



Money Laundering Regulations 2007

An overview for Interim Providers

Introduction

New Money Laundering Regulations (MLR) are being introduced on 15 December 2007 which will have serious implications for many interim providers and, indeed, all those employment agencies in the UK who are placing interim/permanent directors or shadow directors.

The Regulations have been introduced by HM Treasury and are being regulated by HM Revenue and Customs (HMRC). To date, HMRC has carried out very little publicity and, that limited publicity has not targeted all of the business sectors affected by the Regulations. HMRC has issued guidance on these Regulations but the guidance is still only in 'draft' form and the final guidance will not be published until 15 December 2007. However, after a top level meeting with the HMRC MLR policy unit, Competex understands that there will be no further changes to the 'draft' guidance and this will automatically become the final version on 15 December 2007.

We have been advised by HMRC that HM Treasury has agreed an advertising budget but the advertising campaign has not yet started. HMRC will be holding seminars on the Regulations in the New Year but the dates are not yet available!

Who has to be regulated?

Any interim provider or employment agency who introduces a candidate at director level must now be regulated by a supervisory authority for money laundering purposes. This is because in HMRC terms, your activities are deemed to fall under the category of a Trust or Company Services Provider (TCSP) (see below).

In addition, if you are being regulated by HMRC, **all active directors or partners** together with a **nominated officer** of your company must be regulated and **all shareholders owning more than 25%** of the shares must also be regulated as Fit and Proper persons.

Furthermore, all **candidates** fulfilling the role of a director must also have their business regulated and be checked as a Fit & Proper person.

What is a Trust or Company Service Provider?

A TCSP is any person who by way of business provides any of the following services to third parties;

- Forming companies or other legal persons. *(Not applicable to interim providers but could apply to candidates).*
- Acting, or arranging for another person to act, as a director or a shadow director. *(Applies to interim providers and candidates).*
- Acting as secretary to a company. *(Not applicable to interim providers but could apply to candidates).*
- Acting as a partner in a partnership. *(Applies to interim providers and candidates).*

NB. A director does not have to be formally appointed at Companies House. Any candidate acting as HR director, IT director, sales director or working with the Board means that the Regulations would apply to you and to them.

What is the Fit and Proper (F&P) test?

The F&P test is part of the registration process. The following people will be tested:

- The registration applicant
- A person who effectively directs or will direct the business
- A beneficial owner i.e. anyone with more than 25% of the shares

If any one applicant from your business fails the test, your business will not be registered. You will be notified of the HMRC decision, and you will be able to appeal the decision. See Appendix 2 for the list of circumstances under which an applicant would fail the F&P test.

Registration procedure

The HMRC registration is in two parts. Firstly you must register your business at its normal trading address(es) and secondly you must register as a 'Fit and Proper' (F&P) person.

Are there any registration exemptions?

You do not need to register if you are already registered with or supervised by another authority or professional body (see Appendix 1). It is imperative that you check with your professional body to see if they will act as your supervisory body. We have been advised by ICAEW that their members will only be covered if they hold a practising certificate. If you do not hold a practising certificate, you can either apply for one and be supervised by ICAEW, or you can register with HMRC. We are aware that the Chartered Institute of Management Accountants has advised their members that they will cover all their members but you should confirm this with them.

When do I need to register?

If you are an existing TCSP and do not have a supervisory authority, you must have applied to register with HMRC by 1 April 2008. If you do not register by this date you are obliged to terminate your existing assignments and not accept further relevant work until you are registered.

If you place new candidates in any assignments at director level after 15 December 2007, you will need to **have applied** for registration.

If you are setting up in business as a new TCSP on or after 15 December 2007, you will need to apply to register before carrying out any relevant assignments.

How do I register?

If HMRC is your supervisory body, you will need to register by using form MLR100 and you will also need to complete the form MLR101 for the F&P test. We recommend that you read the explanatory notes that go with both forms. Both the forms and the explanatory notes are available to download at <http://www.hmrc.gov.uk/mlr/regs.htm#3>. Please note that the forms must be filled in by hand in **black** ink and must be signed.

We strongly recommend that you obtain proof of delivery of your registration forms. We expect HMRC to be inundated with registration forms and that there will be significant delays in processing applications, so be sure to keep your receipt.

How much are the registration fees?

The business registration fee is currently set at £95 per annum per premises until 1 June 2008. Thereafter, the fee will be reviewed annually.

The fee for the F&P test is £50 for each applicant, payable at the time of registration. This will also be subject to review in future years. However, it is a one off charge.

When you first apply to register, you will need to pay your fees by cheque but, once registered, you can pay future fees by cheque, BACS or CHAPS. HMRC will send a renewal reminder prior to the due date.

You will receive a certificate of registration which serves as notification of your MLR registration number and confirms the details that HMRC has for your business.

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What happens if I don't register under the Regulations?

If you fail to register when you should, HMRC has powers to invoke penalties and you will not be able to place candidates at director level until you are registered.

Reporting changes

You will need to report changes to HMRC if your registration details are incorrect or there is a change of business circumstances i.e.

- change of address and new or additional premises
- change or additions to directorships or key personnel
- change of shareholding
- premises ceasing to trade

To avoid penalties, these changes must be registered within 30 days. Currently, no charges will be made for reporting these changes.

Public Sector

In general terms, if you handle assignments within the public sector, the Regulations may not apply to you.

However, many public sector bodies such as those in education and health operate certain services through limited companies and limited liability partnerships. If you are handling relevant assignments in the public sector through such a limited company or LLP you will need to register under the Regulations. It is your responsibility to verify the status of each assignment when working with the public sector.

Summary

We strongly recommend that you assess the nature of the assignments that you have been placing, consider the type of assignments that you expect to place in the future, and then make a decision as to whether you should register or not. If there is any likelihood that you might be placing relevant assignments, we suggest that you register sooner rather than later since, from 1 April 2008, if you have not applied to register by this date, then you must not carry on that relevant business.

Under the provisions of the Regulations, HMRC has up to 45 days to carry out each check.

The latest guide to the MLR 2007 from which these notes for Competex clients have been compiled is available on the HMRC website at: <http://www.hmrc.gov.uk/mlr/mlr9.pdf>

Appendix 1: List of Supervisory Authorities and Professional Bodies named in the Money Laundering Regulations 2007

The supervisory authorities are:

- The Financial Services Authority (FSA);
- The Office of Fair Trading (OFT);
- The Commissioners of Her Majesty's Revenue & Customs (HMRC);
- The Gambling Commission of Great Britain;
- The Department of Enterprise, Trade and Investment in Northern Ireland (DETI); and
- The Secretary of State for the Department for Business, Enterprise and Regulatory Reform.

The professional Bodies are:

- The Association of Chartered Certified Accountants
- The General Council of the Bar
- The General Council of the Bar of Northern Ireland
- The Council for Licensed Conveyors
- The Faculty of Advocates (Scotland)
- The Institute of Chartered Accountants in England and Wales
- The Institute of Chartered Accountants in Ireland
- The Institute of Chartered Accountants of Scotland
- The Law Society
- The Law Society of Scotland
- The Law Society of Northern Ireland
- The Association of Accounting Technicians
- The Association of International Accountants
- The Association of Taxation Technicians
- The Chartered Institute of Management Accountants

- The Chartered Institute of Public Finance and Accountancy
- The Chartered Institute of Taxation
- The Faculty Office of the Archbishop of Canterbury
- The Insolvency Practitioners Association
- The International Association of Book Keepers
- The Institute of Financial Accountants
- The Institute of Certified Book Keepers

Appendix 2: Circumstances Under Which an Applicant Would Fail the Fit and Proper Test

For the purposes of the MLRs 2007, an applicant will fail the test if they:

- have been convicted of-
 - (i) an offence under the Terrorism Act 2000;
 - (ii) an offence under paragraph 7(2) or (3) of Schedule 3 to the Anti-Terrorism, Crime and Security Act 2001;
 - (iii) An offence under the Terrorism Act 2006;
 - (iv) an offence under Part 7 of PoCA 2002;
 - (v) an offence listed in Schedule 2, 4 or 5 of PoCA 2002;
 - (vi) an offence under the Fraud Act 2006
 - (vii) an offence under section 72(1), (3) or (8) of the Value Added Tax Act 1994
 - (viii) cheating the public revenue;
- have been adjudged bankrupt or in respect of whom sequestration of his estate has been awarded and (in either case) has not been discharged;
- are subject to a disqualification order under the Company Directors Disqualification Act 1986(a), or has effectively directed a business which has consistently failed to comply with the requirements of the Act;
- are or have been subject to a confiscation order or recovery order under PoCA 2002;
- have consistently failed to comply with the requirements of the MLRs;
- have consistently failed to comply with the requirements of regulation 2006/1781/EC of the EU Payments Regulation;
- have effectively directed a business which has consistently failed to comply with the requirements of the Money Laundering Regulations and/or the Payments Regulation.
- are otherwise not a fit and proper person with regard to the risk of money laundering or terrorist financing.