1990 (c. 11), section 4, Schedule 2, paragraph 42, the Planning (Consequential Provisions) (Scotland) Act 1997 (c. 11), sections 4 and 6(2), Schedule 2, paragraph 28 and by S.I. 2001/1283.

<sup>(29)</sup> See also section 7 on the meaning of “casino” and Part 5 of the Act generally on operating licences

<sup>(30)</sup> 1965 c. 12.

- (b) a society registered under the Industrial and Provident Societies Act (Northern Ireland) 1969(31), when it—
    - (i) issues withdrawable share capital within the limit set by section 6 of that Act (maximum shareholding in society); or
    - (ii) accepts deposits from the public within the limit set by section 7(3) of that Act (carrying on of banking by societies);
  - (c) a person who is (or falls within a class of persons) specified in any of paragraphs 2 to 23, 25 to 38 or 40 to 49 of the Schedule to the Financial Services and Markets Act 2000 (Exemption) Order 2001(32), when carrying out any activity in respect of which he is exempt;
  - (d) a person who was an exempted person for the purposes of section 45 of the Financial Services Act 1986(33) (miscellaneous exemptions) immediately before its repeal, when exercising the functions specified in that section;
  - (e) a person whose main activity is that of a high value dealer, when he engages in financial activity on an occasional or very limited basis as set out in paragraph 1 of Schedule 2 to these Regulations; or
  - (f) a person, when he prepares a home information pack or a document or information for inclusion in a home information pack.
- (2) These Regulations do not apply to a person who falls within regulation 3 solely as a result of his engaging in financial activity on an occasional or very limited basis as set out in paragraph 1 of Schedule 2 to these Regulations.
- (3) Parts 2 to 5 of these Regulations do not apply to—
- (a) the Auditor General for Scotland;
  - (b) the Auditor General for Wales;
  - (c) the Bank of England;
  - (d) the Comptroller and Auditor General;
  - (e) the Comptroller and Auditor General for Northern Ireland;
  - (f) the Official Solicitor to the Supreme Court, when acting as trustee in his official capacity;
  - (g) the Treasury Solicitor.
- (4) In paragraph (1)(f), “home information pack” has the same meaning as in Part 5 of the Housing Act 2004(34) (home information packs).

## PART 2

### CUSTOMER DUE DILIGENCE

#### Meaning of customer due diligence measures

5. “Customer due diligence measures” means—

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(31) 1969 c. 24 (N.I.).

(32) S.I. 2001/1201. This Order was amended by S.I. 2001/3623, S.I. 2002/1310, S.I. 2003/47, S.I. 2003/1675, S.I. 2005/592, S.I.2005/2114, S.I.2005/3225, S.I. 2006/2383 and S.I. 2007/125. Paragraphs 1, 24 and 24A exempt respectively the Bank of England, industrial and provident societies and credit unions within the meaning of the Credit Unions (Northern Ireland) Order 1985 (S.I. 1985/1205 (N.I.12)) in respect of the activity of accepting deposits. Paragraph 39 exempts insolvency practitioners in respect of any regulated activity mentioned in Article 5(1). Paragraph 24A was inserted by S.I. 2001/3623.

(33) 1986 c. 60. This Act was repealed as from 1st December 2001 by S.I. 2001/3649, art.3(1)(c).

(34) 2004 c. 34.

- (a) identifying the customer and verifying the customer's identity on the basis of documents, data or information obtained from a reliable and independent source;
- (b) identifying, where there is a beneficial owner who is not the customer, the beneficial owner and taking adequate measures, on a risk-sensitive basis, to verify his identity so that the relevant person is satisfied that he knows who the beneficial owner is, including, in the case of a legal person, trust or similar legal arrangement, measures to understand the ownership and control structure of the person, trust or arrangement; and
- (c) obtaining information on the purpose and intended nature of the business relationship.

### **Meaning of beneficial owner**

- 6.—(1) In the case of a body corporate, “beneficial owner” means any individual who—
- (a) as respects any body other than a company whose securities are listed on a regulated market, ultimately owns or controls (whether through direct or indirect ownership or control, including through bearer share holdings) more than 25% of the shares or voting rights in the body; or
  - (b) as respects any body corporate, otherwise exercises control over the management of the body.
- (2) In the case of a partnership (other than a limited liability partnership), “beneficial owner” means any individual who—
- (a) ultimately is entitled to or controls (whether the entitlement or control is direct or indirect) more than a 25% share of the capital or profits of the partnership or more than 25% of the voting rights in the partnership; or
  - (b) otherwise exercises control over the management of the partnership.
- (3) In the case of a trust, “beneficial owner” means—
- (a) any individual who is entitled to a specified interest in at least 25% of the capital of the trust property;
  - (b) as respects any trust other than one which is set up or operates entirely for the benefit of individuals falling within sub-paragraph (a), the class of persons in whose main interest the trust is set up or operates;
  - (c) any individual who has control over the trust.
- (4) In paragraph (3)—
- “specified interest” means a vested interest which is—
- (a) in possession or in remainder or reversion (or, in Scotland, in fee); and
  - (b) defeasible or indefeasible;
- “control” means a power (whether exercisable alone, jointly with another person or with the consent of another person) under the trust instrument or by law to—
- (a) dispose of, advance, lend, invest, pay or apply trust property;
  - (b) vary the trust;
  - (c) add or remove a person as a beneficiary or to or from a class of beneficiaries;
  - (d) appoint or remove trustees;
  - (e) direct, withhold consent to or veto the exercise of a power such as is mentioned in sub-paragraph (a), (b), (c) or (d).
- (5) For the purposes of paragraph (3)—



- (a) where an individual is the beneficial owner of a body corporate which is entitled to a specified interest in the capital of the trust property or which has control over the trust, the individual is to be regarded as entitled to the interest or having control over the trust; and
- (b) an individual does not have control solely as a result of—
- (i) his consent being required in accordance with section 32(1)(c) of the Trustee Act 1925<sup>(35)</sup> (power of advancement);
  - (ii) any discretion delegated to him under section 34 of the Pensions Act 1995<sup>(36)</sup> (power of investment and delegation);
  - (iii) the power to give a direction conferred on him by section 19(2) of the Trusts of Land and Appointment of Trustees Act 1996<sup>(37)</sup> (appointment and retirement of trustee at instance of beneficiaries); or
  - (iv) the power exercisable collectively at common law to vary or extinguish a trust where the beneficiaries under the trust are of full age and capacity and (taken together) absolutely entitled to the property subject to the trust (or, in Scotland, have a full and unqualified right to the fee).
- (6) In the case of a legal entity or legal arrangement which does not fall within paragraph (1), (2) or (3), “beneficial owner” means—
- (a) where the individuals who benefit from the entity or arrangement have been determined, any individual who benefits from at least 25% of the property of the entity or arrangement;
  - (b) where the individuals who benefit from the entity or arrangement have yet to be determined, the class of persons in whose main interest the entity or arrangement is set up or operates;
  - (c) any individual who exercises control over at least 25% of the property of the entity or arrangement.
- (7) For the purposes of paragraph (6), where an individual is the beneficial owner of a body corporate which benefits from or exercises control over the property of the entity or arrangement, the individual is to be regarded as benefiting from or exercising control over the property of the entity or arrangement.
- (8) In the case of an estate of a deceased person in the course of administration, “beneficial owner” means—
- (a) in England and Wales and Northern Ireland, the executor, original or by representation, or administrator for the time being of a deceased person;
  - (b) in Scotland, the executor for the purposes of the Executors (Scotland) Act 1900<sup>(38)</sup>.
- (9) In any other case, “beneficial owner” means the individual who ultimately owns or controls the customer or on whose behalf a transaction is being conducted.
- (10) In this regulation—
- “arrangement”, “entity” and “trust” means an arrangement, entity or trust which administers and distributes funds;
- “limited liability partnership” has the meaning given by the Limited Liability Partnerships Act 2000<sup>(39)</sup>.

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<sup>(35)</sup> 1925 c. 19.

<sup>(36)</sup> 1995 c. 26.

<sup>(37)</sup> 1996 c. 47.

<sup>(38)</sup> 1900 c. 55. Sections 6 and 7 were amended by the Succession (Scotland) Act 1964 (c.41).

<sup>(39)</sup> 2000 c. 12.

**Application of customer due diligence measures**

7.—(1) Subject to regulations 9, 10, 12, 13, 14, 16(4) and 17, a relevant person must apply customer due diligence measures when he—

- (a) establishes a business relationship;
- (b) carries out an occasional transaction;
- (c) suspects money laundering or terrorist financing;
- (d) doubts the veracity or adequacy of documents, data or information previously obtained for the purposes of identification or verification.

(2) Subject to regulation 16(4), a relevant person must also apply customer due diligence measures at other appropriate times to existing customers on a risk-sensitive basis.

(3) A relevant person must—

- (a) determine the extent of customer due diligence measures on a risk-sensitive basis depending on the type of customer, business relationship, product or transaction; and
- (b) be able to demonstrate to his supervisory authority that the extent of the measures is appropriate in view of the risks of money laundering and terrorist financing.

(4) Where—

- (a) a relevant person is required to apply customer due diligence measures in the case of a trust, legal entity (other than a body corporate) or a legal arrangement (other than a trust); and
- (b) the class of persons in whose main interest the trust, entity or arrangement is set up or operates is identified as a beneficial owner,

the relevant person is not required to identify all the members of the class.

(5) Paragraph (3)(b) does not apply to the National Savings Bank or the Director of Savings.

**Ongoing monitoring**

8.—(1) A relevant person must conduct ongoing monitoring of a business relationship.

(2) “Ongoing monitoring” of a business relationship means—

- (a) scrutiny of transactions undertaken throughout the course of the relationship (including, where necessary, the source of funds) 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.

(3) Regulation 7(3) applies to the duty to conduct ongoing monitoring under paragraph (1) as it applies to customer due diligence measures.

**Timing of verification**

9.—(1) This regulation applies in respect of the duty under regulation 7(1)(a) and (b) to apply the customer due diligence measures referred to in regulation 5(a) and (b).

(2) Subject to paragraphs (3) to (5) and regulation 10, a relevant person must verify the identity of the customer (and any beneficial owner) before the establishment of a business relationship or the carrying out of an occasional transaction.

(3) Such verification may be completed during the establishment of a business relationship if—

- (a) this is necessary not to interrupt the normal conduct of business; and
- (b) there is little risk of money laundering or terrorist financing occurring,

provided that the verification is completed as soon as practicable after contact is first established.

(4) The verification of the identity of the beneficiary under a life insurance policy may take place after the business relationship has been established provided that it takes place at or before the time of payout or at or before the time the beneficiary exercises a right vested under the policy.

(5) The verification of the identity of a bank account holder may take place after the bank account has been opened provided that there are adequate safeguards in place to ensure that—

- (a) the account is not closed; and
- (b) transactions are not carried out by or on behalf of the account holder (including any payment from the account to the account holder),

before verification has been completed.

## Casinos

**10.**—(1) A casino must establish and verify the identity of—

- (a) all customers to whom the casino makes facilities for gaming available—
  - (i) before entry to any premises where such facilities are provided; or
  - (ii) where the facilities are for remote gaming, before access is given to such facilities; or
- (b) if the specified conditions are met, all customers who, in the course of any period of 24 hours—
  - (i) purchase from, or exchange with, the casino chips with a total value of 2,000 euro or more;
  - (ii) pay the casino 2,000 or more for the use of gaming machines; or
  - (iii) pay to, or stake with, the casino 2,000 euro or more in connection with facilities for remote gaming.

(2) The specified conditions are—

- (a) the casino verifies the identity of each customer before or immediately after such purchase, exchange, payment or stake takes place, and
- (b) the Gambling Commission is satisfied that the casino has appropriate procedures in place to monitor and record—
  - (i) the total value of chips purchased from or exchanged with the casino;
  - (ii) the total money paid for the use of gaming machines; or
  - (iii) the total money paid or staked in connection with facilities for remote gaming, by each customer.

(3) In this regulation—

“gaming”, “gaming machine”, “remote operating licence” and “stake” have the meanings given by, respectively, sections 6(1) (gaming & game of chance), 235 (gaming machine), 67 (remote gambling) and 353(1) (interpretation) of the Gambling Act 2005<sup>(40)</sup>;

“premises” means premises subject to—

- (a) a casino premises licence within the meaning of section 150(1)(a) of the Gambling Act 2005 (nature of licence); or

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<sup>(40)</sup> 2005 c. 19.

- (b) a converted casino premises licence within the meaning of paragraph 65 of Part 7 of Schedule 4 to the Gambling Act 2005 (Commencement No. 6 and Transitional Provisions) Order 2006(41);

“remote gaming” means gaming provided pursuant to a remote operating licence.

#### **Requirement to cease transactions etc.**

**11.**—(1) Where, in relation to any customer, a relevant person is unable to apply customer due diligence measures in accordance with the provisions of this Part, he—

- (a) must not carry out a transaction with or for the customer through a bank account;
- (b) must not establish a business relationship or carry out an occasional transaction with the customer;
- (c) must terminate any existing business relationship with the customer;
- (d) must consider whether he is required to make a disclosure by Part 7 of the Proceeds of Crime Act 2002 or Part 3 of the Terrorism Act 2000.

(2) Paragraph (1) does not apply where a lawyer or other professional adviser is in the course of ascertaining the legal position for his client or performing his task of defending or representing that client in, or concerning, legal proceedings, including advice on the institution or avoidance of proceedings.

(3) In paragraph (2), “other professional adviser” means an auditor, accountant or tax adviser who is a member of a professional body which is established for any such persons and which makes provision for—

- (a) testing the competence of those seeking admission to membership of such a body as a condition for such admission; and
- (b) imposing and maintaining professional and ethical standards for its members, as well as imposing sanctions for non-compliance with those standards.

#### **Exception for trustees of debt issues**

**12.**—(1) A relevant person—

- (a) who is appointed by the issuer of instruments or securities specified in paragraph (2) as trustee of an issue of such instruments or securities; or
- (b) whose customer is a trustee of an issue of such instruments or securities,

is not required to apply the customer due diligence measure referred to in regulation 5(b) in respect of the holders of such instruments or securities.

(2) The specified instruments and securities are—

- (a) instruments which fall within article 77 of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001(42); and
- (b) securities which fall within article 78 of that Order.

#### **Simplified due diligence**

**13.**—(1) A relevant person is not required to apply customer due diligence measures in the circumstances mentioned in regulation 7(1)(a), (b) or (d) where he has reasonable grounds for

(41) S.I. 2006/3272 (C.119). There are amendments not relevant to these Regulations.

(42) S.I. 2001/544. There are amendments not relevant to these Regulations.

believing that the customer, transaction or product related to such transaction, falls within any of the following paragraphs.

- (2) The customer is—
  - (a) a credit or financial institution which is subject to the requirements of the money laundering directive; or
  - (b) a credit or financial institution (or equivalent institution) which—
    - (i) is situated in a non-EEA state which imposes requirements equivalent to those laid down in the money laundering directive; and
    - (ii) is supervised for compliance with those requirements.
- (3) The customer is a company whose securities are listed on a regulated market subject to specified disclosure obligations.
- (4) The customer is an independent legal professional and the product is an account into which monies are pooled, provided that—
  - (a) where the pooled account is held in a non-EEA state—
    - (i) that state imposes requirements to combat money laundering and terrorist financing which are consistent with international standards; and
    - (ii) the independent legal professional is supervised in that state for compliance with those requirements; and
  - (b) information on the identity of the persons on whose behalf monies are held in the pooled account is available, on request, to the institution which acts as a depository institution for the account.
- (5) The customer is a public authority in the United Kingdom.
- (6) The customer is a public authority which fulfils all the conditions set out in paragraph 2 of Schedule 2 to these Regulations.
- (7) The product is—
  - (a) a life insurance contract where the annual premium is no more than 1,000 euro or where a single premium of no more than 2,500 euro is paid;
  - (b) an insurance contract for the purposes of a pension scheme where the contract contains no surrender clause and cannot be used as collateral;
  - (c) a pension, superannuation or similar scheme which provides retirement benefits to employees, where contributions are made by an employer or by way of deduction from an employee's wages and the scheme rules do not permit the assignment of a member's interest under the scheme (other than an assignment permitted by section 44 of the Welfare Reform and Pensions Act 1999<sup>(43)</sup> (disapplication of restrictions on alienation) or section 91(5)(a) of the Pensions Act 1995<sup>(44)</sup> (inalienability of occupational pension)); or
  - (d) electronic money, within the meaning of Article 1(3)(b) of the electronic money directive, where—
    - (i) if the device cannot be recharged, the maximum amount stored in the device is no more than 150 euro; or
    - (ii) if the device can be recharged, a limit of 2,500 euro is imposed on the total amount transacted in a calendar year, except when an amount of 1,000 euro or more is redeemed in the same calendar year by the bearer (within the meaning of Article 3 of the electronic money directive).

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<sup>(43)</sup> 1999 c. 30.

<sup>(44)</sup> 1995 c. 26.

(8) The product and any transaction related to such product fulfils all the conditions set out in paragraph 3 of Schedule 2 to these Regulations.

(9) The product is a child trust fund within the meaning given by section 1(2) of the Child Trust Funds Act 2004~~(45)~~.

### **Enhanced customer due diligence and ongoing monitoring**

**14.**—(1) A relevant person must apply on a risk-sensitive basis enhanced customer due diligence measures and enhanced ongoing monitoring—

- (a) in accordance with paragraphs (2) to (4);
- (b) in any other situation which by its nature can present a higher risk of money laundering or terrorist financing.

(2) Where the customer has not been physically present for identification purposes, a relevant person must take specific and adequate measures to compensate for the higher risk, for example, by applying one or more of the following measures—

- (a) ensuring that the customer’s identity is established by additional documents, data or information;
- (b) supplementary measures to verify or certify the documents supplied, or requiring confirmatory certification by a credit or financial institution which is subject to the money laundering directive;
- (c) ensuring that the first payment is carried out through an account opened in the customer’s name with a credit institution.

(3) A credit institution (“the correspondent”) which has or proposes to have a correspondent banking relationship with a respondent institution (“the respondent”) from a non-EEA state must—

- (a) gather sufficient information about the respondent to understand fully the nature of its business;
- (b) determine from publicly-available information the reputation of the respondent and the quality of its supervision;
- (c) assess the respondent’s anti-money laundering and anti-terrorist financing controls;
- (d) obtain approval from senior management before establishing a new correspondent banking relationship;
- (e) document the respective responsibilities of the respondent and correspondent; and
- (f) be satisfied that, in respect of those of the respondent’s customers who have direct access to accounts of the correspondent, the respondent—
  - (i) has verified the identity of, and conducts ongoing monitoring in respect of, such customers; and
  - (ii) is able to provide to the correspondent, upon request, the documents, data or information obtained when applying customer due diligence measures and ongoing monitoring.

(4) A relevant person who proposes to have a business relationship or carry out an occasional transaction with a politically exposed person must—

- (a) have approval from senior management for establishing the business relationship with that person;
- (b) take adequate measures to establish the source of wealth and source of funds which are involved in the proposed business relationship or occasional transaction; and

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(45) 2004 c. 6.

- (c) where the business relationship is entered into, conduct enhanced ongoing monitoring of the relationship.
- (5) In paragraph (4), “a politically exposed person” means a person who is—
  - (a) an individual who is or has, at any time in the preceding year, been entrusted with a prominent public function by—
    - (i) a state other than the United Kingdom;
    - (ii) a Community institution; or
    - (iii) an international body,including a person who falls in any of the categories listed in paragraph 4(1)(a) of Schedule 2;
  - (b) an immediate family member of a person referred to in sub-paragraph (a), including a person who falls in any of the categories listed in paragraph 4(1)(c) of Schedule 2; or
  - (c) a known close associate of a person referred to in sub-paragraph (a), including a person who falls in either of the categories listed in paragraph 4(1)(d) of Schedule 2.
- (6) For the purpose of deciding whether a person is a known close associate of a person referred to in paragraph (5)(a), a relevant person need only have regard to information which is in his possession or is publicly known.

### **Branches and subsidiaries**

**15.—(1)** A credit or financial institution must require its branches and subsidiary undertakings which are located in a non-EEA state to apply, to the extent permitted by the law of that state, measures at least equivalent to those set out in these Regulations with regard to customer due diligence measures, ongoing monitoring and record-keeping.

(2) Where the law of a non-EEA state does not permit the application of such equivalent measures by the branch or subsidiary undertaking located in that state, the credit or financial institution must—

- (a) inform its supervisory authority accordingly; and
  - (b) take additional measures to handle effectively the risk of money laundering and terrorist financing.
- (3) In this regulation “subsidiary undertaking”—
- (a) except in relation to an incorporated friendly society, has the meaning given by section 1162 of the Companies Act 2006<sup>(46)</sup> (parent and subsidiary undertakings) and, in relation to a body corporate in or formed under the law of an EEA state other than the United Kingdom, includes an undertaking which is a subsidiary undertaking within the meaning of any rule of law in force in that state for purposes connected with implementation of the European Council Seventh Company Law Directive [83/349/EEC](#) of 13th June 1983<sup>(47)</sup> on consolidated accounts;
  - (b) in relation to an incorporated friendly society, means a body corporate of which the society has control within the meaning of section 13(9)(a) or (aa) of the Friendly Societies Act 1992<sup>(48)</sup> (control of subsidiaries and other bodies corporate).

(4) Before the entry into force of section 1162 of the Companies Act 2006 the reference to that section in paragraph (3)(a) shall be treated as a reference to section 258 of the Companies Act 1985<sup>(49)</sup> (parent and subsidiary undertakings).

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<sup>(46)</sup> 2006 c. 46.

<sup>(47)</sup> OJ No L 193, 18.7.1983, p. 1.

<sup>(48)</sup> 1992 c. 40. Section 13(9)(aa) was inserted by paragraph 11 of Part II of Schedule 18 to the 2000 Act.

<sup>(49)</sup> 1985 c. 6.

**Shell banks, anonymous accounts etc.**

16.—(1) A credit institution must not enter into, or continue, a correspondent banking relationship with a shell bank.

(2) A credit institution must take appropriate measures to ensure that it does not enter into, or continue, a corresponding banking relationship with a bank which is known to permit its accounts to be used by a shell bank.

(3) A credit or financial institution carrying on business in the United Kingdom must not set up an anonymous account or an anonymous passbook for any new or existing customer.

(4) As soon as reasonably practicable on or after 15th December 2007 all credit and financial institutions carrying on business in the United Kingdom must apply customer due diligence measures to, and conduct ongoing monitoring of, all anonymous accounts and passbooks in existence on that date and in any event before such accounts or passbooks are used.

(5) A “shell bank” means a credit institution, or an institution engaged in equivalent activities, incorporated in a jurisdiction in which it has no physical presence involving meaningful decision-making and management, and which is not part of a financial conglomerate or third-country financial conglomerate.

(6) In this regulation, “financial conglomerate” and “third-country financial conglomerate” have the meanings given by regulations 1(2) and 7(1) respectively of the Financial Conglomerates and Other Financial Groups Regulations 2004(50).

**Reliance**

17.—(1) A relevant person may rely on a person who falls within paragraph (2) (or who the relevant person has reasonable grounds to believe falls within paragraph (2)) to apply any customer due diligence measures provided that—

- (a) the other person consents to being relied on; and
- (b) notwithstanding the relevant person’s reliance on the other person, the relevant person remains liable for any failure to apply such measures.

(2) The persons are—

- (a) a credit or financial institution which is an authorised person;
- (b) a relevant person who is—
  - (i) an auditor, insolvency practitioner, external accountant, tax adviser or independent legal professional; and
  - (ii) supervised for the purposes of these Regulations by one of the bodies listed in Part 1 of Schedule 3;
- (c) a person who carries on business in another EEA state who is—
  - (i) a credit or financial institution, auditor, insolvency practitioner, external accountant, tax adviser or independent legal professional;
  - (ii) subject to mandatory professional registration recognised by law; and
  - (iii) supervised for compliance with the requirements laid down in the money laundering directive in accordance with section 2 of Chapter V of that directive; or
- (d) a person who carries on business in a non-EEA state who is—
  - (i) a credit or financial institution (or equivalent institution), auditor, insolvency practitioner, external accountant, tax adviser or independent legal professional;



- (ii) subject to mandatory professional registration recognised by law;
- (iii) subject to requirements equivalent to those laid down in the money laundering directive; and
- (iv) supervised for compliance with those requirements in a manner equivalent to section 2 of Chapter V of the money laundering directive.

(3) In paragraph (2)(c)(i) and (d)(i), “auditor” and “insolvency practitioner” includes a person situated in another EEA state or a non-EEA state who provides services equivalent to the services provided by an auditor or insolvency practitioner.

(4) Nothing in this regulation prevents a relevant person applying customer due diligence measures by means of an outsourcing service provider or agent provided that the relevant person remains liable for any failure to apply such measures.

(5) In this regulation, “financial institution” excludes money service businesses.

#### **Directions where Financial Action Task Force applies counter-measures**

**18.** The Treasury may direct any relevant person—

- (a) not to enter into a business relationship;
- (b) not to carry out an occasional transaction; or
- (c) not to proceed any further with a business relationship or occasional transaction,

with a person who is situated or incorporated in a non-EEA state to which the Financial Action Task Force has decided to apply counter-measures.

## **PART 3**

### **RECORD-KEEPING, PROCEDURES AND TRAINING**

#### **Record-keeping**

**19.—**(1) Subject to paragraph (4), a relevant person must keep the records specified in paragraph (2) for at least the period specified in paragraph (3).

(2) The records are—

- (a) a copy of, or the references to, the evidence of the customer’s identity obtained pursuant to regulation 7, 8, 10, 14 or 16(4);
- (b) the supporting records (consisting of the original documents or copies) in respect of a business relationship or occasional transaction which is the subject of customer due diligence measures or ongoing monitoring.

(3) The period is five years beginning on—

- (a) in the case of the records specified in paragraph (2)(a), the date on which—
  - (i) the occasional transaction is completed; or
  - (ii) the business relationship ends; or
- (b) in the case of the records specified in paragraph (2)(b)—
  - (i) where the records relate to a particular transaction, the date on which the transaction is completed;
  - (ii) for all other records, the date on which the business relationship ends.

(4) A relevant person who is relied on by another person must keep the records specified in paragraph (2)(a) for five years beginning on the date on which he is relied on for the purposes of regulation 7, 10, 14 or 16(4) in relation to any business relationship or occasional transaction.

(5) A person referred to in regulation 17(2)(a) or (b) who is relied on by a relevant person must, if requested by the person relying on him within the period referred to in paragraph (4)—

- (a) as soon as reasonably practicable make available to the person who is relying on him any information about the customer (and any beneficial owner) which he obtained when applying customer due diligence measures; and
- (b) as soon as reasonably practicable forward to the person who is relying on him copies of any identification and verification data and other relevant documents on the identity of the customer (and any beneficial owner) which he obtained when applying those measures.

(6) A relevant person who relies on a person referred to in regulation 17(2)(c) or (d) (a “third party”) to apply customer due diligence measures must take steps to ensure that the third party will, if requested by the relevant person within the period referred to in paragraph (4)—

- (a) as soon as reasonably practicable make available to him any information about the customer (and any beneficial owner) which the third party obtained when applying customer due diligence measures; and
- (b) as soon as reasonably practicable forward to him copies of any identification and verification data and other relevant documents on the identity of the customer (and any beneficial owner) which the third party obtained when applying those measures.

(7) Paragraphs (5) and (6) do not apply where a relevant person applies customer due diligence measures by means of an outsourcing service provider or agent.

(8) For the purposes of this regulation, a person relies on another person where he does so in accordance with regulation 17(1).

### **Policies and procedures**

**20.**—(1) A relevant person must establish and maintain appropriate and risk-sensitive policies and procedures relating to—

- (a) customer due diligence measures and ongoing monitoring;
- (b) reporting;
- (c) record-keeping;
- (d) internal control;
- (e) risk assessment and management;
- (f) the monitoring and management of compliance with, and the internal communication of, such policies and procedures,

in order to prevent activities related to money laundering and terrorist financing.

(2) The policies and procedures referred to in paragraph (1) include policies and procedures—

- (a) which provide for the identification and scrutiny of—
  - (i) complex or unusually large transactions;
  - (ii) unusual patterns of transactions which have no apparent economic or visible lawful purpose; and
  - (iii) any other activity which the relevant person regards as particularly likely by its nature to be related to money laundering or terrorist financing;

- (b) which specify the taking of additional measures, where appropriate, to prevent the use for money laundering or terrorist financing of products and transactions which might favour anonymity;
- (c) to determine whether a customer is a politically exposed person;
- (d) under which—
  - (i) an individual in the relevant person’s organisation is a nominated officer under Part 7 of the Proceeds of Crime Act 2002(51) and Part 3 of the Terrorism Act 2000(52);
  - (ii) anyone in the organisation to whom information or other matter comes in the course of the business as a result of which he knows or suspects or has reasonable grounds for knowing or suspecting that a person is engaged in money laundering or terrorist financing is required to comply with Part 7 of the Proceeds of Crime Act 2002 or, as the case may be, Part 3 of the Terrorism Act 2000; and
  - (iii) where a disclosure is made to the nominated officer, he must consider it in the light of any relevant information which is available to the relevant person and determine whether it gives rise to knowledge or suspicion or reasonable grounds for knowledge or suspicion that a person is engaged in money laundering or terrorist financing.

(3) Paragraph (2)(d) does not apply where the relevant person is an individual who neither employs nor acts in association with any other person.

(4) A credit or financial institution must establish and maintain systems which enable it to respond fully and rapidly to enquiries from financial investigators accredited under section 3 of the Proceeds of Crime Act 2002 (accreditation and training), persons acting on behalf of the Scottish Ministers in their capacity as an enforcement authority under that Act, officers of Revenue and Customs or constables as to—

- (a) whether it maintains, or has maintained during the previous five years, a business relationship with any person; and
- (b) the nature of that relationship.

(5) A credit or financial institution must communicate where relevant the policies and procedures which it establishes and maintains in accordance with this regulation to its branches and subsidiary undertakings which are located outside the United Kingdom.

(6) In this regulation—

- “politically exposed person” has the same meaning as in regulation 14(4);
- “subsidiary undertaking” has the same meaning as in regulation 15.

## **Training**

**21.** A relevant person must take appropriate measures so that all relevant employees of his are—

- (a) made aware of the law relating to money laundering and terrorist financing; and
- (b) regularly given training in how to recognise and deal with transactions and other activities which may be related to money laundering or terrorist financing.

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(51) 2002 c. 29.

(52) 2000 c. 11.

## 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(53) (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(54) (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;
  - (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;

(53) 1974 c. 39.

(54) 2006 c. 14.

- (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<sup>(55)</sup> (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.

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(55) 1986 c. 45.

(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>(56)</sup>;
  - (ii) an offence under paragraph 7(2) or (3) of Schedule 3 to the Anti-Terrorism, Crime and Security Act 2001<sup>(57)</sup> (offences);
  - (iii) an offence under the Terrorism Act 2006<sup>(58)</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>(59)</sup>;
  - (v) an offence under the Fraud Act 2006<sup>(60)</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>(61)</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>(62)</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>(63)</sup> or the Money Laundering Regulations 2001<sup>(64)</sup>;
- (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>(65)</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.

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<sup>(56)</sup> 2000 c. 11.

<sup>(57)</sup> 2001 c. 24.

<sup>(58)</sup> 2006 c. 11.

<sup>(59)</sup> 2002 c. 29.

<sup>(60)</sup> 2006 c. 35.

<sup>(61)</sup> 1994 c. 23.

<sup>(62)</sup> 1986 c. 46.

<sup>(63)</sup> S.I. 2003/3075.

<sup>(64)</sup> S.I. 2001/3641.

<sup>(65)</sup> OJ No L 345, 8.12.2006, p.1.

(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(66).

### **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;
  - (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.

## PART 5 ENFORCEMENT

### *Powers of designated authorities*

#### **Interpretation**

**36.** In this Part—

“designated authority” means—

- (a) the Authority;
- (b) the Commissioners;
- (c) the OFT; and
- (d) in relation to credit unions in Northern Ireland, DETI;

“officer”, except in regulations 40(3), 41 and 47 means—

- (a) an officer of the Authority, including a member of the Authority’s staff or an agent of the Authority;
- (b) an officer of Revenue and Customs;
- (c) an officer of the OFT;
- (d) a relevant officer; or
- (e) an officer of DETI acting for the purposes of its functions under these Regulations in relation to credit unions in Northern Ireland;

“recorded information” includes information recorded in any form and any document of any nature;

“relevant officer” means—

- (a) in Great Britain, an officer of a local weights and measures authority;
- (b) in Northern Ireland, an officer of DETI acting pursuant to arrangements made with the OFT for the purposes of these Regulations.

#### **Power to require information from, and attendance of, relevant and connected persons**

**37.—**(1) An officer may, by notice to a relevant person or to a person connected with a relevant person, require the relevant person or the connected person, as the case may be—

- (a) to provide such information as may be specified in the notice;
- (b) to produce such recorded information as may be so specified; or
- (c) to attend before an officer at a time and place specified in the notice and answer questions.

(2) For the purposes of paragraph (1), a person is connected with a relevant person if he is, or has at any time been, in relation to the relevant person, a person listed in Schedule 4 to these Regulations.

(3) An officer may exercise powers under this regulation only if the information sought to be obtained as a result is reasonably required in connection with the exercise by the designated authority for whom he acts of its functions under these Regulations.

(4) Where an officer requires information to be provided or produced pursuant to paragraph (1) (a) or (b)—

- (a) the notice must set out the reasons why the officer requires the information to be provided or produced; and

- (b) such information must be provided or produced—
  - (i) before the end of such reasonable period as may be specified in the notice; and
  - (ii) at such place as may be so specified.

(5) In relation to information recorded otherwise than in legible form, the power to require production of it includes a power to require the production of a copy of it in legible form or in a form from which it can readily be produced in visible and legible form.

(6) The production of a document does not affect any lien which a person has on the document.

(7) A person may not be required under this regulation to provide or produce information or to answer questions which he would be entitled to refuse to provide, produce or answer on grounds of legal professional privilege in proceedings in the High Court, except that a lawyer may be required to provide the name and address of his client.

(8) Subject to paragraphs (9) and (10), a statement made by a person in compliance with a requirement imposed on him under paragraph (1)(c) is admissible in evidence in any proceedings, so long as it also complies with any requirements governing the admissibility of evidence in the circumstances in question.

(9) In criminal proceedings in which a person is charged with an offence to which this paragraph applies—

- (a) no evidence relating to the statement may be adduced; and
- (b) no question relating to it may be asked,

by or on behalf of the prosecution unless evidence relating to it is adduced, or a question relating to it is asked, in the proceedings by or on behalf of that person.

(10) Paragraph (9) applies to any offence other than one under—

- (a) section 5 of the Perjury Act 1911<sup>(67)</sup> (false statements without oath);
- (b) section 44(2) of the Criminal Law (Consolidation)(Scotland) Act 1995<sup>(68)</sup> (false statements and declarations); or
- (c) Article 10 of the Perjury (Northern Ireland) Order 1979<sup>(69)</sup> (false unsworn statements).

(11) In the application of this regulation to Scotland, the reference in paragraph (7) to—

- (a) proceedings in the High Court is to be read as a reference to legal proceedings generally; and
- (b) an entitlement on grounds of legal professional privilege is to be read as a reference to an entitlement on the grounds of confidentiality of communications.

### **Entry, inspection without a warrant etc.**

**38.**—(1) Where an officer has reasonable cause to believe that any premises are being used by a relevant person in connection with his business or professional activities, he may on producing evidence of his authority at any reasonable time—

- (a) enter the premises;
- (b) inspect the premises;
- (c) observe the carrying on of business or professional activities by the relevant person;
- (d) inspect any recorded information found on the premises;

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<sup>(67)</sup> 1911 c. 6.

<sup>(68)</sup> 1995 c. 39.

<sup>(69)</sup> S.I. 1979/1714 (N.I. 19).

- (e) require any person on the premises to provide an explanation of any recorded information or to state where it may be found;
  - (f) in the case of a money service business or a high value dealer, inspect any cash found on the premises.
- (2) An officer may take copies of, or make extracts from, any recorded information found under paragraph (1).
- (3) Paragraphs (1)(d) and (e) and (2) do not apply to recorded information which the relevant person would be entitled to refuse to disclose on grounds of legal professional privilege in proceedings in the High Court, except that a lawyer may be required to provide the name and address of his client and, for this purpose, regulation 37(11) applies to this paragraph as it applies to regulation 37(7).
- (4) An officer may exercise powers under this regulation only if the information sought to be obtained as a result is reasonably required in connection with the exercise by the designated authority for whom he acts of its functions under these Regulations.
- (5) In this regulation, “premises” means any premises other than premises used only as a dwelling.

### **Entry to premises under warrant**

- 39.**—(1) A justice may issue a warrant under this paragraph if satisfied on information on oath given by an officer that there are reasonable grounds for believing that the first, second or third set of conditions is satisfied.
- (2) The first set of conditions is—
- (a) that there is on the premises specified in the warrant recorded information in relation to which a requirement could be imposed under regulation 37(1)(b); and
  - (b) that if such a requirement were to be imposed—
    - (i) it would not be complied with; or
    - (ii) the recorded information to which it relates would be removed, tampered with or destroyed.
- (3) The second set of conditions is—
- (a) that a person on whom a requirement has been imposed under regulation 37(1)(b) has failed (wholly or in part) to comply with it; and
  - (b) that there is on the premises specified in the warrant recorded information which has been required to be produced.
- (4) The third set of conditions is—
- (a) that an officer has been obstructed in the exercise of a power under regulation 38; and
  - (b) that there is on the premises specified in the warrant recorded information or cash which could be inspected under regulation 38(1)(d) or (f).
- (5) A justice may issue a warrant under this paragraph if satisfied on information on oath given by an officer that there are reasonable grounds for suspecting that—
- (a) an offence under these Regulations has been, is being or is about to be committed by a relevant person; and
  - (b) there is on the premises specified in the warrant recorded information relevant to whether that offence has been, or is being or is about to be committed.
- (6) A warrant issued under this regulation shall authorise an officer—
- (a) to enter the premises specified in the warrant;

- (b) to search the premises and take possession of any recorded information or anything appearing to be recorded information specified in the warrant or to take, in relation to any such recorded information, any other steps which may appear to be necessary for preserving it or preventing interference with it;
  - (c) to take copies of, or extracts from, any recorded information specified in the warrant;
  - (d) to require any person on the premises to provide an explanation of any recorded information appearing to be of the kind specified in the warrant or to state where it may be found;
  - (e) to use such force as may reasonably be necessary.
- (7) Where a warrant is issued by a justice under paragraph (1) or (5) on the basis of information given by an officer of the Authority, for “an officer” in paragraph (6) substitute “a constable”.
- (8) In paragraphs (1), (5) and (7), “justice” means—
- (a) in relation to England and Wales, a justice of the peace;
  - (b) in relation to Scotland, a justice within the meaning of section 307 of the Criminal Procedure (Scotland) Act 1995(70) (interpretation);
  - (c) in relation to Northern Ireland, a lay magistrate.
- (9) In the application of this regulation to Scotland, the references in paragraphs (1) and (5) to information on oath are to be read as references to evidence on oath.

#### **Failure to comply with information requirement**

- 40.**—(1) If, on an application made by—
- (a) a designated authority; or
  - (b) a local weights and measures authority or DETI pursuant to arrangements made with the OFT—
    - (i) by or on behalf of the authority; or
    - (ii) by DETI,
- it appears to the court that a person (the “information defaulter”) has failed to do something that he was required to do under regulation 37(1), the court may make an order under this regulation.
- (2) An order under this regulation may require the information defaulter—
- (a) to do the thing that he failed to do within such period as may be specified in the order;
  - (b) otherwise to take such steps to remedy the consequences of the failure as may be so specified.
- (3) If the information defaulter is a body corporate, a partnership or an unincorporated body of persons which is not a partnership, the order may require any officer of the body corporate, partnership or body, who is (wholly or partly) responsible for the failure to meet such costs of the application as are specified in the order.
- (4) In this regulation, “court” means—
- (a) in England and Wales and Northern Ireland, the High Court or the county court;
  - (b) in Scotland, the Court of Session or the sheriff.

**Powers of relevant officers**

**41.**—(1) A relevant officer may only exercise powers under regulations 37 to 39 pursuant to arrangements made with the OFT—

- (a) by or on behalf of the local weights and measures authority of which he is an officer (“his authority”); or
- (b) by DETI.

(2) Anything done or omitted to be done by, or in relation to, a relevant officer in the exercise or purported exercise of a power in this Part shall be treated for all purposes as having been done or omitted to be done by, or in relation to, an officer of the OFT.

(3) Paragraph (2) does not apply for the purposes of any criminal proceedings brought against the relevant officer, his authority, DETI or the OFT, in respect of anything done or omitted to be done by the officer.

(4) A relevant officer shall not disclose to any person other than the OFT and his authority or, as the case may be, DETI information obtained by him in the exercise of such powers unless—

- (a) he has the approval of the OFT to do so; or
- (b) he is under a duty to make the disclosure.

*Civil penalties, review and appeals***Power to impose civil penalties**

**42.**—(1) A designated authority may impose a penalty of such amount as it considers appropriate on a relevant person who fails to comply with any requirement in regulation 7(1), (2) or (3), 8(1) or (3), 9(2), 10(1), 11(1), 14(1), 15(1) or (2), 16(1), (2), (3) or (4), 19(1), (4), (5) or (6), 20(1), (4) or (5), 21, 26, 27(4) or 33 or a direction made under regulation 18 and, for this purpose, “appropriate” means effective, proportionate and dissuasive.

(2) The designated authority must not impose a penalty on a person under paragraph (1) where there are reasonable grounds for it to be satisfied that the person took all reasonable steps and exercised all due diligence to ensure that the requirement would be complied with.

(3) In deciding whether a person has failed to comply with a requirement of these Regulations, the designated authority must consider whether he followed any relevant guidance which was at the time—

- (a) issued by a supervisory authority or any other appropriate body;
- (b) approved by the Treasury; and
- (c) published in a manner approved by the Treasury as suitable in their opinion to bring the guidance to the attention of persons likely to be affected by it.

(4) In paragraph (3), an “appropriate body” means any body which regulates or is representative of any trade, profession, business or employment carried on by the alleged offender.

(5) Where the Commissioners decide to impose a penalty under this regulation, they must give the person notice of—

- (a) their decision to impose the penalty and its amount;
- (b) the reasons for imposing the penalty;
- (c) the right to a review under regulation 43; and
- (d) the right to appeal under regulation 44(1)(a).

(6) Where the Authority, the OFT or DETI proposes to impose a penalty under this regulation, it must give the person notice of—



- (a) its proposal to impose the penalty and the proposed amount;
  - (b) the reasons for imposing the penalty; and
  - (c) the right to make representations to it within a specified period (which may not be less than 28 days).
- (7) The Authority, the OFT or DETI, as the case may be, must then decide, within a reasonable period, whether to impose a penalty under this regulation and it must give the person notice of—
- (a) its decision not to impose a penalty; or
  - (b) the following matters—
    - (i) its decision to impose a penalty and the amount;
    - (ii) the reasons for its decision; and
    - (iii) the right to appeal under regulation 44(1)(b).
- (8) A penalty imposed under this regulation is payable to the designated authority which imposes it.

### **Review procedure**

- 43.**—(1) This regulation applies to decisions of the Commissioners made under—
- (a) regulation 29, to refuse to register an applicant;
  - (b) regulation 30, to cancel the registration of a registered person; and
  - (c) regulation 42, to impose a penalty.
- (2) Any person who is the subject of a decision to which this regulation applies may by notice to the Commissioners require them to review that decision.
- (3) The Commissioners need not review any decision unless the notice requiring the review is given within 45 days beginning with the date on which they first gave notice of the decision to the person requiring the review.
- (4) Where the Commissioners are required under this regulation to review any decision they must either—
- (a) confirm the decision; or
  - (b) withdraw or vary the decision and take such further steps (if any) in consequence of the withdrawal or variation as they consider appropriate.
- (5) Where the Commissioners do not, within 45 days beginning with the date on which the review was required by a person, give notice to that person of their determination of the review, they are to be taken for the purposes of these Regulations to have confirmed the decision.

### **Appeals**

- 44.**—(1) A person may appeal from a decision by—
- (a) the Commissioners on a review under regulation 43; and
  - (b) the Authority, the OFT or DETI under regulation 34 or 42.
- (2) An appeal from a decision by—
- (a) the Commissioners is to a VAT and duties tribunal(71);
  - (b) the Authority is to the Financial Services and Markets Tribunal(72);

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(71) Established under section 82 of and Schedule 12 to the Value Added Tax Act 1994 (c.23).

(72) Established under section 132 of the 2000 Act.

- (c) the OFT is to the Consumer Credit Appeals Tribunal(73); and
- (d) DETI is to the High Court.

(3) The provisions of Part 5 of the Value Added Tax Act 1994(74) (appeals), subject to the modifications set out in paragraph 1 of Schedule 5, apply in respect of appeals to a VAT and duties tribunal made under this regulation as they apply in respect of appeals made to such a tribunal under section 83 (appeals) of that Act.

(4) The provisions of Part 9 of the 2000 Act (hearings and appeals), subject to the modifications set out in paragraph 2 of Schedule 5, apply in respect of appeals to the Financial Services and Markets Tribunal made under this regulation as they apply in respect of references made to that Tribunal under that Act.

(5) Sections 40A (the Consumer Credit Appeals Tribunal), 41 (appeals to the Secretary of State under Part 3) and 41A (appeals from the Consumer Credit Appeals Tribunal) of the Consumer Credit Act 1974(75) apply in respect of appeals to the Consumer Credit Appeal Tribunal made under this regulation as they apply in respect of appeals made to that Tribunal under section 41 of that Act.

- (6) A VAT and duties tribunal hearing an appeal under paragraph (2) has the power to—
  - (a) quash or vary any decision of the supervisory authority, including the power to reduce any penalty to such amount (including nil) as they think proper; and
  - (b) substitute their own decision for any decision quashed on appeal.

(7) Notwithstanding paragraph (2)(c), until the coming into force of section 55 of the Consumer Credit Act 2006(76) (the Consumer Credit Appeals Tribunal), an appeal from a decision by the OFT is to the Financial Services and Markets Tribunal and, for these purposes, the coming into force of that section shall not affect—

- (a) the hearing and determination by the Financial Service and Markets Tribunal of an appeal commenced before the coming into force of that section (“the original appeal”); or
- (b) any appeal against the decision of the Financial Services and Markets Tribunal with respect to the original appeal.

(8) The modifications in Schedule 5 have effect for the purposes of appeals made under this regulation.

### *Criminal offences*

#### **Offences**

**45.**—(1) A person who fails to comply with any requirement in regulation 7(1), (2) or (3), 8(1) or (3), 9(2), 10(1), 11(1)(a), (b) or (c), 14(1), 15(1) or (2), 16(1), (2), (3) or (4), 19(1), (4), (5) or (6), 20(1), (4) or (5), 21, 26, 27(4) or 33, or a direction made under regulation 18, is guilty of an offence and liable—

- (a) on summary conviction, to a fine not exceeding the statutory maximum;
- (b) on conviction on indictment, to imprisonment for a term not exceeding two years, to a fine or to both.

(2) In deciding whether a person has committed an offence under paragraph (1), the court must consider whether he followed any relevant guidance which was at the time—

- (a) issued by a supervisory authority or any other appropriate body;

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(73) Established under section 40A of the Consumer Credit Act 1974 (c.39).

(74) 1994 c. 23.

(75) Sections 40A and 41A were inserted by respectively sections 55 and 57 of the Consumer Credit Act 2006 and section 41 was amended by section 56 of that Act.

(76) 2006 c. 14.

(b) approved by the Treasury; and

(c) published in a manner approved by the Treasury as suitable in their opinion to bring the guidance to the attention of persons likely to be affected by it.

(3) In paragraph (2), an “appropriate body” means any body which regulates or is representative of any trade, profession, business or employment carried on by the alleged offender.

(4) A person is not guilty of an offence under this regulation if he took all reasonable steps and exercised all due diligence to avoid committing the offence.

(5) Where a person is convicted of an offence under this regulation, he shall not also be liable to a penalty under regulation 42.

### **Prosecution of offences**

**46.**—(1) Proceedings for an offence under regulation 45 may be instituted by—

(a) the Director of Revenue and Customs Prosecutions or by order of the Commissioners;

(b) the OFT;

(c) a local weights and measures authority;

(d) DETI;

(e) the Director of Public Prosecutions; or

(f) the Director of Public Prosecutions for Northern Ireland.

(2) Proceedings for an offence under regulation 45 may be instituted only against a relevant person or, where such a person is a body corporate, a partnership or an unincorporated association, against any person who is liable to be proceeded against under regulation 47.

(3) Where proceedings under paragraph (1) are instituted by order of the Commissioners, the proceedings must be brought in the name of an officer of Revenue and Customs.

(4) Where a local weights and measures authority in England or Wales proposes to institute proceedings for an offence under regulation 45 it must give the OFT notice of the intended proceedings, together with a summary of the facts on which the charges are to be founded.

(5) A local weights and measures authority must also notify the OFT of the outcome of the proceedings after they are finally determined.

(6) A local weights and measures authority must, whenever the OFT requires, report in such form and with such particulars as the OFT requires on the exercise of its functions under these Regulations.

(7) Where the Commissioners investigate, or propose to investigate, any matter with a view to determining—

(a) whether there are grounds for believing that an offence under regulation 45 has been committed by any person; or

(b) whether such a person should be prosecuted for such an offence,

that matter is to be treated as an assigned matter within the meaning of section 1(1) of the Customs and Excise Management Act 1979<sup>(77)</sup>.

(8) Paragraphs (1) and (3) to (6) do not extend to Scotland.

### **Offences by bodies corporate etc.**

**47.**—(1) If an offence under regulation 45 committed by a body corporate is shown—

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(77) 1979 c. 2. There are amendments to section 1 not relevant to these Regulations.

- (a) to have been committed with the consent or the connivance of an officer of the body corporate; or
- (b) to be attributable to any neglect on his part,
- the officer as well as the body corporate is guilty of an offence and liable to be proceeded against and punished accordingly.
- (2) If an offence under regulation 45 committed by a partnership is shown—
- (a) to have been committed with the consent or the connivance of a partner; or
- (b) to be attributable to any neglect on his part,
- the partner as well as the partnership is guilty of an offence and liable to be proceeded against and punished accordingly.
- (3) If an offence under regulation 45 committed by an unincorporated association (other than a partnership) is shown—
- (a) to have been committed with the consent or the connivance of an officer of the association; or
- (b) to be attributable to any neglect on his part,
- that officer as well as the association is guilty of an offence and liable to be proceeded against and punished accordingly.
- (4) If the affairs of a body corporate are managed by its members, paragraph (1) applies in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body.
- (5) Proceedings for an offence alleged to have been committed by a partnership or an unincorporated association must be brought in the name of the partnership or association (and not in that of its members).
- (6) A fine imposed on the partnership or association on its conviction of an offence is to be paid out of the funds of the partnership or association.
- (7) Rules of court relating to the service of documents are to have effect as if the partnership or association were a body corporate.
- (8) In proceedings for an offence brought against the partnership or association—
- (a) section 33 of the Criminal Justice Act 1925(**78**) (procedure on charge of offence against corporation) and Schedule 3 to the Magistrates' Courts Act 1980(**79**) (corporations) apply as they do in relation to a body corporate;
- (b) section 70 (proceedings against bodies corporate) of the Criminal Procedure (Scotland) Act 1995(**80**) applies as it does in relation to a body corporate;
- (c) section 18 of the Criminal Justice (Northern Ireland) Act 1945(**81**) (procedure on charge) and Schedule 4 to the Magistrates' Courts (Northern Ireland) Order 1981(**82**) (corporations) apply as they do in relation to a body corporate.
- (9) In this regulation—
- “officer”—
- (a) in relation to a body corporate, means a director, manager, secretary, chief executive, member of the committee of management, or a person purporting to act in such a capacity; and

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(78) 1925 c. 86.

(79) 1980 c. 43.

(80) 1995 c. 46.

(81) 1945 c. 15 (N.I.).

(82) S.I. 1981/1675 (N.I. 26).

- (b) in relation to an unincorporated association, means any officer of the association or any member of its governing body, or a person purporting to act in such capacity; and “partner” includes a person purporting to act as a partner.

## PART 6

### MISCELLANEOUS

#### Recovery of charges and penalties through the court

**48.** Any charge or penalty imposed on a person by a supervisory authority under regulation 35(1) or 42(1) is a debt due from that person to the authority, and is recoverable accordingly.

#### Obligations on public authorities

**49.**—(1) The following bodies and persons must, if they know or suspect or have reasonable grounds for knowing or suspecting that a person is or has engaged in money laundering or terrorist financing, as soon as reasonably practicable inform the Serious Organised Crime Agency—

- (a) the Auditor General for Scotland;
- (b) the Auditor General for Wales;
- (c) the Authority;
- (d) the Bank of England;
- (e) the Comptroller and Auditor General;
- (f) the Comptroller and Auditor General for Northern Ireland;
- (g) the Gambling Commission;
- (h) the OFT;
- (i) the Official Solicitor to the Supreme Court;
- (j) the Pensions Regulator;
- (k) the Public Trustee;
- (l) the Secretary of State, in the exercise of his functions under enactments relating to companies and insolvency;
- (m) the Treasury, in the exercise of their functions under the 2000 Act;
- (n) the Treasury Solicitor;
- (o) a designated professional body for the purposes of Part 20 of the 2000 Act (provision of financial services by members of the professions);
- (p) a person or inspector appointed under section 65 (investigations on behalf of Authority) or 66 (inspections and special meetings) of the Friendly Societies Act 1992<sup>(83)</sup>;
- (q) an inspector appointed under section 49 of the Industrial and Provident Societies Act 1965<sup>(84)</sup> (appointment of inspectors) or section 18 of the Credit Unions Act 1979<sup>(85)</sup> (power to appoint inspector);
- (r) an inspector appointed under section 431 (investigation of a company on its own application), 432 (other company investigations), 442 (power to investigate company

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<sup>(83)</sup> 1992 c. 40.

<sup>(84)</sup> 1965 c. 12.

<sup>(85)</sup> 1979 c. 34.

- ownership) or 446 (investigation of share dealing) of the Companies Act 1985<sup>(86)</sup> or under Article 424, 425, 435 or 439 of the Companies (Northern Ireland) Order 1986<sup>(87)</sup>;
- (s) a person or inspector appointed under section 55 (investigations on behalf of Authority) or 56 (inspections and special meetings) of the Building Societies Act 1986<sup>(88)</sup>;
- (t) a person appointed under section 167 (appointment of persons to carry out investigations), 168(3) or (5) (appointment of persons to carry out investigations in particular cases), 169(1)(b) (investigations to support overseas regulator) or 284 (power to investigate affairs of a scheme) of the 2000 Act, or under regulations made under section 262(2)(k) (open-ended investment companies) of that Act, to conduct an investigation; and
- (u) a person authorised to require the production of documents under section 447 of the Companies Act 1985 (Secretary of State's power to require production of documents), Article 440 of the Companies (Northern Ireland) Order 1986 or section 84 of the Companies Act 1989<sup>(89)</sup> (exercise of powers by officer).
- (2) A disclosure made under paragraph (1) is not to be taken to breach any restriction on the disclosure of information however imposed.

#### **Transitional provisions: requirement to be registered**

- 50.**—(1) Regulation 26 does not apply to an existing money service business, an existing trust or company service provider or an existing high value dealer until—
- (a) where it has applied in accordance with regulation 27 before the specified date for registration in a register maintained under regulation 25(1) (a “new register”)—
- (i) the date it is included in a new register following the determination of its application by the Commissioners; or
- (ii) where the Commissioners give it notice under regulation 29(2)(b) of their decision not to register it, the date on which the Commissioners state that the decision takes effect or, where a statement is included in accordance with paragraph (3)(b), the time at which the Commissioners give it such notice;
- (b) in any other case, the specified date.
- (2) The specified date is—
- (a) in the case of an existing money service business, 1st February 2008;
- (b) in the case of an existing trust or company service provider, 1st April 2008;
- (c) in the case of an existing high value dealer, the first anniversary which falls on or after 1st January 2008 of the date of its registration in a register maintained under regulation 10 of the Money Laundering Regulations 2003.
- (3) In the case of an application for registration in a new register made before the specified date by an existing money service business, an existing trust or company service provider or an existing high value dealer, the Commissioners must include in a notice given to it under regulation 29(2)(b)—
- (a) the date on which their decision is to take effect; or
- (b) if the Commissioners consider that the interests of the public require their decision to have immediate effect, a statement to that effect and the reasons for it.

<sup>(86)</sup> 1985 c. 6.

<sup>(87)</sup> S.I. 1986/1032 (N.I. 6).

<sup>(88)</sup> 1986 c. 53.

<sup>(89)</sup> 1989 c. 40.

(4) In the case of an application for registration in a new register made before the specified date by an existing money services business or an existing trust or company service provider, the Commissioners must give it a notice under regulation 29(2) by—

- (a) in the case of an existing money service business, 1st June 2008;
- (b) in the case of an existing trust or company service provider, 1st July 2008; or
- (c) where applicable, 45 days beginning with the date on which they receive any further information required under regulation 27(3).

(5) In this regulation—

“existing money service business” and an “existing high value dealer” mean a money service business or a high value dealer which, immediately before 15th December 2007, was included in a register maintained under regulation 10 of the Money Laundering Regulations 2003;

“existing trust or company service provider” means a trust or company service provider carrying on business in the United Kingdom immediately before 15th December 2007.

#### **Minor and consequential amendments**

**51.** Schedule 6, which contains minor and consequential amendments to primary and secondary legislation, has effect.

Signatory text

24th July 2007

*Alan Campbell*  
*Frank Roy*  
Two Lords Commissioners of  
Her Majesty’s Treasury